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Department of Defense
INSTRUCTION

NUMBER 4100.33

SUBJECT: Competitive Sourcing Program Procedures

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References: (a) DoD Instruction 4100.33, "Commercial Activities Program and Procedures," September 9, 1985 (hereby canceled)

(b) DoD Directive 4100.15, "Commercial Activities Program," (new date TBD)

(c) Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," August 4, 1983 (Revised 1999)

(d) OMB Circular A-76 Revised Supplemental Handbook (RSH), "Performance of Commercial Activities," March 1996 (Revised 1999)

(e) through (v), see Appendix 1

1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Updates policy, procedures, and responsibilities contained in DoD Directive 4100.15¹ and OMB Circular A-76².

1.2. Implements the requirements of OMB Circular A-76 Revised Supplemental Handbook, "Performance of Commercial Activities" (hereafter referred to as the RSH)³.

2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to:

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

² Copies may be obtained from EOP Publications, 725 17th Street, N.W., Washington, DC 20503.

³ Copies may be obtained from EOP Publications, 725 17th Street, N.W., Washington, DC 20503.

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

2.1.2. DoD commercial activities (CA) and contains DoD supplemental procedures to the OMB Circular and the RSH for determining whether CAs should be performed in-house, through an interservice support agreement (ISSA), or under contract by a commercial source.

2.1.3. CAs performed by military or DoD U.S. civilians paid by or reimbursed from appropriated funds (i.e., excludes foreign nationals) in the United States, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and overseas.

2.1.4. Contracted CAs performed by U.S.-owned firms in the United States, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and overseas.

2.1.5. CAs that have been reviewed through the DoD Strategic Sourcing Program.

2.2. This Instruction does not:

2.2.1. Apply when contrary to law, Executive order, treaty, or international agreement.

2.2.2. Apply in times of a declared war or military mobilization.

2.2.3. Apply to inherently governmental functions as defined in Enclosure 4.

2.2.4. Apply to exempt CAs performed in-house as defined in Enclosure 4.

2.2.5. Apply to the conduct of research and development (R&D), except for severable CAs that support R&D as defined in Enclosure 4.

2.2.6. Apply to depot maintenance except for support to depot maintenance as defined in Enclosure 4.

2.2.7. Mandate compliance for CAs staffed solely with DoD employees paid by non-appropriated funds, such as golf courses. When installation support functions are consolidated as a business unit for a cost comparison under a single solicitation, a DoD Component may determine that it is more efficient and practical to include all activities in these support functions, including those activities staffed solely with DoD civilian personnel paid by non-appropriated funds.

2.2.8. Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

2.2.9. Provide authority to enter into contracts.

2.2.10. Authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees as described in Title 48, Code of Federal Regulations, Part 237.104 (Federal Acquisition Regulation (FAR) 37.104).

2.3. This Instruction does not establish and is not to be construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this Instruction, except as specifically set forth in the Administrative Appeal Process (AAP) described in the RSH and this Instruction.

3. DEFINITIONS

Terms used in this Instruction are defined in Appendix 2.

4. POLICY

It is DoD policy to:

4.1. Ensure DoD mission accomplishment. The implementation of this Instruction provides a resource management tool for commanders and functional managers to efficiently and cost effectively operate their CAs whether contracted in-house, thereby enhancing the DoD mission objectives of maintaining readiness and sustainability.

4.2. Promote competition. DoD's Competitive Sourcing Program is a major pillar of the business strategy for the Department. DoD Components should manage competitive sourcing with the same discipline and attention given to major acquisition programs. Through the use of the DoD Competitive Sourcing Program, DoD commanders and functional managers will make smart fact-based business decisions to select the best and most cost effective method of performance for their CAs, i.e., in-house or contract/ISSA.

4.3. Rely on the commercial sector. DoD Components shall rely on commercially available sources to provide commercial products or services, unless in-house performance is justified in accordance with this Instruction.

4.4. Retain inherently governmental functions in-house. DoD Components shall ensure inherently governmental functions are performed in-house because they are so intimately related to the public interest that they mandate performance only by Government employees, i.e., military or DoD civilian.

4.5. Achieve economy and enhance productivity through competition. Competition enhances quality, economy, and productivity. When performance of an in-house CA by a commercial source may be viable, a comparison of the cost of contract and in-house performance shall be performed within a reasonable timeframe to determine the appropriate service provider.

4.6. Perform a cost comparison. DoD Components shall perform a cost comparison before converting CAs to or from in-house, contract, or non-DoD ISSA performance, unless otherwise permitted in this Instruction. DoD Components are not permitted to modify, reorganize, divide, or in any way change a CA to circumvent the requirement to perform a cost comparison.

4.7. Compete non-DoD ISSAs in cost comparisons. DoD Components shall compete CAs when obtaining commercial services from a non-DoD Federal agency. A non-DoD ISSA is defined as an agreement with a non-DoD Federal agency for commercial services. Consistent with an agreement between OMB and DoD, DoD Components are not required to compete CAs between DoD Components.

4.8. Share saved resources. Resource savings generated through the DoD Competitive Sourcing Program shall be retained by DoD Components. Savings should be used primarily to improve modernization and readiness, but a portion of the savings should be allocated to incentivize and encourage increased participation by installation commanders and functional managers in the DoD Competitive Sourcing Program.

4.9. Provide placement assistance. DoD Components shall provide placement assistance to civilian employees whose jobs are eliminated due to staff reductions resulting from the DoD Competitive Sourcing Program.

5. RESPONSIBILITIES

5.1. Responsibilities for implementing the policies and procedures of the DoD Competitive Sourcing Program are prescribed in DoD Directive 4100.15 (reference (b)) and appropriate subparagraphs of this Instruction.

5.2. In issuing this Instruction, DUSD(I) has consulted with unions holding National Consultation rights within the Department of Defense. DoD Components shall consult with unions holding National Consultation rights when issuing DoD Component-specific instructions that supplement this Instruction.

6. GENERAL PROVISIONS

6.1. The RSH provides Federal policy and procedures for determining when competition of recurring services, referred to as commercial activities (CA), is or is not appropriate and, when appropriate, how the competition is to be conducted. This section aligns with and supplements Part I, Chapter 1, of the RSH.

6.2. Inherently Governmental Activities. OMB policies and procedures for identifying activities as inherently governmental are discussed in detail in OMB Circular A-76 and the RSH (Part I, Chapter 1, paragraph B., and Appendix 5). DoD policies and procedures for identifying inherently governmental activities modifies this OMB policy and is contained in the DoD Annual CA Inventory Data Call and Enclosure 4. DoD Components shall periodically evaluate the reasons underlying decisions identifying activities as inherently governmental. Activities that no longer qualify as inherently governmental shall be re-coded as CAs. Inherently governmental activities shall be coded in a DoD Component's Annual Commercial Activities Inventory in accordance with DoD's Annual CA Inventory Data Call guidance.

6.3. Government Performance of Commercial Activities.

6.3.1. National Defense/Intelligence Security. OMB Circular A-76 (paragraph 8.b.) requires the Secretary of Defense to establish criteria for determining when Government

performance of a CA is required for national defense reasons. The Circular also directs that only the Secretary of Defense or a designee has the authority to exempt CAs for national defense reasons. It is DoD policy that a CA that is exempt from competition based on DoD Annual CA Inventory Data Call guidance (i.e., military combat augmentation, military image & esprit de corps, military rotation, military career progression, and civilian national security and operational risk) if it meets these criteria (further explained in Enclosure 4). Therefore, a CA staffed with military or civilians based on these criteria may be retained in-house without a cost comparison. To convert from in-house to contract or ISSA, a Component may directly convert these CAs when they are staffed solely by military and/or fewer than 10 DoD civilians (i.e., a direct conversion to private sector performance is permitted), but if staffed by more than 10 DoD civilians, a cost comparison shall be performed. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted. Cost comparisons performed on CAs impacting intelligence security shall be approved by the Director of Central Intelligence or a designee prior to announcement of the cost comparison. To convert from contract to in-house performance based on this criteria, the DoD Component's 9.a. official must justify that conversion is based upon either national defense or intelligence security reasons.

6.3.2. Patient Care. CAs performed at DoD hospitals may be performed in-house in order to maintain the quality of direct patient care as determined by the head of the DoD Component in consultation with the DoD Component's chief medical director. It is DoD policy that CAs staffed with military or DoD civilians based on this criteria may be retained in-house without a cost comparison if properly coded in the Inventory using the criteria at Enclosure 4. To convert from in-house to contract or ISSA, a Component may directly convert these CAs when they are staffed solely by military and/or fewer than 10 DoD civilians (i.e., a direct conversion to private sector performance is permitted), but if staffed by more than 10 DoD civilians, a cost comparison shall be performed. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.3.3. Core Capabilities. It is DoD policy that core capability is determined based upon DoD's Annual CA Inventory Data Call guidance and Enclosure 4. Therefore, a CA staffed with military or civilians based on this criteria may be retained in-house without a cost comparison. To convert from in-house to contract or ISSA, a Component may directly convert these CAs when they are staffed solely by military and/or fewer than 10 DoD civilians (i.e., a direct conversion to private sector performance is permitted), but if staffed by more than 10 DoD civilians, a cost comparison shall be performed. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.3.4. Research and Development (R&D) Activities. OMB Circular A-76, paragraph 7.c.(7), states that the Circular and the RSH do not apply to R&D activities. Therefore this Instruction does not apply to R&D activities. However, recurring and severable CAs that support direct R&D are subject to the cost comparison process. To convert from in-house to contract or ISSA, a Component may directly convert these R&D support CAs when they are staffed solely by military and/or fewer than 10 DoD civilians (i.e., a direct conversion to private sector performance is permitted), but if staffed by more than 10 DoD civilians, a cost comparison shall be performed. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.3.5. Depot Maintenance Activities. 10 U.S.C. § 2464 prohibits conversions to or from contract performance via OMB Circular A-76. Therefore, the RSH and this Instruction do not apply to Depot Maintenance activities. However, recurring and severable CAs that support Depot Maintenance are subject to OMB Circular A-76, the RSH, and this Instruction. To convert in-house to contract or ISSA performance, a Component may directly convert these Depot Maintenance support CAs when they are staffed solely by military and/or fewer than 10 DoD civilians (i.e., a direct conversion to private sector performance is permitted), but if staffed by more than 10 DoD civilians, a cost comparison shall be performed. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.3.6. Firefighter and Security Guard Activities. 10 U.S.C. § 2465 prohibits DoD from obligating or expending appropriated funds (APF) for the purpose of entering into a contract for the performance of firefighting or security guard functions at any military installation or facility. Therefore, DoD Components are prohibited from converting in-house firefighter or security guard activities to contract performance. This prohibition does not apply to a contract (1) to be carried out on a Government-owned but privately-operated installation; (2) to be carried out at a location outside the U.S. (including its commonwealths, territories, and possessions); or (3) existing (or being renewed) as of September 24, 1983. However, contracted firefighting and security guard activities may be competed in a cost comparison. Support activities to firefighter and security guard activities do not fall under this prohibition (e.g., routine maintenance and repair of fire equipment, installation of fire prevention equipment, animal control, visitor information services, vehicle impoundment, vehicle registration, and administrative support).

6.3.7. No Satisfactory Commercial Source Available. A CA may be performed in-house when the DoD Component can demonstrate that no satisfactory commercial source is available. Before concluding that no satisfactory commercial source is available, the DoD Component shall issue a solicitation to ensure all reasonable efforts have been made to identify available sources. Determinations about the availability of satisfactory commercial sources shall be made in accordance with OMB Circular A-76 (paragraphs 8.a.(1)-(3)) and Enclosure 4 which provide specific justification standards required to support a determination under this criterion. However, CAs retained in-house based on this criterion shall implement their Most Efficient Organization (MEO).

6.3.8. Functions with 10 or Fewer FTE. DoD components may convert contracted CAs to in-house or ISSA performance without a cost comparison if the work can be performed by 10 or fewer full time equivalent (FTE) APF civilian employees. It is DoD policy that a conversion from contract to in-house is permissible as a direct conversion; however, compliance with 10 U.S.C. § 2462 is required. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.3.9. Meet Performance Standard. The RSH, Part I, Chapter 1, paragraph A.7., allows performance by in-house, contract, or ISSA if a DoD Component demonstrates the CA meets or exceeds generally recognized industry performance and costs standards. It is DoD policy that prior to any conversions to or from contract based on this criterion, the DoD Component shall obtain prior written DUSD(I) approval. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.3.10. Lower Cost. In-house performance of a CA is permitted if a cost comparison (performed in accordance with the RSH and this Instruction) demonstrates that the CA can operate at lower cost than a contract or ISSA provider.

6.4. Contract Performance of Commercial Activities.

6.4.1. Contracted CAs. A contracted CA will continue under contract unless a cost comparison (performed in accordance with the RSH and this Instruction) determines in-house performance is more efficient and cost effective (except as provided by paragraphs 6.2.1. and 6.2.6. above). 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.2. New requirements. A new requirement is a newly established need for a product or service. If this new requirement is commercially available, DoD Components shall obtain this new requirement by a competitively awarded contract unless the new requirement is inherently governmental or commercial exempt (see Enclosure 4). If the new requirement is not inherently governmental or commercial exempt and in-house performance is desired and it is commercially available, a cost comparison shall be performed to justify in-house performance. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.3. Severable Expansions. An expansion is the modernization, replacement, upgrading, or enlargement of an existing in-house CA or capability. If the expansion involves a 30% increase in the operating cost of the CA, a 30% increase in the total capital investment to perform the CA, or an increase of 65 FTEs or more to the CA, a cost comparison shall be performed prior to in-house performance. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.3.1. In accordance with the RSH, Part I, Chapter 1, paragraph D.3., severable expansions of existing contracted or ISSA-performed CAs shall be obtained by competitively awarded contract. A severable expansion of a CA is a piece of the CA that can stand alone for the purposes of a defined acquisition. If the expansion is less than the thresholds stated in paragraph 6.3.3., the expansion may be performed in-house or competed at the DoD Component's discretion. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.3.2. If the expansion of the CA is not severable, a cost comparison of the entire activity, including the proposed expansion, shall be conducted for potential contract performance. If the expansion is less than the thresholds stated in paragraph 6.3.3., the expansion may be performed in-house. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.4. ISSA. It is DoD policy that prior to a CA being converted to a non-DoD ISSA, it shall be competed in accordance with the RSH and this Instruction. Non-DoD Federal agencies may participate in the cost comparison process as an ISSA provider by competing with private sector offerors to determine which offeror (i.e., contract or ISSA) will compete against the in-

house offer. (See paragraph 7.) 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.5. Activities with 10 or Fewer FTEs. DoD components may convert in-house CAs to contract or ISSA performance without a cost comparison if the work is performed by 10 or fewer full time equivalent (FTE) APF civilian employees. It is DoD policy that a conversion from in-house to contract is permissible as a direct conversion. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.6. Activities of 11 or More FTEs. As required by the Annual Defense Appropriations Act, an MEO analysis must be developed and certified to Congress prior to converting an in-house CA performed by 11 or more full time equivalent APF civilian employees to contract or ISSA performance. While the RSH (Part I, Chapter 1, paragraph D.6.) allows a conversion to contract/ISSA performance without the benefit of a cost comparison if placement can be made, this statutory requirement takes priority over OMB regulatory requirements. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.7. Activities Performed by the Military. DoD Components may directly convert in-house CAs performed by military personnel to contract or ISSA without a cost comparison. If a cost comparison is performed, military may be included in the MEO (no civilian to military conversions shall be permitted) and must be costed in accordance with the DoD A-76 Costing Manual (DoDD 4100.xx-M). 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.8. Preferential Procurement Programs.

6.4.8.1. Under this provision, preferential procurement programs apply to CAs that are either:

6.4.8.1.1. On the procurement list pursuant to section 2 of the Javitts-Wagner-O'Day (JWOD) Act (41 U.S.C. § 47-48c);

6.4.8.1.2. Planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with the JWOD Act; or

6.4.8.1.3. Planned to be converted to performance by the following that must be in the SBA's 8(a) Business Development Program and participating in a particular procurement that is being conducted under the 8(a) program.

6.4.8.1.3.1. Under 51% ownership by an Indian tribe (as defined in 25 U.S.C. 450b(e)), or

6.4.8.1.3.2. A Native Hawaiian organization (as defined in 15 U.S.C. Section 637(a)(15)).

6.4.8.2. If conversion of an in-house CA is planned to one of these preferential procurement firms, compliance with 10 U.S.C. § 2462 is required and either a cost comparison or direct conversion is permissible (refer to the appropriate paragraphs for further information). For these conversions, the following congressional notifications are not required prior to conversion: (1) notification and certification in accordance with 10 U.S.C. § 2461 and (2) certification of the MEO to Congress in accordance with the Annual Defense Appropriations Act.

6.4.8.3. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.4.9. Lower Cost. Contract or ISSA performance of a CA is permitted if a cost comparison (performed in accordance with the RSH and this Instruction) demonstrates that the CA can operate at lower cost than an in-house provider. 10 U.S.C. § 2462 requires that the conversion be based on lower costs and that a realistic and fair comparison of costs is conducted.

6.5. Cost Comparison Waivers.

6.5.1. A-76 cost comparison waivers can be a useful supplement to the Competitive Sourcing Program. As permitted by the RSH, DoD supports this approach given sufficient justification. An A-76 cost comparison waiver permits conversion to or from in-house or contract/ISSA performance without conducting an A-76 cost comparison. The waiver analysis shall apply to the decision not to conduct an A-76 cost comparison rather than whether a particular proposal is consistent with overall Component goals or objectives or is one a Component wishes to investigate. During the analytical process leading to a decision of whether to request a cost comparison waiver, DoD Components should solicit the views, comments, and recommendations of the incumbents (e.g., Government employees and their representatives, private sector contractor(s), ISSA providers). The decision to submit a waiver request is a management determination. Additionally, an A-76 cost comparison waiver shall apply to the entire A-76 cost comparison process and will not be used to waive specific provisions or cost factors within the A-76 cost comparison process itself.

6.5.2. DoD procedures for waiving a specific cost comparison in accordance with the waiver procedures of the RSH follow:

6.5.2.1. Waiver Criteria. In accordance with the RSH, Chapter 1, paragraph E (3)(a)(1) and (2), waivers of A-76 cost comparisons shall be permitted for conversions from or to in-house or contract/ISSA performance only when:

6.5.2.1.1. The conversion will result in a significant financial or service quality improvement and will not reduce significantly the level or quality of competition in the future award or performance of the work, or

6.5.2.1.2. The in-house or contract offer has no reasonable expectation of winning a competition under the A-76 cost comparison process.

6.5.2.2. Compliance with Legislation. An A-76 cost comparison waiver does not constitute a waiver of applicable statutes. A-76 cost comparison waivers cannot be used to

circumvent statutory requirements. Before converting an in-house CA to contract/ISSA performance, DoD Components shall comply with applicable statutory requirements such as 10 U.S.C. § 2461 (provides general cost comparison notifications and inventory provisions), 10 U.S.C. § 2462 (requires private sector sources to be more cost effective), 10 U.S.C. § 2467 (provides cost comparison requirements with respect to retirement costs and consultation with Government employees and Congressional notification of cost comparison waivers), PL 106-79 § 8014 and successor Appropriations Act provisions (provides MEO requirement provisions), and any other pertinent laws.

6.5.2.3. Special Considerations. A-76 cost comparison waivers are granted to DoD for Federal installations scheduled for closure or in cases where functions are designated for termination on specific dates. Such waivers are not required to meet the requirements in paragraph 6.5.2.1 above. DoD Components may elect to grant these waivers on a case-by-case basis.

6.5.2.4. Delegation of Waiver Authority. The A-76 cost comparison waiver approval authority is delegated to the official that a DoD Component has designated to comply with paragraph 9.a. of OMB Circular A-76.

6.5.2.5. Waiver Submission. A-76 cost comparison waiver requests shall be submitted in writing to the A-76 cost comparison waiver approval authority (see paragraph 6.5.2.4. above) and include the following information: (1) the CA(s), location(s), and full-time equivalents (military and civilian) impacted by the waiver request (for multiple locations a breakout by location is required); (2) sufficient justification, supporting analysis, and data; (3) plans for compliance with statutory requirements; and (4) a public affairs plan of action. The A-76 cost comparison waiver request and approval document serve as the administrative record. The public affairs plan shall include the timing of appropriate notifications for adversely affected civilian and military employees, union representatives, incumbent contractors, etc., as well as outline how the appropriate DoD, legislative, and local community notifications will be made.

6.5.2.5.1. If the A-76 cost comparison waiver is based on paragraph 6.5.2.1.1. the request shall clearly indicate why the conversion will result in a significant financial or service quality improvement to DoD. The term “significant” shall be supported by data analysis. The request also shall describe “how” the level or quality of competition in future awards or performance of the work will not be reduced.

6.5.2.5.2. If the A-76 cost comparison waiver is based on paragraph 6.5.2.1.2., the request shall include detailed analysis documenting why the incumbent (i.e., in-house or contractor/ISSA) will have no reasonable expectation of winning a competition under the A-76 cost comparison process.

6.5.2.5.3. A-76 cost comparison waiver requests for a conversion from in-house to contract/ISSA shall include a statement that maximum efforts will be made to assist adversely affected civilian employees in accordance with 5 CFR Part 330 and Part 351. They shall be offered the Right of First Refusal as required by FAR Part 52.207-3 and provisions for how these employees may appeal the A-76 cost comparison waiver decision (see paragraph 6.5.2.7.).

6.5.2.5.4. A Component's decision to waive the A-76 cost comparison process shall be based solely upon whether the CA proposed for conversion strictly meets the requirements delineated in the RSH, Chapter 1, paragraph E (3)(a)(1) and (2). The decision cannot be based on whether the proposal, in general, is consistent with overall Component policies, goals, or objectives, or whether the proposal should be pursued by the Component as a matter of overall sound business judgement.

6.5.2.6. Public Announcement. Before a public announcement is made of the A-76 cost comparison waiver approval, DoD Components shall make the following announcements in the following order:

6.5.2.6.1. A copy of the A-76 cost comparison waiver request and approval document shall be provided with the notification to DUSD(I) five workdays prior to the requirements listed in paragraphs 6.5.2.6.2. and 6.5.2.6.3.

6.5.2.6.2. Concurrently, notify Congress (per 10 U.S.C. § 2461 and any other relevant statute) and directly affected civilian employees and their union representatives as well as any affected military or incumbent contractors. A copy of the A-76 cost comparison waiver request and the approval document shall be provided to these individuals upon Congressional notification, and they shall be informed of the appeal process at the same time.

6.5.2.6.3. Local community. An official press release is recommended.

6.5.2.7. Waiver Administrative Appeal Process (WAAP). A-76 cost comparison waivers are appealable. The following guidance is provided for addressing these appeals:

6.5.2.7.1. Eligible appellants shall be limited to the Federal employees and their representatives and existing Federal contractors and ISSA providers affected by a decision to waive the A-76 cost comparison process.

6.5.2.7.2. Eligible appellants shall file an appeal during the Public Review Period that begins on the date a copy of the A-76 cost comparison waiver request, approval documents, and supporting documentation are provided to the appellants and ends within 20 calendar days. The start date for the Public Review Period is Congressional notification date (see paragraph 6.5.2.6.2.). Appeals shall be submitted by eligible appellants during the Public Review Period to the official who signed the A-76 cost comparison waiver approval document. This official then provides them to the WAAP Authority who shall determine the outcome of the appeal.

6.5.2.7.3. DoD Components shall appoint a WAAP Authority for the A-76 cost comparison waiver appeal, who shall be two organizational levels above the official who signs the A-76 cost comparison waiver approval document (see paragraph 6.5.2.4.).

6.5.2.7.4. A-76 cost comparison waiver appeals must:

6.5.2.7.4.1. Address specific questions regarding agency compliance with requirements and procedures of OMB Circular A-76, the RSH, and this Instruction.

6.5.2.7.4.2. Address factual questions regarding the A-76 cost comparison waiver justification.

6.5.2.7.4.3. Identify specific instances of agency denials of information not otherwise protected by law or regulation.

6.5.2.7.5. The WAAP Authority for the A-76 cost comparison waiver appeal should make a final decision within 30 calendar days from the date of the end of the Public Review Period and provide a copy of the written decision to the appellant(s). This decision shall provide an explanation of why the appeal is sustained, does not meet the appeal criteria, or why the appeal is denied. The A-76 cost comparison waiver appeal decision made by the WAAP Authority is final and not subject to further review as provided by the RSH, Part I, Chapter 3, paragraph K.7, and this Instruction.

6.6. Inventory. DUSD(I) issues an Inventory data call once each year (by early November) with specific instructions and guidance. The data call instructions and guidance are posted at [<http://gravity.lmi.org/ec003/website/web/inventory.htm>]. The Inventory derived from the data call serves as the data set used for a variety of purposes including the Department's response to two annual reporting requirements: 1) the Federal Activities Inventory Reform (FAIR) Act of 1998 and 2) the Annual Report to Congress on Commercial and Industrial Activities (most recently referenced as section 2461(c) of title 10, United States Code). The Inventory encompasses all Department of Defense manpower authorizations and categorizes these authorizations as either inherently governmental, exempt, or subject to competition. In addition, the authorizations are categorized by function, location, and organization. The Inventory includes military (Active and Select Reserve), and DoD civilian manpower. The data call targets a complete inventory with a few exceptions, notably Non-Appropriated Fund (NAF) positions, Contractor (CME) positions, and Individuals accounts. Inventory data should be relatively consistent in the number of authorizations reported in the corresponding FY's Defense Manpower Requirements Report (DMRR).

6.7. Review of Documents.

6.7.1. Access to Supporting Documentation.

6.7.1.1. Directly affected DoD civilian employees and military personnel may participate in or have their views considered during the development of the PWS and Government Management Plan. This participation shall be consistent with procurement and conflict of interest requirements.

6.7.1.2. Directly affected DoD civilian employees and military should be offered an opportunity to comment on a draft solicitation and given sufficient time to review and comment on the solicitation prior to final issuance of the solicitation. The private sector offerors shall be given the opportunity to comment as provided by FAR 11.002(c).

6.7.2. Appeals of DoD Decisions.

6.7.2.1. A-76 Cost Comparison Waivers. During the analytical process leading to a decision of whether to request a cost comparison waiver, DoD Components should solicit the

views, comments, and recommendations of the incumbents (e.g., Government employees and their representatives, private sector contractor(s), ISSA providers). The decision to submit a waiver request is a management determination. However, a copy of the A-76 cost comparison waiver request and the approval document shall be provided to eligible appellants upon Congressional notification. (Refer to paragraph 6.5.)

6.7.2.2. A-76 Cost Comparison Administrative Appeal Process (AAP). Eligible appellants shall be provided all relevant supporting documentation associated with the cost comparison. This shall include the Government Management Plan which includes the in-house cost estimate with any detailed supporting data, the completed cost comparison form, etc.

6.8. Personnel Considerations.

6.8.1. Adversely Affected DoD Civilian Employees. These are DoD civilians identified for release from their competitive level by DoD (in accordance with 5 CFR 51 and 5 U.S.C. Chapter 35) as a direct result of a decision to convert to contract, ISSA, or MEO performance.

6.8.2. Directly Affected DoD Civilian Employees or Military. These are DoD civilians or military whose jobs are being competed in the CAs included in the cost comparison or direct conversion.

6.8.3. Right of First Refusal. DoD permanent civilian employees adversely affected by a decision to convert to contract/ISSA performance shall be provided the right of first refusal for jobs for which they are qualified that are created by the conversion. This “right” is described in FAR 52.207-3, which clause shall be included in solicitations and applies to DoD permanent civilian employees affected by either a cost comparison or direct conversion decision that results in a contract with the private sector (this right does not apply to conversions to an ISSA provider or JWOD/NISH/NIB providers).

6.8.3.1. FAR 52.207-3, Right of First Refusal, reads as follows:

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards. (b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract. (c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

6.8.3.2. The RSH requirement to offer *contract* employees the Right of First Refusal is tied to Executive Order 12933, “Non-Displacement of Qualified Workers Under Certain Contracts”, October 20, 1994. This Executive Order does not apply “on military

installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense).” Therefore, the right of first refusal for contract employees under the RSH and this Executive Order does not apply to DoD.

6.8.4. Assistance to Adversely Affected DoD Civilian Employees. DoD Components shall make every reasonable effort to place or retrain DoD civilian employees who are adversely affected by a conversion to contract as a result of a cost comparison, streamlined cost comparison, or direct conversion. This includes: giving priority consideration for available DoD positions, establishing a reemployment priority list and an effective placement program; paying reasonable costs for retraining and relocation that contribute directly to placement, and coordinating with the Office of Personnel Management to ensure employees have access to placement programs, including the OPM-operated Displaced Employee Program (DEP) and the Inter-agency Placement Assistance Program (IPAP).

6.8.5. DoD Civilian Employee Notification Requirements.

6.8.5.1. At the Beginning of a Competitive Sourcing Initiative. DoD Components shall ensure that affected DoD civilian employees and their representatives are notified of a management decision to begin a competitive sourcing initiative (e.g., a cost comparison, streamlined cost comparison, or direct conversion). For cost comparisons where Congressional notification is required, this employee notification shall be made either concurrent with or within three days after the Congressional notification is made. If Congressional notification is not required, employee notification shall be made prior to public announcement of the cost comparison. Regardless whether Congressional notification is required or not, DoD civilian employees and their representatives affected by a cost comparison or direct conversion, shall be notified prior to public announcement of the cost comparison.

6.8.5.2. While a Competitive Sourcing Initiative is In-Progress: DoD Components shall ensure that affected DoD civilian employees and their representatives are provided the status of the initiative on a monthly basis until the final decision is determined.

6.8.5.3. When a Competitive Sourcing Decision is Made. DoD Components shall ensure that affected DoD civilian employees and their representatives are notified of a tentative cost comparison decision as soon as the cost comparison is performed, or when the results of the streamlined cost comparison or direct conversion are known. For cost comparisons where Congressional notification is required before conversion to contract is permitted, this employee notification shall be made either concurrent with or within three days after Congressional notification is made. If Congressional notification is not required, employee notification shall be made prior to public announcement of the cost comparison decision. Regardless whether Congressional notification is required or not, DoD civilian employees and their representatives affected by a cost comparison or direct conversion, shall be notified prior to public announcement of the decision.

6.8.6. Relationship to the Budget.

6.8.6.1. DoD components shall reflect their Competitive Sourcing Program in annual budget submissions in accordance with Program Objective Memoranda (POM) Planning Instructions, the DoD Financial Management Regulation and other forms of guidance, as applicable. Budget exhibits shall be coordinated through DUSD(I) and OSD(PA&E).

6.8.6.2. DoD Components must ensure that budgetary considerations are part of their competitive sourcing strategy. For example, ensure sufficient budget lead-time is considered when developing cost comparison milestones to ensure appropriate funding is available for implementing final cost comparison decisions.

6.8.6.3. DoD Components shall ensure that sufficient resources (i.e., dollars or manpower) are available to perform competitive sourcing initiatives. For example, sufficient funding should be available for dedicated in-house and/or consultant support.

6.8.6.4. OMB has concurred that DoD may retain savings generated through the Competitive Sourcing Program. Accordingly, DoD Components shall retain resource savings generated through the DoD Competitive Sourcing Program and apply them in accordance with paragraph 4.8.

6.9. General Guidelines. The following figure is a general guide to quickly summarize the differing requirements for a Standard Cost Comparison, Streamlined Cost Comparison, and a Direct Conversion as well as other considerations. Refer to the corresponding paragraphs 8, 9, and 10, respectively, for specific requirements for these types of competitive sourcing initiatives.

FIGURE 6.1. GENERAL GUIDELINES FOR COMPETITIVE SOURCING INITIATIVES			
TYPE OF COMPETITIVE SOURCING INITIATIVE	STANDARD COST COMPARISON	STREAMLINED COST COMPARISON	DIRECT CONVERSION
IF A CA IS PERFORMED BY:			
>10 APF U.S. civilian employees	Required (unless conversion is to a preferential procurement program per para 6.4.8.)	Allowed but limited to CAs performed by <66 APF U.S. civilian employees	Not Allowed (unless conversion is to a preferential procurement program per para 6.4.8. and if cost effective in accordance with 10 U.S.C. § 2462)
>10 APF U.S. civilian employees and any number of: Military NAF employees Foreign Nationals	Required (unless conversion is to a preferential procurement program per para 6.4.8.)	Allowed but limited to CAs performed by <66 APF U.S. civilian employees and any number of military, NAF employees, and/or Foreign Nationals)	Not Allowed (unless conversion is to a preferential procurement program per para 6.4.8. and if cost effective in accordance with 10 U.S.C. § 2462)
<11 APF U.S. civilian employees	Allowed	Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462
<11 APF U.S. civilian employees and any number of: Military NAF Foreign Nationals	Allowed	Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462
Any number of military	Allowed	Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462
NAF employees OR Foreign Nationals	Allowed	Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462

FIGURE 6.1. GENERAL GUIDELINES FOR COMPETITIVE SOURCING INITIATIVES			
TYPE OF COMPETITIVE SOURCING INITIATIVE	STANDARD COST COMPARISON	STREAMLINED COST COMPARISON	DIRECT CONVERSION
IF COMPETITION IS PLANNED FOR CONVERSION TO A:			
Restricted Solicitation: Small Business, Small Disadvantaged Business, Small Business 8(a), HUBZone Set-Asides	Allowed	Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462
JWOD/NISH/NIB Provider (See para 6.4.8)	Allowed	Not Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462
Firms under 51% ownership by an Indian Tribe or Native Hawaiian Organizations (See para 6.4.8.)	Allowed.	Not Allowed	Allowed if cost effective in accordance with 10 U.S.C. § 2462
CONGRESSIONAL CONSIDERATIONS:			
Congressional notification prior to public announcement (10 U.S.C. § 2461)	Required >50 DoD Civilians	Required >50 DoD Civilians	Required >50 DoD Civilians
Congressional notification of final cost comparison decision when converting to contract unless conversion is per para 6.4.8.	Required	Required	
10 U.S.C. § 2461	>50 DoD Civilians	>50 DoD Civilians	>50 DoD Civilians
Annual Defense Appropriations Act	>10 DoD Civilians	>10 DoD Civilians	>10 DoD Civilians
DoD Components shall also make Congressional notification of in-house decisions that meet the above thresholds as a courtesy and to avoid the appearance that cost comparisons only result in contract decisions.			

FIGURE 6.1. GENERAL GUIDELINES FOR COMPETITIVE SOURCING INITIATIVES			
TYPE OF COMPETITIVE SOURCING INITIATIVE	STANDARD COST COMPARISON	STREAMLINED COST COMPARISON	DIRECT CONVERSION
Start Date	Congressional notification date or when Congressional notification is not required the public announcement date	Congressional notification date or when Congressional notification is not required the public announcement date	Congressional notification date or when Congressional notification is not required the public announcement date
End Date	Tentative Cost Comparison Decision Date	Tentative Cost Comparison Decision Date	Tentative Decision Date
OTHER CONSIDERATIONS:			
Government Management Plan Requirements	<ol style="list-style-type: none"> 1. Current Organization Summary 2. MEO 3. IHCE 4. Quality Control Plan, 5. Transition Plan and, if required, 6. TPP 	<ol style="list-style-type: none"> 1. Summary of and Certification that current organization is the MEO, 2. IHCE 3. Quality Control Plan 4. Transition Plan 	<ol style="list-style-type: none"> 1. IHCE 2. Transition Plan

7. INTER-SERVICE SUPPORT AGREEMENT (ISSA)

7.1. General.

7.1.1. For the purpose of this Instruction, an ISSA is an agreement between DoD and non-DoD Federal agencies, e.g., Veterans Administration, Federal Aviation Administration, General Services Administration, Department of Transportation, Department of Energy, etc.

7.1.2. ISSAs include agreements between DoD Components and state or local Governments. DoD Components shall conduct a cost comparison prior to offering to provide or receive CAs to or from state or local government agencies.

7.1.3. A DoD Component is not permitted to bid as an ISSA in another DoD Component's cost comparison. If an ISSA is desired, a cost benefit analysis in lieu of a cost comparison is performed to justify the ISSA between DoD Components. This is considered a transfer of work between Components. However, if the work is a CA it will remain in the FAIR Inventory as a competeable function and should be competed.

7.1.4. DoD Components cannot perform CAs for the private sector unless prior OMB approval is granted or statutory authority exists.

7.1.5. The requirements of the RSH and this Instruction do not apply to non-DoD ISSAs for inherently governmental activities. It is DoD policy, however, that inherently governmental workload included in non-DoD ISSAs must be performed by Government employees, and that non-DoD ISSAs must specifically stipulate this requirement.

7.1.6. The RSH and this Instruction do not apply to existing non-DoD ISSAs unless there is a consolidation that includes a conversion to or from contract performance.

7.1.7. DoD Components will not retain, create, or expand internal capacity for the purpose of providing new or expanded levels of interservice support services for non-DoD Federal Agencies unless justified by a cost comparison. For example, if aircraft maintenance workload is reduced at an installation, the DoD Component cannot seek work from outside DoD to retain, create, or expand capacity for the aircraft maintenance function.

7.1.8. A cost comparison is not required when executing an ISSA for support within the DoD unless such agreement would result in a conversion to or from contract performance.

7.1.9. A non-DoD Federal agency may also request a cost comparison on a DoD-performed CA for which the non-DoD Federal Agency can then submit an offer. It is the prerogative of the DoD Component to determine whether or not a cost comparison should be performed.

7.1.10. If a DoD Component is currently obtaining a CA from a non-DoD Federal Agency, the DoD Component may, with proper notification, terminate that relationship and

convert directly to contract performance without a cost comparison. The DoD Component cannot perform this work in-house until a cost comparison justifies in-house performance.

7.1.11. If a non-DoD Federal agency is currently obtaining a service from the DoD Component, the non-DoD Federal agency may, with proper notification, terminate that relationship and convert directly to contract performance without a cost comparison.

7.2. Specific.

7.2.1. It is DoD policy that prior to a CA being converted to an ISSA, it shall be competed in accordance with the RSH and this Instruction.

7.2.2. ISSA providers shall submit offers developed in accordance with Part II of the RSH and this Instruction. The ISSA offer shall include a Management Plan, which must include an ISSA cost estimate. The ISSA offer shall be received according to timeframes included in the solicitation seeking contract offers and must allow sufficient time for completion of an independent review.

7.2.3. ISSA offers submitted in cost comparisons are subject to an independent review prior to the due date for receipt of contract offers. It is DoD policy that the IRO who certifies the ISSA offer cannot be the same IRO that certifies the in-house cost estimate.

7.2.4. The Source Selection Authority (SSA) evaluates the ISSA and contract offers to identify which offer represents the best overall value to the Government. The selected offer (ISSA or contract) then competes with the in-house offer. The SSA may accept or reject the ISSA proposal as technically qualified or unqualified, as appropriate. A rejection of the ISSA offer as technically unqualified is not appealable. Prospective ISSA offers that are technically acceptable will compete among the private sector offers first to determine if the ISSA offer will compete with the in-house offer.

7.2.5. ISSA offerors may appeal a cost comparison decision in accordance with the RSH and this Instruction.

7.2.6. Under no condition, shall DoD Components cancel or otherwise delay receipt of contract offers, the cost comparison tentative decision, or contract award in order to permit an ISSA to submit an offer.

8. STANDARD COST COMPARISON

8.1. General. This section provides DOD policy and procedures for determining the efficiency and cost effectiveness of competing in-house or contracted CAs. To determine whether a standard cost comparison, streamlined cost comparison, or direct conversion can be performed, refer to Figure 6.1. The standard cost comparison uses the following approach:

Figure 8.1.

8.1.1. Centralized Management. DoD Components are encouraged to use centralized management techniques when performing cost comparisons. This includes a centralized management approach to packaging and having teams that are skilled in performing various aspects of a cost comparison (e.g., PWS development, MEO development, in-house cost estimate preparation, acquisition, independent review) that are responsible for assisting in these areas on a regular basis so they can benefit from lessons learned and best practices. The benefits to DoD Components of a centralized management approach include (1) leveraging experience to improve Competitive Sourcing Programs by facilitating incorporation of real world experiences into Component policies and execution strategies, (2) enhancing workforce and industry confidence due to the higher levels of expertise and objectivity these experienced teams can bring to bear on cost comparisons, and (3) developing core groups of skilled A-76 personnel who can incorporate best practices and lessons learned from one cost comparison to the next. Conversely, the lack of a centralized management approach can cause increased training costs, longer cost comparison completion times, increased risk of making erroneous decisions, and reduced competition and savings. Centralized management can be implemented at various levels within a Component.

8.1.2. Packaging for the Cost Comparison.

8.1.2.1. Packaging is management's determination on which CAs are included in the cost comparison, how this will impact competition, and is a key element to the success of the cost comparison. Decisions on how to package CAs should consider (1) the effect on competition, (2) reduction of duplicative management costs that can be eliminated through optimal packaging, (3) efficiencies in reduced time by, and dollar savings gained from, performing fewer larger cost comparisons versus many smaller cost comparisons, and (4) the impact of post-competition management on commanders.

8.1.2.2. DoD Components determine how to package CAs for competition. This determination should be accomplished before Congressional announcement in order to minimize negative impacts on employees and to ensure information included in the Congressional notification is as accurate as possible. This is important for several reasons.

8.1.2.2.1. Employee morale and productivity is negatively impacted when employees are not sure whether their jobs are being competed. A Component is better served by getting the packaging correct from the start so as to not cause unnecessary apprehension for their employees. For example, including employee positions in an announcement when their work is really exempt from competition causes discontent in the workplace.

8.1.2.2.2. Components must ensure that a cost comparison announced based on the “reviewable” positions in the FAIR Act Inventory are competed as announced unless these positions are evaluated and recoded in accordance with DoD Inventory policy. If these positions are evaluated but remain coded as reviewable, they are to remain in the cost comparison. “Local” rationale for exclusions are not permitted unless covered by DoD policy.

8.1.2.2.2.1. Competition is negatively impacted when industry is reluctant to participate because of repeated instances where announced scopes of work do not materialize when solicitations are released. Industry must plan and budget for cost comparison in which they desire to compete. They base these decisions on the available data provided using the “announced” number of positions. This is acceptable as long as the “announced” number of positions does not change significantly.

8.1.2.2.2.2. When Components decrease the number of positions that are being competed from the number that was announced, the decision must be made with the realization that it may result in an overstatement of savings projected in the budget. Therefore, if these decisions are delegated to lower level than the level responsible for the budget, the DoD Component shall ensure sufficient oversight in order to tie budgetary savings to execution savings.

8.1.2.3. No CA shall be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirements of the RSH and this Instruction (per 10 U.S.C. § 2461).

8.1.2.4. Cost Comparisons and the Small Business Act Bundling Rule. Application of the recently revised Small Business Act clarifies the impact of bundling when performing an A-76 cost comparison. Bundling refers to the grouping of requirements performed either in-house or by contract. The SBA requirement to conduct a cost benefit analysis before bundling these requirements does not apply when performing an A-76 cost comparison. The methodology for the cost comparison process ensures that the Federal Government will derive measurably substantial benefits from the conversion to MEO or contract/ISSA performance. For example, a cost comparison is performed on a function that includes a mix of requirements performed by both DoD civilians and two or more small business contracts. The cost comparison on this function may be converted to performance under one contract that is awarded to a large business or to the MEO. The cost comparison, which includes

a 10% conversion differential (or \$10M over the performance periods), is the cost benefit analysis.

8.1.2.5. Cost Comparisons when JWOD firms are involved.

8.1.2.5.1. If a decision is made to conduct a cost comparison but limit competition between the Government and a JWOD firm (including NISH or NIB), the service (i.e., CA) must be on or added to the JWOD Procurement List before the cost comparison is performed.

8.1.2.5.1.1. The services (i.e., CA) must be added to the Procurement List at an estimated target price to negate the need for justification and approval and to cover the DoD Component (as the procurement agency) with JWOD authority. The DoD Component shall contact the regional NISH office who will provide a pre-qualified Community Rehabilitation Program (CRP).

8.1.2.5.1.2. The DoD Component synthesizes its intent to conduct a cost comparison with JWOD for the specified services and indicates that no solicitation will be issued to industry. The DoD Component shall partner with JWOD and the CRP to develop the PWS and streamlined contract document. The DoD Component shall negotiate an estimated fair and reasonable price in partnership with JWOD and the CRP and forward through NIB or NISH to the JWOD Committee. The Component shall add the requirement to the procurement list and conduct the cost comparison in accordance with this Instruction.

8.1.2.5.2. If a decision is made to conduct a full and open competition to include a JWOD, NISH or NIB firm, the firm must compete under the same evaluation and selection criteria as every the contract/ISSA offerors.

8.1.2.5.3. If a decision is made compete as a small business set aside, a JWOD, NISH or NIB firm are ineligible to compete.

8.1.2.5.4. DoD civilians are not afforded the Right of First Refusal for conversions to JWOD, NISH, or NIB firms.

8.1.2.6. Cost Comparisons Involving Employee Stock Ownership Plans (ESOP). If the DoD civilians decide to form an ESOP and compete as an ESOP in a cost comparison, they do not compete as the in-house offeror but as a private sector offeror. The ESOP offer is treated as a private sector offeror in that it is required to compete in accordance with the FAR and DFARS and competes against all contract/ISSA offerors in the cost comparison to determine which offeror will compete against the MEO. All negotiations between employees and the Government shall be via a third party corporation or company known as a strategic partner.

8.1.3. Cost Comparison Timeframes.

8.1.3.1. OMB Timeframes. Cost comparisons shall be completed in a timely manner. The RSH states that completion should be 18 months for a single function cost comparison and 36 months for a multi-function cost comparison. DoD Components should

establish cost comparison milestones to meet these timeframes. When a DoD Component anticipates not meeting these timeframes, the Component shall submit a written report to OMB through DUSD(I). This report shall include a description of the problems encountered, remedial actions, status, expected completion date, and assurances documenting how the Component will complete the cost comparison within statutory timeframes.

8.1.3.2. Statutory Timeframes. A recurring provision in the Annual DoD Appropriations Act specifies that no funds will be appropriated to perform a cost comparison if the cost comparison exceeds a period of 24 months for a single function cost comparisons and 48 months for a multi-function cost comparison. If DoD Components expend funds on in-house or consultant support for cost comparisons exceeding these statutory timeframes, they will be in violation of the Anti-Deficiency Act. Therefore, cost comparisons that have not reached a tentative decision within the specified statutory timeframes shall be cancelled. This includes canceling the cost comparison, including the solicitation, and notifying employees and their representatives, as well as any affected offerors, of the cancellation

8.1.3.3. Cost Comparison Start Date. This is the date that Congressional notification is made or, if Congressional notification is not required, the public announcement date.

8.1.3.4. Cost Comparison End Date. This is the date that a tentative cost comparison decision is made.

8.1.3.5. Tentative Cost Comparison Decision Date. This is the date that a tentative decision is made after comparing the in-house offer to the selected contract/ISSA offer. At this point, the competition is over and only subject to the due process inherent in the AAP and GAO bid protest procedures.

8.1.3.6. Final Cost Comparison Decision Date. This is the date after public review and, if appeals are received the AAP.

8.1.4. Announcements of Cost Comparisons.

8.1.4.1. Congressional Notification of Intent to Perform a Cost Comparison. DoD Components cannot begin a cost comparison involving more than 50 DoD civilian employees paid using appropriated funds until Congressional notification is made in accordance with 10 U.S.C. § 2461. DoD Components are not required to notify DUSD(I) prior to making a Congressional notification unless it is a politically sensitive notification.

8.1.4.2. Local Public Announcement. Concurrent with or within three days after Congressional notification is made, DoD components will make an official public announcement of a cost comparison. When Congressional notification is not required, a local public announcement, at a minimum, is required. This announcement should be made to directly-affected civilian employees and their labor representatives, local Government labor relations specialist(s), directly-affected military personnel, and the local community (as appropriate). To assuage fears about potential negative impacts of decisions to compete CAs, local public announcements should include a brief explanation of the cost comparison process itself. It is

also advisable that Interservice Support Agreement managers and the chair of the appropriate Joint Interservice Regional Support Group (JIRSG) be notified (as applicable).

8.2. The Cost Comparison Team (CC Team). This is the team or group of individuals responsible for performing all aspects of the cost comparison process. DoD Components are encouraged to use a team approach to performing cost comparisons. The CC Team oversees execution of the cost comparison process and may be at the installation or command level. Its purpose is to (1) ensure fairness and objectivity during the cost comparison process; (2) ensure that applicable laws, policies, and procedures are followed during the process; and (3) oversee day-to-day execution of the cost comparison. The CC Team should include functional expertise (i.e., employees from CAs included in the cost comparison) as well as process expertise (e.g., personnel familiar with the A-76 process, contracting, or who are trained in and knowledgeable of the management analysis tools typically used in cost comparisons). If consultant support is used, they should be integrated as part of the CC Team. Furthermore, it is useful to use separate team(s) for developing the PWS and MEO. The PWS team develops a performance based PWS. The MEO team develops the Government Management Plan; however, this team may be further broken out to focus on specific aspects of the Government Management Plan (i.e., MEO, Transition Plan, IHCE, and, if required the TPP). Employee representatives shall be permitted to participate in an advisory capacity but should not be involved when management makes final decisions.

8.2.1. DoD Components shall set minimum training standards for A-76 cost comparisons for key individuals such as commanders, technicians, contracting officers, source selection authorities, source selection evaluation team members, independent review officials, and administrative appeal authorities/boards, etc. These minimum standards and key individuals who must meet these standards are to be determined at the discretion of the Component, but such standards and designation of individuals must be determined either: (1) at the Command level or above or (2) by a central A-76 office designated to oversee a Component's A-76 Program.

8.2.2. DoD Components shall ensure compliance with procurement restrictions contained in the 41 U.S.C. § 423 and FAR 3.104 when cost comparisons are performed.

8.2.3. To avoid the appearance of improper business practices, DoD Components shall comply with Figures 8.2. and 8.3.

8.3. Performance Work Statement (PWS).

8.3.1. General.

8.3.1.1. The term "PWS" is used in this document in order to be consistent with the RSH. DoD Components are permitted to use any other type of requirements document, e.g., statement of work (SOW), performance work document (PRD), technical requirements document (TRD), statement of objective (SOO).

8.3.1.2. It is DoD policy that all PWSs developed for cost comparison shall be performance based using the principles and mandates of Performance Based Services Acquisition (PBSA). PBSA principles are outlined in the DoD PBSA Guide. DoD Components shall write PWSs describing requirements in terms of "what" (e.g., end results or outcomes)

without mandating “how” (e.g., process steps or specific tasks) service providers must perform the work. The goal is to promote new and innovative approaches for how a service provider can accomplish requirements without restricting or inhibiting work approaches with “business-as-usual” practices. For example, a performance based PWS should not state specific tasks performed by individuals because this describes process steps vice outcomes of the process steps. DoD Components should avoid or minimize the number regulations cited in a PWS. If a DoD Component must cite a regulation in a PWS, the specific chapter or paragraph shall be cited rather than the entire regulation.

8.3.1.3. Since a PWS is an acquisition document, it is essential that the local contracting office be actively engaged in developing the PWS. All contracting actions include a requirements document. The PWS serves that purpose in a cost comparison. As with any requirements document, functional experts provide the content and contracting experts oversee development and are the ultimate approval authority for determining contractual sufficiency. This partnership is best accomplished when the contracting office is actively involved on an abiding basis to provide advice on development of the PWS.

8.3.1.4. A PWS shall contain all technical requirements and those requirements, if addressed elsewhere in the solicitation, shall be consistently stated therein. This includes any required performance levels and standards. It is critical to use experienced personnel and lessons learned from previously-developed PWSs in developing a PWS. The objective is to ensure that a PWS includes all relevant information, e.g., services required and standards of performance.

8.3.1.5. In accordance with the RSH, DoD Components should not consider a PWS that limits the options available for providing the required product or service or otherwise unnecessarily restricts private sector participation as being in compliance with OMB Circular A-76, the RSH or this Instruction.

8.3.1.6. It is essential that a PWS:

8.3.1.6.1. Be sufficiently comprehensive to ensure that the service provider satisfies Government requirements.

8.3.1.6.2. Be geared toward best commercial practices (to the maximum extent practicable) as identified through market research.

8.3.1.6.3. Describe all work in terms of “what” the required service output is rather than “how” the work is to be performed or the number of work hours to be provided, except when deemed essential by the function for safety and/or security reasons.

8.3.1.6.4. Include measurable performance objectives to encourage offerors to develop and institute innovative and cost-effective methods of performing the work.

8.3.1.6.5. Be based on historic and projected workload data (to include surge and other requirements). However, do not lock PWSs into historic performance levels as this may prevent better solutions for how an offeror may satisfy requirements.

8.3.1.6.6. Cite reference instructions, publications, etc, by specific paragraph or chapter rather than by the entire publication when only a portion of an entire document applies.

8.3.1.7. As a good management practice, DoD Components should collect workload data, including descriptions of services performed and workload counts. This information is critical in making day-to-day informed decisions concerning required manning levels. If these data collection systems are not in place already, as soon as it is determined that a cost comparison will take place, impacted CAs should establish such data collection systems in sufficient time that allows for at least 12 months of valid workload data to be available for inclusion in the PWS.

8.3.1.8. Performance metrics shall be developed as part of the PWS to ensure outputs support mission requirements and can be measured after the cost comparison is completed. These metrics provide commanders feedback on performance quality of the selected service provider and ensure missions are being met. For example, even though a regulation might require that vehicle fleet odometer mileage be recorded and sign out/in logs be completed in a particular manner, the performance based approach is to measure indicators of performance that focus on intended service outputs, such as the availability and operating condition of a vehicle fleet.

8.3.1.9. PWS requirements are baselined against actual performance during the 12 months prior to announcement of the A-76 cost comparison (i.e., outcomes whether good or bad, acceptable or unacceptable). This information describes the performance of the CA based on performance measures (e.g., customer satisfaction, response time, cost per square foot, error rate, frequency) that quantitatively or qualitatively measure the performance of the service(s). Establishment of a baseline requires performance measures and data that may or may not already exist. Performance measures and data exist when: (1) DoD Components have been measuring performance and (2) sufficient valid data is available for approximately 12 months prior to announcement of a cost comparison. It may be necessary to further validate existing data. When performance measures and data do not exist, DoD Components must rely on internal and/or private sector functional expertise and use benchmarking, best practices, market research, customer and stakeholder interviews, etc. in order to ensure timely completion of the PWS.

8.3.1.10. A DoD Component has the option to allow mission-related requirements to be included in a PWS that are not currently being performed (e.g., unfunded requirements). This may negatively impact the overall savings resulting from the cost comparison but could result in improved performance at the installation. This is often referred to as “getting well” through the cost comparison process. DoD supports this approach if a Component’s mission can be improved while still meeting their projected savings. A DoD Component must consider if they can afford this approach and the impact “getting well” may have on their budget. Components shall ensure adequate funding will be available for the contract decision or the manpower necessary for the MEO and then allocate the dollars or manpower after a decision.

8.3.1.11. DoD Components are permitted to include requirements that will be performed by volunteers, inmate labor, and borrowed military manpower in the PWS. When including these requirements to be performed by these labor sources, the Component has an

obligation to ensure these labor sources are available to all offerors (i.e., in-house, contract/ISSA). These are considered a “common” labor source in the PWS to all offerors, who must include the management of these labor sources in their offers.

8.3.2. Changes to the PWS During the Cost Comparison Process.

8.3.2.1. DoD Components are permitted to make requirements changes (e.g., performance and quality levels) to the PWS during the cost comparison process prior to opening the in-house cost estimate (i.e., the tentative cost comparison decision). These changes shall be made by either (1) reflecting the changes in the PWS by issuing a formal amendment to the existing solicitation or (2) canceling the existing solicitation and issuing a new solicitation so that all offerors (i.e., in-house and, in accordance with FAR 15.206, contract/ISSA offerors) are afforded equal opportunity to submit amended offers in the case of amended solicitations, or to submit new offers in the case of new solicitations.

8.3.2.2. PWS requirements changes shall be made for the sole purpose of accurately reflecting the Government’s needs and must not transfuse a contract/ISSA offeror’s proprietary ideas or methodology for performing the work required or the in-house offeror’s ideas or methodology for performing the work.

8.3.2.3. If PWS changes are made after opening contractor/ISSA offers but before opening the in-house cost estimate, the contracting officer shall take steps to ensure that no proprietary information from any contractor/ISSA offer is included in the revised solicitation (including the PWS) or is transmitted to the MEO Team or to any individuals participating in the independent review of the in-house offer. The contracting officer shall also ensure that the in-house offeror’s ideas or methodology for performing the work are not included in the revised solicitation or is transmitted to any contract/ISSA offeror.

8.3.2.4. While changes to the PWS are permitted at any time prior to opening the in-house cost estimate, such changes to the PWS should only occur in rare instances. These types of changes to a PWS (i.e., that cause an amendment to or cancellation of the solicitation) should be rare occurrences because such changes can be minimized by actions taken during the pre-selection stage, e.g., conducting the appropriate market research or placing a draft PWS on a web site for review and comment by all potential offerors prior to finalizing the solicitation. However, when a PWS is modified via a formal amendment to the solicitation after contractor/ISSA offers have been received or opened and the in-house offer is changed to reflect this formal modification, an audit trail from the original in-house offer to these adjustments is required (per paragraph 8.7.2.1.).

8.3.2.5. DoD Components shall obtain industry and Government comments on a draft version of the PWS to the maximum extent practicable. This should minimize changes to the PWS after a solicitation is issued.

8.4. Quality Assurance Surveillance Plan (QASP).

8.4.1. A QASP is typically developed by the PWS Team and shall be implemented after the cost comparison has been completed regardless of the final decision (i.e., in-house, contract, ISSA). The individuals responsible for implementing the QASP shall be external to the

MEO, contractor, or ISSA, and cannot be the same individuals providing quality control internal to the service provider.

8.4.2. The QASP documents surveillance methods used to measure service provider performance against performance requirements in the PWS. PBSA principles have changed surveillance techniques from past practices. Past practices evaluated service providers based on external quality control (i.e., process inspections) whereas PBSA promotes reliance on the service provider's internal quality control program (e.g., ISO 9000). If a service provider's quality control program is determined by the Government to be sufficient to ensure satisfactory performance, then the Government can rely on the service provider to monitor daily performance. DoD components can then focus their quality assurance efforts on surveiling service providers' quality control programs, rather than directly surveiling actual performance. Direct inspection by the Government of work performance can be used to augment Government oversight of quality control programs, but this is a secondary method rather than a primary one. The Government always retains the right to inspect all services.

8.4.3. The QASP can be released with the solicitation (but not as part of the solicitation) unless the DoD Component has a compelling reason not to release the QASP. In these situations, if an offeror asks for the QASP, the Component should provide their rationale for not releasing it.

8.4.4. It is DoD policy that the degree of surveillance outlined in the QASP be the same regardless of the service provider (i.e., MEO, contract/ISSA).

8.5. Government Management Plan.

8.5.1. The Government Management Plan (GMP) describes the Government's Most Efficient Organization (MEO) and is the basis of the Government's in-house cost estimate (IHCE). The GMP shall reflect the entire scope of the PWS, as well as any applicable portions of Sections L and M of the solicitation. The GMP includes the following documents:

8.5.1.1. MEO Summary. This summary documents justification for changing from current organization (as-is) to the MEO (to-be). It shall also include a comparison of the current organization with the MEO in terms of organizational structure and staffing (including the number of positions, grades, and types of positions, e.g., full time, part time, intermittent). The MEO Summary also addresses the inefficiencies caused by the current structure and staffing, as well as inefficiencies caused by current equipment, facility, and other resource shortfalls. The Summary presents the results of analyses that led to the process improvement and reengineering changes that will be in the MEO. Lastly, it summarizes the impacts of changing these inefficiencies on all resources (manpower, equipment, facilities, and material and supplies). These changes and their associated resource impacts are mapped to the products and services included in the PWS at a major service level (e.g., vehicle maintenance) rather than at a task level (e.g., perform oil changes). There is no value added in mapping at the lowest level of detail because the quality and reliability of workload data is typically insufficient to support such analysis, increases costs, and will not improve the MEO Summary.

8.5.1.2. The MEO Quality Control Plan (QCP). The QCP is a description of the Government's internal plan to ensure compliance with performance requirements of the PWS. The QCP describes the internal organizational structure and procedures that will be followed to ensure quantity, quality, timeliness, responsiveness, customer satisfaction, and other aspects of service delivery as delineated in the PWS. The MEO Team does not develop a QASP, as this is the responsibility of the PWS Team. The QASP differs from the QCP in that the Government is responsible for quality assurance while the MEO, as the service provider, is responsible for quality control.

8.5.1.3. Assets. This documents management decisions to not provide assets (i.e., equipment, facilities, materials and supplies) to contract/ISSA providers that will be used by the MEO. Any decisions to not make assets available to contract/ISSA providers, when these assets will be made available to the MEO, shall be justified as to why these decisions do not provide a competitive advantage to the MEO, and why doing so will benefit the American taxpayer.

8.5.1.4. Transition Plan. This plan describes the necessary actions for transitioning from the current organization to either MEO or contract/ISSA performance. A Transition Plan is required regardless whether the cost comparison decision may favor either the MEO or contract/ISSA. In planning for transition, DoD Components shall minimize disruption and adverse personnel impacts, to the maximum extent practicable.

8.5.1.5. In-House Cost Estimate IHCE). The IHCE describes all costs associated with the performance of the MEO, and expected costs associated with contract/performance (e.g., contract administration, one-time conversion costs, gain on assets, federal income tax). The IHCE shall be calculated in accordance with the RSH and the DoD Costing Manual and win.COMPARE². No deviations from the Costing Manual are allowed unless prior written approval is obtained from DUSD(I).

8.5.1.6. Technical Performance Plan (TPP). The TPP shall only be developed when performing a CTTO source selection and shall be developed in accordance with Section L of the solicitation.

8.5.2. Certification of the GMP.

8.5.2.1. The certifying official for the GMP shall have the authority to commit the necessary resources to support the MEO. The certifying official shall be either (1) organizationally independent of the CA being competed or (2) at least two organizational levels above the most senior official included in the MEO. For CTTO source selections, the certifying official shall be equivalent in rank to the SSA. Certification of the GMP shall be performed before contract/ISSA offers are opened or reviewed.

8.5.2.2. When the MEO results in a reduction of more than 30% in the number of civilian manpower authorizations, the certifying official for the GMP shall be at least one organizational level above the installation commander or equivalent.

8.6. Safeguarding the MEO.

8.6.1. The GMP shall be considered procurement sensitive until a tentative cost comparison decision is determined. Prior to a tentative cost comparison decision, the GMP and all supporting documentation shall be protected from public disclosure. DoD Components should minimize the number of personnel who have access to the IHCE in order to reduce the potential for premature public disclosure of costs associated with the in-house offer.

8.6.2. After a tentative cost comparison decision is determined, the GMP is a public document. Performance assumptions in a GMP (including a TPP) are the MEO processes and methodologies and are not subject to appeal. Therefore, when these performance assumptions will be used as the basis for another GMP in another similar announced cost comparison, these performance assumptions may be considered proprietary and thus redacted in the GMP and supporting documentation provided during the Public Review Period. However, organizational structure including the number and types of positions, how assets are used, and related costs, shall be released as a critical part of the GMP and supporting documentation regardless whether this information will be used in another announced cost comparison. A decision to redact information in the GMP is an appealable item.

8.6.3. The GMP is delivered to the contracting officer in a single sealed envelope for sealed bid procurements and negotiated procurements that will not use the CTTO source selection process. For a negotiated procurement that will use the CTTO source selection process, the IHCE is sealed in a separate envelope from the remaining portion of the GMP (including the TPP) which is sealed in another separate envelope. Refer to Chapter 18 of the DoD Costing Manual for specific policy and procedures for sealing these envelope(s) and delivering them to the contracting officer. This chapter also addresses (1) allowable modifications to the IHCE after IRO certification but prior to the date designated for receipt of contract/ISSA offers, (2) allowable modifications to the IHCE after IRO certification after the date designated for receipt of contract/ISSA offers but before the IHCE is opened, and (3) resubmission to the contracting officer. Refer to paragraph 8.10.3 below for how offers are evaluated in differing procurements and source selections.

8.7. Solicitations.

8.7.1. DoD acquisition of services is increasing significantly and is under Congressional scrutiny. When DoD acquires services, the use of PBSA strategies encourage competition, promote innovation and creativity, and results in higher quality of performance at a lower cost. The widest possible participation by industry is essential to achieving maximum savings and business improvements as a result of an A-76 cost comparison. Attracting the best performance approaches from industry and the Government requires that all aspects of the A-76 cost comparison process be perceived by both the current in-house workforce and the potential offerors as being open, fair, and equitable.

8.7.2. It is DoD policy to encourage and facilitate a fair and equitable competitive environment when performing cost comparisons. DoD Components shall ensure that high standards of integrity, objectivity, and consistency are maintained throughout the A-76 cost comparison process. DoD Components and commanders/directors shall remain impartial during the cost comparison process and never intend nor promote a specific outcome (i.e., in-house or contract).

8.7.3. Changes to or Cancellations of the Solicitation.

8.7.3.1. Changes to the Solicitation--In-house Offer Audit Trail. After contractor/ISSA offers have been received or opened and the PWS is changed, the in-house offer may only be modified to accommodate these PWS changes. No other modifications to the in-house offer shall be permitted at this time. The contracting officer shall take every precaution to ensure the contract/ISSA offeror's proprietary ideas or methodology for performing the work are not conveyed in any manner to the Government Management Plan Development Team or to any individuals participating the independent review of the in-house offer. In these situations, it is equally important that the contracting officer ensure the in-house offeror's ideas or methodology for performing the work are not conveyed to contract/ISSA offerors. The following steps are required for resubmission of the in-house offer to the contracting officer:

8.7.3.1.1. The contracting officer is responsible for safeguarding and preserving all versions of the Government Management Plan, Technical Performance Plan (TPP) and in-house cost estimate until after the tentative cost comparison decision. All of these versions shall become part of the supporting documentation provided to eligible appellants during the public review period. They provide the audit trail from the original in-house offer to the revised offer. If a revision to the PWS must be made after the private sector offer has been selected for competition with the in-house offer and the envelopes containing either the TPP or Government Management Plan have been opened, the contracting officer must retain possession of these documents and the sealed in-house cost estimate. The contracting officer shall reseal the TPP and Government Management Plan and document why they were resealed. If necessary, these documents may only be reviewed by the appropriate Government personnel involved in certifying the in-house cost estimate. After these certifications are completed, these documents must be resealed until a tentative cost comparison decision. These certifications become part of the supporting documentation provided during the Public Review Period.

8.7.3.1.2. The appropriate Government personnel including the Independent Review Official (IRO) must certify that:

8.7.3.1.2.1. The changes made to the revised Government Management Plan, TPP, and in-house cost estimate are accurate and

8.7.3.1.2.2. The only changes made are those necessary to reflect the formal modification to the solicitation (i.e., PWS requirements change).

8.7.3.1.3. The revised Government Management Plan, TPP and in-house cost estimate are submitted to the contracting officer in sealed envelopes with the following on the outside of the envelopes:

8.7.3.1.3.1. Solicitation Number

8.7.3.1.3.2. The day/month/year the documents are sealed.

8.7.3.1.3.3. The solicitation amendment number.

8.7.3.1.3.4. Reason for Change

8.7.3.1.3.5. Point of Contact (name, telephone number).

8.7.4. Solicitation Cancellations--In-house Offer Audit Trail. When a solicitation is cancelled after receipt of contractor/ISSA offers with the intent to reissue a new solicitation for the cost comparison, the contracting officer shall take every precaution to ensure the contract/ISSA offeror's proprietary ideas or methodology for performing the work are not conveyed to the Government Management Plan Development Team or to any individuals participating in the independent review of the in-house offer. The contracting officer also shall ensure the in-house offeror's ideas or methodology for performing the work are not conveyed to contract/ISSA offerors.

8.7.5. DoD Policy for Oversight of Service Acquisition Programs. Service acquisition program oversight is required when identified as special interest by USD(AT&L), ASD(C3I), or the Component acquisition executive (CAE). DoD has established threshold for approval of acquisition strategies

8.7.5.1. If the potential total contract cost will exceed \$1B or the service acquisition program is identified by USD(AT&L) as a special interest program, USD(AT&L) is responsible for service acquisition program oversight and review. DoD Components shall ensure sufficient time is allowed in their cost comparison milestones for this oversight and review.

8.7.5.2. If the potential total contract cost for an Information Technology (IT) service acquisition equals \$120M or great IT cost or \$30M or great in a single year or is identified by the ASD(C3I) as a special interest program, the ASD(C3I) is responsible for service acquisition program oversight and review. DoD Components shall ensure sufficient time is allowed in their cost comparison milestones for this oversight and review.

8.7.5.3. For cost comparisons or direct conversions impacting more than 1,000 FTEs or if the CAE identifies an A-76 initiative as a special interest initiative, the CAE is responsible for service acquisition program oversight and review. DoD Components shall ensure sufficient time is allowed in their cost comparison milestones for this oversight and review.

8.8. Methods of Procurement.

8.8.1. Best Value.

8.8.1.1. Best value is the goal of every acquisition including when an A-76 cost comparison is performed. "Best value" refers to the expected outcome of an acquisition that provides the greatest overall benefit to the Government in response to the solicitation. Negotiated best value source selection, coupled with performance based strategies, enables DoD to make trade-offs between technical approach, price, past performance and contractor management plans to determine a quality service provider that will compete against the in-house offer. Components shall choose the approach that most effectively leverages PBSA principles and facilitates the selection of the service provider whose performance approach best ensures mission accomplishment.

8.8.1.2. When performing an A-76 cost comparison, DoD Components shall follow the procurement process as required by the FAR and supplemented by the DFARS and Component supplements.

8.8.1.3. In accordance with the FAR, DoD Components can obtain best value by using one or a combination of source selection approaches. The specific source selection process used, such as Sealed Bid, Lowest-Priced Technically Acceptable (LPTA), Cost/Technical Tradeoff (CTTO), depends upon various factors, e.g., the complexity of the requirement and risks associated with it. Regardless of the source selection process used, an A-76 cost comparison between the selected contractor/ISSA offer and the in-house offer determines whether a contract/ISSA offeror or the MEO will perform the work.

8.8.2. Best Value in A-76 and Compliance with 10 U.S.C. § 2462. Except as otherwise provided by law, 10 U.S.C. 2462 requires DoD to procure each supply or service necessary for or beneficial to the Department, other than those that must be performed by Government personnel, from a source in the private sector. The private sector source must provide the supply or services at a cost that is lower than the cost at which the Department can provide the same supply or service. Therefore, the final selection between the in-house offer and the selected private sector offer(s) must be based on lowest cost. All offers (i.e., in-house, contract, and ISSA) submitted in the A-76 Cost Comparison process shall always be based on the requirements in the PWS. The determination that a private sector source can provide the same supply or service at a lower cost occurs when the in-house cost estimate is compared with the selected contractor/ISSA offer on the cost comparison form (CCF). This is the actual cost comparison that takes place and is decided on price alone—thus complying with 10 U.S.C. 2462.

8.8.3. Acquisition Planning.

8.8.3.1. It is DoD policy that the contracting officer works with the CC Team in determining acquisition strategy as soon as possible after announcement. This will ensure that the cost comparison is performed in a way that supports the desired acquisition strategy (e.g., time to develop systems to capture workload data that support a firm fixed price contract).

8.8.3.2. The time necessary to complete a cost comparison process is determined by FAR/DFARS acquisition requirements. Acquisition planning is essential and shall be initiated early in the cost comparison process. Acquisition planning includes developing a coordinated and integrated plan with milestones for performing the cost comparison process in a timely manner and at a reasonable cost. Acquisition planning shall be conducted in accordance with FAR Part 7. Recommended acquisition actions planning follow.

8.8.3.2.1. Performing Market Research. Market research conducted in accordance with FAR Part 10 ensures that a more educated approach is taken during the A-76 cost comparison process by determining best commercial practices for conducting similar procurements.

8.8.3.2.2. Seeking Industry Comments. Components shall, to the maximum extent practicable, involve industry in early exchanges of information. This can be accomplished by (1) the Government releasing a draft version of a PWS in order to solicit

industry review comments, (2) conducting pre-proposal conferences, pre-bid conferences, site visits, and other direct interactions as discussed in FAR Part 15.201.

8.8.3.3. Determining term and type of contract (e.g., firm fixed price, cost reimbursement, incentive fee, award fee). Early determination of contract type, number of performance periods, and incentive/award fee approaches allows sufficient time in the cost comparison process to collect the data to support these acquisition decisions (see paragraph 8.3.1. above). Refer to the DoD A-76 Costing Manual.

8.8.3.4. Appointing a Source Selection Authority (SSA) and the Source Selection Evaluation Board (SSEB). DoD Components shall appoint an SSA and SSEB early in the process to ensure adequate measures shall be in place to avoid the potential for or appearance of a conflict of interest for the duration of the cost comparison.

8.8.3.4.1. SSA. An SSA is required by the FAR.

8.8.3.4.2. SSEB. An SSEB should be appointed. DoD Components shall ensure that individuals whose work is being competed (i.e., directly affected civilian employees and their representatives, or directly affected military members) and individuals who participated in developing the Government Management Plan (e.g., MEO, in-house cost estimate) are excluded from participating as the SSA, as members of the SSEB, or as technical evaluators in the evaluation of competing contract offers, unless an exception is authorized by the head of the contracting activity. Exceptions shall be authorized only in compelling circumstances and, in such cases, the head of the contracting activity shall provide a written statement of the reasons for the action. It may be necessary for government civilian employees or military personnel from other installations or locations to serve on the SSEB or otherwise as evaluators to avoid the appearance of conflict of interest. Non-directly affected civilians or military may serve on the SSEB or as evaluators unless they have a direct, personnel interest in the outcome of the A-76 cost comparison process (e.g., their own or a spouse's civilian employment, stock ownership, etc.) or they participated in the development of the Government Management Plan (e.g., MEO, in-house cost estimate). A centralized SSEB approach is a best practice as it reduces cost, provides skilled evaluators to participate in the selection process, and affords more objectivity in the process.

8.8.3.5. Any individuals certifying the MEO cannot participate in source selection in any manner.

8.8.3.6. The SSA and individuals designated to serve on the SSEB cannot be the AAP Authority or participate on the AAP Board.

8.8.3.7. Developing Section L of the Solicitation, Instructions to Offerors, and Section M of the Solicitation, Evaluation Factors For Award. When a CCTO source selection is used, it is DoD policy that a TPP is developed (in accordance with Section L) as part of the Government Management Plan. Therefore it is important that Section L be developed early in the cost comparison process to allow the MEO team sufficient time to develop the Government Management Plan and for the independent review to be completed prior to receipt of contract/ISSA offers. Additionally, Section M of the solicitation must be developed early in the

cost comparison process when it includes instructions that impact the IHCE, (e.g., material “plug” costs).

8.8.3.8. Including the MEO Team and IRO on the Solicitation Mailing List. It is DoD policy that an MEO Team member be designated as the official contact for receipt of any solicitation changes (e.g., amendments, notifications). This official shall be listed as the MEO Team contact on the Solicitation Mailing List. Furthermore, the IRO shall also be listed on the solicitation mailing list. Before the in-house offer is unsealed, the MEO Team member designated on the solicitation mailing list shall acknowledge receipt of all solicitation changes.

8.8.4. Source Selection.

8.8.4.1. Source selection is a formal systematic process to evaluate contract/ISSA offers. This source selection process occurs in a cost comparison in order to select a contract/ISSA offer that will compete against the in-house offer.

8.8.4.2. Source selection evaluation criteria shall be developed in accordance with FAR 15.304. FAR 15.304(d) provides that “[a]ll factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)).” In determining evaluation factors for the competition among the private sector and ISSA offerors, DoD Components shall consider making cost at least as important as non-cost factors for the Cost Technical/Tradeoff process. This consideration will increase the competitiveness of the cost comparison between the government and the selected contract/ISSA offer. This should be considered in order to achieve a more level playing field between the industry and government offers as well as to promote a more competitive environment. If appropriate, the procedures of FAR 12 may be used to conduct the procurement.

8.8.4.3. The Bid Schedule and Sections L and M of the solicitation must be developed at the same time as the PWS. This is accomplished to streamline the A-76 cost comparison process to reduce the time required to complete a cost comparison.

8.8.4.4. Methods of Source Selections.

8.8.4.4.1. Types of Source Selection Processes and Their Relationship to the Cost Comparison Process. As determined by the DoD Component, various types of source selection processes may be used to select the contractor/ISSA offer that will be compared to the in-house offer. Typical processes are Sealed Bid, Lowest Priced Technically Acceptable, and Cost/Technical Tradeoff, which are described below:

8.8.4.4.1.1. When using a Sealed Bid process, the lowest-priced responsive contractor/ISSA bid from a responsible bidder is selected for comparison against the in-house offer.

8.8.4.4.1.2. When using a Lowest-Priced Technically Acceptable process, the lowest-priced contractor/ISSA offer that is determined to be technically acceptable is selected for comparison against the in-house offer.

8.8.4.4.1.3. When using a CTTO process (or hybrid tradeoff processes), the selected contract/ISSA offeror may not necessarily be the lowest-cost offeror because a higher cost may be traded for a better technical proposal. It is not appropriate to use a CTTO source selection process to the advantage of one party over another (e.g., the MEO over the contractor/ISSA offers). For the Cost/Technical (or hybrid) Tradeoff process, in order to increase the competitiveness of the cost comparison between the in-house and contract/ISSA offers, consideration should be given to making cost at least as important as non-cost factors when selecting the contractor/ISSA offer. While the cost factor will be weighted depending upon the level of risk of the procurement, its relative importance should be carefully considered to ensure that contract/ISSA offerors are able to compete with the MEO during the cost comparison process. DoD Components shall use their component procedures for the Cost/Technical (or hybrid) Tradeoff source selection process to evaluate the contractor/ISSA offers. After applying the Cost/Technical (or hybrid) Tradeoff process to select the contractor/ISSA offer to compete against the in-house offer, the Source Selection Authority (SSA) evaluates the in-house TPP. The Source Selection Authority (SSA) evaluates the in-house TPP before the comparison of the cost of the in-house offer with the cost of the selected contractor/ISSA offer.

8.9. The Independent Review.

8.9.1. The Independent Review is a critical part of the cost comparison process and is performed in accordance with the RSH, this Instruction, and the DoD A-76 Costing Manual by the Independent Review Official (IRO). It is also recommended that the DoD(IG) Guide for Independent Review of A-76 Cost Comparisons be used to assist IROs when performing Independent Reviews. An Independent Review is the validation process for the in-house offer. They are required any time a change is made to (1) the Government Management Plan (including the IHCE or TPP), (2) the PWS, (3) the solicitation (if applicable), and (4) OMB-issued inflation factors. Additionally, an Independent Review of the tentative and final cost comparison decisions shall be performed.

8.9.2. The IRO shall comply with the RSH and this Instruction when performing independent reviews. The IRO is responsible for certifying the Management Plan (including the IHCE and, if appropriate, the TPP) by signing the CCF. The IRO is an independent authority that shall (1) certify the data contained in the MP reasonably establishes the Government's ability to perform the PWS within the resources in the MEO and (2) ensure that all costs entered on the CCF are fully justified and calculated in accordance with the RSH, this Instruction, and the DoD A-76 Costing Manual. While the IRO reviews the PWS as part of their certification, they are not responsible for certifying or validating the PWS as this responsibility rests between the contracting officer and PWS Team.

8.9.3. DoD Components shall ensure the IR process is impartial and objective. DoD Components shall ensure their IROs receive appropriate training to acquire the skills and knowledge that will allow them to perform the IR.

8.9.4. The Independent Review Official can be assisted by an IR Team. This Team may consist of DOD civilians, military personnel, and/or consultants. The IRO or the IR Team are not permitted to be involved in developing the Government Management Plan. Their

independence is critical in order to perform the IR in an objective and impartial manner. Consultants may participate in the IR unless their company is competing against the in-house offer in the cost comparison being independently reviewed.

8.9.5. The IR of the in-house offer must be completed prior to submission to the contracting officer. If changes to the in-house offer are necessary after submission, refer to Chapter 18 of the DoD A-76 Costing Manual.

8.10. Evaluation of Bids and Tentative Decisions.

8.10.1. Contractor/ISSA offers shall not be opened or otherwise reviewed prior to receipt of the in-house offer. The due date for receipt for contract/ISSA offers shall be extended until the in-house offer is received. The contracting officer determines the appropriateness of returning any contract/ISSA offers already received if the date for receipt of contract/ISSA offers is extended as a result of a late in-house offer submission.

8.10.2. Before the in-house offer is unsealed, the MEO Team member designated on the solicitation mailing list shall acknowledge receipt of all solicitation changes.

8.10.3. Tentative Cost Comparison Decision. DoD Components are required to make a formal announcement of the tentative cost comparison decision as soon as possible after a cost comparison is performed. This announcement is made to directly affected civilian employees and their representatives as well as any directly affected military personnel, incumbent contractors, and bidding contractors. The announcement should include the dates for the Public Review Period, the Administrative Appeal Process procedures, and civilian employment rights. Concurrent with this announcement, the local congressional delegation may be informally notified that a final cost comparison decision is pending completion of the Public Review Period and, if appeals are received, the AAP.

8.10.4. Evaluation of Bids.

8.10.4.1. Sealed Bid Procurement. In a sealed bid procurement, the in-house offer shall be received by the contracting officer prior to receipt of contract/ISSA offers. At the public bid opening of the contract/ISSA offers, the apparent contract/ISSA low bidder is selected. The in-house offer is then unsealed and the contract/ISSA price entered on the CCF for cost comparison. This determines the tentative cost comparison decision.

8.10.4.1.1. Before providing cost comparison supporting documentation that begins the Public Review Period, the contracting officer shall determine if the selected apparent contract/ISSA offeror is responsive and responsible. If not, the next lowest contract/ISSA bid is then compared to the in-house offer and again, responsiveness/responsibility determined.

8.10.4.1.2. After an apparent contract/ISSA low bid is determined to be responsive and responsible, cost comparison supporting documentation is provided to eligible appellants and the Public Review Period begins. (See paragraph 8.11.)

8.10.4.1.3. If a two-step sealed bid procedures are is used, the in-house offer shall be submitted no later than the date contract/ISSA offers are required to be submitted for Step 1. Under no circumstances shall contract/ISSA technical proposals or offers be opened or reviewed prior to receipt of the in-house offer.

8.10.4.2. Negotiated Procurement. In a negotiated procurement, the in-house offer shall be received by the contracting officer prior to receipt of contract/ISSA offers.

8.10.4.2.1. In order to ensure a level playing field, the SSEB should conduct a thorough cost analysis to determine if a private sector offeror's price reasonableness is at the same level that is comparable to the IRO's independent review of the in-house offer. The evaluation scheme should include a strong preference for solid relevant past performance that ensures the selected industry offeror provides the same level of quality performance as that provided by the in-house.

8.10.4.2.2. For Low Price Technically Acceptable Source Selection. The Government Management Plan is submitted in a sealed envelope and will not include a TPP since it is not required when the LPTA source selection process is used. After selection of the LPTA contract/ISSA offer, the in-house offer is then unsealed and selected LPTA contract/ISSA price is entered on the CCF to determine the tentative cost comparison decision. Simultaneously with the announcement of the tentative decision, the selected LPTA offer is publicly announced.

8.10.4.2.3. CTTO Source Selection Process. The Government Management Plan shall include a TPP when the CTTO source selection process is used. The IHCE and the Government Management Plan (including the TPP) are submitted in two separate envelopes. The TPP shall be prepared in accordance with Section L of the solicitation. After selection of the CTTO contract/ISSA offer, the envelope containing the Government Management Plan (including the TPP) is unsealed and the actions in the following paragraphs are required as appropriate. The envelope containing the IHCE is not unsealed until these actions are completed. At this time, the selected CTTO contract/ISSA price is entered on the CCF to determine the tentative cost comparison decision. Simultaneously with the announcement of the tentative decision, the selected CTTO offer is publicly announced.

8.10.4.2.3.1. It is the responsibility of the IRO to certify that the data contained in the Government Management Plan establishes the ability of the in-house offeror to perform the PWS requirements within the resources provided by the MEO. The IRO shall also ensure the in-house TPP is written in accordance with Section L (Instructions, Conditions, and Notices to Offerors or Respondents) of the solicitation and clearly outlines the ability of the in-house offeror to meet the technical requirements of the PWS.

8.10.4.2.3.2. When the source selection process is used, the in-house offer shall be delivered to the contracting officer in two clearly marked, sealed envelopes. One envelope contains the Government Management Plan (including in-house TPP) but excluding the in-house cost estimate and any related cost data. The second envelope contains only the in-house cost estimate and any related cost data.

8.10.4.2.3.3. Review of the In-house TPP. The RSH, Part I, Chapter 3, paragraph H.d., states “With the selection of the competitive offer, the contracting officer submits to the [Source Selection] Authority the Government Management Plan, which must comply with the technical proposal requirements of the solicitation. The [Source Selection] Authority evaluates the in-house offer and assesses whether or not the same level of performance and performance quality will be achieved. The Authority should not review or have access to the in-house cost estimate.” In order to maximize the likelihood that all offers comply with the solicitation, DoD components shall ensure all technical requirements (i.e., “technical proposal requirements”) are clearly stated in the PWS. In order to eliminate any possibility of transfusing a contract/ISSA offeror’s approach or proprietary information, the SSA will not direct or suggest the Government Management Plan Development Team make adjustments to the in-house offer that would use a proprietary contract/ISSA offeror’s methodology or the number of FTEs required for performing the work. However, the SSA may point out informational deficiencies (as in FAR Subpart 15.3.) in the in-house TPP to the IRO and to the Government Management Plan Development Team. This affords the Government Management Plan Development Team the same opportunities for clarification as are provided the contract/ISSA offerors. Therefore, when performing A-76 cost comparisons that involve the CTTO source selection process, DoD Components shall comply with the following procedures:

8.10.4.2.3.4. After selection of the contractor/ISSA offer that will be compared to the in-house offer, the SSA shall review the in-house TPP to assess whether it complies with the performance and performance quality output requirements as stated in the PWS. Any other elements of the Government Management Plan, except for the in-house cost estimate (which remains sealed in a separate envelope), may also be reviewed at this time to assist the SSA in this comparison. The SSA will not have access to the sealed in-house cost estimate until after the in-house TPP evaluation is completed and the cost comparison is performed.

8.10.4.2.3.5. DoD Components can avoid the need for adjustments to the in-house offer (after selection of the contractor/ISSA offer to compare to the in-house offer) by ensuring that the Government’s requirements are clearly stated in the PWS and by developing a well-written Government Management Plan including the in-house TPP. It is imperative that a performance based PWS clearly describe the required performance levels, quality and/or standards.

8.10.4.2.3.6. The role of the SSA in the evaluation of the TPP is to assess whether the in-house offer is proposing the same level of performance and performance quality (i.e., outputs) as required by the PWS. In no case shall the SSA make or require specific changes to the in-house approach or MEO staffing requirements. This is the responsibility of the individual certifying the MEO. The SSA may note differences in how the Government Management Plan Development Team interpreted the PWS requirements from how the selected contract/ISSA offeror has interpreted the PWS requirements or may note that the level of performance or performance quality is too high or too low. These differences must be strictly tied to the requirements of the PWS and not to the contract/ISSA offeror’s methodology for “how” the work will be performed such as the number and type of employees of the contractor proposes to use. If these differences indicate that the in-house offer does not offer the same level of performance or performance quality as that is required by the PWS, the SSA shall

then request the Government Management Plan Development Team to re-evaluate only the noted differences. For example, the contractor/ISSA offer has proposed a full-time equivalent (FTE) to perform a particular function but the in-house TPP specifies use of only a part-time employee to fulfill the same function. The SSA will review whether the PWS requires use of an FTE and, if so, then refer this difference to the Government Management Plan Development Team. The SSA's request shall be made in writing and clearly describe the noted differences between the in-house TPP and the PWS. The Government Management Plan Development Team's response to the SSA shall be in writing, and will explain whether or not any adjustments are made to the Government Management Plan pursuant to SSA's request. If the Government Management Plan Development Team does not make any adjustment, their written response to the SSA, submitted with the concurrence of the IRO, shall provide the rationale for this position. If the Government Management Plan Development Team makes adjustments to any part of the Government Management Plan on the basis of the SSA's review of the in-house offer, these changes shall be:

- Limited to the differences noted in writing by the SSA,
- Independently reviewed by the IRO prior to re-submission to the SSA,
- Documented and maintained as part of the cost comparison record, and
- Provided to eligible appellants (along with the SSA's written request, as part of the cost comparison supporting Documentation) during the public review period.

8.10.4.2.3.7. An SSA's request. The SSA In no case shall the SSA require or make specific changes to the in-house approach or staffing requirements. The SSA shall evaluate only on outputs and not if the in-house has sufficient FTEs in the MEO. This is the responsibility of the individual who certifies the MEO and the IRO.

8.11. The Public Review Period and the Administrative Appeal Process (AAP).

8.11.1. The Public Review Period and AAP shall be an independent and objective process that applies to all DoD Competitive Sourcing initiatives (i.e., cost comparisons, streamlined cost comparisons, direct conversions).

8.11.2. Corrections to errors in the IHCE are not permitted after receipt of contract offers, including before or after the tentative cost comparison decision (even if correcting these errors will impact the tentative decision). DoD Components shall only correct these errors after receipt of contract offers via the AAP. In these situations, the contracting officer shall notify all eligible appellants that an error has been discovered on a specific CCF line; however, the nature of the error is not to be disclosed. The reason for this policy is to ensure that there is no appearance of adjusting the Government's offer after receipt of contract offers.

8.11.3. The purpose of the Public Review Period and AAP is to ensure the A-76 cost comparison reflects the correct outcome regardless of whether the final decision is in favor of the contract/ISSA or in-house offer.

8.11.4. The outcome of the AAP is final and no subsequent appeals or reviews are authorized under the RSH procedures. When there is a reversal of the tentative A-76 cost comparison decision, no subsequent or sequential appeal shall be permitted.

8.11.5. Eligible Appellants. Eligible appellants are (1) the affected in-house employees (i.e., APF or NAF civilian employees being cost compared whose work is being competed) or their representative(s), (2) military members, (3) contractors who have submitted formal offers, and (4) an non-DoD agency that has submitted an ISSA offer that could be affected by the tentative cost comparison decision to convert to or from in-house, contract, or ISSA performance. A non-selected contractor (who has submitted an offer in the cost comparison) is permitted to appeal in case the contractor originally selected to compete against the in-house offer is reversed via GAO protest.

8.11.6. Public Review Period.

8.11.6.1. The Public Review Period shall begin on the date all supporting documentation is made publicly available and ends within 20 calendar days. However, if the A-76 cost comparison process for a specific initiative is particularly complex, the contracting officer may extend the Public Review Period to a maximum of 30 calendar days.

8.11.6.2. Submission of appeals shall be permitted only during the Public Review Period. Written appeals shall be submitted by eligible appellants to the contracting officer no later than the last day of the Public Review Period. These appeals must be based on correcting any and all discrepancies, errors, or omissions to the IHCE.

8.11.6.3. If errors are noted in the cost comparison by the apparent winner, it may be to their advantage to address the errors in appeal because there will be no sequential AAP available to them if the AAP Authority decision determines that they are no longer the apparent winner. This ensures the apparent winner's position on the error is considered during the AAP Authority's evaluation of all appeals and may actually have a positive impact on the AAP Authority's decision.

8.11.6.4. An appeal or information contained in an appeal that is submitted by one appellant will not be provided to another appellant before the Public Review Period ends. However, it may be provided after the Public Review Period.

8.11.7. Administrative Appeal Process (AAP).

8.11.7.1. General.

8.11.7.1.1. The purpose of the AAP is to correct errors identified through a formal appeal (filed by an eligible appellant) after making a tentative cost comparison decision. This AAP is an administrative process, not a judicial process. Only items formally appealed by an eligible appellant shall be evaluated during the AAP. No final A-76 cost comparison decision may be determined until all appeals are resolved.

8.11.7.1.2. General Accounting Office (GAO) protests are not part of the AAP and a decision to award a contract in the event of a GAO protest is determined by the

contracting officer in accordance with FAR Part 33. Additionally, the AAP does not authorize an appeal outside DoD or judicial review. The AAP is a separate and distinct process from the processes outlined at FAR Part 33, Protests, Disputes and Appeals.

8.11.7.1.3. AAP Decision Time Constraints. The AAP Authority shall issue a single, final AAP decision within 30 calendar days from the end of the Public Review Period. This provides sufficient time for all appeals to be evaluated together in order to determine a final A-76 cost comparison decision within 30 calendar days.

8.11.7.2. AAP Authority.

8.11.7.2.1. An AAP Authority shall be appointed who is senior in rank to the SSA and is either (1) at least two organizational levels above the official who certifies the MEO or (2) independent of the function(s) being cost compared (e.g., if refuse collection is being cost compared, the AAP Authority may not be from the public works/civil engineering function). The following personnel shall be ineligible to be the AAP Authority (or serve on an AAP board if one is appointed):

8.11.7.2.1.1. Anyone participating in the A-76 cost comparison process, such as the IRO, contracting officer, Source Selection Authority, members of the Source Selection Evaluation Board, individuals developing the Government Management Plan (including in-house cost estimate), etc.

8.11.7.2.1.2. Anyone directly working in or associated with the function being cost compared, such as spouses, children, parents, siblings, or household members working in the function being cost compared.

8.11.7.2.1.3. Anyone working for the organization having direct jurisdiction or control over the function being cost compared.

8.11.7.2.2. This appointment shall be made in writing early in the A-76 cost comparison process to ensure the AAP Authority is independent of the A-76 cost comparison process in case an appeal is received. As soon as an appeal is received, the AAP Authority shall be provided a copy of the appeal, cost comparison form, solicitation package, Government Management Plan and all supporting documentation by the contracting officer. Supporting documentation shall not include any proprietary information from a contractor's offer.

8.11.7.3. The AAP Authority shall administer appeals as follows:

8.11.7.3.1. Ensure the contracting officer acknowledges the appellants in writing that their appeals have been received.

8.11.7.3.2. Ensure the contracting officer provides copies of appeals to eligible appellants upon request after the Public Review Period ends and informs the eligible appellants that if they have comments on appeals submitted by other eligible appellants, these must be submitted in writing within 20 calendar days.

8.11.7.3.3. Review all appeals simultaneously to make a single final AAP decision.

8.11.7.3.4. Review only those items specifically identified in an appeal; therefore, no changes to the CCF are permitted unless identified by an eligible appellant in their appeal.

8.11.7.3.5. Appoint an AAP Board if necessary to assist in the analysis of appeals. Personnel involved in the A-76 cost comparison process may not serve on the AAP Board but may provide information, data, or explanations regarding the basis for determinations or decisions made during the A-76 cost comparison process.

8.11.7.3.6. Analyze each element of the appeal to make a determination if the appeal is valid or not based on the appeal criteria in paragraph 8.11.9.

8.11.7.3.7. Investigate, validate, and resolve discrepancies cited in appeals or comments submitted by appellants on appeals filed by other appellants (if received within the 20-day window for submitting comments on appeals) by soliciting assistance from anyone necessary in evaluating the appeal(s), e.g., legal advisor experienced in the procurement process.

8.11.7.3.8. Ensure the appropriate changes are entered into win.COMPARE2 to produce a new cost comparison form which updates the in-house cost estimate even if the original tentative cost comparison decision is not reversed. This is necessary to document the actual results of the cost comparison and enter the data for tracking and congressional reporting requirements in CAMIS.

8.11.7.3.9. Obtain the required certifications on the CCF.

8.11.7.3.10. Maintain an audit trail (with rationale) to document all corrections made to the in-house cost estimate.

8.11.7.3.11. Provide to the contracting officer, the single, final written AAP decision which includes an explanation of why each appeal is either sustained, denied, or does not meet the appeal criteria. The contracting officer shall provide a copy of the final written AAP decision to appellants who submitted appeals. Upon request the contracting officer shall provide a copy of the final AAP decision to other eligible appellants who did not submit appeals.

8.11.7.3.12. Provide other interested parties may request a copy of the final AAP decision under the Freedom of Information Act (FOIA).

8.11.7.4. Appeal Criteria.

8.11.7.4.1. In accordance with the OMB Circular A-76 Revised Supplemental Handbook, Part I, Chapter 3, paragraph K., appealable items shall be limited to:

8.11.7.4.1.1. Address specific questions regarding line items on the cost comparison form and set forth rationale for questioning the items.

8.11.7.4.1.2. Identify specific instances of Government denials of information not otherwise protected by law or regulation.

8.11.7.4.1.3. Address specific questions regarding compliance with the policies and procedures of OMB Circular A-76, the Revised Supplemental Handbook, DoDD 4100.15, or DoDI 4100.33.

8.11.7.4.2. Non-appealable items as listed in the OMB Circular A-76 Revised Supplemental Handbook are:

8.11.7.4.2.1. Selection of one contractor over another for competition with the in-house cost estimate.

8.11.7.4.2.2. Award to one contractor in preference to another.

8.11.7.4.2.3. Management decisions involving the certified Most Efficient Organization (MEO).

8.11.7.4.2.4. Policies and procedures in OMB Circular A-76, the Revised Supplemental Handbook, DoDD 4100.15, or DoDI 4100.33.

8.11.7.4.3. AAP Authority Final Decision.

8.11.7.4.3.1. The decision of the AAP Authority shall be final and may not be overruled by a higher authority, e.g., commander, director. The AAP does not authorize an appeal outside the agency or judicial review. No further appeals or reviews shall be considered even if the AAP results in reversing the initial tentative A-76 cost comparison decision. After providing the commander or director and appellant(s) with a final AAP decision, appropriate public notifications shall be made. The AAP Authority shall then file an AAP After-Action Report with the command that is maintained as part of the official A-76 cost comparison documentation.

8.11.7.4.3.2. DoD Components shall notify DUSD(I) Competitive Sourcing Office and DoD General Counsel (A&L) when a final AAP decision overturns the tentative cost comparison decision.

8.12. GAO Bid Protests.

8.12.1. GAO bid protests can only be filed by a private sector offeror at any time during the Acquisition Process in accordance with FAR or DFARS. However, an in-progress cost comparison (i.e., no tentative decision has yet been determined) should continue as appropriate (e.g., do not cancel the cost comparison, do not delay any aspect of developing the MP or IR).

8.12.2. If a private sector offeror submits a GAO bid protest after a tentative cost comparison decision has been determined, the GAO typically will allow for the AAP to be

completed before they consider the protest. However, after the AAP has been completed the private sector has an additional opportunity (in accordance with the Competition in Contracting Act (CICA) to protest the decision. These protests are handled between a Component's General Counsel, the GAO, and the protestor. During these discussions it may be determined that specific costs entered on the CCF or compliance with policies were inappropriately applied. The Component's General Counsel may determine that the Component must take appropriate corrective action, including re-accomplishing the CCF.

8.12.3. No further A-76 administrative appeals are permitted when this occurs. Government employees do not have standing under CICA; therefore, are not permitted to submit a protest to GAO.

8.12.4. DoD Components shall notify DUSD(I) Competitive Sourcing Office and DoD General Counsel (A&L) whenever a bid protest is filed with GAO. DoD Components shall ensure the appropriate CAMIS entries are made relative to receiving a GAO bid protest.

8.12.5. Litigation in the U.S. Courts.

8.12.5.1. Private sector offerors do occasionally file lawsuits regarding A-76 actions. When this occurs, DoD Components shall notify DUSD(I) Competitive Sourcing Office and DoD General Counsel (A&L). DoD Components shall ensure the appropriate CAMIS entries are made.

8.12.5.2. Government employees have previously submitted lawsuits regarding A-76 actions; however, the courts have ruled that Government employees or Unions have no legal standing to file such lawsuits.

8.13. Cost Comparison Final Decision Announcement. The final cost comparison decision follows the Public Review Period and, if appeals are filed, the Administrative Appeal Process.

8.13.1. Congressional Notification for Contract Decisions. When a cost comparison directly affects more than 10 DoD civilian employees paid using appropriated funds and results in a decision to convert from in-house to contract performance, DoD Components cannot proceed with implementing the contract decision until complying with the Congressional notification requirements of 10 U.S.C. § 2461 and the recurring provision in the Annual DoD Appropriations Act for certification of the MEO. DoD Components are not required to notify DUSD(I) prior to making a Congressional notification unless it is a politically sensitive notification.

8.13.2. Local Public Announcement for All Decisions. As soon as possible after (a) Congressional notification for contract decisions or (b) a final decision for in-house performance, a local public announcement is made. This announcement is made to all offerors, including the contract/ISSA offerors, directly affected civilian employees and their labor representatives, directly affected military personnel, and the local community (as appropriate).

8.14. Implementing the Cost Comparison Decision.

8.14.1. Contract Decisions. The contracting officer awards the contract and issues a notice to proceed. The human resource officer then begins the appropriate personnel actions, e.g., priority placement actions, VERA, VSIP, RIF.

8.14.2. In-house Decisions.

8.14.2.1. The contracting officer cancels the solicitation.

8.14.2.2. The human resource officer begins the appropriate personnel actions, e.g., staffing requirements for the MEO vacancies, priority placement actions, VERA, VSIP, RIF.

8.14.2.3. The installation commander or equivalent issues an MEO Letter of Obligation. This letter obligates the functional area chief for the MEO to comply with the PWS and implement the MEO with the resources bid in the cost comparison for all performance periods. On an annual basis, the installation commander or equivalent will ensure the functional area chief is complying with the MEO Letter of Obligation. This MEO Letter of Obligation is to be considered in the same context as a contract award. The MEO Letter of Obligation shall include the following requirements:

8.14.2.3.1. Implementing the MEO: The functional area chief shall be responsible for satisfying the requirements in the PWS by implementing the MEO within the resources included in the IHCE for all performance periods.

8.14.2.3.2. Modifying the MEO: The functional area chief shall maintain the PWS as an active requirements document for all performance periods bid in the cost comparison. This active PWS shall be used as an audit trail to reflect modifications to requirements as compared to the PWS used in the cost comparison. It also shall be used to justify any resource adjustments (plus or minus) to the MEO. No additional resources are permitted to be added to the MEO unless there is a corresponding, documented requirements increase to the PWS. No decreases in the MEO are permitted unless there is a corresponding, documented requirements decrease to the PWS.

8.15. Post Cost Comparison Review Requirements.

8.15.1. Regardless of the decision, one of the primary post-cost comparison actions is to implement the QASP. (See paragraph 8.4.)

8.15.2. Contract Decisions in Cost Comparisons. Contracts should be reviewed on a periodic basis to ensure continued efficiency and cost effectiveness. If the contract quality is unacceptable or the price increases significantly, the contracting officer will negotiate with the contractor to obtain reasonable prices or acceptable quality. If negotiations fail and re-solicitation does not result in reasonable prices, a cost comparison of the contracted CA can be performed.

8.15.3. In-House Decisions in Cost Comparisons: Post-MEO Performance Review.

8.15.3.1. It is DoD policy that 100% of all MEO decisions resulting from cost comparisons shall be subject to a post-MEO performance review within one of the performance

periods bid in the cost comparison. Twenty percent shall be reviewed following the end of the first full year of performance.

8.15.3.2. The post-MEO performance review determines that the MEO has been implemented in accordance with the Transition Plan and continues to meet the requirements of the PWS (allowing for mission or scope changes) with the resources included in the in-house offer, e.g., manpower and dollars.

8.15.3.3. DoD Components' 9(a) officials are responsible for establishing a post-MEO performance process that is independent, impartial, and objective. Individuals who perform a post-MEO review must be independent of the MEO being reviewed. The post-MEO performance review will be performed in accordance with the RSH (paragraphs 4-7) and this Instruction.

8.15.3.4. For failure to implement the MEO in accordance with the RSH, paragraphs 4-7, refer to paragraph 8.16.2. for resolution.

8.15.3.5. The DoD Components shall maintain an annual list of post-MEO performance review certifications that are available to the public upon request. This list shall include the number of cost comparisons performed by location resulting in in-house decisions since March 1996 when the RSH was issued. This list will include the number of post-MEO reviews completed by cost comparison and location.

8.16. Inability to Perform After a Final Cost Comparison Decision.

8.16.1. For contract decisions, if it is determined after contract start that the selected contract/ISSA offer cannot perform, the contracting officer can seek a reaffirmation of already-received contract/ISSA and in-house offers, allowing adjustment for time delays and inflation. After reaffirmation is received, an evaluation is conducted to determine the resubmitted contract/ISSA offer to be compared against the resubmitted in-house offer.

8.16.2. For in-house decisions, if it is determined that the MEO cannot be implemented, then the contracting officer can seek a reaffirmation of the contract/ISSA and in-house offers received allowing for time delays and inflation adjustments. After reaffirmation is received, an evaluation is conducted to determine the resubmitted contract/ISSA offer to be compared against the resubmitted in-house offer. In these cases, the in-house offer is developed by a team designated by the 9(a) official and must be at least one organizational level higher to ensure the in-house offer is adjusted to account for shortfalls that caused the recompetition. In these cases, it is DoD policy that the DoD(IG) will be the IRO.

8.17. Commercial Activities Management Information System (CAMIS).

8.17.1. DoD Components shall comply with the CAMIS instructions at Enclosure 4.

8.17.2. DoD Components shall be responsible for current and accurate CAMIS data.

8.17.3. DoD Components shall use the OSD-developed web-based CAMIS.

8.17.4. The DoD CAMIS will be used for Congressional reporting requirements (e.g., 10 U.S.C. § 2461).

8.18. Cancellation of Cost Comparisons. A DoD Component shall ensure that any cancellation of a cost comparison is either made by or coordinated through their 9.a. official before canceling the cost comparison.

9. STREAMLINED COST COMPARISON

9.1. General.

9.1.1. This chapter provides DoD policy and procedures for performing a streamlined cost comparison. DoD Components have the option to use the streamlined cost comparison process to determine cost effectiveness of converting CAs to or from in-house, contract, or ISSA performance. To determine whether a standard cost comparison, streamlined cost comparison, or direct conversion can be performed, refer to Figure 6.1. A streamlined cost comparison shall only be permitted if it meets the following criteria.

9.1.1.1. If the conversion is planned for an existing in-house CA, the CA must be performed by 65 or fewer DoD APF civilian employees.

9.1.1.2. If the conversion is planned for a contracted CA, the conversion is limited to 65 or fewer DoD APF civilian employees.

9.1.1.3. The CA will be competed largely on labor and material costs,

9.1.1.4. No significant capital asset purchases are required for the CA, or all equipment requirements will be Government furnished,

9.1.1.5. The CA is commonly contracted, i.e., there are not less than four comparable Component contracts of the same general type and scope and the range of the existing contract costs are reasonably grouped, and

9.1.1.6. The DoD Component complies with all relative A-76 statutes (e.g., 10 U.S.C. § 2461, 2462, MEO provision in the Annual DoD Appropriations Act).

9.1.2. An in-house CA involving more than 65 DoD APF civilian employees cannot be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirements of the RSH and this Instruction.

9.1.3. DoD Components shall use the DoD A-76 Costing Manual and win.COMPARE² to develop the IHCE.

9.1.4. An AAP Authority shall be appointed early in the streamlined cost comparison process because this authority confirms that all costs entered on the CCF are accurate and certifies the reasonableness of the contract/ISSA price adjustments made by the contracting officer.

9.1.5. An Independent Review by the IRO certifies that they have reviewed the proposed in-house cost estimate and contract/ISSA prices and found them to be reasonable and found that both the in-house and contract/ISSA costs were calculated in accordance with the principles and procedures of the RSH and the DoD Costing Manual.

9.1.6. An in-house CA cannot be modified, reorganized, divided, or in any way changed for the purpose of avoiding the cost comparison process.

9.1.7. DoD Components shall ensure streamlined cost comparison decisions are cost effective in accordance with 10 U.S.C. § 2462, and that the requirements of 10 U.S.C. § 2461 and the MEO provision in the Annual DoD Appropriations Act are satisfied.

9.2. Streamlined Cost Comparison Process Procedures.

9.2.1. When determining to perform a streamlined cost comparison, several assumptions are made:

9.2.1.1. The CA is commonly performed by contract,

9.2.1.2. Existing Fixed Price contracts can be used with only minor modification,

9.2.1.3. An existing PWS can be used, and

9.2.1.4. A formal solicitation is not issued.

9.2.2. Paragraphs 6.6. (Review of Documents); 6.7. (Personnel Considerations); 8.1. (Standard Cost Comparison General Information); 8.6.3. (Safeguarding the MEO); 8.9. (Independent Review); 8.11. (Public Review Period and the Administrative Appeal Process); and 8.17. (CAMIS) of this Instruction apply when performing a streamlined cost comparison.

9.2.3. DoD Components shall base their IHCE on their current organization because no MEO development is permitted in a streamlined cost comparison process. The current organization shall be the MEO.

9.2.4. The IHCE is calculated in accordance with the DoD A-76 Costing Manual with the following exceptions.

9.2.4.1. In-House Costs.

9.2.4.1.1. Line 1, Personnel Costs: Calculated in accordance with the DoD A-76 Costing Manual.

9.2.4.1.2. Line 2, Material and Supply Costs: Calculated in accordance with the DoD A-76 Costing Manual.

9.2.4.1.3. Line 3, Other Specifically Attributable Costs: Limit this entry to the cost of existing in-house support contracts (if any) and related Government-furnished equipment and facilities not to be provided to a competing contract/ISSA offeror. Include

personnel liability insurance costs for Line 1 and casualty insurance costs for materials, equipment and facilities included in Lines 2 and 3. Note: The RSH reflects this as Line 4 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 3 (the same as the Generic CCF).

9.2.4.1.4. Line 4, Overhead Costs: calculated IAW the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 4 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 3 (the same as the Generic CCF).

9.2.4.1.5. Line 5, Additional Costs: No costs are entered on this line.

9.2.4.1.6. Line 6, Total In-house Costs: Calculated in accordance with the DoD A-76 Costing Manual.

9.2.4.2. Contract or ISSA Performance Costs.

9.2.4.2.1. Line 7, Contract or ISSA price. The contracting officer provides this price. It may represent either the estimated or actual contract or ISSA price. If an actual contract price is used, it is based on prices received from a formal solicitation. Note: The RSH reflects this as Line 6 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 7 (the same as the Generic CCF).

9.2.4.2.2. Line 8, Contract Administration: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 7 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 8 (the same as the Generic CCF).

9.2.4.2.3. Line 9, Additional Costs: No costs are entered on this line.

9.2.4.2.4. Line 10, One-Time Conversion Costs: No costs are entered on this line.

9.2.4.2.5. Line 11, Gain on Assets: No costs are entered on this line.

9.2.4.2.6. Line 12, Federal Income Tax: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 8 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 12 (the same as the Generic CCF).

9.2.4.2.7. Line 13, Total Contract or ISSA Costs: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 9 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 13 (the same as the Generic CCF).

9.2.4.3. Decision Lines.

9.2.4.3.1. Line 14, Minimum Conversion Differential: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 10 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 14 (the same as the Generic CCF).

9.2.4.3.2. Line 15, Adjusted Total Cost of In-house Performance: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 11 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 15 (the same as the Generic CCF).

9.2.4.3.3. Line 16, Adjusted Total Cost of Contract or ISSA Performance: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 12 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 16 (the same as the Generic CCF).

9.2.4.3.4. Line 17, Cost Comparison Decision – Line 16 Minus Line 15: Calculated in accordance with the DoD A-76 Costing Manual. Note: The RSH reflects this as Line 13 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 17 (the same as the Generic CCF).

9.2.4.3.5. Line 18, Cost Comparison Decision. Note: The RSH reflects this as Line 14 on the Streamlined CCF; however, in win.COMPARE² this line is reflected as Line 18 (the same as the Generic CCF).

9.2.5. The following signatures are required on the CCF when a streamlined cost comparison is performed.

9.2.5.1. Preparer of the IHCE.

9.2.5.2. Independent Reviewer Official.

9.2.5.3. Cost Comparison Completed By.

9.2.5.4. Contracting Officer.

9.2.5.5. Tentative Cost Comparison Decision Announced By.

9.2.5.6. Appeal Authority (always applicable for streamlined cost comparisons).

9.2.6. A market research/analysis is used to justify the conversion from in-house to contract/ISSA performance.

9.3. Development of Estimated Contract/ISSA Price.

9.3.1. The contracting officer does not issue a solicitation but develops a range of contract cost estimates based on not fewer than four comparable service contracts or ISSA offers. Adjustments for differences in scope are permitted.

9.3.2. If the contracting officer finds that four comparable contracts or ISSA offers are not available, the DoD Component shall then convert the streamlined cost comparison to a standard cost comparison in order to solicit offers from contract/ISSA offerors.

9.4. Tentative Streamlined Cost Comparison Decision.

9.4.1. The IHCE is compared against the range of estimated contract costs and ISSA costs developed by the contracting officer.

9.4.2. Contract Decisions.

9.4.2.1. If the Government's Adjusted Total Cost of In-house Performance (Line 15) is greater than the range of Adjusted Total Cost of Contract or ISSA Performance (Line 16), a tentative contract/ISSA decision is determined.

9.4.2.2. Adversely affected DoD civilian employees and their representatives are notified of the tentative decision.

9.4.2.3. The contracting officer publishes the tentative streamlined cost comparison decision in the Commerce Business Daily.

9.4.2.4. The Public Review Period and AAP are initiated in accordance with paragraph 8.11. Both the IRO and the AAP Authority confirms that all costs entered on the CCF are correct and certifies the reasonableness of the contract/ISSA estimate made by the contracting officer.

9.4.2.5. The contracting officer then issues a formal solicitation soliciting only private sector offers. This solicitation shall indicate that a streamlined cost comparison was performed and include the Right of First Refusal clause for the adversely affected DoD civilian employees impacted by the conversion to contract performance.

9.4.3. DoD Components shall ensure DoD civilians adversely by a streamlined cost comparison decision are offered placement opportunities in accordance with paragraph 6.7.

9.4.4. In-house Decisions.

9.4.4.1. If the Government's Adjusted Total Cost of In-house Performance (Line 15) is less than or within the range of Adjusted Total Cost of Contract or ISSA Performance (Line 16), a tentative in-house decision is determined.

9.4.4.2. Affected DoD civilian employees and their representatives are notified of the tentative decision.

9.4.4.3. The contracting officer publishes the tentative streamlined cost comparison decision in the Commerce Business Daily.

9.4.4.4. The Public Review Period and AAP are initiated in accordance with paragraph 8.11. The AAP Authority confirms that all costs entered on the CCF are correct and certifies the reasonableness of the contract/ISSA estimate made by the contracting officer.

9.4.4.5. The CA is retained in-house as an MEO and is subject to post-MEO performance reviews in accordance with paragraph 8.15.

9.4.5. DoD Components shall ensure CAMIS data is entered as required for streamlined cost comparisons (See paragraph 8.17.)

10. DIRECT CONVERSIONS

10.1. General.

10.1.1. This chapter provides DoD policy and procedures for direct conversions. To determine whether a standard cost comparison, streamlined cost comparison, or direct conversion can be performed, refer to Figure 6.1. DoD Components have the option of performing a standard cost comparison on any activity that meets the requirement for a direct conversion.

10.1.2. The term “direct conversion” refers to the third process allowed to convert to or from in-house, contract, or ISSA performance. It implies a CA will be “directly” converted from one service provider to another without the need to perform a standard or streamlined cost comparison.

10.1.3. DoD Components are permitted to perform direct conversions in accordance with paragraphs 6.3.1, 6.3.3., 6.3.4., 6.3.5., 6.3.8., 6.4.2., 6.4.5, 6.4.7., and 6.4.8.

10.1.4. Paragraphs 6.6. (Review of Documents); 6.7. (Personnel Considerations); 8.1. (Standard Cost Comparison General Information); 8.3. (Performance Work Statement); 8.4. (QASP); 8.7. (Solicitations); 8.9. (Independent Review); 8.11. (Public Review Period and the Administrative Appeal Process); and 8.17. (CAMIS) of this Instruction apply when performing a direct conversion.

10.1.5. An in-house CA cannot be modified, reorganized, divided, or in any way changed for the purpose of performing a direct conversion.

10.1.6. DoD Components shall ensure direct conversions are cost effective in accordance with 10 U.S.C. § 2462, and that the requirements of 10 U.S.C. § 2461 and the MEO provision in the Annual DoD Appropriations Act are satisfied.

10.1.7. DoD Components shall prepare an IHCE based on existing manpower costs of the CA (i.e., no MEO shall be developed). The IHCE will be developed in accordance with the DoD Costing Manual with the following exceptions.

10.1.7.1. Cost for in-house performance excludes CCF Lines 3, 4, and 5.

10.1.7.2. Cost for contract performance excludes CCF Lines 9, 10, and 11.

10.1.7.3. The conversion differential (CCF, Line 14) is excluded.

10.1.8. An independent review is required of the IHCE. This review is limited only to validate and certify that costs on the CCF are accurate.

10.1.9. After a tentative direct conversion decision is determined, the Public Review Period and Administrative Appeal Process are initiated in accordance with paragraph 8.11. After the Public Review Period and, if appeals are received, the Administrative Appeal Process, a final direct conversion decision is determined.

10.1.10. Right of First Refusal applies to adversely affected civilian employees except for conversion to JWOD/NISH/NIB providers.

10.1.11. DoD Components shall ensure DoD civilians adversely by a direct conversion are offered placement opportunities in accordance with paragraph 6.7.

10.1.12. DoD Components shall ensure CAMIS data is entered as required for direct conversions.

11. PERFORMANCE TRACKING REQUIREMENTS

11.1. DUSD(I) is responsible for evaluating DoD Component execution of their Competitive Sourcing Programs via the Budget Review Process, CAMIS, and SHARE A-76! DoD Components shall be required to:

11.1.1. Continue to update their CAMIS in accordance with Enclosure 7.

11.1.2. Submit contributions for best practices to the OSD A-76 Cost Comparison Knowledge Management System known as SHARE A-76!

12. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. The DoD Component shall forward one copy of its implementing documents to DUSD (I) within 120 days.

Appendices:

AP1. References, continued

AP2. Definitions

AP3. Acronyms

AP4. Annual CA Inventory Guidance – Manpower Mix Criteria

AP5. Conflict of Interest Table

AP6. Consultant Firewall Table

AP7. Commercial Activities Management Information System (CAMIS)

AP1 APPENDIX 1 - REFERENCES, continued

- (e) Federal Acquisition Regulation (FAR), January 1, 2000
- (f) Defense Federal Acquisition Regulation (DFARS), 1998
- (g) Federal Activities Inventory Reform Act of 1998 (PL 105-270)
- (h) DoDD 5400.7, FOIA, May 13, 1998
- (i) Javits-Wagner-O'Day Act (PL 92-98), 1971
- (j) Small Business Administration (PL 85-536), Dec 9, 1999
- (k) Section 117, Chapter 11, Title 31, U.S.C., "Government Performance and Results Act (GPRA)", 1993
- (l) Chapter 41 of Title 5, U.S.C., "Federal Workforce Restructuring Act of 1994"
- (m) Sections 2461-2474, Chapter 146 of 10 U.S.C., "Contracting for Performance of Civilian Commercial or Industrial Type Functions", 1994
- (n) Sections 8020 and 8043 of Public Law 103-335, "The Defense Appropriations Act of 1995," September 30, 1994
- (o) OFPP Best Practices Guide to Performance Based Service Contracting, October 1998
- (p) Executive Order 12615, "Performance of Commercial Activities", November 23, 1987
- (q) Guide for Independent Review of Office of Management and Budget Circular A-76 Studies, (DATE TBD)
- (r) Department of the Army Regulation (AR) 5-20, "Commercial Activities Program", 1 October 1997
- (s) Department of the Army Pamphlet (DA PAM) 5-20, "Commercial Activities Study Guide", 31 July 1998
- (t) Chief of Naval Operations Instruction (OPNAVINST) 4860.7C, "Commercial Activities Program Manual", 7 June 1999
- (u) Department of the Navy (DON) Competitive Sourcing Handbooks: "Succeeding at Competition" and "Business Unit Definition and Analysis Guide", 31 December 1997
- (v) Department of the Air Force Instruction (AFI) 38-203 "Air Force Commercial Activities Program Instruction", 1 August 2000

AP2 APPENDIX 2 - DEFINITIONS

Accumulated Depreciation: The total amount of depreciation taken to date.

Acquisition Cost: The original purchase price including the expense for transportation and installation incurred to place the asset in operation (if not already in the purchase price).

Administrative Appeal Process: A formal process to review appeals concerning the IHCE after a tentative cost comparison decision. The AAP Authority evaluates appeals (submitted by eligible appellants during the Public Review Period) in order to determine if changes are necessary to correct the IHCE.

Administrative Appeal Process Authority: The responsible official who determines whether an appeal (submitted by an eligible appellant) is valid and directs changes to the IHCE as appropriate depending on their investigation of the appeals submitted. The AAP Authority reviews appeals to ensure that all costs are properly accounted for in accordance with the principles and procedures of this Manual and the RSH.

Age of Asset: The number of years between the purchase/construction date of the item (i.e., asset) and the date of the cost comparison.

Annualized: Calculation to reflect a rate based on a full year.

Annual Paid Hours: Per PL 97-253, Section 310, 2087 hours represents the number of hours annually paid for positions used on a pre-arranged regularly scheduled tour of duty. These hours are used to convert hourly pay to annual pay.

Annual Productive Hours: The number of hours annually available for work that excludes nonproductive time such as annual and sick leave, administrative leave, and training. There are 1,776 productive hours available for full-time permanent positions (or one full-time equivalent or FTE), and 2,007 productive hours available for intermittent positions. The difference in the number of productive hours between position types is attributed to the nonproductive time.

Basic Pay: A position's annual salary plus any other entitlements that receive the full fringe benefit rate.

Bid: An offer (i.e., price) made in response to an Invitation for Bid in Sealed Bid procurement.

Borrowed Military Manpower: Military manpower used to perform workload other than in their assigned work centers, including non-military essential activities, and often in other than their primary occupational specialties.

Capital Improvements: The costs of major overhauls and modifications that add value or prolong the life of a capital asset (i.e., equipment or facility).

Commercial Activity: A product or service obtainable (or obtained) from a commercial source.

Commercial Activity Management Information System: The DoD tracking system for execution of A-76 cost comparisons and direct conversions that monitors, collects and maintains data for cost comparisons and direct conversions.

Commercial Source: A business or other non-Federal activity that is eligible for contract award in accordance with Federal Acquisition Regulations.

Common Cost: These are costs the Government expects to incur at exactly the same rate under an in-house or contract/ISSA provider. These costs are often referred to as “wash” costs.

Component’s 9.a. Official: A DoD Component’s official that is designated as responsible for implementation of and compliance with the OMB Circular A-76 (per paragraph 9.a.). This official shall be at the assistant secretary or equivalent level.

Congressionally Mandated Cost Comparison Timeframes: The amount of time permitted by Congress to complete a cost comparison. For multi-function cost comparisons, the time allotted is no more than four years. For single function cost comparisons, the time allotted is no more than two years. The clock starts at public announcement (i.e., Congressional notification) and stops at tentative cost comparison decision.

Contract Administration: The actions necessary to administer the contract and to ensure the Government and contractor live up to their respective responsibilities under the contract. This includes tasks performed by warranted contracting officers or the contracting officer’s technical representatives (COTR), and any related payment and evaluation staff.

Contract Award Date: The date the contract is awarded to a contractor by the Government, (i.e., signed by both the contracting officer and contractor). This date may or may not be the same date as the contract start date. For Negotiated acquisitions, the contract award date reflects the final cost comparison decision.

Contract Manyear Equivalent: An FTE expression for contracted requirements.

Contract Start Date: The date the contractor is scheduled to begin performing under the terms of the contract.

Conversion from Contract: The change of a commercial activity from contract performance by a commercial source to in-house performance by Federal employees.

Conversion to Contract: The change of a commercial activity from in-house performance by Federal employees to contract performance by a commercial source.

Cost Comparison: A point in time when there is a determination made for a specific service provider based upon the cost comparison process. It is at this time when the estimated cost of Government performance is formally compared to the cost of performance by a contract/ISSA provider to determine the most efficient and cost effective provider.

Cost Comparison End Date: The tentative cost comparison date. This is the day the “clock” stops on the congressionally mandated time frame for completion of the cost comparison.

Cost Comparison Process: A standard, formalized OMB competitive process used to determine the most efficient and cost-effective method of performance—contract/ISSA or in-house. The process results in a specific outcome—MEO or contract/ISSA performance of a commercial activity.

Cost Comparison Start Date: The date the cost comparison process begins. This is the date of Congressional notification, which is also the same date as public announcement. This is the day the “clock” starts on the congressionally mandated time frame for completion of the cost comparison.

Department of Labor Wage Determination: A Department of Labor determination on the minimum wages and fringe benefits for certain skills required to be paid by Government contractors in contracts covered by the Service Contract Act and/or the Davis-Bacon Act.

Depreciable Basis: The original acquisition cost plus the cost of capital improvements less residual value.

Direct Conversion: A method of converting an activity to or from in-house, contract, or ISSA performance without conducting a cost comparison. A direct conversion is another type of A-76 initiative where an MEO is not developed when 50 or fewer civilians are impacted by the conversion.

Disposal/Residual Value: An estimate of the asset’s worth (i.e., value) at the end of its useful life that is determined either by application of the disposal value factor listed at Appendix 8 or an engineering estimate. For equipment, this is the worth of the equipment (i.e., value) that is equal to the acquisition cost times the disposal value percentage unless a more accurate estimate is available. For facilities, the value of the facility is a locally computed estimate.

Eligible Appellants: Parties affected by a tentative cost comparison decision. This includes Federal employees (i.e., APF or NAF civilian employees whose work is being cost compared) or their representative(s), contractors who have submitted formal offers, and an agency that has submitted a formal offer via an ISSA.

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

Final Cost Comparison Decision: The definitive cost comparison decision that follows the Public Review Period and, if appeals are filed, the AAP.

Full-Time Equivalent: Generally, in-house staffing should be expressed in terms of productive work hours. With the establishment of the number of productive work hours required, a conversion to the number of FTEs is needed. For civilian full-time, part-time, and temporary positions, estimate the total hours required by skill and divide by 1,776 annual available hours to

determine the number of FTE positions required. For civilian intermittent positions to be expressed in FTEs, estimate total hours required by skill and divide by 2,007 annual available hours to determine the number of FTE positions required. For military positions, each service establishes annual available hours to be used for converting work hours to FTEs.

Government Management Plan: The document that reflects the Government's offer in a cost comparison. It outlines the changes that will result from the existing organization to the MEO and outlines how the MEO will meet the requirements of the PWS. It provides the staffing patterns and operating procedures that serve as a baseline for the IHCE. It consists of an MEO, QASP, IHCE, Transition Plan, and any supporting documentation as well as a TPP when required.

Independent Government Estimate: An estimate developed by the contracting office that is used to determine if contract/ISSA offers are fair and reasonable. It is an estimate of the costs and profit to perform the work depicted in a PWS that is used in evaluation of contract/ISSA offers. This estimate is not to be confused with the IHCE.

Independent Review Official: The official responsible for certifying the MEO's performance and the IHCE as being in full compliance with the procedures and requirements of this Manual and the RSH and the PWS. This is the same individual as the Independent Review Officer referred to in the RSH. The term "officer" may imply to DoD Components that this individual must be a military officer in one of the military Services when it is OMB's intent is that this individual be an official responsible for performing the independent review. Therefore, to ensure that Components have the flexibility to designate any official as their IRO, DoD uses the term "official" vice "officer" when referring to IRO.

In-house Offer: The RSH term that represents a parallel between what the Government is offering and contract/ISSA offerors. The "in-house offer" is not strictly an offer as used in the FAR. This term is used to represent the Government Management Plan that is required by the RSH.

Inter-Service Support Agreement: An agreement between Federal agencies for the provision of a commercial activity. For A-76 cost comparison purposes, a non-DoD Federal agency may participate in the cost comparison process by competing with private sector offerors in the cost comparison process to determine which offeror (contract/ISSA) will compete against the in-house offer.

Invitation for Bids. Under sealed bidding procurement, the solicitation requesting submission of bids.

Joint Inventory: An accounting of materials, supplies, equipment, etc., that is performed to transfer responsibility for an existing inventory from an incumbent service provider to a newly selected service provider (i.e., MEO, contract ISSA) resulting from a cost comparison. This accounting verifies the quantity and condition of the property and identifies any discrepancies.

Just-in-Time Training: When applied to A-76, it is training that is provided "just-in-time" to individuals that will be impacted by or participate in the cost comparison process. "Just in time" means that the training provided includes the most recent policies and procedures and occurs as

soon as possible after cost comparison start date. The purpose of this training is to ensure individuals are not trained months or years before the actual process begins.

Mix: A commercial activity that has a combination of work performed both in-house and by contract.

Market Value: The price that would be paid if the asset were sold on the open market.

Monthly Depreciation: The acquisition cost divided by the expected life, in months, of the asset.

Most Efficient Organization: The Government's in-house organization deemed to be the most efficient for competition with the private sector. It may include a mix of Federal civilian employees, military members and contract support. It is the basis for all Government costs entered on the CCF. The MEO is one of the products of the Government Management Plan and is based upon the PWS.

Multi-function Cost Comparison: A single cost comparison that competes many commercial activities under one solicitation or a single commercial activity that is competed at many locations as a single cost comparison under one solicitation.

Negotiated Procurement: A type of source selection process where offerors submit proposals in response to a Request for Proposal.

Net Book: The worth of an item equal to the original acquisition cost minus the accumulated depreciation.

New Asset: Newly acquired item.

New Requirement: A newly established need for a commercial product or service.

Offer: A proposal or bid submitted by any party (i.e., in-house, contract, ISSA) in response to a solicitation (i.e., Request for Proposal, Invitation for Bid).

Overhead: The standardized rate that accommodates overhead costs that are not necessarily visible to the CA or installation, but are clearly included in and provided by the Department's budget and represents costs that are comparable to those that a contractor must include, such as allocations for Chief Executive Officers, headquarters management support staff, etc. This factor includes costs that are not 100% attributable to the CA being competed but are generally associated with the recurring management or support of the CA. Use of the rate avoids a requirement to develop detailed allocations of all management and support costs within DoD and as provided by the Government at large to the commercial activity being competed.

Percentage of Shared Asset Usage: The estimated MEO use of an item (i.e., asset) if shared with an activity not undergoing a cost comparison (shown in decimal format); percentage is multiplied by the annual depreciation to determine the adjusted annual depreciation that is to be charged to the MEO in the IHCE.

Performance Work Statement: A PWS is a statement of the technical, functional and performance characteristics of the work to be performed. It identifies essential functions to be performed and determines performance factors, including the location of the work, the units of work, the quantity of work units, and the quality and timeliness of the work units. It serves as the scope of work and is the basis for all costs entered on the CCF. A PWS may be replaced by another type of requirements document, e.g., statement of work (SOW), performance requirements document (PRD), technical requirements document (TRD), statement of objective (SOO). It serves as the scope of work and is the basis for all costs entered on the CCF and must comply with Performance-based Service Contracting requirements.

Phase-In Period Costs: Costs associated with a designated transition timeframe included in the bid schedule of some solicitations. Phase-in periods are commonly used for operations. The period is an overlap period where the incumbent phases out its performance and the selected service provider phases in its performance. This period includes costs associated with converting from the current provider to the selected provider to ramp-up into full compliance with the PWS.

Plug Cost: A cost the contracting officer inserts in the solicitation that all offerors must insert in their offer. This is often represented as a ceiling and/or a “not-to-exceed” amount for items such as material or travel.

Post-MEO Performance Review: An internal review confirming that the MEO has been implemented in accordance with the Transition Plan, establishes the MEO’s ability to perform the services of the PWS and confirms that actual costs are within the estimates contained in the IHCE.

Preferential Procurement Programs: Special required commercial source programs such as Federal Prison Industries and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O’Day Act.

Proposal: An offer (that typically includes technical management and cost sections) made in response to a Request for Proposals in a negotiated procurement.

Public Review Period: A specific time frame (from 20 to 30 calendar days) during which an eligible appellant may submit a cost comparison appeal for consideration during the AAP.

Quality Assurance Surveillance Plan: A plan describing the methods of inspection to be used, the reports required, and resources to be employed with estimated work hours. This plan should be an organized, written document containing sampling guides, checklists, and decision tables used for contractor/ISSA or MEO quality assurance surveillance. If the method of surveillance for the MEO will be different from that specified in the QASP for contractor/ISSA surveillance, an MEO QASP must be developed and included in the Management Plan.

Request for Proposal: The request to potential offerors to submit proposals in a negotiated procurement.

Retained Pay: Retained pay is the same as “saved pay”. It provides pay protection for an employee whose grade or pay is reduced due to management actions for which the employee is not responsible, e.g., placed in a lower graded position by reduction in force (RIF) action or

reduced in grade due to reclassification of the employee's former position. When such actions occur, the employee's pay is preserved indefinitely, with minor exceptions.

Saved Pay: See retained pay.

Sealed Bid Procurement: A type of procurement where contractors submit bids in response to an invitation for bids.

Severable Expansion: An increase of work currently performed either by contract, in-house or ISSA that could be provided using the current approach or could be competed since the increase in work is separable. Thus a PWS can be written for the work without severe additional administrative burden, in order to be subjected to competition, i.e., cost comparison. Economies of scale are not justification for dismissing new or expanded work as severable; these economies will be tested through competitive offers.

Service Contract Act: A law that sets the minimum wages and fringe benefits for labor, which must be paid to all "service workers". The law applies to all contracts that are primarily for services and entered into by Federal Government agencies, whose value is estimated to exceed \$2,500.

Supporting Documentation: The IHCE and all relevant documentation to explain the costing of the IHCE to the IRO, AAP Authority, and any eligible appellant during the AAP.

Transferred Asset: An item (i.e., asset) transferred from another activity to the competing activity.

Technical Performance Plan: The technical approach of the MEO to meet the requirements of the PWS. It is prepared in accordance with Section L of the solicitation and depicts the MEO's technical approach. A Government TPP is only required as part of the Government Management plan when the Cost/Technical Tradeoff source selection process is used.

Tentative Cost Comparison Decision: The cost comparison decision pending the outcome of the Public Review Period and AAP.

Transition Plan: A written plan for the transition from the current organizational structure to MEO or contract/ISSA performance, designed to minimize disruption, adverse impacts, capitalization, and startup requirements.

Useful Life: The estimated period of economic worth (i.e., usefulness) of an asset in a particular operation.

Wash Cost: See common costs.

AP3 APPENDIX 3 - ACRONYMS

AAP	Administrative Appeal Process
ADP	Automated Data Processing
APF	Appropriated Fund
CA	Commercial Activities
CAMIS	Commercial Activities Management Information System
CARE	Civilian Assistance and Reemployment
CCF	Cost Comparison Form
CFR	Code of Federal Regulations
CLIN	Contract Line Item Number
CME	Contract Man-year Equivalent
COLA	Cost of Living Adjustment
COR	Contracting Officer's Representative
COTR	Contracting Officer's (Technical) Representative
CPMS	Civilian Personnel Management Service
DBA	Davis-Bacon Act
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDHRA	Department of Defense Human Resource Activity
DoDI	Department of Defense Instruction

DOL	Department of Labor
DUSD(I)	Deputy Under Secretary of Defense (Installations)
EDP	Environmental Differential Pay
EPA	Economic Price Adjustment
FAR	Federal Acquisition Regulation
FICA	Federal Insurance Contributions Act
FSC	Federal Supply Code
FTE	Full-time Equivalents
FWS	Federal Wage System
FY	Fiscal Year
GFE	Government-Furnished Equipment
GFF	Government-Furnished Facilities
GFM	Government-Furnished Materials
GFP	Government-Furnished Property
GS	General Schedule
GSA	General Services Administration
IHCE	In-house Cost Estimate
IFB	Invitation for Bid
IGE	Independent Government Estimate
IRO	Independent Review Officer

ISSA	Inter-Service Support Agreement
MEO	Most Efficient Organization
NAF	Non-Appropriated Fund
NAFI	Non-Appropriated Fund Instrumentality
NIB	National Industries for the Blind
NISH	National Industries for the Severely Handicapped
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSD	Office of the Secretary of Defense
OSHA	Occupation Safety and Health Administration
OUSD(AT&L)	Office of the Under Secretary of Defense (Acquisition, Technology and Logistics)
PCH	Packing, Crating and Handling
PWS	Performance Work Statement
QAE	Quality Assurance Evaluator
QASP	Quality Assurance Evaluation Plan
QSI	Quality Step Increase
RFP	Request For Proposal
RSH	Revised Supplemental Handbook (to OMB Circular A-76)

SBA	Small Business Administration
SCA	Service Contract Act
SSP	Sustained Superior Performance
TP	Transition Plan
TPP	Technical Performance Plan
USA	United States Army
USAF	United States Air Force
USMC	United States Marine Corps
USN	United States Navy
WD	Wage Director
WG	Wage Grade
WL	Wage Leader
WS	Wage Supervisor

AP4 APPENDIX 4 - Instructions for Applying DoD Manpower Mix Criteria

(Appendices noted in original text not included.)

1. General.

1.1. The following manpower mix criteria and data codes are to be used by the DoD Components to identify what DoD military and civilian manpower in the programmed force structure are:

1.1.1. Core (to include manpower performing inherently governmental, military essential and civilian essential functions) and not subject to private sector performance;

1.1.2. Non-core and restricted from cost comparison or direct conversion (such as fire fighters and security guards) to private sector performance; and,

1.1.3. Non-core and subject to cost comparison or direct conversion to private sector performance.

1.2. Manpower mix criteria are listed in descending order of precedence. When two (or more) criteria apply to a manpower requirement, the criterion highest on the list shall take precedence. (A diagram depicting a decision matrix for applying the Manpower Mix Criteria and order of precedence for coding billets is displayed in Enclosure 2.)

1.3. DoD Component program and force management officials shall review the manpower designations and re-designate manpower, as necessary, to ensure there is a sufficient workforce base to support:

1.3.1. Mobilization based on the criteria for “Military Combat Augmentation” (code B) and “Civilian Security or Operational Risk” (code I); and,

1.3.2. Peacetime overseas and sea-to-shore rotation of military personnel and military career progression; and, for compliance with legislatively mandated manpower floors, based on the criteria for “Military Rotation” (code E), “Military Career Progression” (code F), and legislatively mandated floors (code J), respectively.

2. Manpower Mix Criteria.

2.1. DoD Components shall designate core “military essential” manpower requirements based on the following criteria and data codes:

2.1.1. **Military Combat (Code A)**. DoD Components shall designate all military manpower requirements in operating forces that deploy to theaters or areas of operations where there is a high likelihood of exposure to hostile fire with code A. Military manpower requirements that support contingency operations in units that do not deploy but, due to the nature of their military mission, are subject to military attack may also utilize code A. A key element is whether the personnel must be trained and ready to use combat skills or training and (except for Chaplains and medical personnel) use deadly force.

2.1.1.1. This includes military manpower in combat units that will be engaged in, or provide direct support for, military combat operations. Units that provide service support under combat conditions may be considered for this category, but only where military combat exposure (direct fire) is expected or where use of civilians or contractors is considered an unacceptable risk. (Risk assessment procedures are at Enclosure 1.)

2.1.1.2. The manpower under this criterion is considered “military essential” because military combat training and experience is necessary for the successful performance of the work and, except in emergency situations, the use of noncombatant contract and DoD civilian personnel is deemed an unreasonable risk. This may include entire units (such as Army Modified Tables of Organization and Equipment units) or individual manpower within units, as well as Unit Type Code (UTC) tasked manpower in the Air Force.

2.1.1.3. During peacetime, not all of the “Military Combat” manpower requirements are programmed. DoD Components program manpower to maintain the military forces and essential support elements sufficiently ready during peacetime so that units can be brought to the appropriate mission readiness status within the period of time allowed to meet the most demanding requirements on an approved time phased force deployment list (TPFDL). DoD Components ensure that units can meet their mission readiness status within the required time frame by maintaining a sufficient number of military personnel in the infrastructure for each occupational and skill level needed for a complete and immediate mobilization consistent with the guidance in DoD Directive 1100.18 (reference a). This source of military manpower is referred to as “Military Combat Augmentation” manpower. Assignment of military personnel to positions in the infrastructure during peacetime allows for the cost effective cross-utilization of military personnel.

2.1.2. **Military Combat Augmentation (Code B)**. DoD Components shall designate military manpower in the infrastructure that do not otherwise require military incumbents with code B when they are needed to ensure there is an adequate inventory of military personnel for each occupation and skill level necessary to satisfy projected mobilization or wartime manpower demands that cannot be met with personnel designated “code A” or with personnel acquired after mobilization.

2.1.2.1. This includes military personnel who are required for a mobilization, military contingency, or other emergency requirement, but are assigned to positions in the infrastructure during peacetime to provide for their cost-effective utilization and training. (For example, utilizing doctors and nurses in military hospitals in the infrastructure during peacetime is more cost effective and appropriate than assigning them to Mobile Army Surgical Hospital (MASH) units in the field.)

2.1.2.2. In all cases, the incumbents must be qualified to perform the duties and tasks required by the designated position, and the duties and responsibilities must provide the military with the experience and training necessary to upgrade or remain proficient in primary or secondary military occupational specialties. Such designations shall conform to the readiness requirements and training needs of the DoD Component, and not exceed the number required to augment units in the operating forces during a mobilization or other emergency situation.

2.1.2.3. Decisions concerning the number of manpower included under this criterion are made by occupational specialty and centrally managed at the DoD Component Headquarters or Major Command level by responsible program and force management officials. Since a mobilization may involve the expansion of the military forces beyond the (approved) programmed force structure, DoD Components must consider all of the wartime manpower requirements and the entire wartime manpower demand before making final decisions about this manpower. DoD Components shall use a formal, validated process for determining mobilization manpower requirements and wartime manpower demands, as specified in DoD Directive 1100.18, reference (a), and for validating the manpower under this criterion. The manpower shall be revalidated as changes are made to the wartime contingency plans and readiness requirements in the Defense Planning Guidance (DPG) and the availability of reserve and military retiree assets.

2.1.2.4. The manpower under this criterion is considered “military essential” because the personnel from these positions are used to support peacetime deployment of military forces, achieve full military manning of operating units upon mobilization, and provide casualty replacements and wartime rotation for military personnel either immediately or relatively soon after commencement of sustained operations.

2.1.3. **Military Unique Knowledge & Skills (Code C)**. DoD Components shall designate military manpower that require knowledge and skills acquired primarily through military training and current military experience for the successful performance of the prescribed duties with code C.

2.1.3.1. This manpower is considered “military essential” because the required military experience must be of a first-hand nature acquired through the command of military forces or by participating in or conducting military operations, tactics, or systems operations and must be more substantial than familiarity with military administration procedures or similar capabilities reasonably attained by civilian employees or possessed by retired military.

2.1.3.2. This includes manpower for:

2.1.3.2.1. Military officials who are directly and ultimately responsible for the accomplishment of assigned missions and functions; exercise authority (direction and control) over military forces, programs, property (physical assets and information), funds, and personnel; and make decisions and set policy on behalf of the government. This includes positions such as the Chairman of the Joint Chiefs of Staff; Service Chiefs of Staff; Judge Advocate Generals; Commanders in Chief of the unified commands; Commanding Officers of garrisons, forts, bases, and stations who exercise command or military authority over military subordinates or subordinate commands; Superintendents of military academies; Commandants of Cadets; and Commanders of Service Commands.

2.1.3.2.2. A minimum number of military planners and program officers in line and staff organizations that are necessary to ensure that government officials maintain management authority and thorough control over government operations. This manpower assists with the planning, advice, and policy formulation for matters that are military in nature; the authoritative direction over all aspects of military operations, joint training, and logistics;

strategic planning and direction of the military forces; contingency planning; intelligence; development of military doctrine and tactics; determining weapon system operational requirements; and other activities where current, first hand military experience, knowledge, and judgment are required.

2.1.3.2.3. Military judges, legal officers, or judge advocates, where knowledge and experience must be acquired through special studies, prosecutions, or adjudicatory procedures under the Uniform Code of Military Justice (UCMJ).

2.1.3.2.4. A minimum number of military project officers in program development agencies, testing facilities, aircraft plants, shipyards, or other armament production centers where actual “hands on” military experience is needed for product acceptance determinations or where military training, judgment, and recent experience are used to ensure that a program is directed toward proper military requirements and applications.

2.1.3.2.5. Military instructors in units conducting essential military training based on their own previous training and practical experience. For example, this would include requirements for drill sergeants, instructors in fleet training centers and schools, or instructors providing tactical aviation or field training.

2.1.3.2.6. Military manpower in activities outside the DoD (such as the White House, United Nations, and Department of Commerce) when the duties require military unique knowledge and skills.

2.1.4. **Military Image and Esprit de Corps (Code D)**. DoD Components shall designate a limited number of military manpower in the infrastructure with code D when they are traditionally or customarily used to provide a military “esprit de corps” or to promote public affairs purposes. This includes manpower for military bands, Honor Guards, recruiters, military contingents or guard detachments primarily at overseas locations where military personnel are traditionally assigned to project a military presence or image, and teams that demonstrate military expertise to the public.

2.1.4.1. This manpower is considered “military essential” because only military personnel can project a military presence or image, or demonstrate military expertise.

2.1.4.2. Under the manpower mix order of precedence, coding for the “Military Combat Augmentation” criterion takes precedence over coding for “Military Image or Esprit de Corps.” Therefore, manpower requirements that are created to support “esprit de corps” during peacetime, but are eliminated during a mobilization so that the military incumbents can be used to augment the military forces (as is the case with the Thunderbirds, Blue Angels, and Black Knights), shall be coded as “Military Combat Augmentation” manpower. Only manpower that is used solely to provide a military “esprit de corps” or to promote public relations during peacetime and wartime are included under this criterion.

2.1.5. **Military Rotation (Code E)**. DoD Components shall designate manpower in the infrastructure that would not otherwise require military incumbents with code E to provide a rotation base for overseas or sea-to-shore assignments when the number of military coded A through D are not sufficient to satisfy peacetime rotation requirements.

2.1.5.1. This manpower is considered “military essential” because it is needed to maintain military tour lengths and military personnel turnover at appropriate levels and, by so doing, keeps peacetime recruitment and training costs to a minimum.

2.1.5.2. Decisions concerning the number of manpower coded under this criterion are centrally managed at the DoD Component Headquarters or Major Command level by responsible program and force management officials. This manpower shall be justified by occupational specialty; based on established assignment, rotation, and career development policies; and consider TEMPO goals, personnel turnover, and permanent change of station (PCS) turbulence. Maximum stability of personnel assignment and minimum rotation or turnover will be maintained to the extent consistent with requirements of training, readiness, and morale pursuant to DoD Directive 1100.4, reference (b). Policies governing military assignments, overseas and sea-to-shore tour lengths, and rotation practices are addressed in DoD Directive 1315.7, reference (c).

2.1.5.3. DoD Components shall ensure that decisions about the number of manpower needed to support overseas and sea-to-shore rotation, are made in conjunction with decisions about the manpower needed to support “Military Career Progression” (code F) and “Legislatively Mandated Floors” (code J).

2.1.6. **Military Career Progression (Code F)**. DoD Components shall designate manpower in the infrastructure that do not otherwise require military incumbents with code F to provide career paths for military personnel when the number of military coded A through E are not sufficient to satisfy peacetime military career progression requirements.

2.1.6.1. DoD Components shall designate manpower requirements for military career progression only after considering other options for managing career fields (such as restructuring grade requirements and providing additional training). When considering key management positions in support activities, DoD Components shall ensure that decisions to designate manpower for military career progression are managed so as to maintain reasonable opportunities for the development of both military and civilian personnel pursuant to DoD Directive 1100.9, reference (d).

2.1.6.2. Decisions as to the number of manpower coded under this criterion are made by occupational specialty and centrally managed at the DoD Component Headquarters or Major Command level by responsible program and force management officials. Final decisions about the number of manpower requirements necessary to support career progression must be made in conjunction with decisions about the manpower needed to support “Military Rotation” (code E) and “Legislatively Mandated Floors” (code J).

2.1.6.3. This manpower is considered “military essential” because the assignments provide leadership experience necessary to produce competent military leaders and the day-to-day work assignments necessary to develop military skills.

2.2. DoD Components shall designate core “civilian essential” manpower requirements based on the following criteria:

2.2.1. **Civilian Authority and Direction (Code G)**. This criterion is used to identify DoD manpower requirements that are necessary to exercise civilian management authority (direction and final decision making) over government policy, programs, property (physical assets and information), funds and treasury accounts, or employees. The incumbents of these positions make decisions on behalf of the government and are directly and ultimately accountable for the accomplishment of assigned missions and functions.

2.2.1.1. This category includes all civilians that have the authority to obligate Federal funds or to commit the government, through other decision making, to some course of action. This category also includes civilians that approve strategic plans, program objectives, functional requirements, and performance criteria; policies, directives, and regulations in assigned missions and functions; the allocation of resources (funding and manpower), the obligation and disbursement of funds, contract terminations; and the collection of public funds; acquisitions, use, and disposition of government property (real or personal, tangible or intangible); Freedom of Information Act requests and responses; Federal licensing actions (except vehicle or support equipment) and inspections; and government positions, testimony, and responses to Congress and audit organizations.

2.2.1.2. The examples listed above coincide with functions in Appendix A of OFPP Policy Letter 92-1, reference (e).

2.2.1.3. Examples of positions that fall under this criterion include Secretaries of Military Departments and Directors of Defense Agencies and DoD Field Activities; Under, Assistant, and Deputy Secretaries of Defense and the Military Departments; program and project managers; contracting officers; and DoD directors over line operations or principal staff elements.

2.2.1.4. This criterion excludes civilians that provide first line supervision over Federal employees performing functions that are, otherwise, subject to private sector competition and performance. In addition, employee utilization of government credit cards for the purchase of office supplies or temporary duty travel does not meet the funds obligational criteria specified above.

2.2.2. **Civilian Expertise and Control (Code H)**. This criterion is used to identify a minimum number of DoD manpower requirements that are required to ensure that civilian decision making officials (accounted for under criterion G above) maintain sufficient levels of oversight, control, and accountability over government operations and Federally funded projects and tasks. The incumbents in these positions provide corporate knowledge and technical expertise necessary to ensure that government and public interests are advanced and that government contractual obligations are fully satisfied by playing an active and informed role in areas such as contract administration and evaluation. This includes civilians in staff and line functions that require current technical knowledge and on-the-job training and work experience necessary to effectively influence government decision-making and progress into positions of authority and direction (code G, above).

2.2.2.1. Examples include civilians that:

2.2.2.1.1. Interpret and/or execute Federal laws and develop associated policy and regulatory guidance in assigned functional areas—e.g., resource management, procurement/contracting, personnel administration, etc.;

2.2.2.1.2. Render value judgments, develop recommendations, and establish management criteria and objectives on behalf of the government—e.g., legal opinions, program priorities, budget requests, performance evaluation, contract awards, quality assurance, personnel selection and appraisal, security clearances, etc.;

2.2.2.1.3. Develop government positions, testimony, legislation, and responses to the Congress, audit agencies, public and private sector inquiries, etc.; (because of the appearance of private influence with respect to documents that are prepared for the Congress or reflect government position pursuant to OFPP Policy Letter 92-1, reference (e));

2.2.2.1.4. Perform duties that require official government representation—e.g., prosecution and adjudicatory functions, conduct of criminal investigations and administrative hearings, Federal license certifications, foreign government relations, employee labor relations, legislative activities, public affairs, financial collection activities; and,

2.2.2.1.5. Are in formal personnel management programs designed to provide progression into civilian positions that require government corporate knowledge and technical expertise.

2.2.2.2. The manpower under this category perform functions listed in Appendix B of OFPP Policy Letter 92-1, reference (e), and represent the minimum number necessary for government control.

2.2.2.3. Identification and validation of civilian requirements under this criterion are based upon a manpower requirements study or assessment of what functions and duties must be performed by government employees and other conditions that must exist in order to maintain sufficient government expertise and oversight. Manpower guidance governing this criterion will vary by function based upon its nature, complexity, magnitude of contract reliance, organizational level, geographic dispersion, and other factors (including access to ultimate decision maker). Every effort must be made to avoid situations where government decision making in a functional area is weighted in favor of, or limited to, options presented by the private sector interests.

2.2.3. **Civilian National Security or Operational Risk (Code I)**. This criterion is used to identify DoD civilian manpower requirements (not included under codes G and H, above) that are required to perform highly sensitive national security, intelligence or investigative work and to ensure a ready and government controlled source of technical competence in operations necessary to the effectiveness of military combat and other more specialized operations.

2.2.3.1. Examples include:

2.2.3.1.1. Civilians that are designated emergency-essential, who forward deploy with military troops in noncombatant roles, to perform duties critical to combat missions, provide continuity of essential functions, or ensure the availability of combat-essential systems

subsequent to an evacuation of noncombatants in a crisis situation pursuant to DoD Directive 1404.10, reference (f);

2.2.3.1.2. Civilians that are required to ensure a ready and government-controlled source of technical expertise or operational capability that is essential for the effective and timely response to, and sustainment of, a mobilization or other emergency requirement such as dual status civilian (military) technicians and civilians required for critical core logistics, or where there is concern that contractor performance will not continue during crisis;

2.2.3.1.3. Civilians that maintain and operate Signals Intelligence (SIGINT), Telecommunications, Computer Security (COMPUSEC), and Communications Security (COMSEC) equipment;

2.2.3.1.4. Civilians that provide highly specialized expertise and technical competence in areas necessary to ensure government controlled sources of capability exist in critical areas such as direct patient care in DoD hospitals; medical specialties for combat-related disease and illness; research and development work that is of a theoretical or experimental nature conducted in direct support of military medical, biological, or scientific interests, or for development of critical defense technologies or force modernization; and other unique or valuable workforce skills that should be maintained by the Defense Department in the national interest; or,

2.2.3.1.5. Civilians in formal personnel management programs designed to provide progression into civilian positions that are justified based on national security or operational risk.

2.2.3.2. Identification and validation of civilian requirements under this criterion shall be based upon documented risk assessments of what functions and levels of contractor reliance are appropriate without compromising national security or operational effectiveness. (Procedures for determining unreasonable risk are at Appendix 1.)

2.3. All other manpower requirements are non-core. DoD Components shall designate non-core manpower requirements as restricted from cost comparison or direct conversion to the private sector based on the following criteria:

2.3.1. **Executive Order, Law, Treaty and International Agreement (Code J)**. DoD Components shall designate non-core manpower with code J when they could be considered for private sector performance, but cannot be contracted due to a specific provision of law, Executive Order, treaty, or International Agreement.

2.3.1.1. Examples include:

2.3.1.1.1. Civilian and military firefighters and security guards at DoD military installations and facilities pursuant to section 2465 of Title 10, reference (g), performing work that the DoD Component determines could be considered for private sector performance;

2.3.1.1.2. Manpower in activities involved with the operation and maintenance of hydroelectric power generating facilities at Corps of Engineers water resources

projects covered by section 2321 of Title 33, reference (j), that the Army determines are severable and could be considered for private sector performance;

2.3.1.1.3. Manpower for legislatively mandated manpower floors.

This includes:

2.3.1.1.3.1. Non-core civilian manpower performing depot maintenance work that cannot be contracted with the private sector in order to comply with section 2466 of Title 10, reference (g). This manpower is in addition to what is needed to provide the core readiness capability (identified under criterion I, above);

2.3.1.1.3.2. Civilian manpower for dual status military technicians that are required in addition to those needed to meet inherently governmental requirements (under criteria G and H, above) and mobilization objectives (under criterion I, above) to achieve a legislatively mandated floor; and,

2.3.1.1.3.3. Military manpower that are required (in addition to the military manpower coded A through F) to achieve a legislatively mandated military floor. Decisions concerning what manpower should be coded J to comply with a DoD Component-specific floor are centrally managed at the DoD Component Headquarters or Major Command level by responsible program and force management officials. When addressing military manpower floors, DoD Components shall consider all of their military manpower and ensure that decisions about military floors are made in conjunction with decisions about what manpower is needed to support “Military Rotation” (code E) and “Military Career Progression” (code F). DoD Components should also take into account what military manpower coded L through V could eventually be converted to civilian or private sector performance.

2.3.1.2. This manpower is considered non-core because the work is commercial in nature and does not qualify as “military essential” or “civilian essential.” This manpower is coded J to indicate that it is exempt from contract performance or competition with the private sector because of a law, Executive Order, treaty, or International Agreement.

2.3.2. **DoD Management Determination (Code L).** DoD Components shall designate non-core military and civilian manpower with code L when the non-core manpower requirements have been exempted from cost comparison or direct conversion to private sector performance by a DoD official that exercises management authority over a functional area.

2.3.2.1. This authority is vested in Secretaries of Military Departments; Directors of Defense Agencies and DoD Field Activities; Under and Assistant Secretaries of Defense and the Military Departments; Chairman of the Joint Chiefs of Staff; and the Combatant Commanders. This authority shall not be delegated below the Assistant Secretary or equivalent level.

2.3.2.2. This manpower is restricted from private sector performance solely on the basis of a DoD official’s decision for reasons not covered under the criteria coded A through J above.

2.3.2.2.1. This includes non-core civilian manpower that has been exempted from cost comparison or direct conversion to private sector performance by a DoD official

because the work performed by the civilians is not severable from the work performed by other inherently governmental or exempted manpower (e.g., manpower coded B, E, or F). The Components shall periodically review this manpower to evaluate if the manpower or work can be realigned to allow for competition.

2.3.2.2.2. This also includes non-core manpower that has been exempted from cost comparison or direct conversion to private sector performance because the work under review may involve national defense or intelligence security risks but the risk assessment has not yet been completed. This exemption is temporary—pending the results of the risk assessment.

2.3.2.3. This manpower is considered non-core because the work is commercial in nature and does not qualify as “military essential” or “civilian essential.” This manpower is coded L to indicate that the only reason it is restricted from cost comparison or direct conversion to private sector performance is because of a DoD management determination.

2.4. DoD Components shall designate all other non-core manpower requirements as subject to cost comparison or direct conversion to private sector performance based on the following criteria and data codes. (These criteria were developed to reflect the Department’s progress in the conduct of cost comparisons and direct conversions to private sector performance under the Commercial Activities (CA) Program pursuant to DoD Instruction 4100.33, reference (k).)

2.4.1. **Retained In-house Based on Cost Comparison (Code M)**. DoD Components shall designate non-core manpower with code M when a DoD Component has determined within the last 5 years that DoD civilians (or, in certain situations, DoD military) perform the work in a more cost effective fashion based on the results of a cost comparison.

2.4.1.1. DoD Components shall periodically review the work to determine if it can be more efficiently or cost effectively performed by another source (contract with the private sector, or through an intragovernmental support agreement, i.e., non-DoD agency). In such situations, the DoD Component shall conduct a cost comparison to obtain the most efficient and cost effective method of performance for the DoD following the guidance in DoD Instruction 4100.33, reference (k), and DoD Instruction 4000.19, reference (l).

2.4.1.2. This criterion should include military manpower only when: (1) the work requires unusual working conditions that are not compatible with civilian employment and that cannot be made a “condition of employment” for recruitment of civilians; (2) the work is at locations where skilled civilians are not available; or, (3) civilians cannot be hired and cost effectively trained to perform the work. In such situations, the cost comparison shall include the costs of the military manpower according to the guidance in DoD Instruction 4100.33, reference (k).

2.4.2. **Pending Contract Award (Code N)**. DoD Components shall use code N for non-core civilian or military manpower that is in the process of being converted to contract support based on the results of a cost comparison or direct conversion.

2.4.3. **Pending Cost Comparison Results (Code O)**. DoD Components shall use code O for all non-core DoD military or civilian manpower performing work that is pending the results of an in-progress cost comparison.

2.4.4. **Pending Restructuring Decision (Code P)**. DoD Components shall use code P for all non-core DoD military or civilian manpower performing work in a function that has been deferred from a cost comparison or direct conversion to contract performance, pending the results of a force restructuring decision. This code is limited to restructuring initiatives such as official requests for approval of base closure, or official requests for functional realignment or consolidation actions.

2.4.5. **Based on Terminated Cost Comparison (Code Q)**. DoD Components shall use code Q for non-core DoD military or civilian manpower performing work in a function where a cost comparison was initiated but not completed due to exceeding legislatively-prescribed time completion constraints and was terminated. (This code cannot be used for more than two consecutive years.)

2.4.6. **Subject to Review (Code R)**. DoD Components shall use code R for non-core DoD military or civilian manpower performing work that is commercial in nature and has not yet been subject to competition with the private sector, i.e., a cost comparison or direct conversion to contract.

2.4.7. **Converted From Contract Based on Cost Comparison (Code S)**. DoD Components shall designate non-core manpower with code S when a contracted function has been converted from contract performance to in-house performance as a result of a cost comparison in accordance with OMB Circular A-76 and DoD Instruction 4100.33.

2.4.8. **Converted from Contract Without Cost Comparison Due to Unsatisfactory Performance or Unreasonable Prices (Code T)**. DoD Components shall designate non-core manpower with code T when a contracted function involving 10 or fewer FTE has been converted to in-house performance without a cost comparison based on a contracting officer's determination that (1) the performance was unsatisfactory and resolicitation has not resolved the unsatisfactory performance or (2) that fair and reasonable prices could not be otherwise obtained.

2.4.9. No Satisfactory Commercial Source (Code U).

2.4.9.1. DoD Components shall designate non-core military and civilian manpower with code U when the DoD Component's 9a official (per OMB Circular A-76, paragraph 9.a.) has certified that the contracting officer (or, other appropriate official) has demonstrated (pursuant to DoD Instruction 4100.33, reference (k)) one of the following:

2.4.9.1.1. After issuing a solicitation and receiving offers, it was determined that the use of a commercial source would cause an unacceptable delay or disruption of an essential program. DoD Components must document the impact on mission accomplishment in terms of cost or performance. (Temporary disruption resulting from conversion to contract is not sufficient support for such a finding, nor is the possibility of a strike by contract employees.)

2.4.9.1.2. No satisfactory commercial source was capable of providing the product or services based on lack of a response to a formal solicitation.

2.4.9.1.3. Based on the results of an attempted direct conversion from in-house to contract performance, in-house performance of activities that involve 10 or fewer civilian FTE has been determined to be satisfactory and the costs are fair and reasonable.

2.4.9.2. This criterion should include military manpower only when: (1) the work requires unusual working conditions that are not compatible with civilian employment and that cannot be made a “condition of employment” for recruitment of civilians; (2) the work is at locations where skilled civilians are not available; or, (3) civilians cannot be hired and cost effectively trained to perform the work.

2.4.10. **Cost Comparison Waiver (Code V).** DoD Components shall designate non-core manpower with code V when a cost comparison waiver has been approved to convert from or to in-house or contract/ISSA performance following the guidance in DoD Strategic and Competitive Sourcing Programs Interim Guidance , reference (m).

2.4.11. **Nonpackageable Commercial Activity (Code W).** DoD Components shall designate non-core manpower performing commercial activities with code W when a competition is not possible because the work is not packageable in such a manner as to make competition with the private sector possible. This manpower is considered non-core because the work is commercial in nature and does not qualify as “military essential” or “civilian essential.” This code must be limited to very few positions performing only commercial activities. Before using this code, the positions must be certified as nonpackageable by the DoD Component’s 9a official (per OMB Circular A-76, paragraph 9.a.) or the Assistant Secretary responsible for the Inventory. This code is not to be confused with non-severability as described in the Code L definition.

2.4.12. **Competeable But Exempt from A-76 (Code X).** DoD Components shall designate non-core manpower with code X when a commercial activity is exempt specifically from OMB Circular A-76 competition but can be performed by or competed with the private sector using an alternative process to determine cost effectiveness. This manpower is considered non-core because the work is commercial in nature and does not qualify as “military essential” or “civilian essential.” This manpower is coded X to indicate that it is specifically exempted from OMB Circular A-76 competition by law, Executive Order, treaty, or International Agreement. This code differs from code J where law, Executive Order, treaty or International Agreement prohibits any means of contracting. Examples include but are not limited to (1) research and development positions (excluding research and development support positions) which are exempted by OMB Circular A-76 and (2) architect and engineering positions covered by the Brooks Act.

MANPOWER CRITERIA

		Type of DoD Manpower		
Order of Precedence for Coding Manpower	Inherently Governmental			
	A Military Combat C Military Unique Knowledge & Skills	B Military Combat Augmentation D Military Image & Esprit de Corps E Military Rotation F Military Career Progression	Military Essential	CORE MANPOWER
	G Civilian Authority & Direction H Civilian Expertise & Control	I Civilian National Security & Operational Risk	Civilian Essential	
	J EO, Law, Treaty, or International Agreement	L DoD Management Determination	Restricted	NON-CORE MANPOWER
	Subject to Competition		Not Restricted	
	M Retained In-House Based on Cost Comparison N Pending Contract Award O Pending Cost Comparisons Results P Pending Restructuring Decision Q Based on Terminated Cost Comparison R Subject to Review S Converted to In-house Performance Based on Cost Comparison T Converted to In-house Performance Without Cost Comparison Due to Unsatisfactory Performance or Unreasonable Prices U No Satisfactory Commercial Source V Cost Comparison Waiver W Nonpackageable Commercial Activity X Competeable But Exempt From A-76			

* Government performance is required (includes some Inherently Governmental activities not covered by criteria codes A, C, G, or H).

AP5 APPENDIX 5 AVOIDING CONFLICTS: PARTICIPATION IN A-76 COST COMPARISONS

PWS Team				MEO Team				IHCE	IGE	SSA/SSEB		AAP
IF YOU ARE A CONSULTANT ON THE PWS TEAM, THEN:	IF YOU ARE A DOD CIVILIAN OR MILITARY MEMBER ON THE PWS TEAM	IF YOU ARE NOT ON THE PWS TEAM BUT CONTRIBUTE DATA OR OTHER INFORMATION FOR THE PWS, THEN:	IF YOU CERTIFY OR APPROVE THE PWS, THEN:	IF YOU ARE ON THE MEO TEAM AND ARE A CONSULTANT, THEN:	IF YOU ARE ON THE MEO TEAM, INCLUDING DEVELOPING THE TPP AND THE IHCE, THEN:	IF YOU ARE NOT ON THE MEO TEAM, BUT CONTRIBUTE SUGGESTIONS OR INFORMATION TO THE MEO TEAM, THEN:	IF YOU APPROVE OR CERTIFY THE MEO, THEN:	IF YOU PARTICIPATE IN DEVELOPING THE IHCE, THEN:	IF YOU CONTRIBUTE TO THE INDEPENDENT GOVERNMENT ESTIMATE (IGE), THEN:	IF YOU ARE PART OF THE SOURCE SELECTION EVALUATION BOARD (SSEB), THEN:	IF YOU ARE THE SOURCE SELECTION AUTHORITY (SSA), THEN:	IF YOU ARE THE ADMINISTRATIVE APPEAL PROCESS (AAP) AUTHORITY OR ON THE AAP BOARD, THEN:
You CANNOT be on the MEO Team	You CAN participate on the MEO Team	You CAN participate on the MEO Team		You CANNOT be on the PWS Team	You CAN participate on the PWS Team	You CAN participate on the PWS Team		You CAN participate on the PWS Team	You CAN participate on the PWS Team	You CAN participate on the PWS Team	You CAN participate on the PWS Team	You CANNOT participate on the PWS Team
	You RETAIN your Right of First Refusal if you are a DoD Civilian	You RETAIN your Right of First Refusal if you are a DoD Civilian	You LOSE your Right of First Refusal if you are a DoD Civilian		You RETAIN your Right of First Refusal if you are a DoD Civilian	You RETAIN your Right of First Refusal if you are a DoD Civilian	You LOSE your Right of First Refusal if you are a DoD Civilian	You CAN participate on the MEO Team	You CAN participate on the MEO Team	You CAN participate in developing the IGE	You CAN participate in developing the IGE	You CANNOT participate in developing or know the IGE
								You CANNOT participate in developing the IGE	You CANNOT participate in development of the in-house cost estimate	You CANNOT participate on the MEO Team, or in developing the IHCE	You CANNOT participate on the MEO Team, or in developing the IHCE	You CANNOT participate in the MEO Team, or in developing the IHCE
								You CANNOT be a member of the SSEB or be the SSA	You DO NOT LOSE your Right of First Refusal if you are a DoD Civilian	You CANNOT be either a directly affected DoD Civilian employee or military member	You CANNOT be either a directly affected DoD Civilian employee or military member	You CANNOT be a member of the SSEB or be the SSA
								You RETAIN your Right of First Refusal if you are a DoD Civilian				You CANNOT be a DIRECTLY affected Government employee

- Individual contract consultants who participate in developing the PWS in any manner cannot also participate in developing the MP.

AP6 APPENDIX 6 A-76 CONSULTANT FIREWALL

IF AN INDIVIDUAL CONSULTANT PARTICIPATES IN:

PLANNING PHASE	PWS DEVELOPMENT PHASE	MANAGEMENT PLAN PHASE				INDEPENDENT REVIEW		SOURCE SELECTION		ADMINISTRATIVE APPEAL PROCESS	
		MEO	TP	TPP	IHCE						
Assist in management analyses prior to Congressional notification/public announcement	Participate in development of the PWS and QASP	Participate in development of the MEO document	Participate in development of the TP	Participate in development of the TPP	Participate in development of the IHCE	Conduct IR (i.e., serve as the IRO)	Respond to questions from IRO	Develop source selection materials (e.g., SSEB workbook)	Respond to questions related to in-house offer	Develop documentation for use by AAP AUTHORITY	Respond to questions pertaining to in-house offer
Yes	Yes	No	No	No	No	Yes	Yes	Yes	N/A	No	N/A
Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes

The firewall pertains only to individual consultants, and does not restrict the same consultant company from participation in all phases of a cost comparison.

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AP7 APPENDIX 7 - Commercial Activities Management Information System (CAMIS)

CAMIS information