

STATEMENT OF PAUL V. LOMBARDI
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Before the
COMMERCIAL ACTIVITIES PANEL
San Antonio, TX
August 15, 2001

Mr. Walker and members of the panel, I am Paul Lombardi, President and CEO of DynCorp, a leading provider of a wide range of technical support services to the government.

Over the last 15 years or so, DynCorp has participated in numerous, large cost comparison procurements conducted pursuant to OMB Circular A-76. I am providing this statement to share our experiences with this panel because they are illustrative of a process that does not and cannot achieve impartial results and significant savings without substantial change.

Overall, the cost comparison process must be stripped of conflicts of interest that arise among the government participants. To be fair, these conflicts arise mostly because the process does not provide for a separation between those government representatives who are involved in preparing the government's proposal, or MEO (Most Efficient Organization), and other members of the buying and requiring activities. While directly affected members of the workforce are not allowed to have decision-making roles, the very nature of the business leads to those roles being filled by friends and family members and others with an allegiance that may be inconsistent with the government's or public's fundamental interests. However, regardless of the reason conflicts may arise, they guarantee an inequitable and delayed award decision and an escalation of mistrust among those involved.

Let me provide you with examples of various types of conflicts of interest. First, the checks and balances that are supposed to confirm that the MEO is right sized and meets the requirements of the statement of work, are completely inadequate to do so, in large measure because those performing this function are too willing to accept the decisions made by the MEO, even if they do not make sense.

We have seen, for instance, MEO's that do not contain any positions for program management. We have seen MEO's without any high or mid-level supervisors. We have seen MEO's without any personnel performing quality assurance functions, and we have seen MEO's that do not contain the required key positions identified in the statement of work.

Consider for one moment whether a contractor would ever be selected as the best value in a cost comparison without a full-time program manager or required key personnel. We

all know that such a thing would never happen. Yet we see this frequently in MEO's that have been approved by review boards.

In two recent cost comparisons in which we participated, the MEO omitted millions of dollars of personnel costs that were required to be in contractor cost proposals. In both cases, the missing costs were acknowledged to be required MEO costs by either the agency or the GAO. Although we were entitled to contract award in both procurements once the missing costs were added to the MEO, we only received one award. The other award will never be made due to political pressures asserted by the locality involved. According to the GAO, the cost savings that would have been achieved by contracting out would have been in excess of \$11 million. We think the number is double that because the GAO never reached most of the issues we raised when it sustained our protest on the key personnel issue.

The only way to ensure that the MEO meets the best value requirements of a particular statement of work is to evaluate the MEO according to the evaluation criteria in the solicitation using the same source selection board reviewing contractor proposals at the same time. That way the comparison will be apples to apples.

Another very significant conflict of interest concerns the scope of the government in preparing the MEO. Those individuals assigned the responsibility for compiling the costs of the MEO, are also given the task, pursuant to OMB Circular A-76, of determining the amount of costs to be added to the contractor proposal for conversion costs. This puts the government in the position of being able to increase the cost of contractor performance while at the same time competing against the contractor proposal.

Again let me provide several examples of the problems we have encountered in this area. Usually the additional conversion costs include retraining and relocation costs, among other things. In order to assess a dollar amount for these costs, the government must identify the number of employees who will need to be retrained or relocated and then multiply that number by the cost of retraining or relocation. The greater number of employees involved, the more significant the costs to be added to the contractor proposal.

We have seen the government estimate that substantial numbers of the government work force will not accept offers to work for the contractor, resulting in significant costs added to the contractor proposal. For example, in one cost comparison, we were assessed the cost to retrain the entire current work force because the government made the determination that none of its employees would accept our offer of employment.

We know that such a sweeping estimate of the number of employees adversely affected by a transition is not valid because our experience is that well in excess of 80% of the former government work force accepts employment with the contractor selected over the MEO.

We have also seen the government add significant costs for relocation of the adversely affected work force without any apparent basis for the calculation used. In a cost

comparison in which we recently participated, the government added over \$5 million to our costs to reimburse it for relocation expenses it would have to incur if an award were made to the contractor. This broke down to a determination that the government would relocate 31% of its work force at a cost of \$44,783 per relocation.

Although we asked to review evidence of circumstances in which the government has paid such a large number of employees this substantial amount of relocation expenses, the government could not point to such evidence. Nonetheless, the conversion costs remained added to our costs because there is no requirement that the government provide an actual basis for its estimate of the number of employees who will require retraining or relocation, nor is there any requirement that the relocation and retraining costs be reasonable. I know that it would be unlikely for industry to pay \$45,000 per employee in relocation costs and it is probable that the government experience in reimbursing such costs is significantly lower.

Perhaps the most irrational conversion cost we were assessed was for unemployment benefits. We were charged \$1.3 million in unemployment insurance benefits based upon the assumption that 44% of the current work force would not accept our employment offers. Leaving aside the question of whether such costs are legitimate conversion costs to be charged to the contractor, the likelihood that such costs would be incurred was never considered. The government determined that almost half of the work force would rather draw up to \$250 per week in unemployment pay without benefits for a limited number of weeks than accept a position with the contractor paying an average of \$580 per week with benefits. Nothing would have prevented these employees from accepting a position with the contractor and continuing to look for new federal employment thereafter.

Our experience has been universal. Conversion costs are based on inflated estimates and undocumented assumptions. They have one purpose, to increase the cost of contractor performance as much as possible.

The way to ensure that only legitimate costs are included in conversion costs is to eliminate this as a role for those government representatives who are competing against the contractor proposals. Conversion costs should be determined by completely independent reviewers, located away from the facility that is the subject of the conversion. These costs must be documented by factual information and evaluated to determine whether they are likely to be incurred.

Another conflict of interest arises in connection with the appeal process that occurs after a cost comparison is conducted. Those individuals who put together the MEO, are the same individuals who assist in defending or supporting appeals. Contractors, on the other hand, are excluded from the appeal process except with respect to the actual submission of an appeal. Our experience has been that this always results in an initial victory at the appeal board level for the MEO.

Some examples of the decisions made by these appeal authorities include increasing the amount of our fixed price proposal because a discount we included in our proposal “did not seem fair” to the MEO, and eliminating required positions in one section of the MEO and replacing them with required positions in a different section in order to avoid adding costs in response to an appeal issue.

Incredibly, over the years we have experienced an appeal authority that declined to follow the decision of a higher level appeal authority within that agency. We have also had the unfortunate experience, on more than one occasion, of having the agency itself decline to follow decisions issued by the GAO sustaining a protest we filed. We believe that these are due to the inherent conflicts of interest in the appeal process. Our suggestion is to completely eliminate required agency appeals and make cost comparisons immediately ripe for review by the GAO.

We have had one very positive experience with contracting out that I would like to share with the panel. This past year, we had the good fortune to participate in a cost comparison for operation of the 39th Airlift Wing maintenance and base supply functions at Andrews Air Force Base. In that cost comparison, the Air Force analyzed private offers and the government proposal according to the same evaluation criteria. The procurement officials confirmed that all offerors, including the government MEO, met the statement of work requirements, conducted a probable cost analysis for all proposals, including the government proposal, and increased the costs of that proposal to account for the risk of performance and the costs required to perform the statement of work.

Although we were lucky enough to be awarded a contract as a result of that process, even if we had been unsuccessful, we believe that the Andrews cost comparison was fair to both the government and industry and will result in legitimate and significant cost savings. I encourage the panel to examine that procurement and use it as a model for reform of the A-76 process.

On a final note, I want to stress that neither the A-76 process nor public-private competition in general should be the norm for new government procurements or reprocurements of contracts awarded as a result of cost comparisons.

Aside from anything else, when there is no existing government work force in place, the cost to the government of competing will be significant and prohibitive. Private firms build into their rate structures marketing costs to participate in government procurements. Marketing costs are generally not recoverable directly from the government and this is a tremendous benefit to the government. Industry spends many millions of dollars annually competing in government procurements.

The government would have to include in its budgets the cost to compete regularly in all government programs. Without a work force in place, the government will have to pay to recruit workers and address the routine costs incurred by contractors as part of their marketing investment. If the point of a public-private competition is to provide cost savings to the government, this would produce an opposite result, increased cost to the

government to perform. When there is no government work force in place to compete, the normal competitive process will drive the prices. Almost every procurement in which DynCorp participates is very competitive.

More importantly, particularly where sophisticated, technology-driven requirements are involved, the government simply does not have the skill set or financial flexibility to put together a competitive proposal and work force to be competitive.

One of the fundamental problems with the concept of a public-private competition is that the government does not have a cost accounting system in place that permits it to capture its actual costs, including overhead and capital requirements, to operate a project. We have seen the government exclude the costs to perform projects in their MEO's over the years, because there is no penalty to the government for failing to account for its costs in a cost comparison process. Contractors, on the other hand, are subject to significant cost accounting rules, including those imposed by government audit agencies. And in firm fixed-price contracts, the risk is on the contractor to perform at its proposed costs. The contractor's failure to do so results in losses to the contractor, not increases in the cost to perform to the government. Obviously, this is not the case with government performance.

Until the government is able to account for its cost of doing business in the same way that contractors do, the cost comparison process will never equitably compare the costs of government performance to those of contractor performance.

The problems with the A-76 process described in this statement are serious and will involve substantial effort to create an equitable process for conducting government procurements. We support the efforts of this panel and are willing to work with the panel to find a workable solution.

Thank you very much.