

June 30, 2003

Memo to: Andrew Hire
OMB Budget Examiner-FEC
Treasury Branch
Office of Management and Budget
From: John O'Brien,
Director of Planning and Management
Federal Election Commission
Subject: FEC response to OMB Transmittal M-02-04 and
Budget Procedures Memorandum No. 829
OMB Review of Agencies Inventories of Commercial Activities
Submitted Under the Federal Activities Inventory Reform Act of 1998
Attached is the Federal Election Commission's (FEC) FY 2003 response to the Office of
Management and Budget (OMB) memoranda with regard to our inventory of commercial
activities under the Federal Activities Inventory Reform Act of 1998 (FAIR Act of 1998).

General Response

The FEC is a small (389 FTE) regulatory agency whose essential mission is inherently federal and governmental: the regulation of and enforcement of the Federal Election Campaign Act (FECA), and the disclosure of campaign finance information required by the FECA to be filed and made available to the public. As a small agency, we do not allocate all overhead costs such as rent, telephones, supplies, equipment, postage, and similar overhead items to each office or Division. Most cost items are allocated to the Administrative Division for the whole Commission. It is therefore difficult to separate total costs for specific functions out. We have determined that it is not cost-effective to allocate such overhead costs to small units within the Commission.

As a personnel-intensive regulatory agency, the Commission has one annual appropriation for salaries and expenses, of which roughly 70% annually is allocated to salaries and benefits for direct personnel costs. Our MIS and FTE tracking systems do provide the capability to allocate staff costs to individual programs, although we do not allocate support staff costs to specific programs, but rather to the agency as a whole.

As a result, the majority of our programs and activities are inherently governmental in nature, and involve the policy decisions inherent in regulating the campaign finance disclosure process, which is critical to the electoral process. There is a legitimate concern about injecting private control of functions that relate to the disclosure and regulation of campaign finance and ultimately to the election of federal officials.

Most of those functions identified in the specific guidance attached to the original OMB guidance Memorandum as lending themselves to commercial activity have already been commercialized: FEC staff manages the IT systems at the FEC, but the system itself is

provided by commercial vendors under a competitive process. The over \$4-5 million in annual appropriations earmarked for IT related developmental projects is managed by our in house staff, but is contracted out. This includes systems development, design, and implementation, and often the operation of the systems themselves. For example, each step of the development of the congressionally mandated electronic filing system was developed by competitive contracts: from requirements analysis to design and implementation, to operation of the current system. Our basic data entry of non-electronically filed data into the disclosure database is also contracted out.

During FY 2002 the FEC had to promulgate regulations to implement the BCRA amendments to the FECA under a strict timeframe with statutory deadlines. The FEC also had to file legal briefs under tight timeframes to meet an expedited process of Supreme Court review of legal challenges to the BCRA amendments. In all instances the FEC used contract assistance for temporary staff to collate and index documents, and to assist with the BCRA regulations promulgations as well as with the development of legal briefs during the litigation process. The FEC has also made use of IT contracts to review and design changes to the processing of reports, and the impact of the BCRA amendments on operating systems, the disclosure database, and on the review process.

The FEC is also in the process of implementing automated review procedures to assist the RAD (Reports Analysis Division) staff in meeting the changes due to BCRA and to expedite the review of disclosure reports. The major new IT initiative, the Portals Implementation Project, will move the FEC to more web-based technology for both internal and external users of FEC disclosure database reports and information. All this work will be performed by contractors under the supervision of FEC IT management staff.

Research in the area of elections administration is competitively contracted out and has been ever since the inception of the Commission. This function is scheduled to be transferred to the new Elections Administration Commission either in late FY 2003 or in FY 2004.

Even in the area of administrative support, the FEC has turned over our payroll processing to the National Finance Center. Our small in house Personnel staff is complemented with assistance from contracted specialists for areas such as assistance in developing performance standards and position descriptions.

It is the FEC opinion that our functions have been commercially let out for bids by private vendors where possible and feasible. It is abundantly clear that the FEC has used contractors and temporary contract personnel assistance in a wide range of program (line) functions as well as in administrative and IT functions. The administrative operations are so small, and are centralized for the entire agency, so that they do not lend themselves to commercial performance. Staff involved is inherently governmental under the definitions in accordance with either Appendix A to OFFP Policy Letter 92-1, or in accord with the Appendix B to that letter.

Under the list of functions, we would qualify only for Payroll Processing Services, which have been sent to the NFC, or under Administrative Support Services. In that area, it is arguable whether the 4 or 5 FTE of Administrative Aides could be contracted out in a feasible or cost effective manner. The remainder of the administrative staff is engaged in policy decisions and determinations under the provisions of the lists in Appendix A and B of OFFP Letter 92-1.

Functions under Special Analyses and Studies, and under Data Processing Services, are already contracted out. Existing data systems staff is necessary to monitor the performance of contracted IT studies, analyses, or services provided. At most 3-4 FTE of help desk or administrative data employees may lend themselves to commercial activities.

In many cases, the small scale of operations at the FEC argues against contracting out for services or functions. In most cases, including the functions cited above, the work involved is well below the 10 FTE floor commonly used to determine if an A-76 analysis would be cost effective to decide if a function should be contracted out. Furthermore, most FEC support staff is engaged in managing operations as well as performing the every day workload, and consistently makes policy decisions in the every day course of their activities.

As you will note, the FAIR Inventory for the FEC for FY 2003 is virtually identical to the one submitted for FY 1999-FY 2002. There has been no change in the FEC mission or FEC staffing needs that impacts the FAIR inventory: we have already contracted out much of the work inherent in implementing the BCRA amendments to the FECA. Rather than holding the FEC to mechanistic quotas for contracting out functions, it should be recognized that the FEC has used its judgment to contract out a wide array of research and technical support functions when it was the opinion of the Commission that certain activities were most effectively and efficiently contracted out.

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