



Statement to the Office of Federal Procurement Policy  
Public Meeting on  
Cost Comparisons in Federal Procurement  
March 5, 2013

Administrator Jordan, members of the OFPP staff, I am John Palatiello and I appear today on behalf of several clients in the Federal procurement community. As an individual integrally involved in the passage of the Federal Activities Inventory Reform (FAIR) Act in 1998, I have a keen and longstanding interest in the subject of today's meeting.

First, I'd like to raise an issue of paramount importance to the Council on Federal Procurement of Architectural & Engineering Services, COFPAES ([www.COFPAES.org](http://www.COFPAES.org)). A coalition of the nation's leading design professional societies and associations, formed in 1966, to provide a common voice for the profession on Federal procurement issues, the member organizations of COFPAES are the American Institute of Architects (AIA), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), National Society of Professional Surveyors (NSPS), and Management Association of Private Photogrammetric Surveyors (MAPPS). We wish to make certain the record is clear about the statutory requirements of the Brooks Architect-Engineer Act in 40 USC 1101 et. seq., implemented in FAR part 36.6. When OMB Circular A-76 was revised in 2003, recognition of the Brooks Act was included. While OMB Circular A-76 calls for competition and comparisons based on cost, the Brooks Act requires qualifications based selection. COFPAES urges the continuing of this distinction, and the statutory requirement, in any OFPP policy on public-private comparisons and competitions for A-E services.

On behalf of MAPPS ([www.mapps.org](http://www.mapps.org)) and the Business Coalition for Fair Competition (BCFC – [www.governmentcompetition.org](http://www.governmentcompetition.org)), we would like to make the following recommendations:

The FAIR Act, in section 2(d) requires the head of each agency to “review” activities on the commercial activities inventory. However, the statute does not define such a “review”. We would urge OFPP to issue guidance that requires certain action on activities on the inventory. With more than 850,000 positions on the commercial activities inventory, there is still a considerable amount of government duplication of and competition with the private sector, particularly small business. SBA data shows that small businesses win 71 percent of A-76 awards. We urge an aggressive “review” of such activities.

Section 2(e) of the FAIR Act requires a cost comparison when determining in-house or contractor performance. The statute does not specify in which direction the work is moving. Therefore, we believe it is a legal requirement that a “reverse A-76” be conducted prior to any “in-sourcing”. This must be part of any OFPP guidance to the agencies. We would also point out that a great many in-sourcing actions have been on activities that are clearly commercial in nature. The idea that in-sourcing is only implemented to bring in-house inherently governmental activities that should not have been contracted to the private sector in the first place is not supported by the facts. We urge an immediate moratorium on in-sourcing until guidance and procedures are implemented.

We also believe there should be stronger policy and enforcement on Economy Act (31 U.S.C. 1535) and FAR, 17.5. The Act provides for interagency support agreements when “the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.” The FAR states, “Acquisitions under the Economy Act are not exempt from the requirements of Subpart 7.3, Contractor Versus Government Performance.” Commercial activities on an agency’s FAIR Act inventory that have not been reviewed under A-76 should not be performed for another Federal agency using in-house personnel. In addition, any item on the inventory should be provided to state or local government unless there is a certification, pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505(a)).

We have also seen significant acquisitions of equipment to build, maintain and expand agencies’ in-house performance of commercial activities, absent an A-76 comparison. In particular, we’ve seen agencies expend significant amounts of money, including ARRA “stimulus” money, to buy equipment. In many instances, the same government office buying equipment had ID/IQ contracts with firms, including small businesses, to provide the service that the equipment would support. Imagine the frustration of a small business owner who is trying to amortize the cost of his or her equipment, not getting task orders on their government contract, and then seeing his or her tax dollars being expended by that agency-client to purchase that same equipment.

It is instructive to review the report of the Senate Committee on Governmental Affairs which explains the intent of the FAIR Act.

there continues to be activities which are not inherently governmental that the government performs for itself. The purpose of this legislation is to establish a process to evaluate those activities that remain in-house. This legislation does not affect the current Federal procurement system nor does it impair the ability of agencies to contract with the private sector for needed goods and services under that system.

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to review each activity on the list and, when competing activities, to use a competitive process to select the source to perform the activity. It is the Committee's expectation that OMB will work with Federal agencies to ensure that they proceed in a reasonable time frame with a competitive process for activities that are appropriate for competition. The Committee believes that there are many opportunities for competition

and expects agencies to prioritize functions that are most likely to have a high payback from such competition.

(S. Rept. 105-269, emphasis added)

Finally, it is important to remember that Executive Order 12615, issued by President Reagan, is still on the books today. It includes provisions, among others to “Ensure that new Federal Government requirements for commercial activities are provided by private industry, except where statute or national security requires government performance or where private industry costs are unreasonable” (emphasis added) and “conduct annual studies (under OMB Circular A-76) of not less than 3 percent of the department or agency's total civilian population, until all identified potential commercial activities have been studied”. We urge OFPP’s strong implementation of these requirements.

Thank you for the opportunity to share our views. We have always found OFPP to be open and cooperative and we look forward to working with OFPP on this important issue.