

Federal Activities Inventory Reform (FAIR) Act and Inherently Governmental Inventories

Topics

- The Office of Management and Budget (OMB)
- The FAIR Act and Inherently Governmental Inventory Process

The Office of Management and Budget (OMB) Roles

- Oversees implementation of the Federal Activities Inventory Reform (FAIR) Act
- Publishes Circular A-76, Performance of Commercial Activities
 - New rules as of May 29, 2003

Competitive Sourcing Rules

- The Federal Activities Inventory Reform (FAIR) Act
 - Has been a management tool since 1998
 - Requires agencies to publish a list of commercial activities for challenge and appeal by interested parties
 - Forms the basis for an agency's determination and selection of candidates for public-private competition
- OMB Circular A-76, Performance of Commercial Activities
 - Has been a management tool since the 1950's
 - Is a regulated and structured process for conducting public-private competition
 - Requires agencies to publish lists of inherently governmental activities for challenge and appeal by interested parties

The FAIR Act and Inherently Governmental Inventory Process

Annually

- Office of Management and Budget (OMB) transmits instructions to agencies for inventories' preparation
- Agencies develop their inventories and submit them to OMB by June 30
- OMB consults with agencies on the composition of inventories
- OMB posts a Federal Register notice (www.nara.gov) stating inventories are available for public review and challenge
- Agencies
 - Make their inventories publicly available
 - Transmit copies of the inventories to both houses of Congress
 - Initiate and resolve challenges and appeals
 - If needed, transmit updated inventories to OMB and Congress

The FAIR Act and Inherently Governmental Inventory Process Example Chronology

- **From March to June**

- Establish work group and convene meeting to provide inventory guidance and establish task requirements
 - Develop inventories
 - Written determinations
 - Competitive sourcing reviews for commercial activities
- Receive inventories, written determinations, and competitive sourcing reviews from work group, and resolve outstanding issues
- Develop inventories' analysis and evaluate results of competitive sourcing review for commercial activities
- Re-convene work group and discuss inventories
- Route inventories, written determinations, and competitive sourcing reviews to Competitive Sourcing Official (CSO) for approval
- Transmit FAIR Act and inherently governmental inventories to OMB

The FAIR Act and Inherently Governmental Inventory Process Example Chronology (continued)

- October-November
 - Consult with OMB on inventories
- March-May
 - Publish inventories for challenge and appeal

The FAIR Act and Inherently Governmental Inventory Process

OMB Circular A-76, Inherently Governmental Definitions

- An inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. Inherently governmental activities normally fall into two categories:
 - the exercise of sovereign government authority or
 - the establishment of procedures and processes related to the oversight of monetary transactions or entitlements.
- The Competitive Sourcing Official shall justify, in writing, any designation of government personnel performing inherently governmental activities.

The FAIR Act and Inherently Governmental Inventory Process

OMB Circular A-76, Inherently Governmental Definitions (continued)

- An inherently governmental activity involves
 - binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
 - determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
 - significantly affecting the life, liberty, or property of private persons; or
 - exerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

The FAIR Act and Inherently Governmental Inventory Process

Commercial Activity Definition

- A commercial activity is a recurring service that could be performed by the private sector and is [presently] resourced, performed, and controlled by the agency through performance by government personnel, a contract, or a fee-for-service agreement.
- A commercial activity is not so intimately related to the public interest as to mandate performance by government personnel.
- Commercial activities may be found within, or throughout, organizations that perform inherently governmental activities or classified work.

Commercial Activity Reason Codes

CODE	DEFINITION
A	The commercial activity is not appropriate for private sector performance pursuant to a written determination by the Competitive Sourcing Official.
B	The commercial activity is suitable for a streamlined or standard competition.
C	The commercial activity is the subject of an in-progress streamlined or standard competition.
D	The commercial activity is performed by government personnel as the result of a standard or streamlined competition (or a cost comparison, streamlined cost comparison, or direct conversion) within the past five years.
E	The commercial activity is pending an agency approved restructuring decision (e.g., closure, realignment).
F	The commercial activity is performed by government personnel due to a statutory prohibition against private sector performance.

OMB Circular A-76

Reason Code A Examples

- Activities involving execution of regulatory policy compliance
- Maintenance of core mission capability
- Provision of policy direction, guidance, and technical assistance in the selection, development, and management of Federal Senior Executives
- Activities that are statutorily mandated

Example Inventories

Partial FAIR Act and Inherently Governmental Developmental Inventory

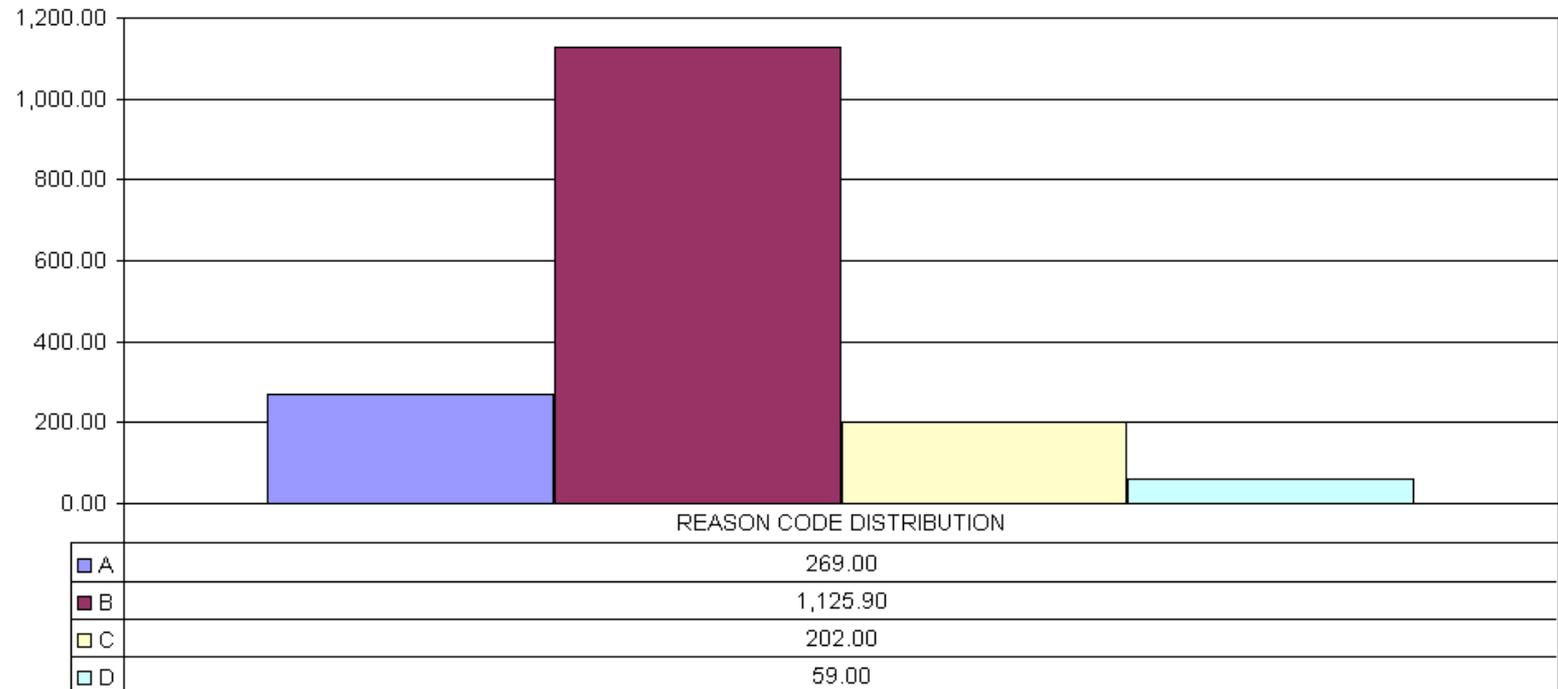
ORGANIZATION UNIT		LOCATION			POSITION / FUNCTION TITLE	STATUS		STATUS			
SUB AGENCY	ORGANIZATION CODE AND NAME	STATE	CITY	COUNTRY		FUNCTION CODE NAME	FUNCTION CODE	FTE	STATUS	REASON CODE	REASON CODE A WRITTEN DETERMINATION JUSTIFICATION
CFO	Chief Financial Ofcr/Ctr Financial Svcs & Deputy CFO/Business Units & Fin Svcs Grp	DC	Washington	US	Program Analyst	Financial Analysis C401	C401	1.00	I		
CFO	Chief Financial Ofcr/Ctr Financial Svcs & Deputy CFO/Business Units & Fin Svcs Grp	DC	Washington	US	Accountant	General Accounting C307	C307	1.00	I		
CFO	Chief Financial Ofcr/Ctr Financial Svcs & Deputy CFO/Business Units & Fin Svcs Grp	DC	Washington	US	Accountant	General Accounting C307	C307	2.00	C	B	

OMB Inventory Format

Seq No.	Org Unit		Location			Status					Additional Information				
	Agy Bur	Abbreviator	State	City	Country	Total FTEs	Activity Fct Cod	Stati	Reaso	Reserved for Future Us	First Year On Inventoi	Year of Cost Compa	CIV/FTE Saving	Est Ann Cost Comp Savin	Year of MEO Review
1,419	027-000	DRO	DC	Washington	US	1.00	C401	I			2002				
1,420	027-000	DRO	DC	Washington	US	1.00	C307	I			2002				
1,421	027-000	DRO	DC	Washington	US	2.00	C307	C	B		2002				

Example Inventory Analysis

Commercial FTE Distribution by Reason Code



Example Inventory Analysis

ACTIVITY	TOTAL FTE	%	STATUS				REASON CODE							
			I	I %	C	C %	A	A %	B	B %	C	C %	D	D %
CFO	471.30	16.00%	148.00	11.48%	323.30	19.52%	17.00	6.32%	279.30	24.81%	0.00	0.00%	27.00	45.76%