

**PRESENTATION TO COMMERCIAL ACTIVITIES PANEL PUBLIC HEARING
JIM WAKEFIELD, ARMY
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Good morning. I am honored to have been given the opportunity to present my views on improving the OMB Circular A-76 cost comparison process to this distinguished panel.

I have worked in the Army's A-76 policy office since 1987. The views I am about to present are mine and do not necessarily represent the position of the U.S. Army. Please do not expect me to provide any "silver bullets" that would cause you to slap your forehead and shout "of course!" I do not have any such "silver bullets."

I would maintain that the A-76 process is no more complex and in need of reform than most other processes used by large organizations. The reason A-76 studies are problematic is that the studies often result in employees losing their jobs. Let me say it again: The A-76 process is problematic because people lose their jobs. That fact "ups the ante" and causes the process to receive much more criticism than other processes that are equally complex. Comparable errors that occur in other processes do not receive as much attention because those other processes do not have the effects on people that A-76 does.

The reason that A-76 is the most powerful tool for achieving efficiencies and savings is that its foundation is competition with the private sector. When commercial activities are outsourced as a result of competition, the in-house jobs go away. So there is just no way to eliminate the prospect of losing jobs without reducing the resulting savings. And by the way, the number of people who are involuntarily separated is much lower than is commonly believed. Most people land on their feet.

Also, it is important to recognize that part of the process is governed by the Federal Acquisition Regulation and part by OMB Circular A-76. Generally, the FAR covers solicitation and source selection, and A-76 covers the in-house offer and cost comparison. To the extent that the A-76 process is difficult and error-prone, I would maintain that most of those difficulties and errors take place within the FAR part, not the A-76 part. If you are going to compete or outsource, you have to prepare a contract solicitation. Now, I'm not a procurement analyst and I'm not saying that we need to fix the FAR. I'm just saying that to the extent that you are only fixing OMB Circular A-76, you are only fixing a small part of the process.

How can the A-76 process be improved? In 1996, as part of DoD's launching of its current wave of A-76 studies, the Defense Science Board published its review of the A-76 process. Despite an extensive effort, pulling together government and private industry experts, that report did not include any proposed change to the process. Also, since the A-76 Supplemental Handbook was revised in 1996, as I have been involved in resolving all the A-76 questions that surfaced to my level, I cannot recall any that prompted a suggestion for change to the A-76 process. If there had been, I would have raised them to OSD and OMB.

As I mentioned before, the A-76 process is problematic because people lose their jobs. And that fact causes many involved in the process to “slow roll” the process. The solicitation for contractor offers and the in-house offer are lengthy, complicated documents, and there are many opportunities to delay their development. Unfortunately, delays leave affected employees uncertain of their future for a longer period of time, and this exacerbates the declines in morale and productivity during the study. The “fix” for “slow rolling” is for commanders and leaders at all levels to constantly indicate their support and commitment to the process. We should encourage such commitment, but it is not a process change that we can legislate.

One part of the A-76 process that is particularly troublesome is adjusting the in-house offer to match the increased performance in the selected contract offer. This applies when the cost / technical tradeoff procedure, often referred to as “best value,” is used to select the contract offer that will compete with the in-house offer. I remember when I prepared the Army comments on the draft version of the 1996 revision of the A-76 Handbook—in which this “MEO-leveling” requirement first appeared—I wrote that the procedure could be a disaster and should be tested before being required. Well, it was made mandatory, and while “disaster” might not be the appropriate term, the procedure has been the subject of several GAO bid protest decisions. For over two years now, I have been intimately involved in developing the DoD guidance for the procedure. I believe the DoD guidance will help in conducting this difficult procedure. After the DoD guidance is used for several studies, OMB will probably want to incorporate portions of it in the A-76 Handbook.

When I was asked to give this presentation, I sent an e-mail to the A-76 people in our major commands for ideas. I only received a few responses, and two of them mentioned the idea of what I’ll call a “one-step cost comparison.” This proposal, which has been making the rounds recently, would include the in-house offer in the source selection process. Instead of having the source selection process choose the contract offer that will compete with the in-house offer at the later cost comparison, a “one-step cost comparison” would have the in-house offer evaluated along with the contractor offers during source selection. The result of this “one-step” process would be the tentative in-house or contract decision. Appeals and protests could work the same way they do now to determine the final decision.

This “one-step cost comparison” idea has some appeal. For sealed bid and “low cost / technically acceptable” source selections, the process would be about the same. The appeal is for “cost / technical tradeoff” source selections, as it would eliminate the “MEO-leveling” step I mentioned before. However, the significant downside is that it would make the in-house or contract decision subjective. How well such a subjective decision would hold up is uncertain. If this idea is determined worthy to be pursued, I would strongly recommend that it be tested before it is mandated.

One final suggestion, on the legislative front. (I am assuming that the panel's charter includes reviewing all the restrictions on outsourcing such as firefighters and guards, so I won't cover that.) There is one law that I would like to see stopped. The reason I use the word "stopped" is that it is a provision that has appeared in each year's DoD Appropriations Act since about the mid-'80s. In the FY01 Act, it's Section 8014. Once I was told that each year DoD leaves it out of the version that they send to the Congress, but in each year's law, there it is again.

This provision states that none of the funds appropriated by this Act shall be available to convert a DoD activity performed by more than ten civilian employees to contractor performance until a most efficient and cost-effective organization analysis is completed and certified to Congress. There is already a statute—10 USC 2461—that requires a cost comparison for DoD activities with more than 50 civilian employees. So the problem with the Appropriations Act provision is that it restricts direct conversions of activities performed by 11 to 50 civilian employees in cases where OMB Circular A-76 permits it, such as where all permanent civilian employees are placed in comparable jobs or when an activity is outsourced to a qualified small or disadvantaged business (other than Indian Tribe owned).

That concludes my presentation. My message is mainly that the process is OK, but it's the controversy caused by the fact that it eliminates jobs that causes most of the problems—and there's not much to be done about that. As a very senior Army official recently said, "asking a garrison to do an A-76 study is like giving a pig a knife and asking it to make pork chops."

Thank you.