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DESIGNING A PERFORMANCE-BASED COMPETITIVE SOURCING PROCESS FOR THE FEDERAL GOVERNMENT:

37 Proposed Changes to Regulations and Approaches to Competing and Outsourcing Commercial Activities in Government

by Carl D. DeMaio, Adrian Moore and Vincent Badolato



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299



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Designing a Performance-based Competitive Sourcing Process for the Federal Government

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BY CARL D. DEMAIO, ADRIAN MOORE AND VINCENT BADOLATO

Executive Summary

During the summer of 2002, Reason Foundation and the Performance Institute launched a project to solicit ideas for changing the process for competing and outsourcing commercial activities in the federal government. As this is often a contentious issue, the project sought input from a wide range of perspectives, including government contracting officials from defense and civilian agencies, federal labor unions, private industry, and good-government groups and organizations. We went to the individuals working within the system and asked them for their ideas.

Much of the input received from these stakeholders confirmed what the bipartisan Commercial Activities Panel (CAP) found in a May 2002 report: *the federal competitive sourcing process is broken*. While the CAP report provided a solid case for reforming the federal competitive sourcing process and offered 10 broad Sourcing Principles for reform, it offered few concrete suggestions for change in policies, approach, or statutory requirements.

Feedback from stakeholders resoundingly affirmed the 10 broad Sourcing Principles articulated in the CAP report. When asked for specific changes in federal competitive sourcing guidelines, stakeholders generated a myriad of ideas from the very creative to the mundane. This report presents 37 of the most feasible and often-suggested ideas generated throughout the project. The 37 recommendations require some form of action by federal agencies, the Administration and/or Congress. The 37 recommendations provide for substantial change to the existing competitive sourcing process.

Clearly, the recommendations will not be embraced in full by every stakeholder. However, the package advanced by the project attempts to provide common-ground ideas that on the whole can benefit all stakeholders. Among the recommendations made are:

1. **Create Three Paths to Competition, One Using a New Vehicle for Competition through an Employee Conversion Organization (ECO):** OMB should create a general competitive sourcing framework that allows for three different modes for competition to be pursued with maximum flexibility by an agency. These three paths are: direct conversion, streamlined competition using employee conversion organization (ECO) vehicles, and standard public-private competition. The ECO vehicle provides a “compromise” approach to federal employee-vendor competition using the FAR (Federal Acquisition Regulations). However, the ECO offers no guarantee that the employee vehicle will win the competition and will subject employees to a firm contract should it win.
2. **Focus on Managing Competitions by Function:** A one-size-fits-all competitive sourcing process may not be the best route for the federal government. OMB should establish an overall competitive sourcing framework and then test and refine the approach on a function-by-function basis.
3. **Provide Transparent and Accurate Data for Cost and Performance Achievement of Contract Winners:** At the moment, federal agencies pay very little attention to maintaining timely and accurate data over the life of a contract. This leads to little transparency and no accountability. In order for the winning Most Efficient Organization (MEO) or contracting entity to be held accountable for its performance and cost, contract data, including personnel records, cost records, and workload data must be constantly and accurately maintained through an action-forcing mechanism, such as a threat for re-competition.
4. **Create a Competition Corps:** The scarcity of qualified and competent competitive sourcing managers within individual agencies has caused competitive sourcing initiatives to take a long time at a substantial cost. OMB should create a “Competition Corps” of highly trained competitive sourcing managers who would be assigned to each study conducted by the agencies to achieve economies of scale, foster maximum competency for managing competitions, and ensure a consistently applied process government-wide.
5. **Allow Agencies to Keep Savings from Competitions:** The existing competitive sourcing process provides little funding for reinvestment in existing programs and provides no positive incentive for undergoing competitive sourcing by not allowing agencies to keep a substantial portion or all of the savings. OMB should allow agencies to share in the savings (perhaps 50%) over the five-year period of performance of their contracts. This would ensure that agencies do not front-load cost savings in the first few years and offset savings in the out years.
6. **Provide for Transition of Benefits for Outsourced Employees:** A major negative impact of competitive sourcing can be the federal workers’ loss of federal employment and associated benefits. A number of innovative vehicles could be accessed to transition federal employees into the private sector complete with benefits. These would ensure that outsourced employees could retain their federal benefits.
7. **Require Measurable Outcomes of Competitive Sourcing:** Accountability for and transparency of results are fundamental ingredients to drive management change in government. Agencies should be required to set measurable goals for competitive sourcing that should be bolstered by a complete business case to ensure that the agency achieves its goals. Performance measures used in this business case should focus on improved performance of programs in addition to cost savings. Finally, data substantiating cost

and performance achievements of winners of competitions (whether employee or private) should be maintained by each agency, and bolstered by the risk of early re-competition.

8. **Expand Accessibility of Information on Agency Commercial Activities:** The accessibility of lists of commercial activities for individual agencies is extremely limited and difficult to access by an outside party. OMB should create an integrated database that is accessible to the public and presents all FAIR Act inventories in a searchable format. Ideally, the OMB online database should identify discrepancies across agencies in the classification of similar activities.
9. **Rename A-76 to Communicate Change:** In order to communicate the difference in approach between the old A-76 process and the new streamlined, performance-based approach, OMB should discontinue use of the A-76 circular number and assign a new circular number to the revised guidance governing competitive sourcing.
10. **Communicate the Purposes of the Administration's and Each Agency's Competitive Sourcing Program:** It is vital that the Administration create a comprehensive communications plan to define and generate support for the changes the Administration will propose to the competitive sourcing process. Moreover, senior officials in each agency should be briefed on what competitive sourcing entails and how to communicate with federal employees, business groups, unions, Members of Congress, and even the general public when proposing competitions.

As the Administration develops its package of reforms to the competitive sourcing process and agencies pursue competitions, it is our hope that these recommendations can serve as thoughtful and provocative slants on what is a difficult, but necessary aspect of federal management improvement. By examining the perspectives and concerns of all stakeholders, the Administration, Congress and the individual agencies can define a competitive sourcing process that is fair, balanced, and performance-based.

Table of Contents

Introduction	1
“Tell us something we don’t know!”	1
“Where do we go from here?”	1
Background on Competitive Sourcing: Understanding the Real Definition and Appropriate Use of Competitive Sourcing to Improve Government Performance	3
Competitive Sourcing Defined	4
The Strategic Importance of Competitive Sourcing: Systemic Change.....	4
The Negative Side of the Federal Government’s Approach to Competitive Sourcing.....	6
Reforming the Competitive Sourcing Process: The Commercial Activities Panel	6
Project Objectives and Approach: Stimulate Dialogue Among Experts and Practitioners to Generate Ideas for Reforms to the Competitive Sourcing Process.....	8
Cross-cutting Recommendations Ways to Make the Competitive Sourcing Process Performance-based.....	11
Cross-cutting Recommendation #1: Provide a General Competitive Sourcing Framework that Creates Three Paths to Competition	11
Cross-cutting Recommendation #2: Take a Function-based Approach to Managing Competitions	13
Cross-cutting Recommendation #3: Create an Action-forcing Mechanism that Would Require Transparency and Accountability for the Cost Performance of Contract Winners	14
Cross-cutting Recommendation #4: Reform the A-76 Process as a One Step Process	14
Cross-cutting Recommendation #5: Change the Circular Number and Structure to Communicate Change in Approach.....	14
Cross-cutting Recommendation #6: Communicate Clearly the Need for Performance-based Competitive Sourcing	15
Recommendations for Each Commercial Activities Panel (CAP) Principle Ways to Make the Competitive Sourcing Process Performance-based.....	16
CAP Principle #1: Support agency missions, goals, and objectives.....	16
CAP Principle #2: Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce	17
CAP Principle #3: Recognize that inherently governmental and certain other functions should be performed by federal workers.....	20
CAP Principle #4: Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government	21
CAP Principle #5: Be based on a transparent and consistently applied process.....	23
CAP Principle #6: Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals	24
CAP Principle #7: Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work	

currently performed in-house, work currently contracted to the private sector, and new work,
consistent with these guiding principles.....25
CAP Principle #8: Ensure that, when competitions are held, they are conducted as fairly, effectively,
and efficiently as possible26
CAP Principle #9: Ensure that competitions involve a process that considers both quality and cost
factors27
CAP Principle #10: Provide for accountability in connection with all sourcing decisions28
[Recommendations for Agencies](#) 30
[Recommendations for Congress](#) 31
[Recommendations for OMB](#) 32
[About the Project Sponsors](#)33

Part 1

Introduction

“Tell us something we don’t know!”

That was the reaction most federal employees, contractors, and competitive sourcing managers had when the historic “Commercial Activities Panel” released its report on competitive sourcing in the federal government. The report damned the existing federal process for managing competitive sourcing as defined and governed by OMB Circular A-76. The panel concluded the existing A-76 process did not meet the standard of a transparent and consistently applied process and took too much time and money to implement.

While the flaws documented by the report might have been stating the obvious to those involved day-to-day in the federal competitive sourcing process, the significance of the Commercial Activities Panel’s report should not be overlooked. The report represented the first time all parties defined *common objections* to the competitive sourcing process. More importantly, the panel succeeded in adopting—by unanimous vote—a set of 10 *common principles for reform* of the competitive sourcing process.

“Where do we go from here?”

The report has left competitive sourcing managers—and the Administration itself—wondering how to overhaul the federal competitive sourcing process to be more consistent with the 10 broad principles articulated by the panel. Indeed, in the wake of the report’s release, the Administration announced its intention to overhaul Circular A-76.

That’s why the Performance Institute and Reason Foundation launched this project to take the 10 broad reform principles and offer recommendations for making specific changes to the federal competitive sourcing process.

To generate our ideas, we went directly to those who know the most about the process: competitive sourcing managers, federal employees and federal contractors. At a public Town Hall forum in July, 2002, we gathered over 120 stakeholders to discuss various reforms. Managers and stakeholders from across the federal government were invited to submit commentary and recommendations in writing throughout the summer.

In the coming months, the Administration, Congress and federal agencies will debate what changes are needed to the federal competitive sourcing process. It is our hope that the recommendations offered in this report will stir creative thinking, push the envelope, and help decision-makers define the best approach to competitive sourcing. Regardless of philosophy over what should be competitively sourced in government, we encourage you to actively participate in the debate over the competitive sourcing process as we all seek to foster a results-oriented, citizen-centered and competitive government.

Part 2

Background on Competitive Sourcing: Understanding the Real Definition and Appropriate Use of Competitive Sourcing to Improve Government Performance

“Competition enhances quality, economy, and productivity. The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular and its Supplement, 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.”

—OMB Circular A-76

Competitive sourcing in the federal government is garnering significant attention and has stirred an enormous debate. However, competitive sourcing is perhaps one of the least understood—and often misconstrued—concepts in the debate over how to reform and improve the performance of the federal government.

In the summer of 2001, the Bush Administration released the President’s Management Agenda (PMA) outlining five major government-wide management reforms. The guiding principles behind these reforms are to make government citizen-centered, results-oriented, and market-based.

As expected, of the five major goals in the President’s Management Agenda, none has drawn more fire or criticism than the target of competing 50% of commercial activities in federal agencies by 2005. Under the PMA’s competitive sourcing goal, and pursuant to the Federal Activities Inventory Reform (FAIR) Act, agencies are required to assess and classify the various activities performed by federal agencies as “commercial” or “inherently governmental.” Based on this analysis and building toward the President’s 50 percent goal, the PMA requires agencies to compete approximately 15% of these commercial activities government-wide through public-private competitions or direct conversion competitions in the next year.

President’s Management Agenda

- Integrating Performance into Budgeting
- Citizen-centered e-Government
- Improved Financial Management
- Strategic Management of Human Capital
- Competitive Sourcing

All five goals are interrelated. Performance is the common thread.

Competitive Sourcing Defined

At its most basic level, competitive sourcing involves the examination of an activity of an agency to determine whether the activity should continue to be carried out within the agency or should be purchased by an outside entity. Put simply, should the agency “make” or “buy” this activity.

Outsourcing and Competitive Sourcing are not the ends, but the means.

The end-state we seek is BETTER PERFORMANCE

Yet in a larger sense, the purpose of competitive sourcing is to analyze an agency’s various options for achieving the performance of a given activity. Indeed, competitive sourcing goes beyond the decision to “make” or “buy” to examine considerations such as:

- Whether an activity is needed in the first place;
- Whether an activity should be “re-engineered” to be more efficient; and
- Whether an activity should be sourced differently, either through another staff unit, another agency, a non-profit organization, a program partner, or a private sector vendor.

If competitive sourcing is effectively implemented on an activity, the issue of improving performance should dominate the three considerations above, with the concept of competition driving the process to ensure the best sourcing solution is adopted by the agency. However, true competition can only be achieved when multiple players are competing under a fair and transparent process where performance expected from the activity in question is clear.

Competitive sourcing and outsourcing are NOT synonymous terms. Outsourcing involves the determination of the third consideration of a competitive sourcing process—that is, whether the activity should be sourced internally or by an outside vendor. As a result, when a target is set for competitive sourcing, the emphasis is on studying the efficiency of the activities in question to determine the best sourcing decision, rather than pre-determining that decision up front.

The Strategic Importance of Competitive Sourcing: *Systemic Change*

Competitive sourcing can play a strategically important role in reforming and improving the performance of the federal government. For years, numerous attempts to streamline government agencies and tackle long-standing management challenges have resulted in little more than reams of reports and promises for improvement. A litany of alphabet-soup initiatives litter the graveyard of federal management improvement—from President Johnson’s Program Planning and Budgeting System (PPBS), Nixon’s Management by Objectives (MBO), Carter’s Zero-Based Budgeting (ZBB), Reagan/Bush 1’s

The Fundamental Question! “If we weren’t already doing this today, would we start doing this tomorrow?”

—Peter Drucker

A question successful businesses ask on a daily basis! A question rarely asked, and almost never answered in government.

Management-by-Objectives II, to Vice President Al Gore’s National Performance Review (NPR). (Note, Gore later renamed NPR the National Partnership for Reinventing Government—different name, but same acronym!)

“There has got to be a way of simplifying the A-76 study process.” —Townhall participant

All of these initiatives were launched with significant fanfare, only to fizzle. Nothing was inherently wrong with what each initiative was asking of federal government programs: focus on management, improve efficiencies, encourage innovation, and demonstrate performance. Where each failed was in the mechanical and/or command-and-control approach to reform emphasized by the initiative. Instead of focusing on producing long-lasting systemic change, the initiatives favored program-by-program analysis and management improvement. If reform is to take hold and outlast a time-limited Administration (and its appointees), the reform strategy must emphasize both systemic change and program-focused initiatives.

Analysis of successful reforms demonstrates that lasting performance improvement can only be won if three key and irreplaceable ingredients are in play: accountability, transparency and competition.

- **Accountability** is achieved when leadership adopts a view that performance and management matter—even in government where politics and constituency dominate decision-making. Accountability is best achieved when each program is required to set clear goals and define clear methods for evaluating performance.
- **Transparency** is defined as providing to the public and decision-makers relevant, useful, timely and accurate data on whether program performance goals are being achieved as well as the associated costs of delivering the performance. Both performance and cost information must go hand-in-hand for a true cost-benefit analysis to be conducted.
- **Competition** is less an action than the environmental condition in which a government program should operate. As any economist or athlete will tell you, competition creates a “race-to-the-top” in almost any undertaking. Truly competitive environments force innovation, demand improvements, and maximize benefit while preventing price-gouging.

“The A-76 process, to me, is very resource-intensive, very time consuming, and we have already spent a fortune training people on this. I would like to see the process simplified so it doesn’t take so many teams dedicated on a full-time basis to do this.” —Townhall participant

Without its emphasis on competition, the President’s Management Agenda would be an incomplete and flawed management reform initiative. Competition can and should play a significant role in federal management improvement. However competition requires rules—and when left to unregulated market forces, can produce “imperfections” with negative consequences. Just as with competition in the market, competition in the federal government does require some rules of the road.

The Negative Side of the Federal Government’s Approach to Competitive Sourcing

Even though competition is a good principle to seek as we reform government, competitive sourcing in the federal government has been roundly criticized by almost every participant in the process for competitions as defined in OMB Circular A-76. As expected, competitive sourcing studies are never welcomed by federal employees as they threaten their job security. In addition, some in industry complain that they are being used as a “stalking horse” merely to make government efficient.

A number of other flaws affecting all stakeholders permeates the process, including:

- Competitions that take years to complete at a high cost per position studied;
- Contentious disagreements between contractors and unions over agency outsourcing definitions, decisions, and outcomes of competitions;
- Severe disparities in categorization of activities: a position at one agency is deemed “inherently governmental” while the same position is deemed to be a “commercial activity” at another agency;
- Inadequate cost accounting systems that make cost comparisons suspect at best; and
- Inflexible employee benefit systems that hamper transitions between the public and private sectors and penalize employees in the process.

Finally, the most common flaw in the current approach to competitive sourcing has been an over-emphasis on using outsourcing to “cut costs” rather than to “enhance performance” of the agency.

Reforming the Competitive Sourcing Process: The Commercial Activities Panel

In response to the continued complaints and difficulties with the A-76 process, Congress instructed the Comptroller General to convene a panel of experts to evaluate the current sourcing decisions of the federal government. The 12-person Commercial Activities Panel consisted of officials from federal agencies, labor unions, private industry and experts in the issues of competitive sourcing.

In May 2002, the Panel released its much-anticipated report on competitive sourcing in the federal government. The report damned the existing federal process for managing competitive sourcing (defined by OMB Circular A-76). The panel concluded the existing A-76 process did not meet the standard of a transparent and consistently applied process and took too much time and money to implement.

In order to guide the new process of competitive sourcing in government, the Commercial Activities Panel (CAP) offered these 10 principles:

- **Align to Mission and Goals of the Agency:** Federal agencies should link any competitive sourcing program they undertake to program strategic plans and performance goals.
- **Link to Human Capital Planning:** Competitive sourcing initiatives should include investments in training federal workers to be more competitive, as well as identify areas where recruitment shortages are projected to be the greatest.

- **Recognize Inherently Governmental Activities:** Federal agencies should clearly and carefully identify inherently governmental activities and ensure federal workers continue to oversee those functions.
- **Create Incentives for Performance-based Management:** Competitive sourcing must be fully integrated into a comprehensive performance-based management system for the agency that encourages and rewards high-performance.
- **Ensure Transparency and Consistency in Competitions:** The federal government should devise a transparent process for managing competitions and be consistent in applying that process across federal agencies.
- **Avoid Arbitrary Targets for Outsourcing:** The Administration and individual agencies should refrain from setting quotas or goals for how many activities or positions should be outsourced.
- **Provide for Full Competition:** When activities are competed—whether they are inside the agency or already contracted out—the process should allow for full competition between federal workers and the private sector.
- **Ensure Fairness in the Competitive Sourcing Process:** It is not enough to allow both sides to bid on federal activities—bids must be evaluated and judged fairly. Without fairness and confidence in the system by all parties, the interests of the taxpayer (the ultimate beneficiary of competitive sourcing) cannot be safeguarded.
- **Focus on “Best Value” in Determining the Winning Bid:** Competitions for federal activities should be evaluated and judged based on cost and performance standards. Moving to a best-value formula will remedy one of the biggest flaws in the existing competitive sourcing process: the single-minded focus on cost cutting rather than performance improvement.
- **Provide for Accountability Throughout the Process:** Regardless of who wins the competition, federal agencies should demand accountability for performance from the winners. Only by measuring performance—and managing contracts for results—can accountability be guaranteed.

Part 3

Project Objectives and Approach: Stimulate Dialogue Among Experts and Practitioners to Generate Ideas for Reforms to the Competitive Sourcing Process

With the release of the Commercial Activities Panel report, attention has turned to changing the competitive sourcing process—both government-wide and within each federal agency. In response to the CAP recommendations, the Office of Management and Budget convened a special working group to overhaul its A-76 Circular and consider ways to borrow more elements of the FAR (Federal Acquisition Regulation) process in competitive sourcing. The intended outcome of OMB's deliberations is to take the CAP recommendations, clarify and specify them, and create a new set of sourcing criteria and rules to govern the sourcing decisions of the federal government.



OMB's Jack Kalavrintinos and Performance Institute/Reason's Carl DeMaio at the Town-Hall Forum.

Federal agencies—already pressed by the Administration to devise competitive sourcing plans and proceed with competitions—are struggling with their own responses to the CAP report recommendations as they choose competition projects and define procedures for managing them.

Indeed, the panel's recommendations, while extremely important in that they represent bipartisan perspectives, are very broad in scope. Few can disagree with the 10 "sourcing principles" articulated unanimously by the panel, but moving from a broad principle to practical change in the process has proven difficult.

In June 2002, the Performance Institute and Reason Foundation jointly undertook a project to generate ideas for changing Circular A-76 and borrowing elements from the FAR to improve the competitive sourcing process. In devising recommendations, the project would go directly to those with the most knowledge and expertise in the process: competitive sourcing managers, federal employees, trade associations, interest groups and private-sector contractors.



CAP panel member Stan Soloway and former OFPP Administrator Al Burman propose ways to use the FAR in competitive sourcing.

In late June, an electronic advisory announcing the project and soliciting feedback was sent to a list of 8000 federal acquisition and contracting offices, government contractors and vendors, public administration interest groups, and trade associations.

These stakeholders were asked:

- How can the competitive sourcing process be changed to be more performance-oriented as imagined in the 10 reform principles from the Commercial Activities Panel?
- What specific changes would you make to OMB Circular A-76?
- How can the Federal Acquisition Regulations (FAR) process be used to improve competitive sourcing?

The advisory encouraged recipients to forward the project questions on to others in their organization who might be interested in sharing their views and suggested changes. All told, the project received hundreds of responses ranging from praise for launching the project and suggested changes to cynicism that no amount of change would improve the process.

On July 26, 2002, the project convened a public Town Hall Forum at the National Press Club featuring three presentation panels and extensive dialogue on proposed changes. Over 120 stakeholders attended the forum—with the audience made up of representatives from DOD and civilian agencies, federal labor unions, private industry, and good-government groups and organizations.



Extensive dialogue and debate was encouraged at the Town Hall Forum to gauge the reaction of all stakeholders to proposed changes.

(For full transcripts of the town hall go to www.rppi.org/ps299townhall.pdf)

This report includes the most feasible and most often-suggested changes to the competitive sourcing process. The 10 principles for competitive sourcing articulated by the Commercial Activities Panel are used as the overall structure for presenting specific changes to the A-76 Circular and recommendations for agency implementation of competitive sourcing and action by Congress and the Administration to improve the entire process. While some changes may benefit more than one of the 10 principles from the CAP report, changes were categorized under the

principle they supported the most.

Finally, the report classifies recommendations into three important categories based on which institutional players in the competitive sourcing process must make the change.

CONGRESS	<u>Congressional Change Required</u> The proposed change would require a modification of statute governing government procurement or management.
OMB	<u>Administrative Change in Regulations Required</u> The proposed change would require a revision of administrative regulations or an OMB Circular.
AGENCY	<u>Agency Implementation Change Required</u> The proposed change needs no statutory or administrative modification; agencies could adopt the change internally in how they devise and manage competitive sourcing initiatives.

Part 4

Cross-cutting Recommendations: Ways to Make the Competitive Sourcing Process Performance-based

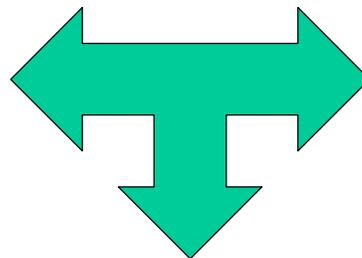
This project formulated a total of 37 specific changes to statutes, OMB policy, and agency approaches to competitive sourcing to affirm the 10 broad principles articulated by the Commercial Activities Panel. All but six recommendations generated by this project fell cleanly within one of the 10 principles. Those six recommendations are dealt with as “cross-cutting recommendations.”

Cross-cutting Recommendation #1: Provide a General Competitive Sourcing Framework that Creates Three Paths to Competition (OMB)

OMB should provide a general framework for how competitions should be managed that provides three standardized paths for competition while allowing maximum flexibility on how an agency pursues those paths to competition.

Three Paths to Competition

Direct
Conversion



Public Private
Competition

Streamlined Competition Using Employee
Conversion Organization (ECO) Vehicles

Path One: Direct Conversion

Federal agencies should be allowed discretion to directly convert an activity to non-governmental performance at any time for any reason. In this case, the agency management would have to marshal a clear business case as to why a decision to directly convert an activity was so clear as to consider continued government performance of the activity inappropriate. (For more on the business case, see recommendations under CAP Principle #3)

Path Two: Streamlined Competition Using Employee Conversion Organization (ECO) Vehicles Under a FAR-based Process

In other cases, the federal agency may want to allow employees to transition into an Employee Conversion Organization (ECO) vehicle. Under this path, agency management would announce a direct conversion and employees would have the opportunity to form either a governmental or non-governmental vehicle to compete for the work. Regardless of what vehicle the employees choose, their vehicle would be fully subject to the FAR during a standard private-private competition. Should the employees win, their vehicle would be placed under contract and treated as a standard vendor to the agency. The contract would be re-competed on a regular cycle using the FAR.

“Government is going to have to be kept in for at least one round of bids.” —Townhall participant

In order to make the ECO approach work, employees would be given a modest amount of support by the agency as they select their vehicle for competition, e.g. employee stock ownership plan (ESOP), transitional benefit corporation (TBC), etc. In addition to having the option of creating a private entity, employees could link up with a governmental or non-governmental vehicle using an existing federal ECO already under government contract.

Creation of governmental ECOs to provide vehicles for competition would not be too difficult. Several entities within the federal government might provide a starting point for creation of governmental ECOs, including Interservice Support Agreement (ISSA) entities, franchise operations, and federal business activities (FBAs). If employees selected a governmental partner through an ISSA, the employees would “transition” to the host agency of the ISSA as a business unit and would bid for the work. (Note: the official transition would only occur should the employees win the competition.) Creation of non-governmental ECOs would essentially be a public-private partnership between employees and a private organization. Should the employees win, they would become members of the private organization.

Several elements should be recognized when considering the ECO concept:

- The ECO would compete under the FAR.
- The winner would be subject to a formal contract for the services.
- Employees would remain part of the federal government only if they partner with an existing ISSA.
- Employees would transition to private employment if they select an ESOP, TBC, or partnership with a private firm.

- Payment depends on performance. Payment will not be received if the performance of the contract is not met.

In order to make this approach fair, full costs of the activity would have to be transferred to the ECO and the ECO operating budget would have to be separated from the agency's budget. Most importantly, regulations governing ISSAs, FBAs and similar vehicles need to be reformed to ensure a level playing field with private bidders.

Why consider the ECO approach?

- An ECO puts employees in control of their destiny far more than direct conversion (where they do not have an opportunity to compete) or the MEO (where they remain constrained by federal processes, must live with the uncertainty of an A-76 process, and would continue as federal employees after their win.)
- Providing agency financial support for this approach would be cost-beneficial in the long run as it would significantly reduce lag-time and competition costs that a traditional public-private process would impose.
- Competitions and employee protests would be governed fully by the FAR, widely recognized as a much better vehicle for governing competitions and contracting.
- An ECO would encourage employees and management to think creatively about different kinds of public-private partnerships to perform federal activities.
- ECOs maximize competition. There is no guarantee that the ECO would win—its chances should be just as good as private vendor chances. However, should the ECO demonstrate better cost and performance in its proposal, the ECO should rightfully win.

"These are things that require careful understanding of what the actual legal structures are and the accountability mechanisms are. You can't say public-private, contract or not." —Townhall participant

3. Path Three: Public-private Competition

The third path to competition would be used only when employees are unwilling, or it is not practical, to convert to an ECO vehicle. Under this path, a reformed A-76 process would be used—with specific reforms suggested under each of the 10 CAP principles later in this report.

Cross-cutting Recommendation #2: Take a Function-based Approach to Managing Competitions (OMB)

A one-size-fits-all competitive sourcing process may not be the best route for the federal government. Calculating costs, analyzing performance goals, and evaluating the competitive nature of a bid can vary depending on different kinds of functions. A premium should be placed on ensuring that a given activity is competitively performed given industry standards for that activity. Evaluating this question for a food service

activity would be dramatically different than evaluating the same question for an IT activity. Put simply, the specific tools and techniques an agency uses to determine whether an activity is competitively performed may differ slightly based on the function being examined. As a result, OMB should establish an overall competitive sourcing framework and then promulgate best competition practices on a function-by-function basis.

Cross-cutting Recommendation #3: Create an Action-forcing Mechanism that Would Require Transparency and Accountability for the Cost Performance of Contract Winners (CONGRESS)

At the moment, federal agencies pay very little attention to maintaining timely and accurate data over the life of a contract. This leads to little transparency and no accountability. In order for the winning Most Efficient Organization (MEO) or contracting entity to be held accountable for its performance and cost, contract data, including personnel records, cost records, and workload data, must be constantly and accurately maintained through an action-forcing mechanism, such as a threat for re-competition. The losing bidder of a competition should have the right to review the performance and cost achievement of the winner over the life of the contract by examining agency data. Agencies that do not maintain these records should have to re-compete the contract. Should the winning entity be partly responsible for the lack of data, during the re-competition, it should be ineligible to compete. After all, poor financial and performance management should disqualify a bidder from the start.

Cross-cutting Recommendation #4: Reform the A-76 Process as a One Step Process (OMB)

The current A-76 process is too long and arduous. To make competition more efficient, the entire process should be reformed and made into a one step competitive procedure. When a competition is called for, federal employees will redesign and reform their proposals, interested parties from industry will submit their proposals, and the process will stop there. The winner of the contract will be determined after this step. This will dramatically speed up the process of competition.

Cross-cutting Recommendation #5: Change the Circular Number and Structure to Communicate Change in Approach (OMB)

In order to emphasize the difference in approach between the old A-76 process and the new streamlined, performance-based approach, OMB should discontinue use of the A-76 circular number and assign a new circular number to the revised guidance governing competitive sourcing. In addition, OMB should substantially reformat the Circular to streamline the guidance.

While changing the circular number does nothing to change the process, it does assist with the significant culture change that is required to reform competitive sourcing. Shortening the circular itself—perhaps by eliminating parts of the Supplement—will provide agencies with the clear message that flexibility and

innovation will be emphasized rather than command-and-control approaches to management reform. It should not take a team of experts to understand the process for competing activities in the federal government. Rules for competing activities should be clear, simple and flexible. Any agency alternative providing for transparency, accountability and competition—with ultimate performance improvements—should be supported by OMB through the Circular.

Cross-cutting Recommendation #6: Communicate Clearly the Need for Performance-based Competitive Sourcing (OMB and AGENCY)

Competitive sourcing is controversial for federal employees from the get-go and presents a complex communications challenge for the Administration. Deciding what to outsource inevitably raises philosophical questions on the size, scope and appropriate role of government in society. Nevertheless, the rationale and benefits behind competition are clear and the Administration does indeed have a realistic and thoughtful competitive sourcing proposal.

As a result, it is vital that the Administration create a comprehensive communications plan to define and generate support for the changes the Administration will propose to the competitive sourcing process. Moreover, political appointees in each agency should be briefed on what competitive sourcing entails and how to communicate with federal employees, business groups, unions, Members of Congress, and even the general public when proposing competitions. Without an effective communications and outreach initiative in each agency, competitive sourcing initiatives might suffer and fall victim to philosophically-motivated political debates.

Part 5

Recommendations for Each Commercial Activities Panel (CAP) Principle

Ways to Make the Competitive Sourcing Process Performance-based

CAP Principle #1: Support agency missions, goals, and objectives

Commentary: This principle highlights the need for a link between the missions, goals, and objectives of federal agencies and related sourcing policies.

Recommendation #1: Devise a Competitive Sourcing Strategy Based on the Agency's Strategic Plan and Include it in the March 2003 Revision (AGENCY)

While this proposed change may seem “matter-of-fact,” this recommendation—if effectively implemented—would have a significant impact on the competitive sourcing process. Agencies are already required to devise five-year strategic plans under the Government Performance and Results Act. OMB has asked that agencies revise their strategic plans and submit them by March 30, 2003 for use in the '05 budget process.



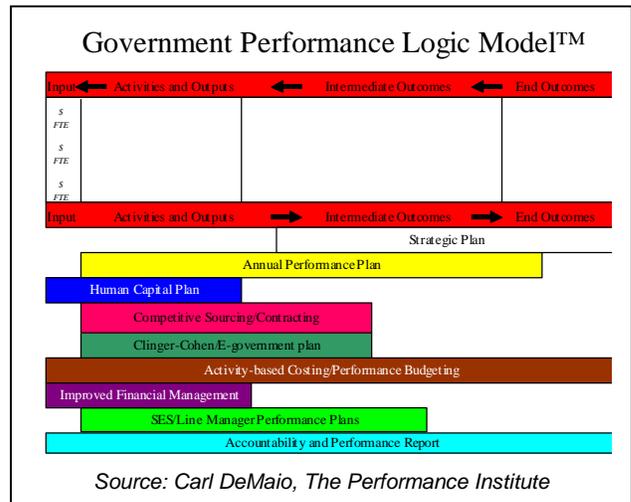
As agencies revise their strategic plans, they should use the process to clarify the performance expectations of each agency activity. Doing so would help satisfy, in part, the first consideration of competitive sourcing, i.e. the necessity of the activity from a performance standpoint. In addition to clarifying expected results, the strategic planning process can help agencies focus on “core mission” activities while identifying various activities that, while important, may not need to be performed within the agency. Indeed, research by the Performance Institute and Reason has shown that most examples of successful competitive sourcing initiatives were created when agencies were looking to “clear the deck” of extraneous activities in order to focus on the core mission.

Agencies should articulate their competitive sourcing initiatives in their strategic plan. As noted in the strategic planning model, the agency’s strategic plan should discuss competitive sourcing as an element of

“program alignment” using budget alignment (cost efficiencies) and program strategies (performance) as two key reference points. In this case, program alignment would relate to activities performed within the agency by federal employees as well as activities currently or potentially performed by outside entities using agency funds.

Recommendation #2: Use Performance Measures in All Competitive Sourcing Initiatives (AGENCY)

Competitive sourcing is ultimately designed to improve the performance of the federal government. As such, competitive sourcing initiatives should yield *cost savings* (as defined by reduction in cost-per-unit output) and/or *improved performance* (as defined by improved service levels of outputs or enhanced impact on intermediate or end outcomes.) In past competitive sourcing initiatives, agencies have either failed to measure output and outcome performance or, in the handful of cases where performance was examined, used different performance measures for the managed competition than the program reported under the Government Performance and Results Act (GPRA). This practice must stop. Agencies must clearly define end, intermediate, and output performance measures up front to guide the competition.



Recommendation #3: Require Agencies to Submit Competitive Sourcing Plans with Performance Measures for Each Activity to be Completed (OMB)

OMB is presently working with each federal agency on reviewing and approving its competitive sourcing plan. OMB should require that the competitive sourcing plan adopt the same format as the agency’s strategic plan and present activities to be studied in relation to the strategic goal of the agency it serves. Moreover, no plan should be accepted without associated performance measures focusing on cost savings AND performance. In each activity studied, a unique cost savings and performance measure should be included. Where the activity being studied is associated with a pre-existing GPRA performance goal or measure, the GPRA goal or measure should be used. By requiring submission and review of the performance measures, OMB can ensure that the agency competitions are proceeding with clear performance criteria that will be used during the competition and in evaluating and selecting the winning bid.

CAP Principle #2: Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce

Commentary: This principle underscores the importance of considering human capital concerns in connection with the sourcing process. While it does not mean that agencies should refrain from outsourcing due to its impact on the affected employees, it does mean that the federal government’s sourcing policies and practices should consider the potential impact on the government’s ability to attract, motivate, retain, and reward a high-performing workforce both now and in the future. Regardless of the result of specific sourcing

decisions, it is important for the workforce to know and believe that they will be viewed and treated as valuable assets. It is also important that the workforce receive adequate training to be effective in their current jobs and to be a valuable resource in the future.

Recommendation #1: Use the Agency Human Capital Plan to Inform the Competitive Sourcing Strategy (AGENCY)

The agency's competitive sourcing efforts should be aligned to the agency's human capital plan. Indeed, the development of the competitive sourcing plan should occur concurrently with the development of the human capital plan. In those commercial activities where the agency identifies a current or projected human capital shortage, competitive sourcing should be considered as one process for either streamlining the function or converting the function to an outside source where human capital can be accessed.

"How do you put negative incentives on the government side? I mean do people not get paid?"
—Townhall participant

Recommendation #2: Invest in Targeted Training and Professional Development for Federal Employees Undergoing or Emerging from Competitive Sourcing (AGENCY)

The agency's human capital plan should identify training needs for employees who are the subject of competitions. In addition, training and professional development investments should be identified in the management plan for the formation of the government's High Performance Organization. Finally, in cases where federal employees have lost their positions from a competition, the agency should take reasonable steps to retool the employee and offer a transfer to another position within the agency.

Recommendation #3: Allow federal workers to keep pensions and other benefits through innovative vehicles such as an Employee Stock Ownership Plan (ESOP) and Transition Benefit Corporation (TBC) (CONGRESS)

A major negative impact of competitive sourcing can be federal workers' loss of federal employment and associated benefits. Total loss of benefits need not occur. A number of innovative vehicles (such as TBC and ESOP) could be accessed to transition federal employees into the private sector complete with benefits. Under current law, federal employees can use the Intergovernmental Personnel Agreement Act to retain federal benefits so long as they return to the federal agency that they left within four years. Unfortunately, not all TBC and ESOP employees will return to their agencies within four years, if at all. As a result, Congress should amend Title 5 of the U.S. Code to define these employees of these innovative vehicles as "federal employees."

"Obviously we are not going to get more civil servants but . . . we can train them better. We can recognize that they are more than just contract managers." —Townhall participant

Recommendation #4: Support Agency Competitive Sourcing Initiatives by a Change Management Philosophy (AGENCY)

It is vitally important that agency management employ change management techniques in designing, implementing and communicating competitive sourcing initiatives. Effective communications are vital to keeping employees informed and involved in a change as potentially significant as a competitive sourcing study. Most importantly, agency leadership must ensure credibility in assuring federal workers that the agency views individuals as valuable assets and take steps to reinforce that view throughout the competitive sourcing process.

Recommendation #5: Provide Incentives and Bonuses for Employees Through “Efficiency Dividends” (CONGRESS)

Cost savings achieved during the first two years of a competitive sourcing initiative should, in part, be invested into employee bonus pools to be distributed with employees involved in successful sourcing initiatives. Three kinds of bonus systems should be devised: one for employees who staff a governmental ECO, one for employees who win a traditional public-private competition, and one for federal contract and program managers overseeing an outsourced activity. Obviously in the first two cases the federal government would be recognizing and rewarding innovative and efficient management by employees after they win the competition. In the third case, the federal government would be recognizing the importance of recruiting and properly compensating business leaders at the contract and program management level (Although several federal agencies already enjoy flexibility on pay and personnel management, this recommendation may require explicit congressional authorization.)

“The net loss, in the next 8-14 years, is going to be a mass exodus of civil servants. So ultimately you’ve got to look at contractors running parts of government.” —Townhall participant

Recommendation #6: Allow for Effective Consideration of Human Capital Issues by Using a Classification System as a Foundation for FAIR Act Inventories (OMB)

Under the FAIR Act, agencies are required under OMB guidance to inventory, analyze and report the basic functions of positions in government supporting commercial activities. Currently, there are no clear function code definitions throughout government, or even intra-agency, in order to code FAIR inventory functions. Moreover, the FAIR Act function codes look more like the DOD function definitions and do not translate well for the needs of civilian agencies. Meanwhile, most government agencies are structured around the Personnel Classification System used for budgeting. As a result, this takes one accepted matrix for coding and then forces the agency to use an entirely new matrix of definitions and characterizations to code functions in FAIR inventories.

While the classification system is imperfect, it is a more realistic and relevant structure from which to analyze the total number of federal employees involved in commercial activities. As such, the classification system should be used as a basis for creating the FAIR Act inventories. Maintaining the classification system to code governmental functions to OMB will facilitate the reporting requirements, as well as maintaining congruency with the human resources community, which uses the classification system. Nevertheless, as part of an

overall and comprehensive management reform strategy, OMB and OPM should work cooperatively to improve the classification system government-wide.

CAP Principle #3: Recognize that inherently governmental and certain other functions should be performed by federal workers

Commentary: Recognizing the difficulty of precisely defining “inherently governmental” and “certain other functions,” there is widespread consensus that federal employees should perform certain types of work. OMB Directive 92-1 provides a framework for defining work that is clearly “inherently governmental,” and the Federal Activities Inventory Reform (FAIR) Act has helped to identify commercial work currently being performed by the government. It is clear that government workers need to perform certain military, judicial, enforcement, regulatory, and policymaking functions, and the government may need to retain an in-house capability even in functions that are largely outsourced. Certain other capabilities, such as adequate acquisition skills to manage costs, quality, and performance and to buy products and services effectively and efficiently, or other competencies such as those directly linked to national security, also must be retained in-house to help ensure effective mission execution.

Recommendation #1: Declare as a Matter of Fact that the Determination of the Inherently Governmental or Commercial Nature of an Activity is Largely a Management Decision (OMB)

As recognized by the CAP and most participants in competitive sourcing analysis, the definitions of “inherently governmental” and “commercial activity” are highly synthetic and subjective. It should be made clear by OMB that what is an inherently governmental or commercial activity cannot be predetermined by a government-wide, one-size-fits-all definition. Moreover, agencies cannot and should not look to perfecting a definition of the terms as a way to dodge the bullet of justifying the agency’s approach to competitive sourcing. Rather, it is ultimately a managerial decision that must be bolstered by a business case. Declaring this will dramatically speed up the competitive sourcing process and place the burden for defending categorization of activities as governmental or commercial where it belongs: on agency management.

“The Supreme Court of the United States has found that there is virtually nothing that is inherently governmental.” —Townhall participant

Recommendation #2: Provide for Greater Transparency of the Categorization of Commercial and Inherently Governmental Activities (OMB)

Currently, OMB requires that agencies compile paper-based lists of commercial activities. Should an outside party want to review these positions, it is often quite difficult to access the information. Moreover, very little cross-agency comparison can be made without significant research and analysis. OMB should create an integrated database, accessible to the public online, where all FAIR Act inventories are provided in a searchable format. OMB should request agencies submit an accounting of their inherently governmental positions. Ideally, the OMB online database should identify discrepancies across agencies in the classification of similar activities. In addition to providing for public transparency, this integrated

information resource would improve individual agency analysis and classification of activities by providing a comparative context.

Recommendation #3: Require Agencies to Clearly Identify Risk Factors Relating to Commercial Performance of an Activity that Reasonably Could be Deemed Inherently Governmental and Prescribe Oversight Strategy (OMB)

One way to create a solid business case around categorizing activities as inherently governmental or commercial is to clearly identify the risks to the public good in having a commercial entity perform a certain inherently governmental activity. In addition to stating the risks associated with outsourcing the activity, the agency should certify that there is *no reasonable means of oversight and accountability that could be used* in conjunction with an outsourcing initiative. For example, risk could be mitigated by an oversight board consisting of appointed officials and/or through independent performance evaluations. Risk factors include, but are not limited to, the following: assurance that official rules of law are followed, national security concerns, establishment or definition of government policy, civil liberty and privacy concerns.

For those risk factors identified for the activity, should the agency decide to keep the function in-house, specific performance measures should demonstrate how well the agency is managing those risks. At the same time, the risk factors should be measured if the activity is ultimately outsourced. In both cases, the agency will be accountable for its decisions relating to inherently governmental activities.

Recommendation #4: Subject Inherently Governmental Functions to Government-Government Competition (CONGRESS)

Consistent with the need to maintain some functions within the government due to risk factors surrounding inherently governmental activities, a performance-based government approach could require that at some point an agency's inherently governmental activities be competed within the government. In several agencies, special "franchise funds" and "business authorities" have been created using federal employees. These entities routinely compete, win and perform under contracts with other federal agencies under an ISSA vehicle. Congress may want to consider legislation defining a process for competing even inherently governmental activities using ISSAs. The competition process for a public-public competition would mirror the public-private competitive process, with slight modification. In the end, competitive forces could be applied to ALL activities carried out by the federal government.

"It has to be through a dedication to change management that we take ownership for and that we realize that there is no inherent Right of Entitlement to a government position, if in fact the delivery of the services can be more effective done by another alternative." —Townhall participant

CAP Principle #4: Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government

Commentary: This principle recognizes that historically it has been primarily when a government entity goes through a public-private competition that the government creates a “most efficient organization” (MEO). Since such efforts can lead to significant savings and improved performance, they should not be limited to public-private competitions. Instead, the federal government needs to provide incentives for its employees, its managers, and its contractors to constantly seek to improve the economy, efficiency, and effectiveness of the delivery of government services through a variety of means, including competition, public-private partnerships, and enhanced worker-management cooperation.

Recommendation #1: See the HPO Concept in the Broadest Sense, with Competition as One Strategy for Improving Performance (AGENCY)

In the CAP report, the concept of the High Performing Organization was outlined as an alternative to competitive sourcing. Unfortunately, using an HPO only to delay a formal competition is a far too narrow application of what otherwise could be an important vehicle for improving government performance. Instead, HPOs are created when the agency defines and implements a broad-based management improvement plan. Competitive sourcing is but one tool to create an HPO; HPOs are not vehicles of competitive sourcing. In contrast to the HPO concept, this report advances the idea of the ECO (Employee Conversion Organization) to convert functions into contracted performance by employees as described in Cross-cutting Recommendation #1.

“What we do to do full studies in order to get around all of the requirements is embarrassing. We need to do something better.” —Townhall participant

Recommendation #2: Allow Agencies to Keep Cost Savings from Competitive Sourcing Automatically (OMB and CONGRESS)

In past competitive sourcing initiatives, agencies have produced budget savings only to have them taken back by OMB or Congress during the Appropriations process. By not allowing agencies to keep a substantial portion or all of the savings, the existing competitive sourcing process provides little funding for reinvestment in existing programs and provides no positive incentive for undergoing competitive sourcing. Instead of allowing agencies to keep the full amount of savings during a two to three year period as some have suggested, it is better to allow agencies to share in the savings (perhaps 50%) over the five year period of performance of the contract. This would ensure that agencies do not front-load cost savings in the first few years and offset savings in the out years. Additionally, agencies should be required to use their cost savings to reinvest in employee development and other management improvement initiatives for the agency. (NOTE: An example of such a structured management improvement fund was proposed in the Government Waste Corrections Act of 2001.)

Recommendation #3: Revise the PART to Require Evidence of Performance Improvement through Competitive Sourcing (OMB)

The Office of Management and Budget is grabbing agency attention on the PMA goal for budget and performance integration by examining 20 percent of program budget requests during the '04 process using the Program Assessment Rating Tool (PART.) The PART defines some 20 questions for an agency to answer in

assessing whether it is a high-performing government program. While some of the questions relate to competitive sourcing, OMB should explicitly request that in the “Program Results” portion of the PART, the agency include an analysis—using performance measures—on how competitive sourcing has improved the program’s design or results.

“If in fact the government wins or the contractor wins, they need to know the money is there for the investment.” —Townhall participant

CAP Principle #5: Be based on a transparent and consistently applied process

Commentary: The use of a transparent and consistently applied process is key to ensuring the integrity of the process as well as to creating trust in the process on the part of those it most affects: federal managers, users of the services, federal employees, the private sector, and the taxpayers.

Recommendation #1: Create a “Competition Corps” to Assist Agencies in Implementing Competitive Sourcing Projects (CONGRESS)

A key reason why competitive sourcing initiatives have taken a long time and substantial cost to implement has been the lack of qualified, competent competitive sourcing managers within individual agencies. Moreover, because training in managing competitions is uneven, the competitive sourcing process has not been consistently applied across activities.

The Office of Management and Budget should create a “Competition Corps” of highly trained competitive sourcing managers who would be assigned to each study conducted by the agencies. Similar to the public-defender/judge roles of the justice system, the Competition Corps would assume two roles. One manager would be assigned to assist employees in the development of an MEO or ECO and another manager would serve as the independent reviewer of the proposals. The Competition Corps would be financed by a fee charged to each agency. By consolidating expertise for managing competition into a central entity, the federal government can achieve economies of scale, foster maximum competency for managing competitions, and ensure a consistently applied process government-wide. Ideally, the Competition Corps would be organized into “functional” Centers of Excellence where staff would develop specific and honed expertise in management improvement, cost calculation, performance measurement, and proposal evaluation in key commercial activities.

Recommendation #2: Create Peer Review of Appropriateness of Bid Protests (OMB)

All protests should be treated the same and all entities should have the same rights. However, under the current system, parties to competitive sourcing do not have the same rights and responsibilities. As an alternative, formal employee entities, not individuals or unions, should be given the right to protest, and only if the competition was conducted under a FAR or one-step A-76 competition.

Should an employee entity bring a protest against a competitive sourcing decision, his case would be referred at random to two members of the Competition Corps. The two members of the Competition Corps (not involved in the competition in question) would review the appropriateness of the protest by public entities.

Under this process, employee entity protests could be “sponsored” by the Competition Corps if the two chosen reviewers determine there is valid and acceptable material to support a bid protest. The government would pay the bill for the “sponsored” protests and the Corps would request a review by GAO. If the Corps deems that there is not enough valid information or material to justify a protest, then the government would not foot the bill for the protest and GAO would be requested to not consider the protest. The protest could still go through, however, but the employee entity would have to seek legal redress at its own expense. This process would reduce frivolous protests that waste time and resources.

Recommendation #3: Create the Right for Employee Bid Protest with GAO (OMB)

Consistent and complementary with the review of the appropriateness of bid protests before they proceed, the General Accounting Office should be used as the primary vehicle for adjudicating disputes, similar to the role the office plays for private-sector bid protests.

CAP Principle #6: Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals

Commentary: This principle reflects an overall concern about arbitrary numbers driving sourcing policy or specific sourcing decisions. The success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. Any FTE or other numerical goals should be based on considered research and analysis. The use of arbitrary percentage or numerical targets can be counterproductive.

Recommendation #1: Set Goals and Measure the Success of Competitive Sourcing Initiatives Based on “Cost Efficiencies” and “Performance Enhancements” (AGENCY)

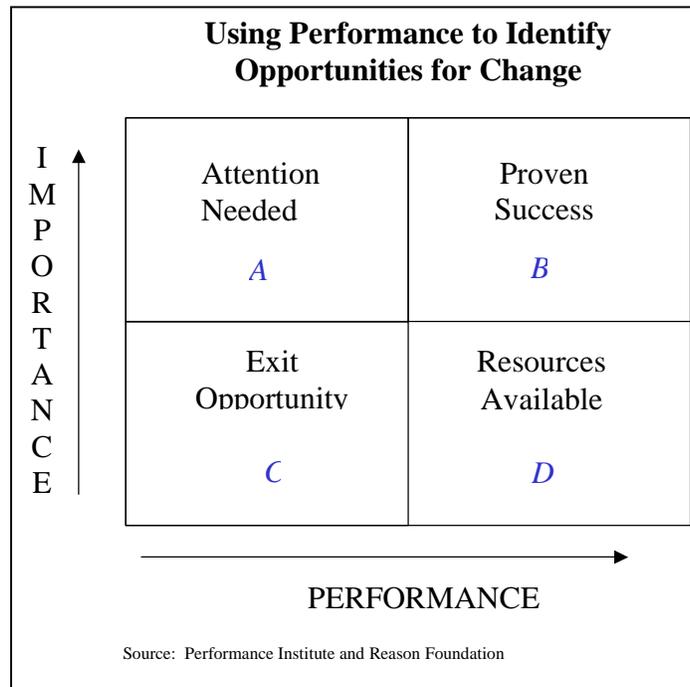
What gets measured gets done. In no way should the CAP report be interpreted to discourage the use of deliberate goals and measures. Accountability for results is a fundamental ingredient to drive management change in government. Specific targets—when supported by thorough analysis—are quite helpful. Targets should be bolstered by a business case that takes into account cost drivers, program performance deficits, changing customer needs, etc.

Recommendation #2: Prioritize Activities and Functions Scheduled for Competitive Sourcing Using a Transparent Business Model (AGENCY)

One way for agencies to identify where to begin applying competitive sourcing, and later to help decide whether to use public-private competition or direct conversion, is shown in the figure. If an agency has done a good job of analyzing how important an activity is to meeting the agency’s performance goals and also analyzed how well the activity is performing, it can plot the activity in the graph. The more important the activity is to the agency’s overall performance, the higher on the graph it is. The better the activity is performing, the farther to the right on the graph it is.

Based on which box the activity falls into, an agency can determine what opportunities for change may exist.

- A. Attention Needed**—Activities plotted here are important to the agency’s overall performance, but are not performing very well. These activities are prime candidates for competition designed to improve activity performance.
- B. Proven Success**—Activities plotted here are important to the agency’s overall performance and are performing very well. Enough said.



- C. Exit Opportunity**—Activities plotted here are not important to the agency’s overall performance and are not performing very well. The agency may choose to shift resources to more important areas after ceasing these activities and allowing the private sector to meet any demand for them.
- D. Resources Available**—Activities plotted here are not important to the agency’s overall performance but are performing very well. The agency may have resources and staff here that can deliver similar high performance in more important activities and again may choose to shift resources to more important areas after ceasing these activities and allowing the private sector to meet any demand for them.

Recommendation #3: Eliminate FTE Floors and Ceilings in Competitive Sourcing Guidance (OMB)

In deciding whether a full-scale competition is warranted versus a direct conversion, OMB guidance should not use FTE floors and ceilings as the defining criteria. FTE floors and ceilings are an arbitrary and synthetic standard and provide little business-case rationale to guide competition decisions. Instead, OMB guidance should provide agencies with complete flexibility on when a direct conversion can be used versus a full-scale competition. The easier competition is, the more likely agencies will use it as a management process rather than taking the easier route of direct conversions.

CAP Principle #7: Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles

Commentary: Competitions, including public-private competitions, have been shown to produce significant cost savings for the government, regardless of whether a public or a private entity is selected. Competition also may encourage innovation and is key to improving the quality of service delivery. While the government should not be required to conduct a competition open to both sectors merely because a service could be performed by either public or private sources, federal sourcing policies should reflect the potential benefits of competition, including competition between and within sectors. Criteria would need to be developed, consistent with these principles, to determine when sources in either sector will participate in competitions.

Recommendation #1: Use ISSAs to Bring Work Back Into the Federal Government (OMB)

Employees and their unions have often criticized competitive sourcing as not allowing the “door to swing both ways.” In other words, once an activity is outsourced, the capacity to re-compete and bring the work back into the government is lost. If truly competitive and performance-based, ISSA’s and associated ECO entities should be able to re-compete against commercial vendors and potentially win against private entities should the private entity not achieve the cost and performance expectations under its contract.

Recommendation #2: Require ISSAs to Compete Fairly...and Often (CONGRESS)

Unfortunately, the current ISSA system does not always provide for a level playing field competition against non-governmental vendors. OMB should promulgate clearer regulations to govern the cost accounting, structure, and performance evaluation of ISSA vehicles. Moreover, special set-asides and competitive advantages for ISSAs should be eliminated entirely to ensure the most fair and equitable competition.

CAP Principle #8: Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible

Commentary: This principle addresses key criteria for conducting competitions. Ineffective or inefficient competitions can undermine trust in the process. The result may be, for private firms (especially smaller businesses), an unwillingness to participate in expensive, drawn out competitions; for federal workers, harm to morale from overly long competitions; for federal managers, reluctance to compete functions under their control; and for the users of services, lower performance levels and higher costs than necessary. Fairness is critical to protecting the integrity of the process and to creating and maintaining the trust of those most affected. Fairness requires that competing parties, both public and private, or their representatives, receive comparable treatment throughout the competition regarding, for example, access to relevant information and legal standing to challenge the way a competition has been conducted at all appropriate forums, including the General Accounting Office (GAO) and the United States Court of Federal Claims.

“A lot of contractors can compete on an enterprise basis, but if you are going to fracture things into small component units, you put contractors and the government at a disadvantage, because it becomes like a PacMan diet—little snippets here and there—and nobody can intelligently and aggressively compete and know the end goal, which is the delivery of good services to the tax payer.” —Townhall participant

Recommendation #1: In Terms of Cost Calculation Methodology, Require the Use of Activity-based Costing (ABC) or Equivalent Cost Management System (OMB)

OMB has already established a PMA goal to improve financial management at all federal agencies. Consistent with this goal and the competitive sourcing program, ALL commercial activities should be supported by activity-based costing (ABC) or an equivalent costing system within three years or should be placed on the priority list for competition or direct conversion. As a requirement for public-private competition, ECOs and MEOs should submit their bids consistent with an ABC or equivalent costing system. Calculations under the ABC and associated agency financial management system should continue to be governed by full compliance with the Statement of Federal Accounting Standards No.4, "Managerial Cost Accounting Standards for the Federal Government."

Recommendation #2: Use DOD Software System for Cost Accounting (AGENCY)

The Department of Defense has developed an impressive software system to support cost calculations for competitions. To the extent possible, this system should be made available to all civilian agencies for use during public-private competitions.

Recommendation #3: Assess Risk Factors to Government Bids when Assessing Them on Private Bids (AGENCY)

Under the current A-76 process, performance risk factors are not assigned to government bids, while risk factors relating to past performance are sometimes assigned to private sector bids. In order to maintain equivalency in the competitive process, risk factors need to be determined and assessed to both the public and private sector bids, requiring a more thorough and robust technical evaluation of each bidding entity.

"All bidders treated fairly, all bidders get the same rights, all bidders have the same responsibilities. I mean that is essentially the underpinning of what the FAR is supposed to do." —Townhall participant

CAP Principle #9: Ensure that competitions involve a process that considers both quality and cost factors

Commentary: In making source selection decisions in public-private competitions: (a) cost must always be considered; (b) selection should be based on cost if offers are equivalent in terms of non-cost factors (for example, if they offer the same level of performance and quality); but (c) the government should not buy whatever services are least expensive regardless of quality. Instead, public-private competitions should be structured to take into account the government's need for high-quality, reliable, and sustained performance, as well as cost efficiencies.

Recommendation #1: Redefine the Policy Section of A-76 to Include "Performance Improvement" as a Stated Policy Objective of Competitive Sourcing (OMB)

Currently, the A-76 articulates as a policy that competitive sourcing should achieve economy and enhance productivity. This policy emphasis has led to an over-emphasis on cost containment and reductions to the

exclusion of performance improvements. OMB should clearly state that competitive sourcing should be used to “enhance performance and achieve efficiencies” and in doing so set the stage for an emphasis on best-value competitions. Moreover, to be consistent with this policy, a universal edit should be made throughout the guidance to change the term “cost comparison” to “cost and performance comparison.”

Recommendation #2: Eliminate the Specific Statutory Requirement that Competitions at DOD Focus Exclusively on Cost (CONGRESS)

At the moment, most officials believe that Congress must modify existing statutory language that requires the Department of Defense to solely examine cost during competitions. In order to be consistent with the best-value approach, Congress should modify existing statutes to provide for cost and performance competitions. However, should Congress not act, it is arguable that DOD indeed already has the ability to conduct best-value competitions if the cost evaluation is conducted on the basis of a cost-per-unit output, correlated to performance. The correlation to performance of unit costs would demonstrate cost inefficiencies. This methodology could be used to achieve best-value analysis from a cost perspective.

“I would say that Angela Styles should consider freeing up the federal work force and allow them to be very creative in the submission of their competitive bids. For example, allowing partnerships with the private sector, joint ventures with the private sector, other creative business arrangements that would allow them to basically be more competitive. Including going after a broader base of business in order to lower their costs.” —Townhall participant.

Recommendation #3: Establish a Clear Performance Framework for Each Activity Competed (AGENCY)

No competition should be conducted unless clear measures of performance are established for the activity being examined. The performance measures used during the competition phase should be included in the performance-based contract governing the winning bid.

CAP Principle #10: Provide for accountability in connection with all sourcing decisions

Commentary: Accountability serves to assure federal workers, the private sector, and the taxpayers that the sourcing process is efficient and effective. Accountability also protects the government’s interest by ensuring that agencies receive what they are promised, in terms of both quality and cost, whether the work is performed by federal employees or by contractors. Accountability requires defined objectives, processes and controls for achieving those objectives, methods to track success or deviation from objectives, feedback to affected parties, and enforcement mechanisms to align desired objectives with actual performance. For example, accountability requires that all service providers, irrespective of whether the functions are performed by federal workers or by contractors, adhere to procedures designed to track and control costs, including, where applicable, the Cost Accounting Standards. Accountability also would require strict enforcement of the Service Contract Act, including timely updates to wage determinations.

Recommendation #1: Require the Agency Inspector General to Review and Certify Achievement of Contract/MEO Savings and Performance Goals (CONGRESS)

The taxpaying public is entitled to a performance and accountability review of sourcing decisions, especially large and/or critical contracts, of the federal government after a predetermined time period. This review should be performed by an agency Inspector General to ensure that there exists no conflict of interest involved in the performance and accountability review. The results of these reviews should be made public in order to provide contract accountability to the taxpayer. When an IG function has been competed, the competition review should be conducted by the General Accounting Office. Congress should assign these review responsibilities through legislation. Understanding that not every competition can be evaluated in detail, the selection of competitions should be done at random.

Appendix A

Recommendations for Agencies

Recommendation	Page No.
Communicate the Need for Performance-based Competitive Sourcing	15
Devise a Competitive Sourcing Strategy Based On The Agency's Strategic Plan And Include It In The March 2003 Revision	16
Use Performance Measures in All Competitive Sourcing Initiatives	17
Use the Agency Human Capital Plan to Inform the Competitive Sourcing Strategy	18
Invest in Targeted Training and Professional Development for Federal Employees Undergoing or Emerging from Competitive Sourcing	18
Support Competitive Sourcing Initiatives by a Change Management Philosophy	19
See the HPO Concept in the Broadest Sense, with Competition as One Strategy for Improving Performance	22
Set Goals and Measure the Success of Competitive Sourcing Initiatives Based on "Cost Efficiencies" and "Performance Enhancements"	24
Prioritize Activities and Functions Scheduled for Competitive Sourcing Using a Transparent Business Model	24
Use DOD Software System for Cost Accounting	27
Assess Performance Risk Factors to Government Bids when Assessing Them on Private Bids	27
Establish a Clear Performance Framework for Each Activity Competed	28

Appendix B

Recommendations for Congress

Recommendation	Page No.
Create an Action-Forcing Mechanism that Would Require Transparency and Accountability for the Cost Performance of Contract Winners	14
Allow Federal Workers To Keep Pensions And Other Benefits Through Innovative Vehicles Such as an Employee Stock Ownership Plan (ESOP) and Transition Benefit Corporation (TBC)	18
Provide Incentives and Bonuses for Employees Through “Efficiency Dividends”	19
Subject Inherently Governmental Functions to Government-Government Competition	21
Allow Agencies to Keep Cost Savings from Competitive Sourcing Automatically	22
Create a “Competition Corps” to Assist Agencies in Implementing Competitive Sourcing Projects	23
Require ISSAs to Compete Fairly...and Often	26
Eliminate the Specific Statutory Requirement that Competitions at DOD Focus Exclusively on Cost	28
Require the Agency Inspector General to Review and Certify Achievement of Contract/MEO Savings and Performance Goals	29

Appendix C

Recommendations for OMB

Recommendations	Page No.
Provide a General Competitive Sourcing Framework that Creates Three Paths to Competition	11
Take a Function-based Approach to Managing Competitions	13
Reform the A-76 Process as a One Step Process	14
Change the Circular Number and Structure to Communicate Change in Approach	14
Communicate Clearly the Need for Performance-based Competitive Sourcing	15
Require Agencies to Submit Competitive Sourcing Plans with Performance Measures for Each Activity to be Competed	17
Allow for Effective Consideration of Human Capital Issues by Using a Classification System as a Foundation for FAIR Act Inventories	19
Declare as a Matter of Fact that the Determination of the Inherently Governmental or Commercial Nature of an Activity is Largely a Management Decision	20
Provide for Greater Transparency of the Categorization of Commercial and Inherently Governmental Activities	20
Require Agencies to Clearly Identify Risk Factors Relating to Commercial Performance of an Activity that Reasonably Could be Deemed Inherently Governmental and Prescribe Oversight Strategy	21
Allow Agencies to Keep Cost Savings from Competitive Sourcing Automatically	22
Revise the PART to Require Evidence of Performance Improvement through Competitive Sourcing	22
Create Peer Review of Appropriateness of Bid Protests	24
Create the Right for Employee Bid Protest with GAO	24
Eliminate FTE Floors and Ceilings in Competitive Sourcing Guidance	25
Use ISSAs to Bring Work Back Into the Federal Government	26
In Terms of Cost Calculation Methodology, Require the Use of Activity-based Costing (ABC) or Equivalent Cost Management System	27
Redefine the Policy Section of A-76 to Include “Performance Improvement” as a Stated Policy Objective of Competitive Sourcing	27

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