

**HELICOPTER ASSOCIATION INTERNATIONAL
STATEMENT CONCERNING OMB CIRCULAR A-76 AND
THE FEDERAL ACTIVITIES INVENTORY REFORM ACT
OF 1998**

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I would like to thank you for the opportunity to provide the position of the Helicopter Association International concerning OMB Circular A-76 and the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.

The Helicopter Association International (HAI) is a non-profit, professional trade association of over 1,400 member organizations from 70 nations. Since 1948, HAI has been dedicated to promoting the helicopter as a safe and efficient method of commerce, and to the advancement of the civil helicopter industry. Member companies include operators of civil helicopters, manufacturers, and associate industry supporters, most of whom are small businessmen and women. Many HAI members contract with the federal government to provide valuable services to the government, at lower cost to the government than if the government provided the services. These services include firefighting, aerial forestry, construction, agricultural application, air ambulance services, and search and rescue. However, Helicopter Association International members also include many government operators that maintain high standards of safety, efficiency, and effectiveness.

US GOVERNMENT POLICY

In a memorandum dated August 4, 1983 (Revised 1999), from the Office of Management and Budget, to the Heads of Executive Departments and Establishments the background and purpose of OMB Circular A-76 was detailed. It provided that “in the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, 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 memorandum continues stating “competition enhances quality, economy, and productivity. Whenever commercial sector performance of a Government operated commercial activity is permissible, in accordance with this Circular and its Supplement (Circular A-76), comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who will do the work. When conducting cost comparisons, agencies must ensure that all costs are considered and that these costs are realistic and fair. The Federal Government shall rely on commercially available sources to provide commercial products and services.... The Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.”

This requirement does not apply to inherently governmental functions. An “Inherently Governmental Function” is defined as a function, which, is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities which require either the exercise of discretion in applying

Government authority or the use of value judgment in making decisions for the Government. Inherently Governmental Functions normally fall into two categories: the act of governing, i.e. the discretionary exercise of Government authority, and monetary transactions and entitlements.”

HAI POSITION

The Helicopter Association International strongly endorses the principles enumerated in the OMB Circular A-76 and those contained in the transmittal memorandum as stated above. Increased commercial outsourcing will enable the members of HAI to provide expertise and professionalism to government. The Federal Activities Inventory Reform Act of 1998, which required agencies to list jobs that are not "inherently governmental in nature", amounted to the listing of 850,000 jobs that could possibly be outsourced to the private sector. Reaching the goal of President Bush to open up 425,000 jobs and activities to competition to the private sector will enable members of HAI to increase their activities in such areas as firefighting and aerial forestry.

Currently, cost comparisons between contracting out and in-house performance are a main determinant as to whether an activity is outsourced. The status quo does not take into consideration the specialty and mission of the governmental agency and the private sector contractor, the technical capabilities of both sectors, and past performance. HAI stresses the need for a renewed focus within the implementation process of OMB Circular A-76 towards mission-centric outsourcing, in which government agencies do not provide any service not directly essential to the performance of their core mission and national security. This will enable more open and fair competition between the private sector, particularly small businesses, and governmental agencies. For example, the core missions of both the Army and Air National Guards focus on supporting national security objectives and disseminating units that are trained and equipped to mobilize for war or a national emergency. However, in some instances, the National Guard has advocated for equipping itself with aerial firefighting equipment and fighting fires, although this falls outside of its core mission activities. Commercial outsourcing in this instance will allow for specialized companies within the private sector that utilize new and innovative technologies and techniques to perform the firefighting functions in a more efficient and effective manner.

HAI remains steadfast in its belief that commercial outsourcing contributes to the improved performance of both governmental agencies and the private sector. By focusing on activities core to executing the mission of the agency, the agency will be able to improve the quality of its respective service, as well as reducing cost. Reducing cost has been the principal award determinant of past outsourcing associated with OMB Circular A-76. However, HAI recognizes that commercial outsourcing also leads to capital conservation, improved quality of services provided, accelerated speed of services to market, rapid innovation, and an enhanced tax base. Due to the fact that the private sector often possesses enhanced technology and equipment and utilizes new and innovative techniques, governmental agencies which utilize commercial outsourcing save resources normally allocated to capital.

There is a need to streamline the evaluation process of governmental agencies and the private sector in determining the need to outsource. The current evaluation process of governmental agencies is the determination of a Most Efficient Organization (MEO). When a business is evaluated, it is rated in past performance, technical competence, and management expertise. However, technical competence is not factored in the process of determining a MEO. This has given governmental agencies an upper hand in the competition process with the private sector. HAI believes that increasing the accountability of governmental agencies through the inclusion of technical competence and past performance into the determination of MEOs will facilitate the creation of open and fair competition between the public and private sectors. This can be done through the expansion of the "best value" evaluations to include governmental agencies as well as the private sector, so when considering commercial outsourcing, there is a universal measurement and evaluation tool of governmental agencies and the private sector.

The status quo does not allow for open and fair competition between governmental agencies and the private sector in the commercial outsourcing process. The Federal Activities Inventory Act of 1998, when coupled with the policies and principles of OMB Circular A-76, provide an adequate basis by which the commercial outsourcing process can commence. However, changes need to be made to ensure increased access of the private sector to activities that are considered "commercial in nature".

GENERAL ACCOUNTING OFFICE REVIEW

On June 4, 1998, J. Christopher Mihn, Associate Director, Federal Management and Workforce Issues, General Government Division of the General Accounting Office testified before the Senate Subcommittee on Oversight of Government, Management, Restructuring, and the District of Columbia Committee on Governmental Affairs. In Mr. Mihn's testimony, he states the "although the evidence suggests that the A-76 process provides the opportunity to achieve savings, A-76 does not appear to be a high priority within OMB or civilian agencies, and as a result, little effort is under way to use the A-76 process. There has been minimal A-76 activity among many agencies since the late 1980's with some civilian agencies...reporting that they have not studied any positions under A-76 in the past 11 years. Moreover, despite OMB's intention that the March 1996 revision to the A-76 Supplemental Handbook would make A-76 a more attractive vehicle for agencies to use, no significant increase in efforts under A-76 among civilian agencies are readily evident."

Mr. Mihn concluded his testimony by stating "A-76 has shown itself to be an effective management tool in increasing the efficiency of the federal government and saving scarce funds. However, despite its proven track record, A-76 is seldom used in civilian agencies. OMB has not consistently sent strong messages to the agencies.... In addition, agencies will need to continue their efforts to ensure both that they have the sound program cost data needed to make comparisons and that mechanisms are in place to monitor and oversee contracts. Finally, we believe that agencies' development and Congress' use of annual performance plans under the Results Act provide an opportunity to consider A-76 and other competition issues within the context of the most efficient means to achieve agency goals."

FEDERAL ACTIVITIES INVENTORY REFORM ACT

In a report dated April 14, 2000 to the House Subcommittee on Oversight, Investigations, and Emergency Management of the Committee on Transportation and Infrastructure, Mr. Mihn describes the initial implementation of the Federal Activities Inventory Reform Act of 1998 (FAIR Act). The FAIR Act became law on October 19, 1998, requiring executive agencies to submit each year to the OMB inventories of activities that in the judgment of the head of the agency are not inherently governmental functions. If an activity is not an inherently governmental activity, it falls within the purview of OMB's Circular A-76 and may be subject to the contracting out procedures set forth in A-76. Before the FAIR Act was passed, there had been considerable debate that agencies were not making a serious effort under A-76 to ensure that they rely on the private sector for commercial goods and services to the extent that it is cost effective.

The report concludes that in the first year's implementation of the FAIR Act, "the number of agencies that have inventoried their activities and identified full time employees performing commercial activities has increased compared with prior efforts to inventory commercial activities. However, the initial implementation of the FAIR Act indicates that there are opportunities for agencies to make further improvements in the inventories provided to Congress and the public."

The five agencies that the GAO reviewed exempted many of the full time employees performing commercial activities from competition. Thus, although the FAIR Act has increased the number of full time employees identified as performing commercial activities, the actual number of full time employees that could be considered for competition is substantially smaller than the number of commercial employees listed. This illustrates that there has been a lack of enforcement of the provisions and requirements contained in A-76.

ACTION REQUIRED

Helicopter Association International believes that it is essential to retain OMB Circular A-76 and the FAIR Act. OMB has issued A-76 to provide guidance and direction as to the federal government's stated policy to outsource those commercial activities performed by governmental employees that are not an inherently governmental function. Congress has passed the FAIR Act to provide an accounting of those government full time employees performing commercial activities. HAI urges that both be retained, and the intent of both of these documents be enforced. The General Accounting Office has the opportunity, through this panel, to provide Congress information necessary to ensure adherence to the stated governmental policy. HAI strongly encourages the panel to confirm the stated policy and provide Congress with recommendations as to the policies and procedures necessary to insure compliance. HAI urges the panel to make recommendations to expedite the review of an A-76 process, as the continued viability of the private sector requires a fast and effective process.

Substantially all helicopter services that are provided by government helicopter operations are available from the private sector, often at less expense than if the government was to perform the work. The private sector aircraft and personnel are FAA certificated. Civil helicopter operators pay taxes and provide many high paying jobs throughout the country. Every time a government helicopter performs commercial services, a small business operator loses work, loses revenue, and if the unfair competition persists, may have to lay off employees. Conversely, every time government helicopters perform commercial work, it may use this work to justify larger budgets, hire more government employees, and spend additional tax revenues. As government helicopter operations grow in a finite marketplace, FAA certificated commercial operators are squeezed out of the marketplace.

The GAO has an opportunity to provide the Congress with the guidance and expertise necessary to halt this unjustifiable trend. HAI is grateful to the GAO for turning its attention to what many civil helicopter operators view as the number one challenge to their continued viability and very existence. Thank you for your consideration of these matters, which are of vital interest to America's civil helicopter industry. Please feel free to contact me if you have any questions or comments.