

# COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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May 21, 2001

CODSIA Case No. 8-01

Mr. William T. Woods  
General Accounting Office  
Office of General Counsel  
Room 7476  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Woods:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to comment on the notice regarding the General Accounting Office Commercial Activities Panel, published in the *Federal Register* on March 23, 2001 (66 Fed. Reg. 16245).

Formed in 1964 by industry associations with common interests in the defense and space fields, CODSIA is currently composed of eight associations representing over 4,000 member companies across the nation. Participation in CODSIA projects is strictly voluntary; a decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

Through other venues (*e.g.*, the Industry Logistics Coalition and the Coalition for Outsourcing and Privatization), many of the members of CODSIA have been extensively involved in the debate over the performance of Government commercial activities and implementation of the Office of Management Budget Circular A-76.

OMB Circular A-76 states that "*in the process of governing, the Government should not compete with its citizens ... it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.*" The Circular then outlines procedures for competitions between in-house performance and private sector performance of a Government operated commercial activity. Implementation of the Circular is provided in the Revised Supplemental Handbook, which became effective in March 1996. A subsequent revision to the Handbook, issued in May 2000, addressed the critical importance of an independent source selection board.

Congress enacted the Federal Activities Inventory Reform (FAIR) Act in late 1998. The FAIR Act requires an inventory of all commercial activities within the federal

government. The statute further requires agency heads to review their agency inventories for the purpose of subjecting those inventoried activities to competition between the private sector and the Government for performance of those services. The goal of the FAIR Act is to achieve the best value for the taxpayer when commercial services are performed on behalf of the federal government. Similar to Defense Department requirements in effect since 1989 (10 U.S.C. § 2462), the FAIR Act requires realistic and fair cost comparisons. The FAIR Act also contains a definition for inherently governmental functions. The FAIR Act is founded upon three key principles: to achieve the best value for the taxpayer, to be fair and equitable to all interested parties in the FAIR Act process, and to be included in the Government's overall reinvention effort.

Outsourcing of Government functions has long been an issue for both Government agencies and commercial companies, producing both opportunities and roadblocks. Over the past few years, significant advancements in information technology applications, wide-ranging federal government downsizing and constrained budgets have brought a new business urgency to the subject of outsourcing. Outsourcing functions that are commercial in nature permit a federal agency to address many human resources concerns such as: a dwindling pool of skilled workers and experienced managers; stabilizing manpower costs; improving the agency's effectiveness for, and responsiveness to, its stakeholders; and refocusing agencies on their core, inherently governmental missions.

Outsourcing in the private sector is recognized as an accepted management tool for redefining, re-energizing, and refocusing an organization – usually by applying a business process reengineering analysis to core functions at all levels of an enterprise. Federal agencies are only beginning to recognize that fundamental restructuring is more appropriate to respond to budget pressures rather than one time, short-term savings or “fixes.” Outsourcing its commercial functions, while retaining inherently governmental functions and perhaps a core competency in other functions, must play a large part in this restructuring.

Industry has continuing philosophical reservations with respect to “public-private competition,” because of the fundamental belief that government should not be doing what the private sector does. CODSIA member associations strongly believe that conducting public-private competitions should be the *second* phase to implementing any federal agency's outsourcing decision – the *first* phase should be a direct conversion of the function(s) if the private sector performs the same or similar work and without regard to the number of federal civilian employees involved in performing that function or functions. CODSIA members also believe that public-private (A-76) competitions – as presently conducted – significantly disadvantage the private sector. The private sector is disadvantaged because of the inability of federal cost accounting systems and cost managers to identify, extrapolate, and manage incurred costs. Moreover, federal agency competitors do not face, either qualitatively or quantitatively, the same risks as a commercial contractor (*i.e.*, termination for convenience or default, responsibility for cost

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overruns due to improvident Most Efficient Organizations (MEOs), potential Civil False Claims penalties, Davis-Bacon Act or Service Contract Act compliance, etc.).

During hearings on the FAIR Act, it was acknowledged that the process implementing Circular A-76, as viewed by all parties involved, is a "systems failure." Indeed, a number of the member companies of CODSIA member associations view the process as being so intrinsically unfair that they refuse to compete on A-76 procurements. Their perception and conclusion deprives the Government of valuable competition. These companies have excellent business practices that could contribute to improved federal infrastructure efficiency. Other member companies of CODSIA member associations will bid only on a highly selective basis.

Ultimately, if Government agencies are to continue to compete against private offerors to provide goods or services, it is vital that such competitions be conducted on the basis of truly comparable cost accounting practices, actual past performance accomplishments and best value to the agency and to the taxpayers. Equally vital is that the lengthy timeframes and the excessively detailed Performance Work Measurements currently associated with the A-76 process be streamlined as much as possible. One immediately available method for streamlining the A-76 process is to have Commercial Activity teams adhere to the guidance in FAR 37.602-1 regarding Performance Work Statements for performance-based contracts. At this time, the member companies of several CODSIA member associations perceive that performance-based work statements are routinely (and consciously) avoided by federal agencies.

CODSIA members are pleased with the attention that outsourcing has received with this Administration, particularly with the February 14<sup>th</sup> OMB memorandum on expanding A-76 competitions, and with more accurate FAIR Act inventories. In addition, OMB Deputy Director Sean O'Keefe's March 9<sup>th</sup> memorandum calling for either public-private competitions or direct conversion for FTEs less than 10, is very encouraging.

We strongly support GAO's independent review of the A-76 process and of the acquisition of commercial goods and services in general and agree that this review necessarily involves all affected parties. The GAO panel should address concerns of an "uneven playing field" that have been raised by both industry and the federal employee unions. CODSIA members are confident that GAO's review will ultimately improve the cost comparison process. GAO does not, however, question the validity of public-private competition, which is a necessary means of saving money for the U.S. taxpayer. Consequently, we expect agencies to continue to initiate and conduct their scheduled and planned A-76 studies during this review period in order to meet the outsourcing objectives established by Mr. O'Keefe in his March 9, 2001, memorandum to agencies. We further expect that agencies will suffer budget reductions if Mr. O'Keefe's objectives are not being satisfied.

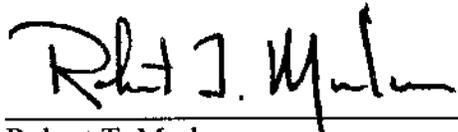
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We have enclosed a list of topics we believe should be considered by the panel. As other issues arise, we will forward them to you for your consideration. Please feel free to call upon CODSIA members for any assistance needed by the panel during the review process.

We appreciate the opportunity to submit these comments and trust that they will be helpful during the commercial activities' review. If you have any questions, please contact CODSIA project officer David Dempsey at (202) 862-5962.

Sincerely,

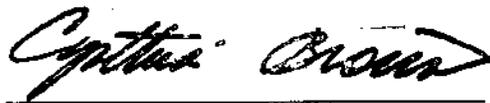
(SEE ATTACHED CODSIA SIGNATORIES)



Robert T. Marlow  
Vice President, Government Division  
Aerospace Industries Association



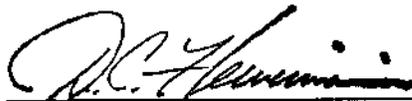
Lorraine M. Lavet  
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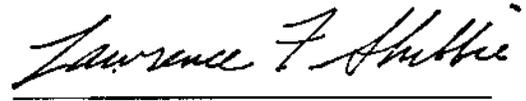
Cynthia Brown  
President  
American Shipbuilding Association



Gary D. Engebretson  
President  
Contract Services Association



Dan C. Heinemeier  
President, GEIA  
Electronic Industries Alliance



Lawrence F. Skibbie  
President  
National Defense Industrial  
Association



Charles H. Cantus  
Vice President, Government Relations  
Professional Services Council

Attachment

**CODSIA RECOMMENDED ISSUES FOR REVIEW  
AND  
ANALYSIS BY THE GAO COMMERCIAL ACTIVITIES PANEL:**

1) Cost Aspects

- Cost accounting information and cost accounting procedures (industry vs. Government)
- Best value price analysis and cost analysis
- Government market surveys
- Government In-House Cost Estimates
- Performance Based Service Contracting
- Activity Based Costing
- Analyze and evaluate the minimum cost differential to 5% or \$5 million – whichever is less – rather than the 10% or \$10 million differential presently in place
- Clarify and emphasize the requirement that all *direct* Most Efficient Organization (MEO) personnel support costs, direct and indirect, and the addition or reduction thereof, are to be included in the calculation of Line 1 costs
- Analyze (and clarify) the distinction between “part time,” “intermittent,” and “part-time intermittent” FTEs and *require* that all non-full time FTE be specifically identified in the MEO’s Technical Performance Plan, the Management Plan and the In-House Cost Estimate
- Prohibit military positions from all Defense Department MEOs
- Require indexing of Davis-Bacon Act or Service Contract Act - covered positions for private sector positions in order to calculate estimated contractor personnel costs *beyond* the first year of performance
- Require indexing of Federal Grade Equivalent positions (which must also be set forth in the solicitation) in order to calculate estimated MEO personnel costs *beyond* the first year of performance and identify such indexing in the MEO’s In-House Cost Estimate
- Analyze the distinction in function, and the allocation of costs, for MEO quality assurance and MEO quality control responsibilities and require the distinction to be specifically identified in the MEO’s Technical Performance Plan and In-House Cost Estimate
- Evaluate the present 12% overhead and G&A costs (Line 4) on a cost realism / should cost basis for the MEO’s personnel costs (Line 1) versus a more accurate and realistic overhead and G&A multiplier

2) Competition

- Legislative and regulatory barriers to effective competition
- Determine why a public-private competition should be conducted – versus a direct conversion – if the Government’s required market survey reveals that the private sector performs the same or similar service(s) as performed by Government civilian personnel
- Competition with private sector from Government agencies in areas not previously performed by that agency (*e.g.*, Interservice Support Agreements or “ISSAs”)

### 3) Definitions

- Commercial activities
- Analyze “inherently governmental activities” versus agency “core competencies”

### 4) Reforming the A-76 Public/Private Competition Process

- Develop Government-wide rules regarding what constitutes “supporting documentation” that must be made publicly available at the time of the announcement of the Tentative Cost Comparison Decision, and allowing interested persons to make copies of the documentation
- Require that the *all* MEO documents (*specifically including* the In-House Cost Estimate, the Line Item Rationale, the Technical Performance Plan, the Management Plan, the Transition Plan, and the technical analysis comparing the levels of service and the quality of service between the MEO and the selected “best value” offeror) be made available at the time of the announcement of the Tentative Cost Comparison Decision
- Require that all MEO supporting documentation be made available at the time of the announcement of the Tentative Cost Comparison Decision
- Elevate appropriate OMB “A-76 Updates” from “guidance” to interim rule status pending public comment
- Oversight of source selection process (*e.g.*, HCA responsibilities, review of the evaluation criteria)
- Conflict of interest and firewalls (*e.g.*, source selection board composition)
- Increase the threshold for requiring A-76 studies (*e.g.*, from 10 to 50 FTEs)<sup>1</sup>
- Development of the MEO
- Insure that MEO costs are realistic and fair through Government management techniques, including performance reviews
- Streamline time (and Government cost) of a commercial activity study by focusing on performance-based work statements
- Appeal procedures (*specifically including* availability of supporting documentation, time frames for filing appeals and supplemental appeals from affected parties, cost recovery for successful appeal, implementation of appeal or GAO bid protest decision)

### 5) Results and Performance Measurements

- Publicly available audits of MEO’s transition plan, management plan, and technical performance plan which must be *completed* within 30 days following the first year of in-house performance
- Annual audit of post-MEO performance and cost of MEO performance
- Measurement of Savings
- Pursuant to Section 354 of the 2001 Defense Authorization Act (Pub. L. 106-198), and in concert with the FAIR Act, institute within the Department of Defense a

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<sup>1</sup> This FTE figure is based on § 354 of the 2001 DOD Authorization Act which requires DOD to monitor functions of 50 FTEs or more selected for a “workforce review” – presumably consistent with the agency’s FAIR Act inventory. If this rationale and figure is acceptable, this footnote would be deleted prior to submission to GAO.

monitoring system for the performance of DOD functions performed by 50 or more civilian employees for functions identified for a workforce review

6) Federal Activities Inventory Reform Act

- Completeness and integrity of agency commercial activity inventory
- Use and explanation of reason codes
- Comparison and correlation of function codes vs. OPM personnel data
- Implement FAIR Act challenge procedures that require agency to disclose the pre-existing documented agency rationale for the inclusion or exclusion of any challenged position developed prior to announcement of the inventory

7) Acquisition Workforce

- Consistent, realistic and enforceable requirements and policies for Government personnel for either private sector or MEO transition plans
- Human capital concerns (*e.g.*, retirement of experienced Government personnel)
- Enhanced training of Government and industry personnel in A-76 and service contracting

8) Alternatives to A-76

- Privatization
- Direct conversion authority for any number of Government civilian employees as the primary vehicle for federal outsourcing

9) Small Business Issues

- Direct conversion of functions under an enlarged threshold
- Responsible subcontracting goals for small businesses, minority businesses, woman-owned businesses
- Analyze whether the agency requirements to meet small business subcontracting goals set forth in the RFP must be met by the MEO
- Contract / commercial activity consolidation