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General

1. GENERAL

1.1 Purpose. This document sets forth policy, responsibilities, and procedures for implementation of Office of Management and Budget (OMB) Circular A-76 revised, "Performance of Commercial Activities," and its supplement, issued by the OMB on August 4, 1983. The revised Circular A-76 and its supplement define certain policies and procedures for review of activities defined as "Commercial." The review and subsequent actions are intended to enhance quality, economy, and productivity.

1.2 Policy. The policy of the Department of the Interior, and its Bureaus and offices, is to look to the private sector to competitively obtain needed goods and services when economically feasible, rather than to establish, maintain, or expand in-house services. For the purposes of this policy, Indian and Native American Tribes, Tribal organizations and associations are considered part of the private sector. Many activities are inherently Governmental, as defined by the Circular, and remain unaffected by this policy.

1.3 Background and Scope. The Bureau of Indian Affairs (BIA) requires a cost comparison standard to determine whether operation of commercial activities should be performed under contract with private sources or in-house, using Government resources and personnel. This decision requires documentation and analyses in order to make a determination.

A. Federal policy regarding performance of commercial activities is established by OMB Circular A-76 (Revised August 1983). The Circular defines a commercial activity as "one which is operated by a federal executive agency and which provides a product or service which could be obtained from a commercial source." A representative list of such activities has been published in the Federal Register, and will be updated annually. The Circular specifies that, "Whenever commercial sector performance of a Government-operated commercial activity is permissible, in accordance with this Circular and its Supplement, comparison of contracting and the cost of in-house performance shall be performed to determine who will do the work."

B. The national policy on performance of commercial activities has been promulgated through Budget Bulletins issued in 1955, 1957, and 1960. In 1966, Circular A-76 was issued for the first time. This policy was issued with implementation guidelines, and prescribed in a permanent directive. The Circular was revised in 1967, 1979, and most recently in 1983 (Federal Register, Vol. 48, No. 159, Tuesday, August 16, 1983). This revision has increased the number of implementation guidelines from one to four parts.

C. The basic policy of the revised Circular remains unchanged. The

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Government must rely on private enterprise to provide commercial goods and services. The Government must not start or carry on any activity to provide a commercial product or service, if such can be procured more economically from the private sector. Those functions that are clearly Governmental, however, should be performed by Government personnel, and are not to be classified as commercial activities.

D. Certain commercial activities may remain within the Government for one of the following reasons:

(1) There is no satisfactory contractor source.

(2) In-house cost to provide the product or service is lower than the cost of contracting even though the work may be transferred to another Federal office.

E. When the deciding factor between in-house and contractor performance is the lowest cost, a comprehensive Cost Comparison Analysis is to be conducted to determine the provider. Anticipated benefits to the Government include:

(1) Efficient performance of existing Government organization.

(2) Enhanced productivity through measurable job standards.

(3) Precise commercial activity description for Tribal organization review and consideration, where applicable.

(4) Reduced long-range fiscal obligations when a Cost Comparison shows that a contract is cost effective.

F. The compilation of cost estimates is thus an essential part of BIA compliance with OMB Circular A-76. However, the Bureau has responsibilities that other agencies do not, specifically:

(1) BIA Trust Responsibilities. The Department of the Interior is responsible for the management of Indian resources as a Federal Trust obligation. The BIA is the primary manager of this responsibility.

(2) Self-Determination Act. Pub. L. 93-638 (see 25 CFR Subchapter M). The Bureau must allow eligible Indian Tribes and organizations to assume direct responsibility over certain programs.

(3) Buy Indian Act, 25 U.S.C. 47. The Bureau will provide the opportunity to contract to bonafide "Buy Indian" organizations as a preferential procurement source.

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G. The procedures of this document are, therefore, written to keep a balanced perspective on Circular A-76 requirements and the special responsibilities of the BIA.

1.4 Definitions. For the purposes of this document, the following definitions apply:

- A. Activity. Another name for a commercial activity.
- B. Administer. That stage of the contracting cycle in which the Contracting Officer ensures that the total contract is being followed, makes necessary changes to the contract, and ensures progress toward contract completion.
- C. Analyst. A non-contracting person charged with developing a Statement of Work and a Quality Assurance Plan; also, the person who analyzes a function to develop the required documents.
- D. Assistant Secretary. The Assistant Secretary - Indian Affairs.
- E. Bureau. The Bureau of Indian Affairs (BIA).
- F. Buy. That stage of the contracting cycle in which bids are analyzed, the proposed contractor is determined capable to perform the contract, and award is made to the successful contractor.
- G. Circular. Office of Management and Budget (OMB) Circular A-76.
- H. Commercial Activity. One which provides a product or service needed by the Government. A commercial activity may be:
- (1) Operated and managed either by a Federal executive agency or by a private commercial source for the Government.
 - (2) Part of an organization or type of work that is separable from other functions or activities, and is suitable for performance either in-house or by contract.
- I. Conversion to Contract. The changeover of an activity from Government performance to performance under contract by a private commercial source.
- J. Conversion to In-House. The changeover of an activity from a private commercial source to Government performance.
- K. Cost Comparison. The completion of an in-house cost estimate and comparison of that estimate to the total cost of contracting.

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L. Define. That stage of the contracting cycle in which the customer states what he/she wants contracted. This stage includes funding the requirement, writing the Statement of Work, and writing the Quality Assurance Plan.

M. Director. The responsible Official, Area Director, Area Education Programs Administrator, or Office Director, who has direct line authority over the commercial activity under study.

N. Economical. Refers to performance at minimum cost.

O. Effective. Compares what an activity or group of people actually does with an assigned mission.

P. Efficient. The result is achieved with as little resource consumption as possible without degradation of the required quality level of the product or service.

Q. Governmental Function. A function so intimately related to the public interest that it must be performed by Government employees. Such functions fall into two categories:

(1) The act of governing (i.e., the discretionary exercise of Government authority). Examples include investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgements, selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; and regulation of natural industry and commerce, including food and drugs.

(2) Monetary transactions and entitlements, such as benefits programs; tax collection and revenue disbursement control, accounts and money supply; and the administration of public trusts.

R. Indian Tribe. As defined by 25 CFR 271.2(h).

S. Input. Anything put into a system or process, or expended in its operation, to achieve a result or output.

T. Interface. A common boundary between two organizations or activities.

U. Job Analysis. The act of defining an activity. Job Analysis:

(1) Looks at a job being done in-house or by a contractor to determine what actually results.

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(2) Looks at organization, work functions, workload, performance levels, facilities, equipment, supplies, personnel, and resources.

(3) Is a basic analytical tool in the A-76 process.

V. Methods Improvement. The act of defining the most efficient, effective, and economical production method for an activity. Methods Improvement is a basic analytical tool in the A-76 process.

W. Organization Analysis. The act of looking at an organization to determine what kind of services it provides.

X. Output. The result, or the amount of something produced by a system or process during a given span of time.

Y. Performance Indicator. A measurable characteristic of an output of a work process.

Z. Performance Value. The combination of a standard and an acceptable quality level that is used to describe an output of a work process.

AA. Private Commercial Source. A private business, or other non-Federal activity, located in the United States, its territories and possessions, Puerto Rico, or the District of Columbia, which provides a product or service required by a Government agency.

BB. Quality Assurance. Those actions taken by the Government to check goods or services to determine that they meet the requirements of the Statement of Work.

CC. Quality Assurance Evaluator. That person responsible for checking contractor performance.

DD. Quality Assurance Plan. An organized, written document used to guide the application of systematic quality assurance methods to a given commercial activity.

EE. Quality Control. Those actions taken by a contractor to control the production of goods or services to meet the requirements of the Statement of Work.

FF. Random Number Table. A table of numbers arranged in a random fashion. A table used to make random samples.

GG. Random Sampling. A method of looking at a few individual items in a lot to determine the quality of that lot against a standard.

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HH. Review. A review of commercial activities performed to decide if a Cost Comparison needs to be done.

II. Sample. One or more service outputs drawn from a lot, the outputs being chosen at random. The number of outputs in the sample is the sample size.

JJ. Sampling Guide. The part of the Quality Assurance Plan which details all the information needed to perform a random sample.

KK. Service. A job performed to the standard and within the acceptable quality level. The contractor must do the specific job and meet the acceptable quality level for performance to be acceptable and for he/she to be paid.

LL. Source. That stage of the contracting cycle in which the contracting office prepares the bid package, finds potential contractors to do the work, and accepts bids from proposed contractors.

MM. Standard. An acknowledged measure of comparison.

NN. Statement of Work. A document that accurately describes the essential and technical requirements for items, materials, or services, including the standards used to determine whether the requirements have been met.

OO. Supplement. The Supplement to Office of Management and Budget Circular A-76 (Revised August 1983).

PP. Surveillance Plan. An organized written document used for quality assurance surveillance. The document is part of the Quality Assurance Plan, and contains sampling guides, checklists, and decision tables.

QQ. System. A group of interacting, interrelated, or interdependent elements forming a collective entity.

RR. Tree Diagram. A visual representation of the major functions performed by a system, which shows logical parts and subparts.

SS. Tribal Organization. As defined by 25 CFR 271.2(r).

TT. Work. A series of actions, changes, or functions that brings about an end result.

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2. RESPONSIBILITIES

2.1 General. Primary responsibility for the implementation and management of the A-76 program is vested with the Assistant Secretary - Indian Affairs. Line officials, such as Area Directors and Agency Superintendents, have been delegated major responsibilities to manage and conduct A-76 studies for programs under their authority.

2.2 Assistant Secretary - Indian Affairs. In addition to having overall responsibility for implementing and managing the A-76 program, the Assistant Secretary also has responsibility for certain other operational functions, as follows:

A. Inventory Approval. The Assistant Secretary shall approve the inventory of Bureau programs designated as commercial activities, in accordance with OMB Circular A-76; also the additions and/or deletions of activities from the inventory.

B. Designation of Central Office Responsibility. The Assistant Secretary will designate the Bureau Official who will have the responsibility: to oversee the program; to act as the central point of contact; and to coordinate the Bureau-wide A-76 effort.

C. Approval of Study Results. Upon completion of the Management Study, the Statement of Work (SOW), and the Quality Assurance Plan (QAP), the responsible Director will certify that the studies represent the most efficient, effective, and economical operation practical. The Assistant Secretary shall review the decision, and, if appropriate, concur in the decision made.

D. Termination of Studies. Should the Director recommend termination of any studies for any reason, including those resulting from Tribal Review, the Assistant Secretary must concur in such recommendations before they are invoked.

E. Approval of A-76 Policy Modification. The only Bureau authority that can make exceptions to the A-76 Study process, as presented by this document (policy), is the Assistant Secretary. Waivers of this process can be granted by the Assistant Secretary.

2.3 Area and Central Office Directors. Area and Central Office Directors have primary responsibility for implementing and operating the A-76 Study process, as mandated by the programs under their jurisdiction.

A. Appointment of A-76 Coordinator. Each Director shall assign the responsibility of A-76 Coordinator to a staff member who will be in a position to represent the Director in all A-76 activities.

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B. Review of Program and Notification of Results. The Director shall be required to actively review Bureau programs to determine which programs or parts of programs meet the criteria presented by the Circular as commercial activities. When formal approval of a particular A-76 Study is issued by the Assistant Secretary, the Director shall notify all concerned employee organizations and tribal organizations.

C. Appointment of Study Group. The appropriate Director shall appoint the Bureau staff to perform the required study either through the use of in-house or contractual resources. The Study Group Chairperson will formally notify the responsible Director when the A-76 Study process has reached the Tribal Review requirement.

D. Determination of Tribal Review Requirement. Upon receiving the Tribal Review notification, the Director has ten working days to determine if a review of the A-76 Study results is required with the appropriate tribe and/or tribal organizations. If the Director determines that such is required, a formal notification will be presented to the Study Group Chairperson.

E. Approval of A-76 Study Results. The responsible Director's approval of the completed A-76 Study is mandatory prior to its submittal to the Assistant Secretary for review and approval.

2.4 Central Point of Contact. The Deputy Assistant Secretary - Indian Affairs has appointed an A-76 Coordinating Committee, located at the Central Office in Washington, D.C. The Committee has overall responsibility for the A-76 process implementation, oversight of all A-76-related activities, and the coordination of all A-76 activities.

2.5 The A-76 Coordinator:

A. Provides support to the Director in determining the scope and content of the applicable Cost Comparison Analysis studies.

B. Provides the interface role between local staff resources and the resource actually fulfilling the study responsibilities.

C. Works closely with the Director and the management staff to ensure that a sound basis for communication is established and maintained between the Director's staff, the Study Group, and the study resource.

D. Serves as liaison between the Director and the Central Office A-76 Committee in terms of status of studies, and may serve as a Study Group Chairperson and/or Study Group member, as required.

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2.6 A-76 Study Group. The Circular recommends that all A-76 studies be performed under the leadership of a Study Group. Whether the study is being performed by contract resources or through the use of in-house resources, the role of the Study Group remains the same.

A. Each study will be performed under the guidance of a qualified Study Group of three to five members. One of the group members must be designated as the Chairperson.

B. The Study Group has complete responsibility for the A-76 study process, which includes the requirement to ensure that all parts of the study are completed. The Study Group does not have the authority to waive any portion of the A-76 study process for any reason.

2.7 Area Contracting Offices. The OMB Circular A-76 process is not a contracting process, but rather an analysis and cost comparison process.

A. The authorities of the Area Contracting Officer are not changed by the Circular, nor are the contracting rules or procedures.

B. The Area Contracting Officer will be provided support documentation and service requirements for contract requests, according to the requirements applying to existing contracting procedures.

2.8 Contracting Firms. The role of a contract firm is not altered by the A-76 process. A contract issued by the Bureau that has resulted from an A-76 study will be no different than a contract issued for any other purpose.

2.9 Tribal Organizations. The Bureau has a unique responsibility to tribes and/or tribal organizations. The Bureau's approach to the requirements of OMB Circular A-76 includes a distinct effort to consult with eligible tribes affected by the commercial activity under study, and to consult on the decisions made by the Bureau Director during the Tribal Review process. The Tribal Review process is mandatory and will be addressed as a part of all A-76 studies conducted by the Bureau.

2.10 Employees and Employee Organizations. It is intended that the scope and purpose of each A-76 study by the Bureau be an open and straight-forward process.

A. To the extent feasible, the Bureau will allow employees and employee organizations to provide information concerning the most efficient and effective operation for management consideration.

B. The employees and employee organizations are not responsible for selecting programs for A-76 determinations or for conducting the requisite

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studies. They are, however, encouraged to provide information on the current processes, and recommendations for increased efficiency and effectiveness, to ensure accuracy and reflect the current and proposed program correctly.

2.11 Public Sector. The A-76 process requires the use of the Federal Register as the means of informing all concerned parties of commercial activity determinations.

2.12 Announcements Period. Bureau announcements concerning A-76 commercial activity selections and study decisions and/or determinations will be released through the Bureau's Public Information Office, located in the Central Office, Washington, D.C.

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3. SPECIAL CONSIDERATIONS

3.1 General. The BIA has a unique responsibility to Indians to administer the trust obligations of the United States, and, at the same time, to respond to a strong expression of Indian people for self-determination. To meet this obligation, Public Law 93-638 requires an orderly transition from Federally-administered programs and services to tribal control through effective and meaningful Indian participation.

A. Any Indian tribe or tribal organization(s), according to 25 CFR 271.2(h) and (o-r), can therefore request that the Secretaries of the Departments of Interior, Education, and Health and Human Services enter into contracts with the tribe or tribal organization(s). In such contracts, the Indian tribe or tribal organization(s) plans, conducts, and administers Indian programs and services, if the tribe or tribal organization(s) can show responsibility and responsiveness to perform satisfactorily. Such contracts may be negotiated without advertising, if authorized by the appropriate Secretary.

B. Title 25 U.S.C. 4.7 states, "So far as may be practicable, Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market at the discretion of the Secretary of the Interior."

C. The regulations pertaining to Pub. L. 93-638, 25 U.S.C. 4.7, and the policies of OMB Circular A-76 are congruous and support each other in the following areas:

(1) Bureau preferential procurement programs, "Buy Indian" and "Self Determination", are permissible source programs under the Circular. The provisions of Pub. L. 93-638 and 25 U.S.C. 4.7 can be used with the Circular review process and to develop contracting actions plans. Periods of contract performance stated in the Circular and in Pub. L. 93-638 are consistent.

(2) The Circular would not be applicable if contrary to either Pub. L. 93-638 or 25 U.S.C. 4.7.

(3) The analysis effort required by the Management Study and the Statement of Work preparation provides an excellent work scope for tribes, tribal organizations, and "Buy Indian" firms (as well as any other contractor) to respond to when seeking to contract with the Governments.

D. Both Pub. L. 93-638 and 25 CFR Subchapter M are considered part of this document by reference.

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3.2 Personnel Considerations. A vital aspect of the application of the Circular is the treatment of personnel employed by an existing in-house commercial activity.

A. Activity personnel must be treated equitably, fairly, and with dignity.

B. In addition to the notification that a given commercial activity will undergo a Cost Comparison Analysis, Activity Management should encourage employees to help in determining the most efficient, effective, and economical organization methods during the Management Study. Personnel interviews are designed to achieve this goal by considering:

(1) Functions that currently operate well.

(2) Functions that could be improved based on the experience of activity employees.

C. Learning first-hand what is efficient and inefficient within a commercial activity will greatly aid the Study Group members in determining how methods are to be improved. The in-house cost estimate should, to the extent possible, be based on details suggested by the employees.

D. When an in-house activity is to be converted to contractor performance, the Circular requires contractors to give qualified, displaced Federal employees the right of first refusal for job openings on the contract. Such a requirement will be placed into each contract for program operations. The personnel departments responsible for the commercial activities involved will be included early in the A-76 Study process. If the decision is made to contract, affected activity employees are identified for release from their competitive level, in accordance with 5 CFR 351 and Title 5 U.S.C. 35.

E. The BIA will exert maximum effort to find suitable positions in the same field for affected employees, including:

(1) Giving them priority consideration for available positions within the BIA.

(2) Establishing reemployment priority lists and a positive placement program.

(3) Paying reasonable costs for training and relocation that contribute directly to placement.

(4) Coordinating with the Office of Personnel Management (OPM) and the Department of Labor to ensure that affected employees have access

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to Government-wide placement programs, including the OPM-operated Displaced Employees Program, and the Department of Labor-operated Federal Employees Reemployment Registry.

(5) Advising affected employees that they have the right of first refusal for employment on the contract in positions for which they are qualified, and assisting them in applying for such employment.

3.3 Review Process. In support of the special responsibilities placed on the BIA by Pub. L. 93-638, the A-76 study process is unique, in that it includes measures designed to consult with eligible tribes and inform affected tribal organizations of the study findings before final decisions are made. This process is further described in Section 4.7.

3.4 Privacy and Security. All the information collected and included in a given Cost Comparison Analysis is restricted and confidential, until the final contracting decisions are made. Mark it "SENSITIVE." The Circular specifically states that the "confidentiality of all cost data, including contract price, must be maintained to ensure that Government and contract cost figures are completely independent." This applies to the review and evaluation of Cost Comparison Analysis by tribal organizations, as required by 25 CFR Subchapter M (Pub. L. 93-638). However, upon completion of the study, and after all the final decisions are made, all documents become public property, releasable under the Freedom of Information Act, except where such information meets the criteria of specifically exempted items under the Act.

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4. THE A-76 PROCESS

4.1 General. OMB Circular A-76 established Federal policy regarding the Government's operations of commercial activities. The Circular and its Supplement are considered part of this document by reference, and need to be read comprehensively.

A. Circular Is Supplemented. For purposes of administration of the A-76 program within the Bureau, the Circular is supplemented by:

- (1) Overall implementation instructions.
- (2) Supplement to OMB Circular A-76, dated August 1983.

B. Commercial Activity. The Circular applies to four categories of commercial activity:

- (1) Existing in-house commercial activities.
- (2) Expansion of existing in-house activities.
- (3) New requirements for commercial activities.
- (4) Existing contracts.

C. Procedure.

(1) The A-76 process is initiated by preparing an inventory list and a review schedule for in-house commercial activities, contracts, and new requirements. A Cost Comparison Analysis is not directed for each activity on the list, but only for those activities that meet certain criteria, as set forth in step-by-step instructions of Part I of the Circular.

(2) Once a Cost Comparison is directed by the Bureau, the appropriate Director develops a schedule and Milestone Chart. The appropriate Director formally notifies the Assistant Secretary of the study and identifies members of the Study Group. The Management Study is begun first, with the goal of developing the most efficient, effective, and economical operation possible. The study emphasizes the best method for Government performance of the activity. Techniques such as Job Analysis and Methods Improvement are employed to achieve these results (See 4.4D).

(3) Three steps begin shortly after the Management Study starts and progress concurrently. These steps are under the direction of the study group and are:

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(a) Preparation of a performance Statement of Work, that must clearly state what is to be done without prescribing the method.

(b) Preparation of a Quality Assurance Plan to describe how the work results will be measured.

(c) Notification of the employees involved and initiate requests for assistance from them. For studies involving activities covered by a labor agreement the union shall be notified of the initiation of the study and invited to provide recommendations and suggestions to enhance the efficiency and effectiveness of the program.

(4) The Management Study, Statement of Work, and Quality Assurance Plan, which comprise the Tribal Review Package, are then required to undergo an informal review and formal approval, before the Management Study is certified. The Tribal Review package will then be presented to the responsible Director, who will perform the Tribal Review.

(5) If the responsible Director formally acknowledges that the commercial activity is not subject to the provisions of 25 CFR Subchapter M, a document subtitled "The Contracting Actions/Acquisition Plan" is prepared. The solicitation is then announced in the Commerce Business Daily, after which both an in-house cost estimate and contractors' offers are prepared.

(6) The in-house cost estimate is prepared by the Study Group, using the Statement of Work, the Quality Assurance Plan, and the Management Study. The Management Study forms the basis for the Statement of Work and in turn allows the Bureau to make decisions concerning the most efficient organization. Both Government and commercial cost estimates must be based on the same scope of work and standards of performance.

(7) The in-house estimate is delivered only after independent review. The review is to ensure that in-house costs have been estimated and supported, in accordance with the provisions of the Circular.

(8) After receipt by the Contracting Officer of the in-house estimate, and after completion of the comparison, the results are announced, and a period for tribal organizations, public review, and resolution of appeals is provided. After this period, the final decision to perform the activity in-house or by contract is announced, based on the final results.

D. Cost Margins.

(1) Cost margins have been established by OMB Circular A-76 that must be exceeded before:

(a) Converting an in-house activity to contract.

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(b) Converting an expansion of an in-house activity to contract.

(c) Performing a new requirement commercial activity in-house.

(d) Converting a commercial activity from an existing contract to in-house performance.

(2) The cost margins are listed in the Circular, along with how they are applied and reasons for applying them. There are two cost margins equal to:

(a) Ten percent of in-house personnel-related costs.

(b) Twenty-five percent of acquisition costs of new capital assets.

(3) Once the cost margin(s) have been added to contract performance costs (for existing in-house activities) or to in-house performance costs (for expansions, new requirements, and existing contracts), the entity with the lowest adjusted costs will be awarded the commercial activity.

E. Contract Type. There are different types of contracts that can be awarded. One purpose of the Contracting Actions/Acquisition Plan is to specify the contract type. The contract type will influence the format when preparing the solicitation. The contract type will also result in different intermediate steps by the responsible Contracting Officer, after receipt of contractors' offers and the in-house estimate.

4.2 Annual Review of Commercial Activities.

A. The purpose of the tasks in this step are to review commercial activities:

(1) Existing BIA activities and expansions.

(2) New BIA requirements.

(3) Existing BIA contracts.

B. The BIA compiles an inventory of all of the commercial activities which it operates. When the Bureau has completed the initial tasks specified by the Circular, a determination is made that these activities are not a Government function and are eligible for study as commercial Activities.

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C. A date is listed for reviewing each activity and deciding if it should be performed in-house, by contract, or if a Cost Comparison Analysis is required to make this decision.

D. The Circular applies to certain categories of activities. Others, particularly those that are governed by Indian preferential procurement rules, may be contracted without performing a Cost Comparison Analysis.

E. A Cost Comparison Analysis shall be performed for:

(1) Activities with more than ten full-time employees not subject to military readiness, medical concerns, and unavailable contracting sources, and for which a Cost Comparison is not waived by the Bureau.

(2) Activities with less than ten full-time employees for which contract costs might be unreasonable, as recommended by the Director and approved by the Assistant Secretary.

F. All reviews of commercial activities are to commence immediately, and all Cost Comparison studies are to be finished by September 30, 1987.

4.3 Project Initiation. When a commercial activity review schedule is set, the responsible Director shall be formally notified. The Director shall then:

A. Inform concerned tribal officials and/or tribal organizations.

B. Determine how the study is to be conducted:

(1) Milestones necessary to achieve the study objectives.

(2) Locations to be studied.

(3) How the studies will be "packaged."

(4) If full management studies are required at any location.

(5) If contract support is necessary to conduct the study or to perform the Cost Comparison Analysis.

C. Appoint an appropriate Study Group, and assure the completion of contractual documents, if such are necessary.

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4.4 Management Study. For existing in-house commercial activities and expansions, Management Study procedures shall be used. The Management Study shall accomplish the following:

A. The study shall determine what organization structure, staffing, and operating procedures will result in the most efficient, effective, and economical in-house performance of the commercial activity.

B. The study will include the following tasks:

- (1) Determine the organization and mission of the commercial activity.
- (2) Draw a tree diagram, and use a standard numbering system.
- (3) Perform a Work Analysis.
- (4) Perform a Workload Analysis.
- (5) Perform a Facility Analysis, Material Analysis, and Equipment Analysis.
- (6) Perform a Personnel Analysis.
- (7) Perform a Value Analysis.
- (8) Perform a Governing Directives Analysis.
- (9) Interview activity personnel on the detailed requirements of each function.
- (10) Perform Methods Improvement.
- (11) Prepare a draft of the Management Study Report.
- (12) Publish the Management Study Report.

C. The study will reflect the best efforts of the commercial activity to improve operations in the area under study. Emphasis must be on:

- (1) Defining the mission of the activity.
- (2) The best way of doing it (Methods Improvement), with the least consumption of resources. This may:
 - (a) Require changing procedures, revising paper flow,

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restructuring the organization, reconfiguring facilities, changing equipment positions, eliminating or downgrading, and other techniques.

(b) Result in reduced manpower requirements, by consolidating organizations, activities, or functions, eliminating unnecessary supervision/functions/tasks, decreasing the number of supervision levels, and/or reducing clerical and other support positions. If the Management Study identifies a need for fewer people in an activity, areas supporting the activity should be investigated for reduced requirements.

D. The study will be performed using two major analytical methods: Job Analysis and Methods Improvement.

(1) In Part III of the Supplement, Job Analysis is presented as a new technique to develop and write Statements of Work. The tasks of Job Analysis actually apply from the beginning of the Management Study until a Cost Comparison Form (contained in Part IV of the Supplement) is completed. The tasks develop both what is produced by an activity and how it is produced.

(2) Job Analysis is used first to define the current activity. These tasks are again used during Methods Improvement to define the most efficient, effective, and economical production method. If the current production method is best, the results of Job Analysis and Methods Improvement will be identical.

(3) The initial collection of data produces information for in-house cost calculations. In-house performance costs include personnel, material and supply, facility, and equipment costs. The Study Group must be aware of how to calculate final in-house costs, or it may arrive at a cost estimate without enough data to calculate the actual costs.

(4) Job Analysis is used for existing in-house activities and expansions, and for new requirements and existing contracts. Separate tasks have been developed to explain the differences involved in applying Job Analysis to preliminary informal reviews, new requirements, and existing contracts. These tasks are:

(a) Preliminary Informal Review Analysis.

(b) Job Analysis for New Requirements.

(c) Job Analysis for Existing Contracts.

(5) For the remainder of the Cost Comparison Study:

(a) In the Statement of Work and solicitation steps, the description of the work, but very little of the method of performing it, is used.

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(b) Both the description and the method for performing the work are used when the in-house cost estimate is prepared.

(c) The tasks identified in the Job Analysis are used before and after interviewing staff in the field, and again during Methods Improvement and the analysis phase of the Statement of Work.

4.5 Performance Statement of Work. A performance Statement of Work (SOW) is the BIA's accurate, documented description of essential services, technical requirements, and performance standards for a commercial activity that is to be performed in-house, put under contract, or is already under contract. The SOW must clearly state what is to be done without prescribing how it is to be done.

This step describes how to develop and write a performance Statement of Work.

A. The tasks are:

- (1) Analysis Phase.
- (2) Prepare the Deduct Analysis.
- (3) Write an Outline.
- (4) Write the Statement of Work.
- (5) Publish the Statement of Work.

B. The in-house, private contractor or other Government Agency cost estimate must be based on the same scope of work and standards of performance that are included in the Statement of Work. The SOW, therefore, must be well written, identifying and stating requirements so that minimum requirements are accurately stated. If not stated clearly, several interpretations of the requirements could result, defeating the purpose of the Cost Comparison Analysis.

C. The Government policy in service contracting is as follows:

- (1) The SOW for a service contract includes the standards of performance and acceptable quality levels.
- (2) Standards must be measurable.
- (3) Quality control is a contractor responsibility.
- (4) A SOW must not contain detailed procedures unless absolutely necessary. Rely on a statement of the required services as an end product.

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(5) Keep references to BIA directives in the SOW to a minimum.

(6) The surveillance plans described in this document are an acceptable way of performing quality assurance.

(7) If practical, the most qualified persons available should be assigned to provide basic information.

D. The SOW and attendant Quality Assurance Plan must first undergo analysis, then are written. The previous steps in Job Analysis were carried out to write a SOW and a surveillance plan, and if done properly, should make writing both easy.

E. Neither task is truly independent; what is written into the SOW influences what is put into the surveillance plan. Likewise, the surveillance plan will force the writer to make sure that outputs and procedures in the SOW are measurable.

F. Writing the SOW consists of:

(1) Expressing the contract-desired output in clear, simple, concise, and legally enforceable terms. In determining what level of detail to include in the SOW, the analyst must consider whether to quote from a mandatory regulation or to refer to it.

(2) Using a format that presents the specific tasks in an easily understood manner.

(3) Determining what exhibits will help convey to the contractor the job that needs to be done.

4.6 Quality Assurance Plan. The Quality Assurance Plan is an organized, written document, used to guide the application of systematic quality assurance surveillance methods to a given commercial activity.

A. General.

(1) The surveillance is performed by a quality assurance evaluator.

(2) The Quality Assurance Plan:

(a) Contains a performance requirement summary, sampling guide, checklists, decision tables, and instructions for the evaluator.

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(b) Assumes that the contractor is responsible for managing and controlling the output of service.

(c) Seeks to determine if contractor-provided service meets specified quality standards.

(d) Includes sections for key performance indicators, information sources, surveillance tools, and surveillance duties.

B. Key Performance Indicators. The Job Analysis phase identifies many performance indicators, not all of which are critical to the service being provided. Performance requirements should be the same for contractors as those required for Federal employees of the program under study.

C. Information Sources. Plans may use many sources of information, such as existing management information systems, customer complaints, and random sampling, among others.

D. Surveillance Tools. The writer of the Quality Assurance Plan has many tools:

(1) Sampling Guide. The sampling guide is a written procedure which states what will be checked, the standard of performance, and how the checking will be done. By sampling a small part of the total service in a random fashion, the evaluator can accept or reject the service, based on the standard.

(2) Decision Tables. When a service is rejected, a decision must be made as to whether the contractor or the Government is at fault. A decision table is used for this purpose. The decision table identifies different kinds of unsatisfactory performance, probable cause factors, and the things from which these factors could result.

(3) Checklist. Checklists are used to record what has been checked by a sampling guide, and to record information on contract items not covered by sampling.

E. Surveillance Duties. The final section of the Quality Assurance Plan describes the conduct of the surveillance; that is, using the written surveillance plan on a current basis.

(1) In the actual surveillance, random samples are drawn, and schedules of quality assurance inspections are made. Contractor discrepancies are documented and corrective action taken. If appropriate, money is deducted from a contractor's payment by the Contracting Officer.

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(2) When the output by the contractor is based on a performance specification, the contractor develops the work procedure.

(a) The Government looks at the procedures only on an exception basis, since producing the output as specified in the contract normally indicates that the contractor is using satisfactory procedures.

(b) The Government becomes concerned only when services are not adequately performed. When this occurs, the inspector must look beyond the services provided to determine if the problem is caused by the Government or the contractor. If Government-furnished items, such as parts, equipment, or facilities, are at fault, the contractor is told to take corrective action.

4.7 Tribal Review. A Tribal Review may be required for each study. To make the determination, special procedures shall be followed:

A. The responsible Director will be formally notified by the Study Group Chairperson when the study has reached the Tribal Review stage.

B. The Director shall have ten working days to make the determination as to whether or not Tribal Review is required. Based on the Director's determination, the following will result:

(1) Tribal Review not required. The study process will continue as if the requirements of P.L. 93-638 were not a factor.

(2) Tribal Review required. The Study Group Chairperson will compile the Tribal Review Package, comprised of A-76 study findings and BIA financial data. The responsible Director will receive the Package, and will have 45 calendar days to conduct the Review. The Director will inform the Study Group Chairperson, once the Review has been completed, that the determination is to:

(a) Continue the A-76 Study through to completion.

(b) Terminate the A-76 Study. If this is determined, the written concurrence of the Assistant Secretary - Indian Affairs is mandatory.

4.8 Contracting/Acquisition Plan. The contracting process is a vital part of the Cost Comparison Analysis and the A-76 process.

A. Tasks. The tasks in the Contracting/Acquisition Plan are to:

(1) Consider consolidation advantages and guidelines.

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(2) Specify the type of contract to be considered for the commercial activity involved in the Cost Comparison Analysis.

(3) Prepare any necessary documentation for consideration of waivers of Federal preferential procurement policies or limited source provisions.

(4) Prepare procedures to take formal action against the contractor for unsatisfactory performance.

(5) Determine the contract administration manpower level.

B. The Area Contracting Office or Central Office Contracting and Grants Administrative Staff. The primary responsibility for these tasks rest with either the Area Contracting Office or Central Office Contracting and Grants Administrative Staff. The contracting office servicing the Director conducting the study, has primary responsibility for the above tasks. The appropriate contracting office:

(1) Is the means of securing a contract and enforcing its provisions.

(2) Provides the necessary authority and technical experience in contracting to make the contract a workable document.

(3) Finalizes any consolidations considered, develops contracting plans, and determines the contract administration level.

C. The Contracting Officer. By law, only a warranted Contracting Officer may execute a contract, and may direct a contractor.

4.9 In-House Cost Estimate. This section explains how to prepare the in-house cost estimate for a commercial activity undergoing a Cost Comparison Analysis. The in-house cost estimate requires the following:

A. Determination of the cost of performing the commercial activity. The estimate involves the expertise of many functional and staff offices, several of which are represented on the Study Group. To ensure that the best and most accurate cost estimate is prepared, the Study Group may consult with the Office of Financial Management, Office of the Solicitor and other staff functions, as needed.

B. Preparation using the SOW that appears in the contract solicitation. This ensures an equitable Cost Comparison Analysis, when all significant identifiable costs that would be incurred by the contractor or in-house are included.

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C. Review by an impartial independent reviewer, to ensure that it was prepared in accordance with Part IV of the Supplement to the Circular. The reviewer determines that the estimate is current, accurate, and complete. It is then sealed, and submitted to the Contracting Officer by the required submission date for bids or proposals. The confidentiality of both in-house estimate and bid/proposal prices is maintained, to ensure that they are completely independent.

D. Inclusion of the following classifications:

(1) Direct Costs. Those specifically attributable to the program under study. This includes personnel costs, material and supply costs, depreciation, rent maintenance and repair, insurance, and utilities. Travel costs can also be included, if specifically related to the program under study.

(2) Indirect Costs. Those which are overhead in nature and are partially assignable to the program under study.

(3) Other Costs. Other costs specifically attributable to the cost of performing the A-76 Studies or completing the evaluation.

E. Different procedures for calculating costs for expansions, new requirements, and existing contracts than those used for existing in-house commercial activities:

(1) Identification of new or increased costs.

(2) Cost of capital on additional assets.

(3) One-time conversion costs.

(4) Minimum cost differentials.

4.10 Cost Comparison Analysis. The major goal of the Cost Comparison Analysis is to conduct a comprehensive and valid comparison of the estimated cost to the Government of acquiring a product or service by contract or providing it with in-house personnel and resources.

A. The general policy of the Government is to rely on private sources to supply the products and services it needs, when it is more economical to do so. A Cost Comparison Analysis must be fair, reasonable, and consistent.

B. After a Cost Comparison Analysis is made, the Contracting Officer determines the results.

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4.11 Announce Cost Comparison Analysis Results.

A. Under a Decision to Contract.

(1) Formal Advertised Procurement. Announce the results, subject to an evaluation of the bids for responsiveness and responsibility, and resolution of request for review.

(2) Make Documents Available. Upon request, make the Cost Comparison Analysis available for public review. The abstract of bids, the complete Cost Comparison Analysis, and detailed supporting data relative to the in-house cost estimate are made available to interested parties for review.

(3) Finalize Documentation. Conduct pre-award survey, if necessary, and completely document BIA and contractor responsibility. Perform best and final review.

(4) Complete Final Evaluation. If the selected bidder is other than the previously announced apparent low bidder, the Study Group Chairperson must revise the Cost Comparison Analysis.

B. Under a Decision to Perform either In-House or by Contract.

Each Contracting Officer establishes an informal administrative procedure to resolve appeals from directly affected parties who question the determination between contract and in-house performance. The appeal procedure will apply only to decisions from Cost Comparison Analyses. It will apply to questions concerning:

(1) Establish Administrative Procedures. Award to one contractor in preference to another, the Government's decisions relating to its performance requirements, or to organizing and staffing in-house activities for efficient performance, cannot be the subject of an appeal.

(2) Establish Appeal Procedures. Within the framework of Part IV of the Supplement, an informal appeal process is established by the Director for each A-76 study. The procedure must be independent and objective, and provide for an expeditious decision (within 30 calendar days of receipt of the appeal) by an impartial official at a level organizationally higher than the official who made the original decision.

C. Process Appeals As Required. To be eligible for review under Agency appeals procedures, an appeal must meet certain criteria:

(1) It must be received by the Agency, in writing, within 15 days of the date supporting documentation is received by the appellant.

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(2) It must address specific line items on the Cost Comparison Form (Part IV of the supplement) and set forth the rationale for questioning those items.

(3) The appeal must demonstrate that its result may change the Cost Comparison decision.

D. Cancel the Solicitation. The Contracting Officer cancels the solicitation in accordance with existing procurement regulations. For activities already in the contract, the existing contracts will be allowed to expire (options will not be exercised). If the required fulltime employees accommodate BIA's personnel limitation, a request will be submitted to OMB in conjunction with the annual budget review.

E. Implement the Management Study Results. The Director must initiate the most efficient, effective, and economical program, as determined by the Management Study. Implementation of the estimate must be started within 30 days after the Cost Comparison Analysis decision is announced and must be completed within one year. The Quality Assurance Plan developed to monitor contractor performance should be used to monitor in-house performance. Regardless of who does the job quality must be maintained and schedules set.