

TO: Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP)

ATTN: Ms. Aisha Hasan (ahasan@omb.eop.gov)

FROM: Center for Effective Government

RE: Public Comments on the Use of Cost Comparisons

DATE: April 15, 2013

To whom it may concern:

The Center for Effective Government (CEG) is a nonprofit research and advocacy organization whose core mission is to ensure government is effective and responsive to the priorities of the American people. CEG is submitting the following as a written comment as a response to OMB's request for public input "on the practice of comparing the relative cost of performance by Federal employees versus contract performance in order to identify the most cost-effective source."

A. Suitability

1. *In situations where either sector may be suitable to perform the work, what factors should an agency take into account to determine if a cost comparison is likely to be beneficial?*

CEG believes that inherently governmental and closely associated with inherently governmental functions should be insourced without the use of cost comparisons whatsoever. These are functions that need to be performed by government employees because their sensitivity and importance requires that they be housed within the government, without the introduction of the profit motive, the potential disruption of changing suppliers, required layers of contract oversight, and other factors complicating the performance of these functions. If agency management determines that a function should be performed in-house due to risk or any other compelling basis, even if a function is not officially determined to be inherently governmental or closely associated with inherently governmental functions, it should not be subject to cost comparisons. Also, if a function contracted out is performing an unnecessary task, rather than being subjected to a cost comparison, it should be eliminated.

2. *What considerations would be helpful in prioritizing which functions are studied first?*

Congress has directed non-DoD executive branch agencies in the FY2009 Omnibus Appropriations Act §736 and for the DoD in 10 U.S.C. §2330a, to prioritize the following as contracted work to be considered for insourcing: work that federal employees have done in the last ten years or similar to that work; work that is being performed by contractors that have performed poorly in the last five years due to excessive costs or inferior quality, which CEG would argue includes contractors who have been engaged in misconduct; work that is being performed by contractors that won the work without meaningful competition (CEG does not consider a scenario where only one bid or offer is received to be a meaningful competition—to meet that standard, there needs to be true cost competition, requiring two or more bids or offers). OMB and agencies should follow the law in terms of prioritizing the functions that should be studied first for potential insourcing.

B. Procedures

1. *What additional guiding principles and/or clarification of the above principles would be helpful?*



There should be no arbitrary caps on the number of federal civilian employees. Currently, even if an agency can get a waiver from an in-house staffing cap or if an agency can swap out one government worker billet for another, it creates additional hurdles and thus disincentives for agencies to effectively staff their operations. If a cost comparison determines that a government workforce is the cheaper option – aside from inherently governmental or closely associated with inherently governmental functions, which should always be staffed by federal workers, or other compelling reasons– it should be insourced.

Congress has passed laws (for non-DoD agencies: FY2008 Consolidated Appropriations Act (P.L. 110-161) §739; for the DoD: 10 U.S.C. §2461(a)(1)(G)) that prevent inclusion of worker retirement and healthcare benefits as part of the cost comparison. This is important because it prevents a race to the bottom by giving a costing advantage to contractors that provide the fewest benefits for their workers.

2. *What guidance might be provided regarding tracking of results to ensure expected benefits identified in the cost comparison have been realized?*

For non-DoD agencies, the FY2010 Omnibus Appropriations Act §743, and for the DoD, 10 U.S.C. §2330a, require agencies to identify functions that could be insourced and develop an insourcing plan. OMB should require compliance with these laws. Both the functions identified and the insourcing plans by agencies should be posted online and OMB should aggregate links to this information on its own public web page to make it easier for the public to find these disparate plans. The agencies should be required to annually report on their success in insourcing these positions, listing the number and types of positions insourced, and information on what basis the positions were insourced. A model for such an annual report is the September 2011 “Report to the Congressional Defense Committees on the Department of Defense's FY 2010 In-sourcing Actions.”¹

3. *What changes and/or clarifications might be considered to improve the effectiveness of these principles in the conduct of a cost comparison?*

The A-76 process is not an appropriate methodology for conducting cost comparisons for insourcing decisions. A-76 has come under criticism from variety of sources -- from the RAND Corporation to the Department of Defense Inspector General. There is a current government-wide moratorium on the use of A-76² and there are substantial flaws in it: from how overhead is calculated for government workers; to the calculation of contract administration costs; to the lack of consideration of the impact on federal taxes paid by contractor versus government employees; to factoring the potential size of award/incentive fees that could be paid to a contractor, but that would not be paid to federal workers.

4. *In 2010, the Department of Defense established business rules for use in estimating and comparing the full costs of military and civilian manpower and contract support. See Directive-Type Memorandum (DTM) 09-007, “Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support,” available at <http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-007.pdf>. What, if any, principles might be considered for adoption government-wide?*

While the DTM is flawed, CEG urges OMB to direct departments and agencies government-wide to utilize the DoD's DTM as a methodology for conducting cost comparisons. The Government Accountability Office (GAO) is reviewing the DTM currently and it should be revised accordingly in response to GAO's findings.

¹ <http://pogoarchives.org/m/ns/fy2010-insourcing-report-iaw-sec-323-of-fy2011-ndaa-20110902.pdf>

² <http://www.fas.org/sgp/crs/misc/R40854.pdf>

Thank you for consideration of these comments.

Sincerely,

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