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

<table>
<thead>
<tr>
<th>CODE</th>
<th>DEFINITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>The commercial activity is not appropriate for private sector performance pursuant to a written determination by the Competitive Sourcing Official.</td>
</tr>
<tr>
<td>B</td>
<td>The commercial activity is suitable for a streamlined or standard competition.</td>
</tr>
<tr>
<td>C</td>
<td>The commercial activity is the subject of an in-progress streamlined or standard competition.</td>
</tr>
<tr>
<td>D</td>
<td>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.</td>
</tr>
<tr>
<td>E</td>
<td>The commercial activity is pending an agency approved restructuring decision (e.g., closure, realignment).</td>
</tr>
<tr>
<td>F</td>
<td>The commercial activity is performed by government personnel due to a statutory prohibition against private sector performance.</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>ORGANIZATION UNIT</th>
<th>LOCATION</th>
<th>POSITION / FUNCTION TITLE</th>
<th>STATUS</th>
<th>FUNCTION CODE NAME</th>
<th>FUNCTION CODE</th>
<th>FTE</th>
<th>STATUS</th>
<th>REASON CODE</th>
<th>REASON CODE A WRITTEN DETERMINATION JUSTIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CFO</td>
<td>DC</td>
<td>Program Analyst</td>
<td>CFO</td>
<td>Financial Analysis</td>
<td>C401</td>
<td>1.00</td>
<td>I</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CFO</td>
<td>DC</td>
<td>Accountant</td>
<td>CFO</td>
<td>General Accounting</td>
<td>C307</td>
<td>1.00</td>
<td>I</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CFO</td>
<td>DC</td>
<td>Accountant</td>
<td>CFO</td>
<td>General Accounting</td>
<td>C307</td>
<td>2.00</td>
<td>C</td>
<td>B</td>
<td></td>
</tr>
</tbody>
</table>

### OMB Inventory Format

<table>
<thead>
<tr>
<th>Seq-No</th>
<th>Org Unit</th>
<th>Location</th>
<th>Status</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.419</td>
<td>DRO</td>
<td>DC</td>
<td>Total 1.00 C401 I</td>
<td>3002</td>
</tr>
<tr>
<td>1.420</td>
<td>DRO</td>
<td>DC</td>
<td>Total 1.00 C307 I</td>
<td>3002</td>
</tr>
<tr>
<td>1.421</td>
<td>DRO</td>
<td>DC</td>
<td>Total 2.00 C307 C B</td>
<td>3002</td>
</tr>
</tbody>
</table>
Example Inventory Analysis

![Bar Chart]

**Commercial FTE Distribution by Reason Code**

<table>
<thead>
<tr>
<th>Reason Code</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>269.00</td>
</tr>
<tr>
<td>B</td>
<td>1,125.90</td>
</tr>
<tr>
<td>C</td>
<td>202.00</td>
</tr>
<tr>
<td>D</td>
<td>59.00</td>
</tr>
</tbody>
</table>
# Example Inventory Analysis

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>TOTAL FTE</th>
<th>%</th>
<th>STATUS</th>
<th></th>
<th>REASON CODE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CPO</td>
<td>471.30</td>
<td>16.00%</td>
<td>148.00</td>
<td>11.48%</td>
<td>323.30</td>
<td>19.52%</td>
</tr>
</tbody>
</table>