

## § 169a.10

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 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)<sup>6</sup>, part II of the Supplement to OMB Circular A-76 (Management Study Guide)<sup>7</sup>, part IV of the Supplement to OMB Circular A-76 (Cost Comparison Handbook)<sup>8</sup>, 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 commer-

<sup>6</sup>See footnote 3 to § 169a.1(a).

<sup>7</sup>See footnote 3 to § 169a.1(a).

<sup>8</sup>See footnote 3 to § 169a.1(a).

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cial 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]

### § 169a.12 New requirements.

(a) In cases where a new requirement for a commercial product or service is anticipated, a review 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, then the new requirement normally shall be performed by contract.

(b) If there is reason to believe that commercial prices may be unreasonable, a preliminary cost analysis shall be conducted to determine whether it is likely that the work can be performed in-house at a cost that is less than anticipated for contract performance. If in-house performance appears to be more economical, a cost comparison shall be scheduled. The appropriate conversion differentials will be added to the preliminary in-house cost before it is determined that in-house performance is likely to be more economical.

(c) Government facilities and equipment normally will not be expanded to accommodate new requirements if adequate and cost-effective contractor facilities are available. The requirement for Government ownership of facilities does not obviate the possibility of contract operation. If justification for in-house operation is dependent on relative cost, the cost comparison may be delayed to accommodate the lead time necessary for acquiring the facilities.