

Competitive Sourcing

Procurement Policy and Procedure

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U.S. Office of Personnel Management

Associate Director for Management and Chief Financial Officer

Contracting, Facilities & Administrative Services Group

Contracting Branch

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Introduction

This policy and procedure document implements Office of Management and Budget (OMB) Circular A-76, Performance of Commercial Activities (Circular), May 29, 2003, and:

- assigns competition responsibilities,
- establishes reporting requirements, and
- describes the method for determining annual competition requirements.

This U.S. Office of Personnel Management's Competitive Sourcing Policy and Procedure document follows, generally, the outline of the Circular and must be read in conjunction with it. Associate Directors and Heads of Offices will continuously review their commercial activities using the Federal Activities Inventory Reform (FAIR) Act inventory as a tool to identify competition candidates. Associate Directors and Heads of Offices have authorization to nominate their activities as candidates for competition. If information contained herein conflicts with the law or the Circular, the law and Circular have precedence over this policy and procedure document.

Purpose

This document establishes the Office of Personnel Management's (OPM) policies and procedures for implementing and administering the Office of Management and Budget Circular A-76, Performance of Commercial Activities.

References

This document describes policies and procedures for implementing provisions of:

- Office of Management and Budget (OMB) Circular A-76 (Circular);
- Federal Activities Inventory Reform (FAIR) Act of 1998; and,
- Federal Acquisition Regulations (FAR).

Definitions

Adversely Affected Employees. Federal civilian employees serving competitive or excepted service appointments in Tenure Groups I, II, or III, who are identified for release from their

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competitive level by an agency, in accordance with 5 C.F.R. Part 351 and 5 U.S.C. Chapter 35, as a direct result of a performance decision resulting from a streamlined or standard competition.

Commercial Activity. A commercial activity is one that can be performed by a private sector source. A commercial activity may be part of an organization or a type of work that is separable from other functions or activities and is suited for private sector contract performance.

Commercial Source. A business or other concern that may compete to perform a commercial activity.

Conversion from Contract. A change in the performance of a commercial activity from a private sector provider to agency performance.

Conversion to Contract. A change in the performance of a commercial activity from agency performance to a private sector provider.

Expansion. An increase in the operating cost of an existing commercial activity based on modernization, replacement, upgrade, or increased workload. An expansion of an existing commercial activity is an increase of 30 percent or more in the activity's operating costs (including the cost of FTEs) or total capital investment.

Inherently Governmental Activity. An activity that is so intimately related to the public interest that it must be performed by Government employees. These functions include activities that require either the exercise of discretion in applying Government authority or the use of value judgments in making decisions for the Government. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States including:

- a. binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- b. 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;
- c. significantly affecting the life, liberty, or property of private persons; or
- d. 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.

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Interested Parties. For purposes of challenging the contents of an agency's commercial activities inventory pursuant to the Federal Activities Inventory Reform Act, an interested party is (1) a private sector source that is an actual or prospective offeror for a contract or other form of agreement to perform the activity and has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source; (2) a representative of any business or professional association that includes within its membership private sector sources referred to in (1) above; (3) an officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity; (4) the head of any labor organization referred to in section 7103(a)(4) of Title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (3).

Management Plan. The document that outlines the changes that will result in the Government's Most Efficient Organization to perform a commercial activity. It provides the staffing patterns, operating procedures, and needed resources that serve as a baseline for in-house cost estimates.

Most Efficient Organization (MEO). The document that forms the basis for all Government costs entered on the Competition Form. The MEO is a product of the Management Plan and is based on the Performance Work Statement (PWS).

Organization Coordinator (OC). An official, appointed by the head of the operating unit, designated to handle implementation of the Circular in an operating unit in coordination with CFAS Contracting Branch staff.

Performance Work Statement (PWS). The document that details the technical, functional, and performance characteristics of the work to be performed, identifies essential functions, and establishes performance standards. The PWS is the basis for all costs entered on the Competition Form. The PWS members must be separate and distinct from the Most Efficient Organization team.

Personal Services Contract. Personal service contracts are ones that establish an employer-employee relationship between Government and contractor employees involving close and continual supervision of contractor employees by Government employees rather than general oversight of contractor operations.

Principal Review Officer (PRO). An OPM employee appointed by the Organization Coordinator (or designee) who is responsible for ensuring the successful completion of competitive sourcing reviews and all requirements of the Circular and this document are met.

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Policy

OPM will meet the goals established by OMB for conducting A-76 Standard and Streamlined Competitions. Costs of OPM functions that can be performed by commercial firms will be compared with costs offered by commercial firms in competitions governed by the Circular and the FAR. These comparisons will ensure all costs are considered and that the costs are realistic and fair. Inherently governmental functions will continue to be performed by Federal employees.

Scope

This policy applies to all OPM commercial activities with the exception of:

- OPM Competitive Sourcing Official exempted commercial activities performed by Government personnel;
- OPM activities that are exempted by law, Executive Orders, or any treaty or international agreement;
- inherently governmental functions as stated under Definitions.

This policy document will not be used to:

- justify conversion to contract solely to avoid personnel ceilings or salary limitations;
- be construed to alter any law, executive order, rule, regulation, treaty, or international agreement;
- provide authority to enter into contracts; and,
- authorize personal service contracts.

Government Performance of Commercial Activities

Government performance of a commercial activity is authorized when a Standard or Streamlined Competition, conducted in accordance with the Circular, demonstrates that the Government is operating or can operate the activity at an estimated lower cost.

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Responsibilities

The following organizations and individuals are important to the success of OPM's competitive sourcing program. All competitive sourcing efforts must be carefully coordinated among the below described organizations and individuals' to achieve timely milestone completion.

Employee Unions. The unions that represent OPM employees are strongly encouraged to participate in, and contribute to, the A-76 program. Union participation is especially important in the preparation of Performance Work Statements and development of Most Efficient Organizations. OPM employee unions are permitted by OMB Circular A-76, Performance of Commercial Activities to participate in OPM's competitive sourcing program in the following areas:

- **Status Reports.** The Human Resource Advisor (HRA) shall interface with directly affected employees (and their representatives) from the date of public announcement until full implementation of the performance decision. Additionally, the HRA shall notify directly affected employees and their representatives of performance decisions and cancellations of competitions and solicitations. The Source Selection Authority shall ensure that the Contracting Officer offers a debriefing to directly affected Government personnel (and their representatives), in accordance with FAR 15.503.
- **Development of Key A-76 Documents.** The Circular states, "Directly affected Government personnel (and their representatives) may participate on the PWS team; however, to avoid any appearance of a conflict of interest, members of the PWS team (including, but not limited to, advisors and consultants) shall not be members of the MEO team." The Circular also states that, "Directly affected Government personnel (and their representatives) may participate on the MEO team; however, to avoid any appearance of a conflict of interest, members of the MEO team (including, but not limited to, the Agency Tender Official (ATO), HRA, advisors and consultants) shall not be members of the PWS team." Union officials may participate in the development of draft PWSs that serve as the baseline for the public private competition. Review of final PWSs would, however, make participating union officials and employees "procurement officials" and, as such, subject to the provisions of the Procurement Integrity Act. The Procurement Integrity Act prohibits Procurement Officials from 1) going to work for the contractor, if a contractor wins the competition, 2) divulging sensitive source selection information, and 3) accepting gratuities from any competing contractors. Additionally, Comptroller General Decisions have held that Government personnel who prepare PWSs are prohibited from participating in developing Government Management Plans (which includes the MEO, Transition Plan, Technical Performance Plan, and Standard/Streamlined Competition Form) and the source selection process. The separation of these functions prevents the appearance of a conflict of interest. Concluding, union officials reviewing final versions of the PWS would be precluded

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from participating in the preparation of the Government's Standard /Streamlined Competition Form.

- **Issuance of Formal Solicitations.** The Circular provides that, "All releases of the PWS and solicitation, including drafts, shall be by the CO. Information that is developed by the ATO or MEO team shall be considered procurement sensitive. With the exception of information related to the performance or productivity of the incumbent agency organization, historical data or other existing information that is available to the ATO or MEO team shall be made available to all prospective providers."
- **A-76 Performance Decision.** The Circular states, "The SSA shall ensure that the CO offers a debriefing to all private sector offerors, public reimbursable sources, the ATO, and directly affected Government personnel (and their representatives), in accordance with FAR 15.503."

The Deputy Director, OPM appoints the agency Competitive Sourcing Officer.

The Competitive Sourcing Officer will:

- approve any variations in competitive sourcing procedures described in Circular A-76;
- interpret the Circular, Federal Activities Inventory Reform (FAIR) Act, and other policy documents. Develop and revise OPM policy, procedures, and responsibilities for implementing the Circular;
- respond to inquiries from the public, OMB, Congress and the White House;
- prepare outgoing correspondence related to the A-76 Program, or delegate this responsibility to Associate Directors, Heads of Other Offices, and designated Competition Officials;
- prepare reports required by OMB or other agencies, including updated inventories and schedules for Standard and Streamlined Competitions;
- maintain records of decisions made as a result of Standard and Streamlined Competitions;
- maintain an inventory database of Standard and Streamlined Competitions;
- assist OPM offices in their implementation of the Circular and FAIR Act;
- monitor progress of operating units in implementing the Circular;
- meet with the staff of OMB regarding the Circular and the FAIR Act;
- track and provide information on operating costs of the activity in the Most Efficient Organization; and,
- prepare MEO cost summaries for the development of Circular A-76 costs that will compete with private sector firms.

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Associate Directors and Heads of Other Offices are responsible for:

- appointing an Organization Coordinator to implement the Circular within the activity being studied;
- coordinating A-76 reviews, expansions, and new requirements analyses;
- coordinating with Union officials, and involving them in the A-76 competition process; and,
- conducting management studies of all positions in the activity under review to assure the most efficient and cost effective performance.

Organization Coordinators are responsible for implementing the Circular in their activities. Specific responsibilities of the Organization Coordinator are:

- appointing a Principal Review Officer for each Standard and Streamlined Competition. The Principal Review Officer assesses and corrects documents supporting the Performance Work Statement, Most Efficient Organization, Quality Assurance Surveillance Plan, and Technical Performance Plan before they are sealed and provided to the Contracting Officer.
- certifying that each in-house cost estimate is based on the most efficient and cost effective operation possible;
- preparing the Performance Work Statement (PWS);
- reviewing the PWS and ensuring information is adequate for preparation of the solicitation; and,
- developing the in house costing data for competition purposes. This function, which is performed by a team member of the Most Efficient Organization, must be organizationally separate from the team that prepares the Performance Work Statement.

The Chief, Contracting Branch is responsible for:

- preparing the solicitation and ensuring the solicitation is complete and adequate for the competition;
- coordinating with Office of General Counsel to ensure legal requirements are met;
- answering questions from contractors arising during the competition;
- managing the solicitation process, including providing guidance and direction to the Source Selection Evaluation teams;
- ensuring adherence to Attachment B, Paragraph 5, The Source Selection Process and Performance Decision;
- tracking savings from Standard and Streamlined Competitions for Office of Management and Budget reports; and,

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- avoiding conflicts of interest by ensuring that no employee whose position is under A-76 competition will participate in source selection activities; separate teams of Government employees are involved in preparing the PWS and the Government's management plan; and no Government employee who participated in the preparation of the Government's management plan is involved in source selection activities.

The Office of the General Counsel will:

- provide legal guidance associated with A-76 competitions as requested; and,
- provide legal expertise about challenges to A-76 competition awards.

The Office of the Inspector General will:

- review Standard and Streamlined Competitions to ensure compliance with Circular A-76; and,
- conduct annual Post Competition Accountability assessments to ensure that the MEO is operating in accordance with the Cost of Agency Performance.

The Assistant Director, Human Capital Services Management Group is responsible for ensuring implementation of responsibilities for Circular A-76 Attachment B.8.d. Human Resource Advisor.

Quarterly Reporting Requirements

CFAS Contracting Branch will submit a Competitive Sourcing Quarterly Report to OMB, by the end of each fiscal quarter (December, March, June, September), that includes the following (1) in-progress streamlined and standard competitions (i.e., competitions with start dates and pending performance decisions); and (2) completed streamlined and standard competitions (i.e., competitions with performance decisions).

Annual Reporting Requirements

The FAIR Act and Attachment A of the Circular requires OPM to submit to OMB no later than June 30 of each year its Commercial Activities Inventory and supplemental information as requested. After OMB review and approval, OPM transmits a copy of the Inventory to Congress and makes it available on its website to the public. OPM follows the Circular for interested parties to challenge (and appeal) the contents of the inventory.

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Implementing the Circular and FAIR Act

The Circular and FAIR Act will be followed by parties responsible for implementing any part of these rules and regulations. CFAS and Center for Financial Services (CFS) staffs will prepare the annual FAIR Act Inventory using information submitted by OPM offices. The inventory must be submitted to OMB by June 30 each year. After review and approval by OMB, the inventory will be made available to Congress and the public. The inventory will include:

- Operating Unit and Activity
- Location
- Status
- Activity and Reason Codes
- Number of FTE
- Year the Activity first appeared on the inventory
- Year of Competition
- FTE Savings
- Estimated Annual Savings
- Year of MEO Review
- Official responsible for activity or contact person
- Title and phone number of the responsible official

CFAS will process all initial decisions on challenges to the FAIR Act Inventory. All appeals of FAIR Act Inventory challenges will be decided by the Director.

Determination of Activities Subject to Standard and Streamlined Competition

OPM offices' FAIR Act Inventory submissions shall contain:

- a description of the organization's mission and how the conversion of its commercial activities would affect its ability to meet its mission;
- a description of how that organization's commercial activities could be combined or integrated with another organization's commercial activities; and,
- an evaluation of that organization's commercial activities as follows:
 - perceived cost differences between performing the activity with in-house versus contractor staff;
 - impact to mission accomplishment if the activity is contracted out as the result of an A-76 competition;

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- impact on other organizations within OPM if the activity is contracted out as the result of an A-76 competition; and
- success that other agencies have had when these activities were performed by commercial sources.

Based upon the above analysis, each OPM office will determine for each activity whether it is:

- Most suitable for competition
- Suitable for competition
- Least suitable for competition

Additional Information

Please refer all questions to Fred Chatterton, Chief, Contracting Branch, at (202) 606-2240.