

**Assessment of
Business Approaches
Swales Report
+
FFRDC**

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Approaches

- Traditional Contract
- NASA Institute
- Cooperative Agreement
- Space Act Agreement
- State Corporation
- Gov't Corporation
- Gov't Sponsored Enterprise
- Cooperative Association
- FFRDC
- NASA Division

Traditional Contract

- Responsibility to contractor through competitive procurement
 - This involves a standard procurement for acquisition of services
 - Not limited to academics or nonprofits
 - Swales report questions whether commercial corporation could be a viable management entity for the NGO itself. Assume this concern involves potential conflict in area of commercialization.
 - Example: Institute for Hubble Space Telescope (HST)

Traditional Contract

- Pro's
 - Well understood precedent except for commercialization
 - No problem with Competition in Contracting Act (CICA); involves competitive sourcing
 - Can influence type of bidders through requirements and evaluation criteria
 - Flexible management

Traditional Contract

- Con's
 - Subject to all Government regulations; some flexibility at subcontract level
 - Requires NASA oversight and control; NASA enters into agreements with IP's
 - Swales indicated may be more difficult to obtain independent funding; Pub. L. No 106-74 § 434 (10/20/99) permits use receipts collected by NASA from commercial use of ISS. Authority expires in FY02, but extension being sought.
 - May not be best way to promote commercial use

NASA Institute

- Create Institute through competitive procurement
- Essentially same as earlier option, but limit competition to nonprofit/academics
- An Institute is non-Federal entity
 - established to accomplish an ongoing research program
 - devoted to research, the development and transfer of technology, and the provisions of services to the scientific community and public
 - responsible for facilitating scientific and industrial community access to NASA space and ground-based assets.

NASA Institute

- Pro's
 - Well understood precedent
 - Highly appropriate for facilitating research with ISS
 - Flexible personnel management
 - Competitive selection of NGO

NASA Institute

- Con's
 - CICA problem by excluding for profit, commercial sources
 - Subject to all Government regulations; some flexibility at subcontract level
 - Requires NASA oversight and control; NASA enters into agreements with IP's.
 - May be more difficult to obtain independent funding
 - May not be best way to promote commercial use

Cooperative Agreement

- Team with contractor or independent consortium using a cooperative agreement
 - Assumes partner brings substantial contribution
 - Cooperative agreement is defined as a type of financial assistance with substantial NASA involvement

Cooperative Agreement

- Pro's
 - Consortium members bring a wide range of skills and resources
 - Established procedure
 - Award cannot be protested like a procurement contract
 - Better way to promote commercial use of ISS
 - Could be competed, but no requirement at subcontract level

Cooperative Agreement

- Con's
 - No partner appears to be willing to make substantial contribution - premise for this approach.
 - Cooperative agreement is an inappropriate vehicle to fulfill NASA requirements since not binding
 - No profit permitted
 - Substantial NASA involvement
 - Some federal regulations imposed
 - Less freedom regarding patent rights
 - NASA would have to enter into agreements with IP's

Space Act Agreement

- Congress charters contractor or consortium through Other Transaction Authority
 - NASA policy that Space Act agreements are not funded except in rare situations and normally not used when contracts or grants are available
 - Unclear why Congressional charter necessary except would be an extraordinary use of a Space Act agreement

Space Act Agreement

- Pro's
 - Avoids many of the requirements in the FAR; commercial business practices permit streamlining
 - Flexibility with regard to intellectual property rights
 - Consortium members bring wide range of skills and resources
 - May be a better way to attract commercial users
 - Allows NASA to be a team player
 - Competition for NGO possible, but no requirement at subcontract level

Space Act Agreement

- Con's
 - No precedent; Congressional action probably required since involves redefinition of Space Act agreement
 - Enforceability is a question; need to ensure NASA requirements are met
 - No contractor or consortium appears to want to make substantial investment in program – premise for this approach.
 - Diminished NASA management involvement
 - NASA would have to enter into agreements with IP's

State Corporation

- Granting state authority to create a State Government Corporation
 - Permitting a state to establish a corporation on behalf of NASA
 - Done under state statute
 - May involve transfer of assets
 - Example: Florida Spaceport Authority

State Corporation

Pro's

- Free from Federal laws on employment, procurement, FOIA
- State assumes liabilities
- Swales report assumes that state would provide resources and should be able to do so with less problems
- Unclear whether would promote commercial use of ISS, i.e., would commercial users be more likely to do business with a State Corporation?

State Corporation

- Con's
 - State laws on employment, procurement, FOIA
 - Political issue: benefit (or loss) to single state
 - Best facilities/experience are not necessarily state property
 - May require transfer of assets, e.g., research assets
 - Do not know how binding agreement would be
 - More difficult for state to enter into agreements with IP's
 - Competitive selection of NGO unclear

Government Corporation

- Congress establishes a Government Corporation (G Corp)
 - Created and controlled by 31 U.S.C. 9101 et seq., the Government Corporation Act
 - Favored when mission is basically commercial, but necessary when private sector not meeting need
 - Can be government wholly owned, where the government owns all of the stock; mixed ownership where employees or selected group also own stock; or privately owned, where the public owns all of the stock
 - Example: COMSAT

Government Corporation

- Pro's
 - Clear charter and authority to accomplish objectives
 - May be exempted from some laws on employment, procurement, FOIA (often depends on amount of Gov't ownership)
 - Federal government assumes liabilities
 - Independent of NASA; no undue bureaucracy for technology transfer, research and development, service to community
 - Could have authority to enter into agreements with IP's
 - Enables transition to privatization
 - Binding agreement

Government Corporation

- Con's
 - Time and effort to enact legislation
 - Financial self-sufficiency
 - R&D mission may not be conducive to profit motive
 - Should have a clear path to profit making
 - Limited competitive sourcing after creation of NGO

Gov't Sponsored Enterprise

- Congressional Approval for a new Government Sponsored Enterprise (GSE)
 - According to the Swales report, a GSE is a type of Government Corporation characterized by
 - Private finance
 - Privately owned or control
 - Regulated by Government to protect interest
 - Profit seeking
 - GAO treats GSE's as a type of Government Corporation
 - Example: Fannie Mae

Gov't Sponsored Enterprise

- Pro's
 - Congress can provide charter and authority
 - Exemption from laws on employment, procurement, FOIA
 - Federal government assumes liabilities
 - Independent of NASA; should foster commercialization & tech transfer
 - Binding agreement
 - Could have authority to enter into agreements with IP's

Gov't Sponsored Enterprise

- Con's
 - Time and effort to enact legislation
 - Financial self-sufficiency
 - At this time, no party appears to want to privately finance or control this project
 - May require transfer of assets, e.g., research assets
 - Not a federally guaranteed financial service – the purpose of existing GSE's
 - No competitive selection of NGO; unknown at subcontract level.

Cooperative Association

- Congress franchises a new cooperative association
 - Usually an autonomous association of persons united voluntarily to meet a common objective.
 - Normally defined as an enterprise or organization that is owned by and operated for the benefit of those using its services.
 - Often associated with real estate or agriculture
 - Example: Intelsat

Cooperative Association

- Pro's
 - Congress can provide charter and authority
 - Exemption from laws on employment, procurement, FOIA
 - Independent of NASA; should foster commercialization and tech transfer

Cooperative Association

- Con's
 - Time and effort to enact legislation
 - Commercial viability of enterprise is less certain; often consists of less working capital
 - Complex membership & decision making
 - Group united voluntarily for common objective; questionable whether there would be binding agreement
 - No authority to enter into agreements with IP's
 - May involve the transfer of assets, e.g., research assets
 - Special rules needed for non-member access to ISS
 - Competitive selection of NGO unlikely; unknown at subcontract level.

FFRDC

- Meets some long-term research or development need which cannot be met as effectively by existing in-house or contractor resources.
 - Can be universities, consortium of universities, other not-for profit organizations, or an industrial firm
 - Special relationship with sponsoring agency
 - Requires a sponsoring agreement which is usually a contract
 - Need for FFRDC examined every five years

FFRDC

- Pro's

- Long-term relationship encourages continuity to attract high- quality people
- Relationship should encourage FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor, and provide quick response time
- Maintains a special working relationship with the sponsoring agency beyond that which is common to the normal contractual relationship with access to sensitive and proprietary data and to Government employees and facilities.
- Operates in the public interest with objectivity and independence

FFRDC

- Con's
 - Cannot compete with the private sector (could be a plus for purposes of conflict of interest)
 - Cannot enter into agreements with IP's
 - More difficult than contract to establish because of the long term nature of the relationship
 - Do not know when/whether the FFRDC could manage a large engineering contractor; however, some FFRDC's successfully are able to do so

NASA Division

- Continue with current structure for managing ISS utilization, recognizing there will be continuous improvement
 - Reflect the initiatives JSC is making to the process; further improvements likely
 - Similar to option in Swales report involving a NASA division staffed by civil servants
 - Excellent baseline to examine other business approaches

NASA Division

- Pro's
 - Known method of performing the requirement
 - Safety of crew and facility best assured with this approach
 - Does not preclude improvement in future

NASA Division

- Con's
 - Does not result in an NGO per Congressional direction
 - Limited opportunities for competitive sourcing
 - May not satisfy user community desire for transparency
 - May not be best method to foster commercialization and tech transfer.
 - No flexibility from federal statutes

Conclusions

- Inappropriate Approaches for Management of ISS Utilization
 - Cooperative Agreement with Consortium or Other Recipient: Non-binding agreement.
 - Space Act agreement with Consortium or Other Recipient: Lack of precedent; other approaches are available

Conclusion

- Inappropriate Approaches for Management of ISS Utilization (continued)
 - State Corporation: Political issue; state control
 - Govt. Sponsored Enterprise: Must be privately owned; another form of Government Corporation is available
 - Cooperative Association: Voluntary nature of association; question about enforceability

Conclusions

- Appropriate for Study
 - Selection by Contract
 - Traditional Contract: Full and open competition
 - NASA Institute: Same as traditional contract, but limited to nonprofits/academics
 - Federal Government Corporation
 - FFDRC
 - NASA Division: Current structure with continuous improvement