Circular No. A–76 (Cost Comparison Handbook), minus the disposal/transfer costs. This figure shall be entered as a gain or loss on line 11 or line 13 of the cost comparison form as appropriate.

NOTE: If a cost-benefit analysis, as prescribed in §169a.12(B)(iii), indicates that the retention of Government-owned facilities, equipment, or real property for use elsewhere in the Government is cost advantageous to the Government, then the cost comparison form shall reflect a gain to the Government and therefore a decrease to the cost of contracting on line 11 or line 13 of the cost comparison form as appropriate.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29209, July 1, 1992]

§169a.16 Independent review.

(a) The estimates of in-house and contracting costs that can be computed before the cost comparison shall be reviewed by a qualified activity, independent of the Task Group preparing the cost comparison. This review shall be completed far enough in advance of the bid or initial proposal opening date to allow the DoD Component to correct any discrepancies found before sealing the in-house cost estimate.

(b) The independent review shall substantiate the currency, reasonableness, accuracy, and completeness of the inhouse estimate. The review shall ensure that the in-house cost estimate is based on the same required services, performance standards, and workload contained in the solicitation. The reviewer shall scrutinize and attest to the adequacy and authenticity of the supporting documentation. Supporting documentation shall be sufficient to require no additional interpretation.

(c) The purpose of the independent review is to ensure costs have been estimated and supported in accordance with provisions of this Instruction. If no (or only minor) discrepancies are noted during this review, the reviewer indicates the minor discrepancies, signs, dates, and returns the CCF to the preparer. If significant discrepancies are noted during the review, the discrepancies shall be reported to the preparer for recommended correction and resubmission.

(d) The independent review is not required for simplified cost comparisons.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29210, July 1, 1992]

§169a.17 Solicitation considerations.

(a) Every effort must be made to avoid postponement or cancellation of CA solicitations even if there are significant changes, omissions, or defects in the Government's in-house cost estimate. Such corrections shall be made before the expiration of bids or proposals and may require the extensions of bids or proposals. When there is no alternative, contracting officers must clearly document the reason(s).

(b) Bidders or offerers shall be informed that an in-house cost estimate is being developed and that a contract may or may not result.

(c) Bids or proposals shall be on at least a 3-year multi-year basis (when appropriate) or shall include prepriced renewal options to cover 2 fiscal years after the initial period.

(d) All contracts awarded as a result of a conversion (whether or not a cost comparison was performed) shall comply with all requirements of the FAR and DFARS.

(e) Solicitations shall be restricted for preferential procurement when the requirements applicable to such programs (such as, small business set-asides or other required sources of supplies and services) are met, in accordance with the FAR.

(f) Solicitations will not be restricted for preferential procurement unless the contracting officer determines that there is a reasonable expectation that the commercial prices will be fair and reasonable, in accordance with the FAR.

(g) Contract defaults may result in temporary performance by Government personnel or other suitable means; such as, an interim contract source. Personnel detailed to such a temporary assignment should be clearly informed that they will return to their permanent assignment when a new contract is awarded. If the default occurs within the first year of contract performance, the following procedures apply:

(1) If the Government was the next lowest bidder/offerer, and in-house performance is still feasible, the function may be returned to in-house performance. If in-house performance is no longer feasible, the contracting officer

shall obtain the requirement by contract in accordance with the requirements of the FAR, 48 CFR part 49. A return to in-house performance under the above criteria shall be approved by the DoD Component's central point of contact office. This authority may not be redelegated.

(2) If the contract wage rates are no longer valid or if the contracting officer, after a review of the availability of the next lowest responsible and responsive bidders/offerers, determines that resolicitation is appropriate, the Government may submit a bid for comparison with other bids/offers from the private sector. Submission of a Government bid requires a determination by the DoD Component that performance by DoD employees is still feasible and that a likelihood exists that such performance may be more economical than performance by contract. In such cost comparisons, the conversion differentials will not be applied to the costs of either in-house or contract performance.

(h) If contract default occurs during the second or subsequent year of contract performance, the procedures of § 169a.8(b)(2)(i) of this part apply.

(1) *Grouping of Commercial Activities.*

(i) The installation commander shall determine carefully which CAs should be grouped in a single solicitation. The installation commander should keep in mind that the grouping of commercial activities can influence the amount of competition (number of commercial firms that will bid or submit proposals) and the eventual cost to the Government.

(ii) [Reserved]

(2) The installation commander shall consider the adverse impacts that the grouping of commercial activities into a single solicitation may have on small and small disadvantaged business concerns. Commercial activities being performed wholly by small or small disadvantaged businesses will not be incorporated into a cost comparison unless consolidation is necessary to meet mission requirements. Actions must be taken to ensure that such contractors are not displaced merely to accomplish consolidation. Similarly, care must be taken so that nonincumbent small and small disadvantaged business contractors are not handicapped or prejudiced unduly from competing effectively at the prime contractor level.

(3) In developing solicitations for commercial activities, the procurement plan should reflect an analysis of the advantages and disadvantages to the Government that might result from making more than one award. The decision to group commercial activities should reflect an analysis of all relevant factors including the following:

(A) The effect on competition.

(B) The duplicative management functions and costs to be eliminated through grouping.

(C) The economies of administering multifunction vs. single function contracts, including cost risks associated with the pricing structure of each.

(D) The feasibility of separating unrelated functional tasks or groupings.

(E) The effect grouping will have on the performance of the functions.

(4) When the solicitation package includes totally independent functions which are clearly divisible, severable, limited in number, and not price interrelated, they shall be solicited on the basis of an ''any or all'' bid or offer. Commerical bidders or offerors shall be permitted to submit bids or offers on one or any combination of the functions being solicited. These bids or offers shall be evaluated to determine the lowest aggregate contract cost to the Government. This lowest aggregate contract cost then will be compared to the in-house cost estimate based on the MEO for performance of the functions in the single solicitation. The procedures in part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook) apply.

(5) There are instances when this approach to contracting for CAs may not apply; such as, situations when physical limitations of site (where the activities are to be performed) preclude allowing more than one contractor to perform, when the function cannot be divided for purposes of performance accountability, or for other national security considerations. However, if an ''all or none'' solicitation is issued, the decision to do so must include a cost analysis to reflect that the ''all or none'' solicitation is less costly to the

Government or an analysis indicating it is otherwise in the best interest of the Government, all factors considered.

(6) It is recognized that in some cases, decisions will result in the elimination of prime contracting opportunities for small business. In such cases special measures shall be taken. At a minimum, small and small disadvantaged business concerns shall be given preferential consideration by all competing prime contractors in the award of subcontracts. For negotiated procurements the degree to which this is accomplished will be a weighted factor in the evaluation and source selection process leading to contract award.

(7) The contract files shall be documented fully to demonstrate compliance with these procedures.

(i) If no bids or proposals, or no responsive or responsible bids or proposals are received in response to a solicitation, the in-house cost estimate shall remain unopened. The contracting officer shall examine the solicitation to ascertain why no responses were received. Depending on the results of this review, the contracting officer shall consider restructuring the requirement, if feasible and reissue it under restricted or unrestricted solicitation procedures, as appropriate.

(j) Continuation of an in-house CA for lack of a satisfactory commercial source will not be based upon lack of response to a restricted solicitation.

(k) The guidance of subparagraph E.3.f. applies to sumplified cost comparisons and direct conversions of military personnel CAs.

(l) To ensure that bonds and/or insurance requirements are being used in the best interest of the Government, as a general rule, requirements (for other than construction related services) above the levels established in the FAR and DFARS should not be included in acquisitions.

[50 FR 40805, Oct. 7, 1985, as amended at 56 FR 27901, June 18, 1991; 57 FR 29210, July 1, 1992]

§169a.18 Administrative appeal procedures.

(a) *Appeals of Cost Comparison Decisions.* (1) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties relating to determinations resulting from cost comparisons performed in compliance with this part. The appeal procedure will not apply to questions concerning the following:

(i) Award to one contractor in preference to another;

(ii) DoD management decisions.

(2) The appeals procedure is to provide an administrative safeguard to ensure that DoD Component decisions are fair, equitable, and in accordance with procedures in this part. The procedure does not authorize an appeal outside the DoD Component or a judicial review.

(3) The appeals procedure shall be independent and objective and provide for a decision on the appeal within 30 calendar days of receipt of the appeal. The decision shall be made by an impartial official at a level organizationally higher than the official who approved the cost comparison decision. The appeal decision shall be final, unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(4) All detailed documentation supporting the initial cost comparison decision shall be made available to directly affected parties upon request when the initial decision is announced. The detailed documentation shall include, at a minimum, the following: the in-house cost estimate with detailed supporting documentation (see §169a.5(c)(ii) of this part), the completed CCF, name of the tentative winning contractor (if the decision is to contract), or the price of the bidder whose bid or proposal would have been most advantageous to the Government (if the decision is to perform in-house). If the documentation is not available when the initial decision is announced, the time alloted for submission of appeals shall be extended the number of days equal to the delay.

(5) To be considered eligible for review under the DoD Component appeals procedures, appeals shall:

(i) Be received by the DoD Component in writing within 15 working days after the date the supporting documentation is made available to directly affected parties.