COMMERCIAL ACTIVTIES

What is an A-76 Cost Comparison Study?

The Office of Management and Budget defines this process as the development of an estimate of the cost for the Government to perform a commercial activity and compare it to the cost for a contractor to perform that same activity.

Why are Commercial Activities Studies conducted and what are the steps?

In 1955, Budget Bulletin 55-4 established the policy that Government would first look to procure products and services in the private sector before creating a process for providing those products. The Office of Management and Budget and Budget Circular Number A-76, published in 1966 and updated three times since, established that policy. Current DoD policy requires Government activities to compete with private sector to ensure that the most cost-effective and streamlined operation is selected to provide products and services. Essentially the process takes the form of a contract solicitation.

Congress must be notified before a study of the function or functions can begin when more than 50 employees are affected. The estimated completion time for an A-76 study is 18 to 24 months, depending on its scope. The first step is the preparation of a Performance Work Statement (PWS). The PWS is the heart of the contract solicitation and outlines the work that must be accomplished. Based on the requirements in the PWS, the Government develops its own management plan for performance of the work by in-house resources. In-house resources are called the Most Efficient Organization (MEO) and represents the workforce that Government will use to perform the work in the PWS.
Once the contract solicitation is issued, prospective contractors submit their proposals to perform the work in the PWS. An evaluation board evaluates the contractor proposals and determines which contractor best meets the established evaluation factors. The successful contractor's bid is then compared to the Government's own in-house bid. After the Technical Performance Plan has been accepted by the Source Selection Authority, the Government and contractor cost proposals are compared and evaluated. A tentative decision is made based on the results of the cost comparison.

If the contractor's cost proposal is lower than the Government's proposal, taking into account a minimum cost differential, the contractor is tentatively selected to perform the commercial activity. The minimum differential is the lesser of 10% percent of the personnel costs in the Government in-house cost estimate, or $10 million, over the performance period. The minimum cost differential factors in the disruption of converting performance of the commercial activity based only on minimal cost savings. If the contractor's cost proposal is not 10% lower than the in-house cost estimate or $10 million over the performance period, whichever is lower, the MEO is selected to perform the commercial activity.

What is the criteria that makes a slot inherently Governmental?
An inherently governmental task or function is one that is so intimately related to the public interest that it mandates performance by Government employees.

Why is a cost comparison required?
The Federal Workforce Restructure Act of 1994 mandates reductions in the Department of Defense. One way for the Navy to achieve these reductions while maintaining efficiency is through the A-76 process.

At what point must the winning bidder identify the proposed staffing levels to the Government?
Normally the contractor is required to furnish the Government with a list of employees 30 days prior to the start of contractor operations. There is no guarantee that employees under RIF will be offered jobs.

What is Right of First Refusal?
Right of First Refusal is terminology from the Federal Acquisition Regulations. Essentially the contractor is required to give Government employees who will be adversely affected or separated as a result of awarding of a contract, the right to refuse or accept employment with the contractor in positions for which they are qualified. The right is applicable if the employee remains on the rolls of the activity and is separated through RIF as a result of a Commercial Activities decision which results in a contract operation.

How will the contractor determine which employees will be offered positions?
Contractors may use their own policies and procedures in offering positions to displaced Government employees. Contractors will not be directed to accept certain employees or accommodate displaced employees.

How long is the contractor required to keep former employees hired under Right of First Refusal?
There is no guarantee of continued employment with the contractor.

What happens if the selected contractor can not perform?
The Government will have the right to invoke remedies in accordance with the contract terms and conditions. Remedies may include termination for default, or adjustments to incentives and or award fees if applicable.

What is to prevent either the contractor or MEO staff from leaving out necessary tasks just to meet projections?
Both the MEO and the contractor must comply with the tasks in the PWS. If the contractor does not perform in accordance with the PWS, the contract may be terminated. If the MEO is not implemented as provided by in the Transition Plan, the contracting officer may award the work to the contractor. Tasks not

incorporated into the PWS are not required to be performed by either the contractor or the MEO.

Who can bid on the work?
The Government prepares an in-house bid that competes with private contractors who also bid on the work. In addition, any current employees of the function may form a company and bid on the performance of the work.

How are the bids evaluated?
The contract award is made after evaluation of technical quality, ability to perform and the lowest cost.

How is the contractor's proposal evaluated?
The Source Selection Team evaluates the contractor's proposals. The Source Selection Team includes appropriate contracting, legal, logistics, technical and other experts to ensure a comprehensive evaluation of contractor's proposals.

Will the award/decision be definite?
If discrepancies, errors or omissions are identified, the apparent winner or loser of a cost comparison has only the time during the Public Review period to submit an appeal. The appeal should address correcting discrepancies, errors or omissions to ensure the cost comparison reflects the intended outcome for the Government regardless of whether the final decision is in favor of the contractor or the MEO. In other words, the outcome of the 30 day Administrative Appeal Process (AAP) is final.

What is the difference between out-sourcing and privatization?
Outsourcing is the competing of support services between public and private industry. The Government retains full responsibility and control over the delivery of those services whether provided by Government employees or contractors. Privatization is the transfer of control of a target business asset and/or associated activity from the public to the private sector.

Is outsourcing a Navy initiative or is the entire DoD participating?
Outsourcing has been Federal policy since the 1950's. The outsourcing and privatization initiative is a DoD priority to reduce operating costs while improving the way it does business.

How will the quality of the services be checked?
A Quality Assurance (QA) Plan is prepared and implemented. The QA Plan defines Government efforts that ensure that the contractor or the MEO perform in accordance with the standards outlined in the PWS. Services will be measured against a performance standard and quality level. The QA Plan includes a surveillance schedule to ensure the Government receives the intended products or services.

BENEFITS

Can Federal Employees Health Benefits (FEHB) be carried over into retirement if an employee hasn't had it for five years?
Under normal circumstances, no. But when an agency is undergoing RIF, the five-year rule allows employees to carry insurance. The employee may request a waiver from the Office of Personnel Management (OPM).

Can separated employees continue their health insurance if separated through RIF?
Separated employees are allowed to continue their health insurance coverage at the same premium rate for 18 months if separated through RIF through the Temporary Continuation of Coverage (TCC) provision.

Does the health insurance premium go up immediately after a person retires?
No. Premiums will remain the same unless there is an annual premium adjustment which would affect all those under the system. Health insurance for employees is calculated over 26 pay periods. Once a person retires, it is calculated over 12 months. The Government still contributes its percentage toward health insurance coverage.

Can TSP money be moved around after separation?
Yes. A former employee can use his or her PIN number to make changes on-line each month at TSP.gov or call the TSP Thriftline directly at 504-255-8777.

Once separated, how long can a person leave their money in the TSP?
TSP mandatory distribution is 70 1/2 years of age. Until that age is reached, the money can stay in the TSP account and it will accrue interest as it did while still employed. If a person has less than $3,500.00 in their TSP, there will be an automatic distribution of that money, less required taxes.

Can someone take their TSP money out once separated through retirement, resignation and/or RIF?
Yes. If there is less than $3,500 in the TSP account an automatic distribution of that money will take place, less required taxes. If more than $3,500 is in the account there are other choices: Roll it over into an IRA account; withdraw the amount in lump sum, minus taxes; request equal monthly payments; or start an annuity.

What will happen to Federal Employee's Group Life Insurance (FEGLI) after an employee is separated through RIF or retires?
Once separated, the former employee will receive a Notice of Conversion Privilege form, which provides specific instructions on its reverse side. The form is mailed to OPM. By return mail, OPM will provide the person a list of insurance companies that will honor the FEGLI policy. The person then contacts the

insurance agent listed and chooses the company and insurance desired. The person will have 31 days to convert from FEGLI into a non-group whole-life policy. This insurance may be more expensive than FEGLI because it is whole-life rather than term insurance. The person will be eligible for the amount of insurance they had as an employee, without a requirement for a physical.

Can an employee withdraw retirement contributions once separated through RIF and/or resignation?
Retirement contributions can be withdrawn provided the person has been separated for at least 30 days. The forms required for withdrawal depend on the person's retirement system.

FERS employees - Withdrawn retirement contributions can never be repaid. Persons will not be able to count the time for which they received a refund for creditable service or for computation purposes. If a person has at least five years of creditable service, the person could be eligible for a deferred retirement or a postponed retirement. If someone wishes to withdraw retirement funds, a form SF-3102 - Application for Refund for Retirement Deductions must be completed. The form is then mailed directly to OPM 30 days after separation.

CSRS/CSRS-OFFSET employees - Persons under this program may withdraw retirement contributions and repay the funds plus interest, at a later time if re-employed. If a person has at least five years of creditable service, the person could be eligible for a deferred retirement. If someone wishes to withdraw retirement funds, a form SF-2802, Application for Refund for Retirement Deductions must be completed. The form is then mailed directly to OPM 30 days after separation.

Under either system, a refund would be received approximately four to six weeks after OPM received the form.

Can TSP funds be withdrawn immediately after separation?
Not immediately. An employee must be separated at least 31 days in order to close his or her TSP account and withdraw contributions. Although processing time varies, the normal time frame is anywhere from two to three months. When the separation action (SF-50) is process by the Human Resources Service Center, Southeast, the affected employee will receive a TSP Withdrawal Package containing detailed information, options, and the forms required to close the account.

REDUCTION IN FORCE (RIF)

Are RIF regulations locally generated or do they come from Navy or OPM?
OPM. The regulations are derived from the Veteran's Preference Act of 1944 and are in Sections 3501 - 3503 of Title 5 of the U. S. Code. The law requires four factors to be considered: Tenure of employment, i.e., type of appointment; veteran's preference; length of service; and performance ratings. OPM implements the laws through Part 351 of Title 5, Code of Federal Regulations and instructions in the FPM Manual Supplement 351-1.

When are RIF procedures used?
Generally, agencies are required to use RIF procedures when employees are faced with separation or downgrading for a reasons such as reorganization, lack of work, shortage of funds, insufficient personnel ceiling, or the exercise of certain reemployment or restoration rights.

Agencies have the responsibility of deciding whether a RIF is necessary, when it will take place and what positions are affected. The abolishment of a position does not necessarily require the use of RIF procedures. Under some circumstances, agencies may move employees to vacant positions without using RIF procedures. For example, an agency may reassign an employee without regard to RIF procedures to a vacant position at the same grade or pay, regardless of where the position is located.

How is veterans preference applied?
Affected employees are listed into subgroups reflecting their entitlement to veterans preference. There are three subgroups:

Subgroup AD includes veterans with a compensable service-connected disability of 30% or more;

Subgroup A includes veterans not included in subgroup AD;

Subgroup B are non-veterans.

Retired members of the armed forces are considered veterans for RIF purposes, but special circumstances apply.

How is length of service determined?
Employees are ranked by service dates within each subgroup. The service dates include creditable civilian and military service. Additional service may be credited by factoring in performance ratings.

How are performance ratings factored into the process?
Employees receive extra RIF service credit for performance based upon the average of the last three annual performance ratings of record received during

the four year period prior to the date the agency issues RIF notices. The four year period is either the date the agency issues RIF notices, or the date the agency freezes ratings before issuing RIF notices, whichever is earlier. Individual circumstances apply. Generally 20 additional years are extended for an "Outstanding" rating, 16 additional years for an "Exceeds Fully Successful" rating, and 12 years for a "Fully Successful" rating.

What is the difference between "bumping" and "retreating?"
"Bumping" is the process by which an employee displaces another employee in the same competitive area but who is in a lower tenure group, or in a lower subgroup within the same tenure group. The employee must be qualified for the position and it may be a position the employee never held before.

"Retreating" is the process by which an employee displaces another employee in the same competitive area, who has less service within the same tenure and subgroup. The position may be up to five grades or grade intervals lower than the position held if the employee is a disabled veteran in Subgroup AD. The position must also be the same or essentially identical position held by the retreating employee on a permanent basis in any Federal agency.

Can wage-grade (WG) employees bump General Schedule (GS) employees?
Yes. A WG employee may bump a GS employee if the employee is determined to be fully qualified. This will be determined on a case-by-case basis.

Will personnel actions be frozen at any time while the CA process is underway?
Yes. Positions under study will be frozen and will be handled through temporary means, such as temporary promotions, details, or term appointments. However, positions not under study are not affected and may be filled. This may cause confusion among employees who may perceive inconsistencies and disparities in the way individual positions are managed.

Will the HRO provide Service Computation Dates to help employees consider their options?
Briefs will be provided to all employees in organizations under study. The HRO Office will distribute Personal Data Sheets that will include personal employee information, to include the service computation date. Employees will have the opportunity to review and verify their information to ensure its accuracy.

What happens to employees in the beginning or middle stages of a career ladder promotion?
Employees in positions with career ladder promotion potential may be promoted.

What happens to current vacancies undergoing recruitment?
Current vacancies being processed by the HRO which are in organizations under study may be changed to temporary promotion, detail, temporary or term appointment or cancelled.

Can someone draw severance pay after receiving a RIF notice?
Yes. However, employees eligible for an immediate annuity are not eligible for severance pay.

What is the criteria for involuntary separation?
Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving:
(1) Specific written notice that they will be involuntarily separated, and the notice of separation is not cancelled before the resignation is effected; or
(2) A general written notice of reduction in force or transfer of function that announces that all positions in the competitive area will be abolished or transferred to another commuting area.

What is VSIP?
Voluntary Separation Incentive Pay. This is a buyout plan that allows workers to voluntarily leave Government employment in order for agencies to minimize or avoid involuntary separations through RIF. Agencies opt for buyouts because the cost associated with RIF is greater than the cost of buyouts and is less disruptive. Under Public Law 104-208, agencies may offer buyouts of up to $25,000 to eligible employees who voluntarily retire, take early retirement, or voluntarily resign within an approved window of eligibility. The law allows agencies to limit use of the incentive and to target positions according to locations, organizations, and occupations, but not individuals.

Is there an age and service requirement to qualify for VSIP?
The law does not set any age requirements. At minimum, the employee must have worked for three continuous years in the agency offering incentives before taking a buyout. The program allows any employee who wishes to quit or take regular or early retirement to take the buyout. If an employee wishes to retire with the buyout, the employee must meet the age and service requirements for optional retirement.

What other conditions are there?
Employees who agree to the VSIP will sign commitments to leave the agency and not return to the Government for five years. Under some conditions, the agency can require employees to follow through on commitments to separate with the buyout even if they changed their minds. However, there has been an MSPB finding that employees who offer to resign in return for a buyout must be allowed to withdraw their buyout agreement prior to separation unless the agency can demonstrate a valid reason for denying the request.

Does everyone who takes the incentive get $25,000?
No. The maximum amount allowable is $25,000. The actual amount will vary with each employee.

Will the incentive pay be a lump sum or payments over time?
It will be a lump sum. Incidentally, buyouts are considered "gross income" and fully taxable under IRS tax law in the year of payment, regardless of the year in which the buyout was authorized. The buyout is not a special one-time payment with its different tax consequences.

Can civilian employees who retired from the military also qualify for VSIP?
Yes. The incentive pay will be based on civilian service.

When will employees be offered VSIP?
A definite time frame has not yet been determined, but VSIP will be offered before a RIF takes place.

If an employee takes the incentive, can the person be re-employed with another Federal agency?
Yes, but those who retire or resign with an incentive must repay the entire amount of the incentive if they take a job with the Federal Government within five years of the separation date. Re-payment applies to all employment with the Federal Government, including permanent or temporary, re-employed annuitant, as well as expert and consultant employment. The repayment would be the full amount of the buyout, including taxes. The employee may recover taxes withheld. There is no provision for waiver of the repayment requirement.

If an employee declines a buyout offer, can the person still be RIFed?
Yes. Declining a buyout offer does not exempt the employee from RIF.

What is VERA?
Voluntary Early Retirement Authority. The incentive resulted from passage of Public Law 93-39, which is codified in 5 U.S. Code 8336 and 8414. Normally, employees are eligible to retire with 30 years of service at age 55; or with 20 years of service at age 60. Under VERA, OPM may allow agencies to temporarily lower the age and service requirements in order to encourage voluntary retirements. The retirement age and service requirements are reduced to 20 years creditable service, at age 50; or 25 years creditable service, regardless of age. Retiring employees under CSRS who are under age 55 are cautioned that the annuity rate will be reduced by one-sixth of one percent for each full month the retiree is under age 55.

Can VSIP and VERA be offered together?
VSIP may be offered in conjunction with VERA or may be offered separately. Employees who receive VSIP may or may not be the same as those who retire

under VERA. Generally, VSIP is offered for those who would consider resignation, while VERA is offered for those who would consider retirement.

When will the VERA window be advertised?
Once approval is received from OPM via NETC, at least one window of opportunity will be made available.

Does electing to take a job with the contractor under Right of First Refusal, cancel out the opportunity to take VERA/VSIP?
Yes. Employees eligible for Right of First Refusal are those who did not take advantage of VERA/VSIP windows, and are scheduled to be separated by RIF.

How is time in a temporary appointment counted for retirement eligibility and severance pay purposes?
Time employed as a temporary employee is counted in the service computation date (SCD) as far as entitlement to leave and severance pay. Retirement eligibility depends on the retirement system used and the period of time under temporary service.

When the VERA/VSIP windows are opened, what will be the anticipated separation dates?
Dates may vary. Separation dates may have to be individually determined.

Under the current situation will employees receive five years to be used towards **length of service and or age in order to be eligible for VERA and not incur the age reduction?**
No. This is better known as the "Boxer Bill." It has not passed through Congress.

Can an employee covered under CSRS take the VSIP and withdraw money from the retirement system?
Yes. But the employee must be separated for 30 days from the retirement system before OPM will process the application for withdrawal of contributions. Receiving the VSIP does not play a part in entitlement to withdraw contributions. Complete an SF 2802 form, Application for Refund of Retirement Deductions.

Can employees who choose not to apply under the VERA/VSIP window and are eligible for retirement, retire upon separation?
Yes. If the employee does not apply under VERA/VSIP, they will receive a RIF Notice of Separation. Provided they meet the minimum eligibility rules for retirement, i.e., age 50 with 20 years of service or 25 years of service at any age, they may apply under the Discontinued Service Retirement (DSR) rules directly to OPM. This action will then be considered involuntary and the employee can not receive VSIP in conjunction with this action.

If someone has 28 years of service and is under 55 years of age, what happens if there is no VERA; there are no jobs in the commuting area; and the Government does not win the contract?
If the employee in the example belongs to the organization targeted for outsourcing, VERA and VSIP is guaranteed unless unforeseen circumstances intervene.

Can an employee resign and still get VSIP?
Yes. VSIP rules apply whether the employee resigns or retires.

If the contractor terminates a former Civil Service employee, will the employee then have the option of drawing out retirement contributions, or can the employee retire under VERA?
The separated employee will not be eligible for VERA because he or she will no longer be employed by the Navy. However, like any other separated employee, the person may elect to either withdraw the retirement contribution, or if eligible, apply for a deferred or postponed retirement two months prior to his or her 62nd birthday.

Can an employee use sick leave to meet length of service requirements?
No. Sick leave will be counted towards length of service and possibly increase an annuity, but cannot be used to meet eligibility. Sick leave only counts for those who are covered under the CSRS or CSRS-Offset retirement systems. Employees covered under FERS get no credit for their sick leave. Special cases do exist where an employee transferred to FERS from CSRS. In that circumstance, the sick leave accrued at the date of transfer or date of retirement, whichever is less, is credited in the annuity.

Can someone transfer their voluntary contributions into CSRS or TSP when they retire?
No. Voluntary contributions into CSRS are not considered the same type of account as a TSP account because they are not tax-deferred. Employees pay taxes on the money sent to OPM. Employees may opt to purchase supplemental annuity with their contributions and or withdraw the money completely after separation. Once the money is withdrawn, any interest accrued over the years is taxable.

Will employees still have the opportunity to retire after receiving a PPP offer?
That depends on when the employee received the offer. An issue such as this will have to be handled on a case by case basis.

If an employee receives a computation stating that he or she is eligible to retire, can the employee elect not to retire and instead withdraw the retirement contributions?
Yes. An employee may file an Application for Refund of Retirement Deductions instead of retiring, provided the employee has been separated from Federal service for at least 31 days. In addition, the person must not be eligible for a retirement annuity commencing within 31 days, i.e., the person must not have already filed an Application for Immediate Retirement. The employee may withdraw his or her retirement application provided OPM has not finalized it.

If an employee decides to retire, how long would it take for OPM to disburse the first annuity check?
Normally OPM will disburse an interim check within 30 days after OPM receives the retirement application. An interim check is equal to 80% of the estimated annuity and will be paid until OPM finalizes the application. Since this process could take anywhere from two to three months, a retiree may receive two or three interim checks. Once the application has been finalized, OPM will forward an adjusted check to the retiree with a final annuity statement. Annuity checks that follow will be in the amount the retiree will receive for the rest of his or her life, except for changes in benefit deductions and cost of living adjustments.

Can annual leave be used to meet retirement eligibility?
An employee may use annual leave to establish initial eligibility for retirement in reduction-in-force and other restructuring situations.

Can an employee who is eligible for retirement also receive severance pay?
No. Employees who are otherwise eligible for an annuity (CSRS, FERS, or military retirement) are not eligible to receive severance pay. This includes those eligible for retirement under VERA and/or Discontinued Service Retirement (DSR) rules.

What happens to annual leave when the employee is separated?
The employee is paid for all annual leave, even if the amount exceeds 240 hours. Normally the money equivalent of the annual leave is included in the employee's last check or the check immediately following.

What happens to unresolved EEO cases and grievances that have been filed?
Processing continues, unless the employee elects to withdraw the complaint or grievance.

Are there any special provisions for handicapped employees under RIF?
The RIF process is non-discriminatory. However, handicapped employees would not be offered jobs for which accommodation is not possible.

What happens to an employee's on the job injury claim and entitlements if the position is contracted out?
If the claim has been approved, all entitlements continue. However, once off the activity roles, the employee deals directly with the Office of Worker's Compensation Programs (OWCP) handling the claim.

Is there a difference in the way RIFs are conducted under a Commercial Activities situation or in other circumstances?
No. The same RIF regulations apply. However, the contractor shall give Government employees who are displaced as a result of the conversion to contract performance, the Right of First Refusal for employment openings under the contract.

PRIORITY PLACEMENT PROGRAM

Does turning down an offer from a contractor affect being placed on the Priority Placement Program?
No.

Can former employees go on the Priority Placement Program list and still work for the contractor?
Eligibility for registration in the PPP is not affected if a former employee accepts a position with a contractor.

Are employees who receive RIF notices entitled to priority consideration limited to a certain geographic or commuting area?
Employees whose jobs are eliminated are given priority rights to other vacant positions in the DoD. The Personnel Office determines the maximum geographic limitations necessary to assure placement. The employee may then designate activities in that area which are acceptable. The areas to which registered are based on the skills for which the employee has been determined to be sufficiently well qualified.

How long does a registrant stay in the Priority Placement Program?
Twelve months from the date of separation.

Is an employee entitled to grade and pay retention after going off the rolls?
No. If the employee has a break in service of one workday or more the grade and pay retention entitlement cancels.

Can Term or Temporary employees be registered in the PPP?
No. Employees must be on an appointment without time limitation and must be in the competitive service and have career or career-conditional status.

Can an employee work for a contractor while listed on the PPP?
Yes. Separated employees can remain on the PPP for one year, as long they have not turned down a valid offer or been employed by another Federal Agency. Working for a contractor has no bearing on this entitlement.

Can employees delay registration in the PPP until such a time as they can expand the area of referral to another geographic area?
No. Persons registering in the PPP will be required to wait certain periods of time before they can expand the area of referral. Delaying registration will not help in expanding the area to another geographic location. Timelines vary based on pay plans and grades.

What is considered the commuting area for PPP purposes?
There are no actual miles used in this determination. The definition for Commuting Area is the reasonable distance from an employee's residence. This

is a judgement call based on what is a reasonable commute for each employee. Employees should register only for locations that will be acceptable from a commuting perspective. However, expanding the area of referral can expand placement opportunities.

Under what circumstances would the Government purchase an employee's home if affected by RIF?

If placed through the PPP, an employee can be reimbursed for certain expenses incurred in selling a home at the old duty station, for purchasing a home at the new permanent duty station, or in connection with the settlement of an unexpired lease, after a transportation agreement is signed.