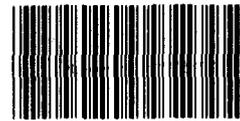


October 1991

# OMB CIRCULAR A-76

## Flaws in Cherry Point Comparison Preclude Validation of Contracting Decision



145171

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**National Security and  
International Affairs Division**

B-245125

October 18, 1991

The Honorable Daniel K. Inouye  
Chairman, Subcommittee on Defense  
Committee on Appropriations  
United States Senate

The Honorable John P. Murtha  
Chairman, Subcommittee on Defense  
Committee on Appropriations  
House of Representatives

The Honorable Walter B. Jones  
House of Representatives

The Marine Corps Air Station in Cherry Point, North Carolina, was the subject of an Office of Management and Budget (OMB) Circular A-76 cost study. After 8 years of review, the study concluded in July 1990 that the facilities maintenance, utilities, and motor transport functions carried out by 388 federal employees could be performed more economically by a private contractor and a contract was awarded. However, this decision was disputed by many of the involved parties.

Congressman Walter B. Jones asked that we review this decision, and the 1991 Defense Appropriations Act (P. L. 101-511) provides that none of the appropriated funds can be used for contract performance until we complete our review and validate the contracting decision. In the meantime government employees have continued performing these functions. This report responds to Congressman Jones' request and the subsequent legislation. The approach we followed in the review is described in appendix I.

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**Background**

OMB Circular A-76 established the policy guiding federal agencies in determining the most economical way to carry out their commercial activities. The circular requires agencies to review their commercial activities to determine whether it is more economical to retain the work in house or to contract it out to the private sector. The agency review is to consist of the following major segments:

- preparation of a performance work statement that, among other things, describes the work required and serves as the basis for contractor bids and

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- a management study containing the government's estimate of the lowest number and types of employees required to do the functions described in the work statement—generally referred to as the “most efficient organization”—that, along with other estimated costs associated with in-house performance, will allow an agency to develop a total estimated cost for in-house performance.

The agency then is to compare the estimated in-house cost with private sector contractor bids. A-76 requirements call for awarding a contract to the offeror with the most advantageous proposal, provided that (1) the total cost of the contract performance is less than the in-house bid and (2) the margin of difference between the total cost of the contract performance and the in-house bid exceeds 10 percent of the personnel costs of the in-house bid. When a contract is awarded, the government work force is to be reassigned or terminated.

If the above conditions are not met, the activity is to be retained in house and done by government civilian workers. Affected parties can file an appeal as a safeguard to help ensure that the decision is equitable and in accordance with A-76 procedures.

Over an 8-year period, the Air Station and the Atlantic Division (LANTDIV) of the Naval Facilities Engineering Command conducted an A-76 study regarding the Air Station's facilities maintenance, utilities, and motor transport functions. In December 1989, LANTDIV received proposals from two firms in response to a solicitation for the performance of these services. In July 1990, the Air Station's and LANTDIV's cost comparison indicated that the above activities could be performed more economically by the one firm that was awarded the LANTDIV contract. The cost comparison projected a savings of about \$4.5 million over 3 years, including the 10 percent differential factor (see app. II). Because of the legislative restriction, the contractor has not yet been notified to proceed with performance of the contract.

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## Results in Brief

The government's decision-making process in the A-76 study involving Cherry Point Air Station contained several deficiencies that may have affected the decision to convert services from agency to contractor operation. These deficiencies included: (1) use of an outdated performance work statement that did not reflect changes in the work requirements, (2) a specification format that did not correspond to the source selection plan format, and (3) failure of the contractor to demonstrate acceptable,

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specific experience and comprehension in mission-critical work requirements. Additionally, other problems within the A-76 study pose serious questions as well. As a result, it is not clear whether the services could be performed more efficiently by the contractor or whether savings estimated at the time the decision was made to contract out will be realized. Accordingly, we could not validate the contracting decision.

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## Performance Work Statement Was Outdated at Bid Opening

According to LANTDIV guidance, the performance work statement should be no more than 6 months old at bid opening, and data should be continuously accumulated in order to verify that the workload has not significantly changed. However, at bid opening for the LANTDIV contract, the performance work statement was about 42 months outdated. In March 1989, Cherry Point officials certified that the performance work statement was still representative and suitable for cost comparison even though their own review had shown workload decreases in some areas of over 50 percent.

During our review, Cherry Point officials identified about 80 items that need to be added to or changed in the performance work statement. However, according to Cherry Point officials, the contractor has not yet been asked to propose a price adjustment for these changes.

According to Cherry Point officials, Cherry Point and Commandant of the Marine Corps officials decided to go forward with the process, even though the performance work statement was outdated. The decision was made, these officials said, to meet a deadline established in the conference report on the fiscal year 1990 Department of Defense Appropriations Act, which provided that multi-function A-76 studies in progress more than 4 years must be terminated and converted to the government's most efficient organization unless completed by August 31, 1990. Also, the officials said, the decision was made to avoid possible budget reductions.

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## Agency Comments and Our Evaluation

In commenting on a draft of this report, the Department of Defense (DOD) acknowledged that some of the work statement was not up to date but indicated that it considered the solicitation representative of the work requirement for cost comparison purposes at the time the solicitation was issued. However, accuracy of the performance work statement is vital to an A-76 study. As stated in a Navy instruction concerned with commercial activities, the performance work statement is the standard for administering contracts; if a performance work statement developed

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in the A-76 cost comparison has to be changed, the validity of the comparison becomes questionable.

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## Specification and Source Selection Plan Formats Did Not Correspond

The format used in LANTDIV's solicitation for specifying the work requirements differed from the format the contractors were required to use in developing their proposals and from the source selection plan criteria used by the Technical Evaluation Board<sup>1</sup> in assessing the contractors' proposals. While the solicitation described the work under seven specification categories, the required proposal format and the source selection plan divided the work into 20 functional areas that could not be readily reconciled with the solicitation (see app. III). The significance of this difference, as stated by the Chairman of the Technical Evaluation Board, was of paramount importance and made it difficult to conduct an accurate evaluation of the technical proposals. Further, according to the Chairman of the Technical Evaluation Board, fragmenting the evaluation into 20 functional areas permitted the evaluation teams to review and rate parts of the proposal without looking at the whole picture. Additionally, in the view of the Technical Evaluation Board Chairman, these problems were compounded by the very vague and highly subjective descriptions of 7 of the 20 functional areas in the source selection plan, which affected the Technical Evaluation Board evaluation and rating. He also said that the solicitation provided virtually no technical specifications that define the systems, equipment components, or work required for those seven functional areas.

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## Agency Comments and Our Evaluation

In commenting on a draft of this report, DOD said that these difficulties were acknowledged and addressed by the Source Selection Board and were deemed not to be significant factors. We reviewed the Source Selection Board reports that outlined discussions and conclusions reached concerning that Board's review of the Technical Evaluation Board's findings, and none of those reports addresses the difficulties cited by the Chairman of the Technical Evaluation Board.

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<sup>1</sup>LANTDIV set up Technical and Price Evaluation Boards to review A-76 contractor proposals. The Boards are to determine the acceptability of the proposals and to assist contracting officers in determining which proposals are most advantageous.

## Evaluation Did Not Ensure Contractor Experience and Comprehension

LANTDIV's evaluation of the contractors' proposals did not ensure that the firm selected for award demonstrated specific and sufficient experience and comprehension in critical areas.

The source selection plan set out the criteria—the methods and procedures—to be used to select the proposal most favorable to the government in terms of technical capability. The Technical Evaluation Board's assessment of the technical proposals showed that the firm that was awarded the contract had failed to demonstrate acceptable, specific experience and comprehension in 10 of the 20 functional areas—including the 2 most critical to the air station's mission, (1) airfield lighting distribution, landing aids and pavement maintenance and (2) airfield arresting gear and air start systems maintenance.

For example, LANTDIV's solicitation directed firms seeking the contract to clearly indicate experience in providing similar services in contracts of similar scope, size, and complexity. They were to include specific work experience in each of the functional areas. However, the Technical Evaluation Board reported in February 1990 that of the 20 functional areas, the contractor did not provide acceptable evidence of specific experience in the 2 areas rated most critical to Cherry Point's mission or in 8 other functional areas (ranked 5, 7, 9, and 16 through 20). The contractor offered only generalized statements that did not indicate specific experience of similar scope.

Additionally, the solicitation directed firms seeking the contract to demonstrate their comprehension by identifying the numbers and types of personnel they would employ to perform the work in each functional area. Yet, according to the Technical Evaluation Board, the contractor did not identify the staffing he would employ for service calls and for indefinite quantity work (relative to comprehension in two top-ranked functional areas). The solicitation also directed respondents to address the skill levels personnel would need to adequately perform the required work. However, the contractor did not adequately address this requirement, according to the Technical Evaluation Board.

In March 1990, the contracting officer called these deficiencies to the contractor's attention. As reported by the Technical Evaluation Board in May 1990, in most identified functional areas, the contractor's revised proposal provided little new or additional information.

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**Agency Comments and Our Evaluation**

According to DOD, it was not the purpose of the source selection process to make a final determination of contractor responsibility, because that is a function of the preaward survey process. However, the preaward survey conducted in this case cited some of the same deficiencies found in the Technical Evaluation Board Report, indicating that problems with contractor experience and comprehension were not resolved during the process. Specific examples of problems noted in both the preaward survey and the Technical Evaluation Board's report are set forth in our evaluation in appendix IV.

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**Other Unresolved Issues**

Our review indicated two other relevant issues cloud the decision to contract out the Cherry Point functions. These are questions about the adequacy of the internal controls over the in-house bid and the significant pricing disparities among the responses to the solicitation that were not resolved.

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**Control Over Most Efficient Organization Description**

As stated in a Navy commercial activity instruction, to ensure that the in-house bid is not compromised, the final calculation of the most efficient organization should be closely held, known to the commanding officer and only one or two members of the commercial activities team.

According to some Cherry Point officials, their description of the most efficient organization was locked in a safe. However, our review indicated that at least 10 people had access to the description. As a result of our discussions with DOD officials, an officer was assigned to investigate the matter and to determine whether the description was compromised. According to DOD, the preliminary findings of this investigation indicate that approximately 20 Cherry Point officials had access to the description, but the investigating officer could not find any indication that the description had been compromised.

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**Pricing Disparities**

According to the Federal Acquisition Regulation, a firm should be put on notice by the contracting officer of suspected mistakes and requested to verify the bid. Moreover, a LANTDIV bulletin indicates that in cases of substantial disparity, the intended scope of work must be discussed with the contractor, in detail, to ensure that a sufficient amount was bid.

In May 1990, the Price Evaluation Board identified disparities in the firms' bids for certain line items—pest control, hazardous waste, and all indefinite quantity, unit-priced work. The disparities for the indefinite

quantity work were resolved through a price analysis. However, the remaining disparities between the two firms were not resolved (see table 1).

**Table 1: Disparities Between Prices Bid on Cherry Point Solicitation** (as of June 11, 1990)

Line item	Contractor	Other firm	Price difference
Pest control			
0001AA-AP	\$66,449	\$478,908	\$412,459
0011AA-AP	65,596	476,687	411,091
0021AA-AP	64,470	479,119	414,649
<b>Subtotal</b>	<b>\$196,515</b>	<b>\$1,434,714</b>	<b>\$1,238,199</b>
Hazardous waste			
0001BY-CC	\$45,727	\$418,308	\$372,581
0011BY-CC	44,948	418,808	373,860
0021BY-CC	43,795	419,899	376,104
<b>Subtotal</b>	<b>\$134,470</b>	<b>\$1,257,015</b>	<b>\$1,122,545</b>
<b>Totals</b>	<b>\$330,985</b>	<b>\$2,691,729</b>	<b>\$2,360,744</b>

Note: Figures rounded to nearest dollar.

According to the Price Evaluation Board report, these large disparities could not be totally explained. The Chairwoman of the Price Evaluation Board said that the price disparities were not discussed with the firms because the Board believed that the prices proposed by the other firm were unrealistically high.<sup>2</sup>

## Conclusions and Recommendation

Because of the deficiencies described in this report, it is not clear whether the services at Cherry Point could be performed more efficiently by the contractor or whether savings estimated at the time the decision was made to contract out will be realized. Accordingly, we are unable to validate the contracting decision.

Without determining the impact of the deficiencies noted, the Navy cannot have reasonable assurance that the contracting out of these functions is in the best interest of the government. We recommend that the Secretary of the Navy direct the head of the contracting activity to ensure that notice to proceed with performance of the current contract

<sup>2</sup>Our review also indicated an inconsistency in the contractor's line item pricing for stem- and pole-mounted fixtures. According to LANTDIV officials, the contractor made a decimal-point error in the unit price for the first option year that would result in an understatement of \$65,997.77. LANTDIV officials agreed that this was an obvious clerical error and have decided to correct the mistake before work commences.

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is withheld until the Commandant of the Marine Corps (1) determines what impact noted deficiencies had and (2) can demonstrate that proceeding with the current contract would be the most advantageous course of action.

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## Agency Comments and Our Evaluation

In commenting on a draft of this report, DOD concurred that the Commandant of the Marine Corps should determine the impact of the performance work statement deficiencies and then decide whether or not proceeding to contract performance is in the best interest of the government. DOD said that he will do so by April 1, 1992. DOD comments are presented in their entirety in appendix IV along with our detailed evaluation of them.

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We are sending copies of this report to the Secretaries of Defense and the Navy, the Commandant of the Marine Corps, the Director of the Office of Management and Budget, and other interested parties. We will make copies available to others upon request.

Please contact me at (202) 275-6504 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix V.



Martin M Ferber  
Director, Navy Issues



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## Abbreviations

DOD	Department of Defense
GAO	General Accounting Office
FAR	Federal Acquisition Regulation
OMB	Office of Management and Budget
LANTDIV	Atlantic Division, Naval Facilities Engineering Command



# Objectives, Scope, and Methodology

The objective of our review was to assess the decision to contract out the facilities maintenance, utilities, and motor transport functions at the Marine Corps Air Station, Cherry Point.

To accomplish this objective, we reviewed guidance, regulations, and solicitation documents concerning Cherry Point's A-76 study, interviewed program officials, and obtained and reviewed data from the following sources:

- Headquarters, United States Marine Corps, Washington, D.C.;
- Marine Corps Air Station, Cherry Point, North Carolina;
- Atlantic Division, Naval Facilities Engineering Command, Norfolk, Virginia;
- Naval Audit Service, Southeast Region, Virginia Beach, Virginia; and
- Local Lodge 2296/District 110, International Association of Machinists and Aerospace Workers, AFL-CIO, Havelock, North Carolina.

We examined the process used to develop the required Cherry Point performance work statement, the description of its most effective organization, and the in-house cost estimate. We reviewed the in-house cost comparison only for its adherence to OMB's guidance. We did not do a complete review or audit of estimated costs if the functions stay in house; we relied on the Naval Audit Service's review of the completeness and accuracy of the in-house figures.

We reviewed the methodology the Technical and Price Evaluation Boards used to evaluate proposals. Since Board members subjectively assigned raw scores of individual technical evaluations, we did not independently verify their validity. However, we did verify the accuracy of the Technical Evaluation Board's summary technical scores by checking the final summary data against the individual raw scores of each Board member. We found minor errors in the calculation of individual scores but did not see any major impact on the final scores. We relied on the reports prepared by the two boards to help identify bid deficiencies. We also relied on the Cherry Point Facilities Maintenance Department Commercial Activities Contract Mode Committee's description and cost estimates of items that need to be added to or changed in the work statement requirements. We did not verify the information provided by the committee.

We obtained information regarding the process the Source Selection Board, Contracting Officer, and the Source Selection Authority used in

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selecting a contractor's offer to compare against the in-house offer and documented the results of the A-76 cost comparison.

Our work was conducted between January and October 1991 in accordance with generally accepted government auditing standards.

# Cost Comparison Summary

Marine Corps Air Station, Cherry Point, NC	For facilities maintenance and services motor vehicle maintenance and operation			Recalculated to base year FY 1991
	Performance periods			
In-house performance cost:	First	Second	Third	Total
1. Personnel cost	\$11,373,211	\$11,373,211	\$11,373,211	\$34,119,632
2. Materials and supply cost	3,580,092	3,650,214	3,717,671	10,947,977
3. Other spec attributable cost	50,569	51,600	52,992	154,761
4. Overhead cost	610,263	615,441	620,726	1,846,430
5. Additional cost	0	0	0	0
6. Total in-house cost	\$15,614,134	\$15,690,465	\$15,764,200	\$47,068,800
<b>Contract performance cost</b>				
7. Contract price	\$11,467,478	\$10,610,411	\$10,340,967	\$32,418,855
8. Contract administration cost	1,039,443	1,079,231	1,119,955	3,238,629
9. Additional cost	193,916	127,523	182,006	503,444
10. One-time conversion cost	3,088,884	0	0	3,088,884
11. Disposal of assets gain/loss	12,648	0	0	12,648
12. Federal income tax 0.8%	(91,740)	(84,883)	(82,728)	(259,351)
13. Not used	0	0	0	0
14. Total contract cost	\$15,710,629	\$11,732,281	\$11,560,199	\$39,003,109
<b>Decision Summary:</b>				
15. Conversion differential	\$1,197,391	\$1,197,886	\$1,198,392	\$3,593,670
16. Total (14+15)				\$42,596,779
17. Cost comparison (16 - 6)				(\$4,472,020)
18. Cost comparison decision:	/	/	/	Accomplish in-house if line 17 is positive. / X / Accomplish by contract if line 17 is negative.

Source: Management Assistance Office,  
Cherry Point Marine Corps Air Station

# Functional Areas and Relative Weights

Based on the source selection plan, functions are listed in order of decreasing relative importance; that is, function 1 is the most important to the government and function 20 is the least important (see table III.1).

**Table III.1: Functional Areas and Their Assigned Relative Weights**

Functional areas		Relative weights
(1)	Airfield lighting distribution, landing aids and pavement maintenance	.0952 <sup>a</sup>
(2)	Airfield arresting gear and air start systems maintenance	.0905 <sup>a</sup>
(3)	Electrical distribution, emergency generation systems, and traffic lights maintenance	.0857 <sup>a</sup>
(4)	Compressed air plants and distribution systems maintenance (not Wells Air Start)	.0810 <sup>a</sup>
(5)	Rapid refueling distribution and systems maintenance	.0762 <sup>a</sup>
(6)	Water plants and systems operation and maintenance	.0714
(7)	Fire protection and alarm systems	.0667 <sup>a</sup>
(8)	Domestic sewage and collection systems operations and maintenance	.0619
(9)	Industrial waste treatment plant and collection system operations and maintenance	.0571
(10)	Heating, ventilation, air conditioning refrigeration plants and reefer maintenance	.0524 <sup>a</sup>
(11)	Heating plants and steam distribution systems operations and maintenance	.0476
(12)	Garrison mobile equipment maintenance	.0429
(13)	Garrison mobile equipment operations	.0381
(14)	Buildings and structures maintenance	.0333
(15)	Family housing (change of occupancy) maintenance	.0286
(16)	Preventive maintenance	.0238
(17)	Hazardous waste cleanup and collection to asbestos	.0190
(18)	Pest control	.0143
(19)	Aircraft recovery, destructive weather and hurricane plan	.0095
(20)	Railroad facilities maintenance, grounds and surface areas other than airfield pavement maintenance, marine vessels maintenance	.0048
<b>Total</b>		<b>1.0000</b>

<sup>a</sup>These are functional areas the Chairman of the Technical Evaluation Board believed to be described vaguely and subjectively. (See p. 4.)

# Comments From the Department of Defense

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



PRODUCTION AND  
LOGISTICS

ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301-8000

October 7, 1991

Mr. Frank C. Conahan  
Assistant Comptroller General,  
National Security and  
International Affairs  
U.S. General Accounting Office  
Washington, DC 20548

Dear Mr. Conahan:

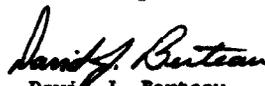
This is the Department of Defense (DoD) response to the General Accounting Office (GAO) Draft Report, "OMB CIRCULAR A-76: Flaws in Cherry Point Comparison Preclude Validation of Contracting Decision," dated September 5, 1991 (GAO Code 394401/OSD Case 8824). The Department of Defense partially concurs with the draft report.

The Department recognizes that some of the work statement at Cherry Point was not up-to-date. The DoD nonetheless considered the solicitation representative of the work requirement for cost comparison purposes at the time the solicitation was issued.

The DoD does agree that the Commandant of the Marine Corps must determine the impact of deficiencies in the Performance Work Statement, and then decide upon a course of action with respect to the contracting decision. The DoD does not, however, agree that the Office of Management and Budget should be involved in the Cherry Point contract decision.

The detailed DoD comments on the report findings and recommendations are provided in the enclosure.

Sincerely,

  
David J. Berteau  
Principal Deputy

Enclosure

GAO DRAFT REPORT - DATED SEPTEMBER 6, 1991  
(GAO CODE 394401) OSD CASE 8824

"OMB CIRCULAR A-76: FLAWS IN CHERRY POINT COMPARISON PRECLUDE  
VALIDATION OF CONTRACTING DECISION"

FINDINGS AND RECOMMENDATION TO BE ADDRESSED IN  
THE DOD RESPONSE TO THE GAO DRAFT REPORT

DEPARTMENT OF DEFENSE COMMENTS

\* \* \* \* \*

FINDINGS

- **FINDING A: Performance Work Statement Was Outdated at Bid Opening.** The GAO reported that, according to an Atlantic Division Naval Facilities Engineering Command instruction, a performance work statement for contracting out should be no more than 6 months old at bid opening, and data should be accumulated continuously in order to verify that the workload has not changed significantly. The GAO found, however, that, at bid opening, the performance work statement for the Marine Corps Air Station, Cherry Point, was about 42 months outdated. The GAO also found that, in March 1988, Cherry Point officials certified that the performance work statement was still representative and suitable for cost comparison--even though their review showed workload decreases in some areas of over 50 percent. The GAO noted that, during its review, Cherry Point officials identified about 80 items that needed to be added to or changed in the performance work statement. The GAO further reported that the contractor had not yet been asked to propose a price adjustment for the identified changes.

The GAO found that the decision was made to go forward with the contracting out process, in order to meet a deadline established in the FY 1990 DoD Appropriations Act--even though the performance work statement was outdated. (The GAO noted the Act provided that multifunction A-76 studies in progress more than four years must be terminated and converted to the Government most efficient organization--unless completed by August 31, 1990.) The GAO reported that the decision was also made to avoid possible budget reductions. The GAO concluded that the accuracy of the performance work statement is vital and, if it is changed, the validity of the A-76 cost comparison becomes questionable. (pp. 5-7/GAO Draft Report)

Enclosures

Now on pp.3-4.

See GAO comment 1.

**DoD RESPONSE:** Partially concur. The Atlantic Division, Naval Facilities Engineering Command, does not have an instruction requiring that Performance Work Statements should be no more than 6 months old at bid opening. The Atlantic Division, did, however, publish advisory guidance to accumulate and monitor historical data on a continuing basis.

A Performance Work Statement should be considered "outdated" when it fails to represent the current requirement accurately. In March 1989, the Commanding General certified that the historical data in the solicitation was representative, for cost comparison purposes, of the work requirements of the Marine Corps Air Station at Cherry Point. While some revisions to the Performance Work Statement were incorporated by amendments, responsible Cherry Point officials have indicated that some changes were not incorporated and the Performance Work Statement may be outdated because of this. In accordance with Federal Acquisition Regulation 7.304 (a), the Government's functional managers are responsible for accurately reflecting the Government's requirements in the Performance Work Statement. Responsible officials at the Marine Corps Air Station at Cherry Point were not aware of the additional changes until after the contract was awarded on July 13, 1990. During the administrative appeal process, some deficiencies were alleged by the appellants, but could not be substantiated by responsible command personnel and were, therefore, considered insufficient to warrant cancellation.

See GAO comment 2.

In contrast to unofficial comments made to the GAO by employees unauthorized to speak for the DoD, the decision to go forward with the solicitation was not based on language contained in the FY 1990 DoD Appropriations Act or to preclude possible budget reductions.

- **FINDING B: Solicitation and Source Selection Plan Criteria Did Not Correspond.** The GAO reported that the contracting officer is instructed to base the solicitation on the parameters established in the source selection plan. The GAO found, however, that the Atlantic Division solicitation criteria, used by the contractors in developing their proposals, differed from the source selection plan criteria used by the Technical Evaluation Board in assessing contractor proposals. The GAO explained that, according to the Chairman of the Technical Evaluation Board, the significance of the differences was of paramount importance and made it difficult to conduct an accurate evaluation of the technical proposals. The GAO noted, for example, that while the solicitation defined the largest categories of work as three separate contract line items, the source selection plan divided the categories into 20 functional areas that could not be reconciled readily with the solicitation.

Now on p.4.

The GAO reported that, according to the Chairman of the Technical Evaluation Board, fragmenting the evaluation into 20 functional areas permitted the evaluation teams to review and rate only parts of the puzzle without looking at the whole picture. The GAO noted that the cited problems were compounded by the very vague and highly subjective descriptions of seven of the 20 functional areas in the source selection plan. The GAO also reported that the solicitation provided virtually no technical specifications that defined (1) the systems, (2) the equipment components, or (3) work required for those seven functional areas. (pp. 7-8/GAO Draft Report)

See GAO comment 3.

**DoD RESPONSE:** Nonconcur. It is the DoD position that the solicitation and Source Selection Plan criteria did, in fact, correspond. Section L of the solicitation entitled "Instructions to Offerors" is the criteria/information the contractors utilize in developing their technical/cost proposal and is the same as the criteria set forth in the Source Selection Plan for evaluation. The differences in the way work effort was distributed by the two proposers and the Government across the twenty functional areas made the evaluation effort more difficult and time consuming than it could have been. Those differences may have resulted in slightly lower technical scores for both proposers, but they fairly represent the comparative value of the technical proposals. The difficulties were acknowledged and addressed by the Source Selection Board, but were deemed not to be significant factors.

Now on pp.5-6.

- **FINDING C: Source Selection Plan Evaluation Criteria Did Not Ensure Contractor Capability.** The GAO reported that the source selection plan system for assessing contractor proposals did not ensure that those considered for award were capable technically by virtue of their experience and comprehension. The GAO reported that the Technical Evaluation Board assessment of the technical proposals showed that the firm that was tentatively awarded the contract failed to demonstrate experience and comprehension in a minimum of 10 of the 20 functional areas, including the two most critical. The GAO also found that the contractor did not identify the staffing that would be employed for service calls and for indefinite quantity work, as directed in the solicitation. In addition, the GAO noted that the contractor did not address the skill levels personnel would need to perform the required work adequately. The GAO further found that, in March, after the contracting officer called the cited deficiencies to the attention of the contractor, the revised contractor proposal provided little new or additional information. (pp. 9-11/GAO Draft Report)

See GAO comment 4.

**DoD RESPONSE:** Partially concur. We do not agree, however, that the purpose of the source selection process is to determine the contractor responsibility (capability). The purpose of the source selection process is to determine the adequacy and ranking of proposals relative to specific criteria in the solicitation and not to make final determinations of contractor responsibility. The determination of responsibility is a function of the preaward survey process in accordance with Federal Acquisition Regulation Part 9. Preaward surveys were conducted on both contractors independent of the source selection process. Both contractors were determined responsible and therefore capable of performing the subject contract.

- **FINDING D: Control Over Most Efficient Organization**  
**Description.** The GAO reported that, in order to ensure that the in-house bid is not compromised, the final calculation of the most efficient organization should be held closely--known to the commanding officer and only one or two members of the commercial activities team. The GAO found, however, that at least 10 people had access to the description. The GAO reported that, as a result of its discussion with DoD officials, a Cherry Point Judge Advocate General is investigating to determine whether the description was compromised. (pp. 11-12/ GAO Draft Report)

Now on p.6.

**DoD RESPONSE:** Partially concur. The final calculation of the Most Efficient Organization were disclosed only to those having a need to know. That included a number of people, in part, because of the turnover of top officials at Cherry Point. Since beginning to develop the Most Efficient Organization, Cherry Point has had three different Commanding Generals, three Chiefs of Staff, and a substantial turnover in other positions in which knowledge of the Most Efficient Organization was required. The preliminary findings of a Judge Advocate General Manual investigation being conducted at Cherry Point indicated that approximately 20 Cherry Point officials had access to the Most Efficient Organization; however, the investigating officer could not find any indication that the Most Efficient Organization was compromised.

See GAO comment 5.

- **FINDING E: Employee Involvement in Cost Study Process.** The GAO reported that Marine Corps guidance requires that officials solicit suggestions from affected employees and their union representatives for improving the in-house organization, during the management study and development of the performance work statement. The GAO also reported that officials are to provide affected employees with briefings at

major milestones as the study progresses. The GAO found, however, that the group performing the A-76 study decided (1) that it would be too difficult to brief 500 employees at each milestone and (2) that it would delay completion of the study. The GAO also noted that, while Cherry Point attempted to keep employees informed through periodic newsletters, they were not distributed to each affected employee. The GAO concluded that Cherry Point made only a superficial attempt to generate employee involvement. (pp. 8-10/ GAO Draft Report)

**DoD RESPONSE:** Nonconcur. The cited procedures were not applicable at the time the study was performed. The DoD made every effort to meet the intent of existing regulations and local labor agreements for involving employees in the management study and development of the performance work statement. The Fiscal Year 1989 DoD Appropriations Act included language (codified at 10 United States Code 2467) that established mandatory procedures for involving the union and the employees in the study process. The law requires monthly meetings with the employees during the development and preparation of the performance work statement and the most efficient organization. Development of the Cherry Point's performance work statement and most efficient organization was completed prior to 10 United States Code 2467 becoming law. The Cherry Point documents were completed prior to the Naval Audit Service certification of the study on December 1, 1987. Except for the issuance of the solicitation, Cherry Point's study was completed prior to 10 United States Code 2467 becoming law. The Commandant of the Marine Corps letter 4860 LLF-5-KM-lwj provided suggested guidelines for employee and union involvement in the study process.

Nonetheless, in addition to fulfilling local labor agreement requirements, the Facilities Maintenance Department published at least 20 separate "Commercial Activities" newsletters for the benefit of the affected employees, informing them as significant developments occurred. The newsletters were posted on all Department Bulletin Boards, copied and distributed to the employees, and widely exchanged and discussed by the employees. Department heads and supervisors continually discussed the Commercial Activities process with employee groups at award ceremonies, safety meetings, and social functions, and solicited comments and input from the employees.

- **FINDING F: Pricing Disparities.** The GAO reported that, in May 1990, the Price Evaluation Board identified disparities in the bids of some firms for certain line items, including (1) pest control, (2) hazardous waste, and (3) all indefinite quantity unit-priced work. The GAO observed that a firm

is to be put on notice by the contracting officer if there are suspected mistakes--i.e., advised that its bid is much lower than other bids or the Government estimate, and requested to verify the bid. The GAO noted that disparities for the indefinite quantity work were resolved through a price analysis, but the remaining disparities between the two firms were not resolved. The GAO reported that the Price Evaluation Board could not explain totally the large disparities. The GAO noted that the Chairwoman of the Price Evaluation Board said that discussions had not been held with the firms because the Board believed the prices proposed by the other firms were unrealistically high. The GAO found an inconsistency in the contractor line item pricing for stem- and pole-mounted fixtures.

The GAO concluded that, because of the deficiencies described in this report, it is not clear whether the services at Cherry Point could be performed more efficiently by the contractor or whether, savings associated with contracting out will be realized. The GAO further concluded that, without determining the impact of the identified deficiencies, the Navy cannot have reasonable assurance that the contracting out of the functions is in the best interest of the Government. (pp. 13-16 /GAO Draft Report)

Now on pp.6-7.

**DoD RESPONSE:** Partially concur. In accordance with Federal Acquisition Regulation 15.610 (b), the content and extent of discussions/negotiations (written or oral) is a matter within the discretion of the Contracting Officer, based on particular facts of each acquisition. Since adequate competition existed, a price analysis was performed based on the criteria in Federal Acquisition Regulation 15.805-2. Accordingly, proposed prices were compared to the competition received. On most pricing disparities, proposed prices were compared with other competitive contract prices for the same or similar items. Upon receipt and review of the proposals, each proposer in the competitive range was (1) formally advised of the numerous pricing disparities (including Pest Control and Hazardous Waste), (2) also advised as to the discrepancies and mistakes through written discussion, and (3) requested to verify and confirm their prices accordingly.

See GAO comment 7.

Upon receipt of the response, disparities still existed in certain line items: Pest Control, Hazardous Waste, and Indefinite Quantity Unit-Priced Work. As stated by the GAO, disparities in the indefinite quantity work were resolved through price analysis. In the judgement of the Source Selection Board, the prices of the low proposer for pest control and hazardous waste more realistically represented the requirement of the Performance Work Statement than that of the other proposer; therefore, further discussions were not recommended. Moreover, a total of \$3.3 million in

pricing disparities were addressed and justified in the Price Evaluation Board report, based on a comparison with other similar contracts. Based on the total analysis, the overall price was considered competitive, fair, and reasonable.

As noted on page 15 of the GAO draft report, the \$65,000 pricing inconsistency for stem and pole-mounted fixtures was identified by Atlantic Division as a decimal point error and will be corrected before work commences.

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**RECOMMENDATION**

- **RECOMMENDATION:** The GAO recommended that the Secretary of the Navy direct the head of the procuring activity to ensure that notice to proceed with performance of the current contract is withheld until the Commandant of the Marine Corps (1) determines what impact noted deficiencies had and (2) can demonstrate to the satisfaction of the Director of the Office of Management and Budget that proceeding with the current contract would be the most advantageous course of action. (pp. 16/GAO Draft Report)

**DoD RESPONSE:** Partially concur. The DoD concurs that the Commandant of the Marine Corps should determine the impact of the Performance Work Statement deficiencies. However, it is the DoD position that only the Marine Corps should decide whether or not proceeding to contract performance is in the best interest of the United States Government. It is neither appropriate nor necessary to involve the Office of Management and Budget in that decision. The Commandant will accomplish his review and make a decision by April 1, 1992.

Now on pp.7-8.

See GAO comment 8.

The following are GAO's comments on DOD's letter dated October 7, 1991.

## GAO Comments

1. LANTDIV did have advisory guidance that outlined the minimum historical information required for contract approval and it stated that the information in the statement should be no more than 6 months old at bid opening.

A performance work statement should be considered outdated when it fails to accurately represent the current requirements. It was 42 months old and officials had failed to incorporate numerous changes. Significant workload decreases were identified that raise doubt about the suitability of the statement for cost comparisons.

Contrary to DOD's assertion, responsible officials at Cherry Point were aware of needed changes to the performance work statement. Prior to July 1990, several memoranda for the record show that officials responsible for the preparation of the statement discussed needed changes but agreed not to make them. Also, a Source Selection Board member said that, with the permission of the Source Selection Board Chairman, he met with Cherry Point's Director of Facilities, Facilities Maintenance Officer, and Officer in Charge, Facilities Support Contracts Department, to discuss the Source Selection Board's concerns about substantive changes (e.g., omissions) to the statement.

2. During our entrance conference at Cherry Point, command officials identified those individuals, knowledgeable of the A-76 process, who could speak on behalf of the command. It was those individuals who told us why the A-76 process was permitted to go forward even though the performance work statement was outdated.

Those officials explained that the decision to go forward with the A-76 process was based on language contained in the fiscal year 1990 DOD Appropriations Act and potential budget reductions.

3. While section L of the Solicitation required proposals to consist of 20 sections corresponding to the 20 functional areas in the Source Selection Plan, there was no evident correspondence between these functional areas and the performance work statement requirements. This disparity caused difficulties in the evaluation process that led the chairman of the Technical Evaluation Board to question the accuracy, fairness and objectivity of the evaluation process. We have revised the report to provide greater clarity in the wording of this section. We reviewed the

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Source Selection Board reports that outlined discussions and conclusions reached concerning that Board's review of the Technical Evaluation Board's finding, and none of those reports addresses the difficulties cited by the Chairman of the Technical Evaluation Board.

4. The Source Selection Plan provided to us by LANTDIV officials states that its purpose is to select the proposal most favorable to the government in terms of technical capability. Our report does not say that the source selection process is the final determinant of contractor responsibility.

We agree that preaward surveys are to be conducted to determine contractor responsibility. However, the preaward survey conducted in this case exacerbated our concerns by citing some of the same deficiencies found in the Technical Evaluation Board Report. For example, the Technical Evaluation Board reported that the contractor was deficient in overall management staffing areas. Specifically, the contractor lacked adequate staffing in the work control center and failed to identify staff required to maintain and repair government-owned, contractor-operated garrison mobile equipment. Similarly, the March 1990 preaward survey report recommended that even though the contractor was determined to be responsible, he should be required to provide a more detailed staffing analysis in the work control center, transportation division, and bus operations. More specifically, staffing for the work control center did not appear to be sufficient and, in some instances, the contractor either did not provide staff or provided inadequate staff to perform required maintenance on government-owned, contractor-operated garrison mobile equipment.

5. Although the investigation found no evidence that the description of the most efficient organization was compromised, the investigation did not rule out such a possibility. It is not clear to us why many of the people identified as having access to the final calculation needed such access. Concern over the confidentiality of the description should have dictated the need for tight controls over who had access to the final calculation.

6. We agree that mandatory procedures for involving the union and employees in the A-76 process did not become law until fiscal year 1989, and we have deleted this section because the Marine Corps' guidance to which we had referred was in fact "suggested guidelines" for employee and union involvement.

7. We agree that in accordance with Federal Acquisition Regulation (FAR) 15.610(b), the content and extent of discussions/negotiations is a matter of the contracting officer's judgment. However, FAR 15.610(c) also obliges the contracting officer to resolve suspected mistakes.

We do not agree that on most pricing disparities, proposed prices were compared with other competitive contract prices for the same or similar items. According to a December 1988 LANTDIV Facilities Support Contract Commercial Activities Bulletin, "Lessons Learned From Past Experiences," simply comparing bottom line prices on any procurement that is bid on other than a lump sum basis is not an adequate evaluation. The Cherry Point procurement was a combination fixed-price, lump sum, and indefinite quantity contract. The bulletin further states that serious attention should be given to individual contract line item amounts that are out of line with other bids. Despite its acknowledged concerns over the \$2.3 million in price disparities for pest control and hazardous waste, the Price Evaluation Board made no effort to resolve these disparities. Instead, the Board concluded from the indefinite quantity price analysis that the remaining differences in total price between the two proposers were competitive. However, LANTDIV officials could provide no documentary evidence to show that the prices of the low proposer for pest control and hazardous waste were more realistically priced than the widely disparate ones of the only competitor.

8. In a draft of this report we recommended that the Director of the Office of Management and Budget be involved in this decision; however, DOD disagreed. We remain concerned about the resolution of deficiencies that prevented us from validating the contracting decision. Furthermore, in light of the fact the original study took 8 years, it may be more of a challenge to resolve the deficiencies by April 1, 1992, than DOD expects. However, rather than recommending that the Director become officially involved, we are sending a copy of this report to him. Since he is responsible for Circular A-76, we will let him decide whether to monitor whatever resolution the Department of the Navy might adopt.

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# Major Contributors to This Report

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**National Security and  
International Affairs  
Division,  
Washington, D.C.**

**Brad Hathaway, Associate Director  
Patrick Donahue, Assistant Director**

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**Norfolk Regional  
Office**

**Joseph Watkins, Evaluator-in-Charge  
Sandra Bell, Site Senior**



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