

§ 169a.10

from Government agencies such as the Small Business Administration.

(B) Where the availability of commercial sources is uncertain, the DoD Component will place up to three notices of the requirement in the *Commerce Business Daily* (CBD) over a 90-day period. (Notices will be in the format specified in FAR, 48 CFR part 5 and part 7, subpart 7.3) When a bona fide urgent requirement occurs, the publication period in the CBD may be reduced to two notices, 15 days apart. Specifications and requirements in the notice will not be unduly restrictive and will not exceed those required of Government personnel or operations.

(ii) Use of a commercial source would cause an unacceptable delay or disruption of an essential program. In-house operation of a commercial activity on the basis that use of a commercial source would cause an unacceptable delay or disrupt an essential DoD program requires a specific documented explanation.

(A) The delay or disruption must be specific as to cost, time, and performance measures.

(B) The disruption must be shown to be a lasting or unacceptable nature. Temporary disruption caused by conversion to contract is not sufficient support for the use of this criteria.

(C) The fact that a DoD commercial activity involves a classified program, or is part of a DoD Component's basic mission, or that there is the possibility of a strike by contract employees is not adequate reason for Government performance of that activity. Further, urgency alone is not an adequate reason to continue Government operation of a commercial activity. It must be shown that commercial sources are not able, and the Government is able, to provide the product or service when needed.

(D) Use of an exemption due to an unacceptable delay or disruption of an essential program shall be approved by the DoD Component's central point of contact office. This authority may be redelegated.

(3) *Patient Care.* Commercial activities at DoD hospitals may be performed by DoD personnel when it is determined by the head of the DoD Component or his designee, in consultation

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with the DoD Component's chief medical director, that performance by DoD personnel would be in the best interest of direct patient care.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29208, July 1, 1992]

§ 169a.10 Contracts.

When contract cost becomes unreasonable or performance becomes unsatisfactory, the requirement must be resolicited. If the DoD Component competes in the resolicitation, then a cost comparison of a contracted CA shall be performed in accordance with part III of the Supplement to OMB Circular A-76 (Office of Federal Procurement Policy pamphlet No. 4)⁶, part II of the Supplement to OMB Circular A-76 (Management Study Guide)⁷, part IV of the Supplement to OMB Circular A-76 (Cost Comparison Handbook)⁸, if in-house performance is feasible. When contracted CAs are justified for conversion to in-house performance, the contract will be allowed to expire (options will not be exercised) once in-house capability is established.

[57 FR 29208, July 1, 1992]

§ 169a.11 Expansions.

In cases where expansion of an in-house commercial activity is anticipated, a review of the entire commercial activity, including the proposed expansion, shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or because it is in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, a cost comparison of the entire activity shall be performed. Government facilities and equipment normally will not be expanded to accommodate expansions if adequate and cost effective contractor facilities and equipment are available.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29208, July 1, 1992]

⁶ See footnote 3 to § 169a.1(a).

⁷ See footnote 3 to § 169a.1(a).

⁸ See footnote 3 to § 169a.1(a).