

CHAPTER N

Ethics Aspects of Outsourcing and Privatization

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I. REFERENCES

A. Statutes

1. Statutes regulating the Contracting Out Process – 10 U.S.C. 2461, 2461a, 2462, 2463, 2467, 2475; Sections 8014 and 8024 (FY01 DoD Appropriations Act); Sections 343 and 832 (FY01 DoD Authorization Act)
2. Statutes impacting depot maintenance – 10 U.S.C. 2460, 2464, 2466, 2469, 2469a, 2470, 2472, 2474; Section 8035 (FY01 DoD Appropriations Act)
3. Statutes prohibiting all contracting out – 10 U.S.C. 2465; Sec. 317 of the FY87 DoD Authorization Act (but see Public Law 107-56, section 1010 for partial exception)
4. Federal Activities Inventory Reform Act of 1998, Public Law 105-270
5. Conflicts of Interest – 18 U.S.C. 208
6. Post-employment – 18 U.S.C. 207
7. Representation – 18 U.S.C. 203 and 205
8. Procurement Integrity – 41 U.S.C. 423

B. Regulations

1. Government-wide
 - a. OMB Circular A-76 with Supplemental Handbook (Issued in 1966 and revised in 1967, 1979, 1996 and 1999)
 - b. OFPP Policy Letter 92-1, Inherently Governmental Functions
 - c. FAR Subpart 7.5, Inherently Governmental Functions
 - d. FAR Subpart 9.5, Organizational Conflicts of Interest
 - e. FAR Subpart 3.1, Procurement Integrity
 - f. Standards of Conduct for Employees of the Executive Branch, 5 CFR 2635
 - g. Regulations Concerning Post Employment Conflicts of Interest, 5 CFR 2637 and 2641

h. Interpretation, Exemptions and Waiver Guidance concerning 18 USC 208, 5 CFR 2640

2. DoD-wide

a. DODD 4100.15, Commercial Activities Program

b. DOD 5500.7-R, Joint Ethics Regulation

c. DODI 4100.33, CA Program Procedures (under revision, see <http://emissary.acq.osd.mil/inst/share.nsf/CONTDEFLOOK/Home-What's+Hot>)

d. DoD Interim Final Guidelines for Implementation of the Challenge and Appeal Process established by the Federal Activities Inventory Reform Act of 1998 (FAIR Act), dated 02/01/00

e. DoD 4100.XX-M, A-76 Costing Manual, March 14, 2001

f. DoD Strategic and Competitive Sourcing Programs Interim Guidance, dated April 3, 2000

3. Army

AR 5-20 and Army Pam 5-20, Commercial Activities Program

4. Air Force

a. Air Force Instruction 38-203, Commercial Activities Program, including Interim Change 01-1, July 19, 2001

b. Air Force Policy Directive 38-6, Outsourcing and Privatization

5. Navy

a. SECNAVINST 4860.44F

b. OPNAVINST 4860.7C

C. Other Sources

1. White Paper, Materiel Management Outsourcing and Privatization, Army, May 9, 1997

2. Outsourcing Guide for Contracting, Air Force Logistics Management Agency, Maxwell AFB, AL, June 96

3. Article by Major Mary E. Harney, "The Quiet Revolution: Downsizing, Outsourcing, and Best Value," Military Law Review, Vol. 158, December 1998

4. Office of Government Ethics Letter 95 X 10, originally an article in the Government Ethics Newsgram, Summer 1995, entitled "Privatization Issues Affect Federal Employees." (Vol. 12, no. 2, pp. 1-3)

5. HQ USAF/JAG Memorandum, Applicability of Conflicts of Interest Law and Regulations to Employees Involved in OMB Circular A-76 Related Activities (OpJAGAF 1997/128, 3 Nov 1997)
6. Office of Navy General Counsel memorandum by Eugene P. Angrist, Deputy General Counsel, and Ken Wernick, Assistant General Counsel (Ethics), dated December 22, 1997, SUBJECT: Ethics Issues Related to OMB Circular A-76
7. Office of Government Ethics memorandum to Designated Agency Ethics Officials, DA-99-035, SUBJECT: Section 208 Exemptions for Disqualifying Financial Interests that are Implicated by Participation in OMB Circular A-76 Procedures, dated 9 September 1999
8. General Accounting Office memorandum to the Office of Government Ethics, dated 19 November 1999, B-281224.8, in response to Office of Government Ethics memorandum to Designated Agency Ethics Officials, DA-99-035.

II. BACKGROUND

A. Definitions

1. Outsourcing – transfer of a function that had been performed by government employees to performance by contractor employees. Also called competitive sourcing. OMB Circular A-76 cost comparison procedures apply unless an exception, exemption or waiver applies.
2. Privatization – process of changing a public entity to private control and ownership. It does not include determinations of whether a service should be obtained through private or public resources when the government retains full responsibility and control over the delivery of the services. See OMB Circular A-76 Supplemental Handbook, Appendix 1. Also called competitive sourcing. Example: utilities divestiture
3. Reengineering – a sufficiently encompassing restructuring of government requirements for which any reduction in the number of government employees or any increase in contractor performance is incidental. Example: Air Force restructuring of the 38th Engineering Installation Wing Plan (GAO Report GAO/NSIAD 99-73, February 1999)
4. Inherently governmental – functions so intimately related to the public interest as to mandate performance by federal employees. See OFPP Policy Letter 92-1

B. Some History

1. Contracting out is not new. OMB Circular A-76 was first published in 1966, but is based on earlier Bureau of the Budget memorandums encouraging federal agencies to obtain commercial services from the private sector.

2. The Department of Defense has used contracting out extensively in the 1970s and 1980s. DoD reported to Congress in March 1999 that from 1979 to 1996, the Department competed, under A-76 rules, commercial activities involving more than 90,000 full time equivalents (FTEs). It further reported that it now saves \$1.5 billion either by reorganizing in-house organizations to “most efficient organizations” or by shifting the work to the public sector, savings of about 30 percent. About half of the competitions were won by government organizations. In 1999, DoD initiated studies impacting 34,000 FTEs, and developed plans to compete an additional 230,000 FTEs by FY05 with a projected cumulative savings of \$11.2 billion. (DoD Report to Congress, Leasing of Non-Excess Military Property, March 1999; see also DoD Report to Congress, Competitive Sourcing, July 14, 2000 and GAO-01-20, DoD Competitive Sourcing: Results of A-76 Studies over the Past 5 Years, December 7, 2000)

3. Several policy concerns are driving the increasing number of cost comparisons.

a. The National Performance Review panel concluded in 1993 that forcing public agencies to compete for customers would create “permanent pressure to streamline programs, abandon the obsolete, and improve what’s left.”

b. DoD responded in 1997 with the Quadrennial Defense Review (QDR) which announced that for DoD to maintain the “tooth,” or combat readiness, it must cut the “tail,” or the support functions. By reducing infrastructure, DoD would unleash money to invest in combat readiness.

c. The QDR was followed by the Defense Reform Initiative (DRI) that expanded upon the QDR to propose more streamlining and outsourcing. Chapter three of the DRI identifies outsourcing opportunities under OMB Circular A-76, such as payroll, personnel services, surplus property disposal, and drug testing laboratories. Chapter four identifies ways that the DoD may eliminate unneeded infrastructure, such as additional base closures, privatizing family housing and privatizing utility systems.

d. DRI directives were issued to implement the DRI. DRID 20 requires a billet level inventory of all DoD manpower coded to reflect whether each position is inherently governmental, commercial but exempt from competition, or commercial and should be competed. Phase 1 inventory was sent to OSD on 30 October 1998. Phase 2 coding on spaces to study began February 1999.

e. Congress has been ambivalent on contracting out in DoD. At various points in time, it has acted to limit or prevent contracting out. It also recently passed the Federal Activities Inventory Reform Act of 1998 (FAIR), Public Law 105-270 (1998). FAIR requires executive agencies to prepare a list of non-inherently governmental functions performed by

federal employees, submit the list to OMB and then made the list publicly available. FAIR also established an appeals process for “interested parties” within each agency and the private sector to challenge the contents of the list. Even with the FAIR, agencies must continue to rely on OMB Circular A-76 for the outsourcing process.

f. DoD listed about 500,000 jobs as commercial in its FAIR inventory, but noted that only about 300,000 were potentially available for competition because of restrictions on privatizing certain kinds of work (depot, firefighters, guards). Current DoD plans call for competing 230,000 jobs by 2005, with projected savings of \$11.2 billion.

C. Cost Comparison Process:

1. Commercial Activities Proposed Action Summary (CPAS)
2. Congress notified
3. Workforce notified
4. Performance Work Statement (PWS) developed
5. Most Efficient Organization (MEO) developed
6. Cost estimates developed and reviewed by audit agency or internal review
7. Bids or proposals solicited from private industry
8. Public review and appeal period
9. Decision to award contract or cancel solicitation and reorganize to MEO
10. Transition period
11. MEO or contract operational

D. Privatization Process

1. Varies widely from fairly simple transfers of utility systems to utility companies to more complex divestitures of functions, such as the creation of an Employee Stock Ownership Plan (ESOP) company to accept a contract for execution of function previously performed by government personnel.
2. Each plan needs analysis to determine ethics issues.

E. Litigation Aspects of Cost Comparisons:

1. Historically, courts and boards have limited appeals of contracting out decisions.

- a. IRS v. FLRA (1990) 494 US 922 (no bargaining over contracting out decision)
- b. NFFE v. Cheney (DC Cir 1989) 883 F.2d 1038 (employees lack standing)
- c. SAI, Inc. 91-1 CGPD P267 (no A76 review except as part of competitive solicitation)
- d. AFGE v. US (July 23, 2001) CAFC No. 00-5090 (employees and their unions are not “interested parties” because they are not bidders or offerors)

2. But see

- a. Diebold v. US (6th Cir 1991) 947 F.2d 787 (APA permits judicial review); also NATCO v. Pena (6th Cir 1996) 1996 U.S. App LEXIS 8258
- b. CC Distributors v. US (DC 1989) 883 F.2d 146 (incumbent contractor can contest decision to bring function in-house without cost comparison)
- c. Pemco Aeroplex, Inc.; Aero Corporation, B-275587, 1998 U.S. Comp Gen LEXIS 250 (June 29, 1998) (Comptroller General will overturn a decision to cancel a solicitation and maintain services in-house when the contractor has lower costs, except as otherwise provided by law – core logistics in this case)
- d. DZS/Baker LLC; Morrison Knudsen Corp., B-281224, 1999 U.S. Comp Gen LEXIS 16 (January 12, 1999) (Having 14 of 16 proposal evaluators subject to losing their jobs in an A-76 cost comparison created an uncorrectable conflict of interest warranting re-evaluation by a neutral panel)
- e. AFGE v. Cohen, et al. (7th Cir 1999) No. 98-1504 (Union has standing to challenge alleged violations of the Arsenal Act, 10 U.S.C. 4532 – Case potentially impacts work loading decisions between the public and private sector at arsenals)

III. ETHICS ASPECTS OF OUTSOURCING AND PRIVATIZATION

A. **Conflicts of Interest:** DoD personnel are prohibited from participating personally and substantially...through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a ...contract,...or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom the employee is negotiating or has any other arrangement concerning prospective employment, has a financial interest. (18

U.S.C. 208 for DoD officers and civilian employees; DoD 5500.7-R, subsection 5-301, for enlisted personnel)

1. Cost comparisons under OMB Circular A-76 are particular matters, as are other privatization acquisitions
2. Personal participation means “direct participation” or the “direct and active” supervision of a subordinate’s participation. 5 C.F.R. 2635.402(b)(4)
3. Substantial participation means that the employee’s involvement is of significance. It requires more than official responsibility or knowledge or involvement on an administrative or peripheral issue. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. 5 C.F.R. 2635.402(b)(4) **Caution:** Do not use the definition of FAR 3.104-3 in an 18 U.S.C. 208 or 207 context. This definition implemented an older version of the Procurement Integrity Act, and is not consistent with other guidance or applicable case law to an analysis under 18 U.S.C. 208/207.
4. Impartiality: DoD employees should not work on a matter if a reasonable person who is aware of the circumstances would question their ability to be impartial in the matter. Employees should consult with their supervisors and ethics counselors to assist them in resolving any question of perceived loss of impartiality. 5 C.F.R. 2635.502.
5. Specific Issues
 - a. An employee’s interest in their own salary and position. The Office of Government Ethics (OGE), in consultation with the Department of Justice, treats financial interests arising from Government salary and benefits as disqualifying interests under 18 U.S.C. 208(a); however, OGE also established a limited exemption. This exemption provides that:

“[a] employee may participate in any particular matter, whether of general applicability or involving specific parties where the disqualifying interest arises from federal government salary or benefits, ... except that an employee may not :

Make determinations that individually or specifically affect his own government salary or benefits...,or
Make determinations, requests, or recommendations that individually or specially relate to, or affect, the government salary or benefits, ... of any other person specified in section 208 [of title 18, United States Code]. 5 C.F.R. 2640.203(d)

Example: An employee may participate in reinvention activities,

including preparation of a PWS or MEO, provided that he does not make any determination that has a special or individual effect on his salary or benefits. An employee's interest in his federal employment, even if his position may be abolished, is not a disqualifying interest for participation in the PWS or MEO. 5 C.F.R. 2640.203(d), Example 7.

Example: Absent an individual waiver under section 208(b)(1), however, an employee may not participate in the implementation of an agency plan to create an ESOP that would carry out agency functions under contract to the agency because implementing the plan would result not only in the elimination of the employee's federal position, but also in the creation of a new position to which the employee would be transferred. 5 C.F.R. 2640.203(d), Example 8.

b. Right of First Refusal. FAR 7.305(c) requires inclusion of the clause at FAR 52.207-3, Right of First Refusal of Employment, in all solicitations which might result in a conversion from an in-house performance to a contract performance. This right is speculative in that the contractor is only required to offer employment openings to qualified former government employees. There is no guarantee of employment. It is only if the contractor wins the competition, needs to hire employees and determines a former government employee to be qualified, that there might be an offer of employment. Therefore, we believe that the contingent right to first refusal of employment with a winning contractor does not give rise to a personal financial interest within the meaning of 18 U.S.C. 208.

c. Outside Employment. Three slightly different provisions potentially affect government personnel involved in an outsourcing or privatization who seek employment with an affected bidder or offeror. Those three provisions are:

(1) 18 USC 208:

(a) An employee may not participate personally and substantially in a procurement

(b) Knowing that he has a financial interest, direct or imputed, or is negotiating for employment with others, where those interests would be directly and predictably affected by the procurement.

(c) The employee must disqualify himself or find a regulatory exemption or obtain an agency waiver.

(i) Regulatory exemptions – see 5 CFR 2640.203(d)

(ii) Agency waiver – see 5 CFR 2640.301 – written agency determination that financial interest is not so

substantial as to be deemed likely to affect integrity of employee's services

(2) CFR 2635, Subpart F

- (a) When an employee participates personally and substantially in a procurement and
- (b) Seeks employment or has an employment arrangement with someone directly and predictably affected by the procurement
- (c) The employee must disqualify himself unless he obtains an agency waiver. 5 CFR 2635.605
- (d) Seeking employment includes negotiations, sending an unsolicited resume to bidders or offerors and deferring employment negotiations.

(3) 41 USC 423 (Procurement Integrity Act)

- (a) When an employee participates personally and substantially in a procurement for a contract > \$100K and
- (b) Contacts or is contacted by a bidder or offeror about possible employment
- (c) The employee must report the contact and either reject the offer or disqualify himself until the agency authorizes his participation (which cannot occur until the employee rejects the offer or the bidder or offeror are no longer participating in the procurement)
- (d) The definition of participates personally and substantially for purposes of the procurement integrity act differs from the same definition for the other two provisions. See section III.D.2 of this outline for a discussion.

B. Representation. Two statutory prohibitions:

1. 18 USC 203 – subjects government employees who seek, receive, accept, or agree to accept compensation for representation services as an agent or attorney for another in relation to a ruling, determination, contract, claim or other particular matter to criminal and civil penalties. There are exceptions for representation for parents, spouse, children and estates except for matters within the employee's official responsibilities or that he or she participated in personally and substantially as an employee.

2. 18 USC 205 – subjects government employees who, other than in the proper discharge of their official duties, act as an agent or attorney in the prosecution of a claim against the United States or before any department in connection with any covered matter in which the United States is a party or has a direct or substantial interest to possible civil or criminal penalties. A “covered matter” includes applications, contracts, claims or other particular matters.

3. There are exceptions for representation for parents, spouse, children and estates except for matters within the employee’s official responsibilities or that he or she participated in personally and substantially as an employee. There are also exceptions for non-compensated representation of persons subject to certain personnel administration boards or of voluntary non-profit groups comprised primarily of current government employees and their spouses and dependent children to the extent that the representation does not involve a claim, proceeding, grant or contract.

Example: An employee could not submit a proposal to the government on behalf of a group of employees who are seeking to obtain a contract to perform a privatized government function through an ESOP. The restriction would apply whether or not the employee’s position would be eliminated because the function was being privatized. Employees who wish to submit such a proposal would have to retain a non-employee to represent them in the matter. OGE 95 X 10

C. Post Employment. Government personnel who personally and substantially participated in, or were responsible for, a particular matter involving specific parties while employed by the government are prohibited from later “switching sides” and representing any party back to the government on the same matter. 18 U.S.C. 207. The restrictions of this statute do not prohibit employment, but only certain communications and appearances with the intent to influence.

1. 18 U.S.C. 207 contains six substantive provisions, only two of which are likely to have general applicability to employees involved in an A-76 cost comparison. Those two provisions are:

2. 18 U.S.C. 207(a)(1) imposes a lifetime bar against former government employees knowingly making, with the intent to influence, any communication to or appearance before a government employee on behalf of any other person in connection with a particular government matter involving a specific party in which the former employee participated personally and substantially as a government employee and in which the United States has a direct and substantial interest; and

3. 18 U.S.C. 207(a)(2) imposes a two year bar against former governmental employees knowingly making, with the intent to influence, any communication to or appearance before a government employee on behalf of any other person in connection with a particular government matter that was pending under the employee’s official responsibility during the one-year period of time prior to the

employee's separation from government employment. The term "official responsibility" means "the direct administration or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise to direct government action." 18 U.S.C. 202.

Example: Individuals working on an A-76 cost comparison are not prohibited from working for a winning contractor by 18 U.S.C. 207(a). They may be prohibited from representing their new contractor employer back to the government with regard to the contract, or a work-related issue, if they were either personally and substantially involved in the contract or issue, or if it was under their official responsibility.

4. One of the more difficult factual issues in this analysis is determining when there are specific parties involved in a particular government matter. The question of whether government procurements, including those conducted under A-76, involve specific parties is to be determined "realistically by the degree of interest expressed and contacts made with ... private parties as contractual requirements evolve." OGE Informal Advisory Letter 80 X 4. As noted in 5 C.F.R. 2637.201(c)(2), example 2, while a contract becomes a particular matter when its request for proposal is being formulated, it would ordinarily not become one involving a specific party or parties until proposals or indications of interest therein by contractors were first received." Depending upon the degree of contractor input during the development of the PWS, there may be no 18 U.S.C. 207 post employment restrictions at this stage of the acquisition. Those restrictions will attach when specific parties become identified.

D. Procurement Integrity The Procurement Integrity Act establishes certain prohibitions and requirements relating to (1) disclosing or obtaining procurement information, (2) reporting employment contacts, and (3) post-government employment. 41 U.S.C. 423

1. Disclosing or obtaining procurement information. Present and former government officials, and persons who advised the United States regarding a procurement are prohibited from knowingly disclosing contractor bid or proposal information or source selection information before the award of the contract. All persons are prohibited, except as otherwise authorized by law from knowingly obtaining contractor bid and proposal information or source selection information before the award of the contract.

2. Reporting employment. Government employees working on procurements of \$100,000 or more who are contacted regarding employment opportunities by a bidder or offeror must take one of two actions: They can immediately reject the employment opportunity. They may recuse themselves from further involvement on the procurement, notifying the contracting officer, and commence employment negotiations. If DoD employees immediately and clearly reject the possibility of employment with a bidder or offeror, they may continue working on a

procurement of \$100,000, or greater, but they must still report the employment contact in writing to their supervisors and ethics counselors.

Caution: Be wary of the definition of FAR 3.104-3 to the extent that it excludes preparation of a MEO or management study from the definition of “personal and substantial participation” for purposes of employment notification and recusal. This definition implemented an older version of the Procurement Integrity Act, and is not consistent with the standard definitions of the phrase “personal and substantial participation” as used in 18 USC 207/208. DoD made an effort to amend it for consistency with other definitions of “personal and substantial participation;” however, OMB was concerned that employees would be unwilling to work on OMB Circular A-76 cost comparisons if there was a risk that their future employment with a contractor might be at stake. Therefore, OMB was unwilling to agree to any changes to the current definitions.

3. Post employment Restrictions. For a period of one year after a designated date, certain former government officials may not accept compensation from the concerned contractor on a DoD contract of \$10 million or more if the former officials served in any of the following capacities: procuring contracting officers, source selection authorities, members of source selection boards, chiefs of financial or technical evaluation teams, program managers, deputy program managers, administrative contracting officers and officials who made decisions concerning claims, contract modifications or task orders, or issuance of a contract payment in excess of \$10 million. The designated date varies depending upon the position held, but is generally the date of selection or award for individuals involved in the source selection process and the date of last service for program managers and ACOs and the date of decision for all others.

E. Basic Fairness

1. Contracting actions, especially those potentially impacting the positions of federal employees, need to be fundamentally fair.

2. FAR 9.501 defines “organizational conflict of interest” as a situation in which because of other activities or relationships, a person is unable or potentially unable to render impartial assistance or advice to the government or the person’s objectivity is or might be impaired or the person has an unfair advantage.

Example: We do not usually permit a contractor consultant who has written a statement of work to bid on performance of that statement of work because of the risk that the statement of work may be designed to benefit the consultant’s business interests rather than the interests of the government.

3. The Comptroller General has applied the principles of organizational conflicts of interest to federal employees participating in the contracting process, as well as to contractors. Example: DZS/Baker LLC; Morrison Knudsen Corp., B-281224, 1999 U.S. Comp Gen LEXIS 16 (January 12, 1999) (Having 14 of 16 proposal evaluators subject to losing their jobs in an A-76 cost comparison created an uncorrectable conflict of interest warranting re-evaluation by a neutral panel)

4. The Office of Government Ethics (OGE) objected to the Comptroller General's decision in DZS/Baker LLC; Morrison Knudsen Corp because the Comptroller General did not address the regulatory conflicts of interest exemption found in 5 CFR 2640.203(d) – permitting government employees to participate in matters where their disqualifying interests arise from their federal employment. OGE takes the position that employees cannot be in violation of 18 USC 208 when operating within the constraints of the regulatory exemption. See reference I.C.7. The General Accounting Office responded on 19 November 1999, with a memorandum that noted that the regulatory exemption prevents a criminal violation of 18 USC 208 but does not prevent the Comptroller General from correcting a flawed procurement where there is evidence that an injustice has occurred. See reference I.C.8.

5. These allegations of conflicts of interest and bias in the cost comparison have been one of the growth industries in bid protests. For example, see IT Facility Services-Joint Venture, B-285841 (October 17, 2000); Johnson Controls World Services, Inc., B-286714.2 (February 13, 2001); Matter of COBRO Corporation, B-287578.2 (October 15, 2001) and Matter of TDF Corporation, B-288392 (October 23, 2001), The Jones/Hill Joint Venture, B-286194.4 (December 5, 2001).

6. DoD issued supplemental guidance in April 2000 requiring the Source Selection Authority for any cost comparison to take appropriate action to ensure that there are no conflicts of interest or apparent conflicts of interest. The DoD guidance excludes civilian employees who are “directly affected” by the cost comparison and their representatives, as well as those who participated in the preparation of the Government Management Plan (i.e. the MEO and in-house cost estimate), from serving on Source Selection Evaluation Boards or as evaluators of contractor proposals unless an exception is approved by the head of the contracting activity based on compelling reasons. A “directly affected” civilian employee is one whose work is being competed. Military personnel who are directly affected and non-directly affected civilian employees may participate as technical evaluators or on the Source Selection Evaluation Board unless they have a direct, personal interest in the outcome of the cost comparison or they participated in the development of the Government Management Plan. An individual might have a direct, personal interest if their spouse would be directly affected by the cost comparison or if they own stock in one of the competing companies. Directly affected military personnel may serve as technical advisors but may not have access to the contractors' cost proposals. Individuals who certify the government's MEO may not serve on the Source Selection Evaluation Board or serve as an evaluator. DoD Strategic and Competitive Sourcing Programs Interim Guidance, dated April 3, 2000

IV. CONCLUSION