

CHAPTER 3

CONDUCT OF COMMERCIAL ACTIVITIES STUDIES

Section I. General Information

3-1. Introduction. Commercial activities (CA) studies establish the relative costs of in-house and contract performance of existing or proposed CAs. When responsive bids are received from responsible private sources, the results of the costs comparison concluding each study will dictate the decision to continue or change the method of performance. Therefore, before beginning a CA study, the process outlined in Chapter 2 must be performed to determine if only one method of performance is proper. If it is, then that method is continued. If it is not necessarily the only method that can be used to accomplish the function in question, then a CA study must be undertaken to determine whether the required products or services will be provided by either an in-house work force or a private contractor.

3-2. Conditions Requiring the Conduct of CA Studies. A CA study will be conducted when:

a. Conversion of an existing in-house CA either wholly or partially DOD-funded has been proposed for any reason but was not approved by the ASA(I&L) (see AR 5-20 dated 20 October 1986, paragraph 4-26 for guidance on DOD-funded activities), and the total number of civilian employees is fewer than 45 (pure DOD funded) or fewer than ten (mixed funded); or

b. Conversion to contract performance was proposed but was not approved by the FOA Commander where the CA is staffed with ten or fewer civil works-funded civilians; or

c. An analysis of an existing in-house activity determines that no compelling noncost reasons exist for in-house performance; or

d. An analysis of an existing contract reveals that in-house performance may be less costly to the Government than performance by any available commercial source (see Chapter 2 and paragraph 3-11); or

e. An evaluation of a proposed expansion of an in-house activity finds that no compelling noncost reasons exist for in-house performance of the expanded activity; or

f. In-house performance of a new requirement is feasible and may be less costly to the Government than any available commercial source; or

g. The fifth fiscal year arrives after the final decision in the first study. Another CA study may be made earlier than the fifth fiscal year if in-house performance is no longer cost effective because of changes in missions, workloads, or the commercial market.

3-3. Direct Conversion to Contract Performance. (AR 5-20 dated 20 October 1986, paragraph 4-2, as legislatively amended, provides guidance on mixed and pure DOD funded activities.) A CA study is not required to be conducted before conversion to contract performance of an existing in-house CA if all the following requirements in subparagraphs a-g are met:

a. Activity Size. The number of contractible civilian employees in the CA (on board or authorized and expected to be on board before a conversion to contract is completed) is:

(1) If purely DOD funded, 45 or fewer; or

(2) If purely civil works or mixed funded, ten or fewer employees.

b. Management Decision Criteria. The following standards should be applied in making the decision for direct conversion to contract performance:

(1) The conversion would make sense from a management or performance standpoint;

(2) The activity has not been and will not be reorganized or in any other way changed to reach a personnel threshold to circumvent the need to perform a full CA cost comparison study.

(3) The conversion would result in a fair and reasonable price from a qualified commercial source and in an estimated total cost to the Government that is less than the current in-house performance by a factor of at least ten percent of in-house personnel costs (but see paragraph 3-3e); and

(4) The affected permanent civilian employees could be placed elsewhere within the Government or with the private

contractor through the exercise of the right of first refusal (but see paragraph 3-3f).

c. Approvals and Reports.

(1) If the activity is purely DOD funded and has 45 or fewer employees, the FOA Commander must submit a direct Conversion Decision/Request (RCS CSCOA-128), Figure 3-1, through channels to CDR USACE (CERM-MC) WASH DC 20314-1000 to obtain approval from the ASA(I&L) and to inform ASA(CW). The cover letter for Direct Conversion Decisions/Requests should include an update of any CA inventory and/or CPAS data elements that have changed since the last submission. Especially important are revised milestone dates for solicitation issued, bids opened, appeals period completed, and full contract performance begun.

(2) If the activity is purely civil works funded and has ten or fewer employees, the following procedures apply:

(a) Districts must submit a Direct Conversion Decision/Request to obtain Division-level approval to perform the activity under contract. The approved Direct Conversion Decision/Request will be submitted to CDR USACE (CERM-MC) WASH DC 20314-1000 for information purposes not less than six weeks before the solicitation is issued. Revisions to CA inventory and/or CPAS data elements should be submitted as required in paragraph 3-3c(1).

(b) Separate FOA must submit a Direct Conversion Decision/Request to obtain HQUSACE approval to perform the activity under contract. Revisions to CA inventory and/or CPAS data elements should be submitted as required in paragraph 3-3c(1).

(3) If the activity is mixed funded and has 45 or fewer employees, the approvals and reports are the same as required in paragraph 3-3c(1) above.

(4) Not later than one month after bid opening, the FOA will submit through channels to CDR USACE (CERM-MC) WASH DC 20314-1000 the Final Decision Report for Direct Award to Contract Actions (RCS CSCOA-129) shown in Figure 3-4 on all activities converted directly to contract regardless of method of funding.

d. Employee Notification. When a decision is made to make a direct conversion, the employees and any involved

unions should be notified of the proposed contracting. These employees and any other interested parties will have the right after bid opening to make a formal appeal of the justification for the decision (that is, the numbers used in the cost estimates). The appeals procedures are contained in Section VIII of this chapter.

e. Requirement for Full CA Studies. Projected results in paragraph 3-3b(3) cannot be guaranteed. A solicitation may result in the lowest bid or offer being higher than expected and possibly higher than the Government's in-house cost estimate. In the case that the lowest responsive, responsible bid (or offer) exceeds the Government's in-house costs estimate, it may be necessary to cancel the solicitation and conduct a full CA study. See FAR 14.404-1 and FAR Subpart 7.3. Bidders are notified in the solicitation that CA contracts are awarded only when comparative costs favor contracting.

f. Employee Placement. it is possible that all affected permanent civilian employees may not be placed, even though management had projected otherwise at the time the decision was made to convert an activity directly to contract. Some anticipated jobs for displaced employees may not materialize or the employees may decide not to accept them. This is permissible if the potential for placing displaced employees was based on a thorough and proper evaluation of information known at the time the activity was proposed for a direct-to-contract action.

g. Instructions for Costing.

(1) In preparing the simplified cost comparison required in the Direct Conversion Decision/Request format, some supplemental costs (those designated "if appropriate" on the format) will not be included for activities with ten or fewer employees--that is, ten or fewer civilian employees plus any additional military personnel because positions occupied by military personnel may be converted directly to contract without restriction. These supplemental costs will be estimated for CA with 11-45 employees. Estimated contractor costs can be based on past history of similar contracts at other Corps locations or on the Contracting Officer's best estimate of probable contractor prices.

(2) The FOA Commander will designate a local independent reviewer other than the internal review office to review all direct conversion proposals regardless of