

**Departmental Administrative Order
Implementation of OMB Circular No. A-76, May 29, 2003**

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Section 1 Overview

1.1 Purpose

This Order prescribes policies and procedures to be followed for implementation and general administration of the provisions of the Office of Management and Budget (OMB) Circular No. A-76, Performance of Commercial Activities, May 29, 2003. This Order is to be treated as an amplification of subjects covered in the Circular. The omission of any subject contained in the Circular is not to be considered as diminishing its effect on the Department of Commerce (DOC) if it is otherwise applicable.

1.2 Policy

Operating Units within DOC should continually seek ways to perform their assigned function effectively and efficiently. They should use the Circular as a tool to meet these objectives in a way that is fair to all DOC employees. This Order is a mechanism for linking Departmental objectives to OMB Circular A-76, which is based on the premise that commercial activities should be subject to competition to ensure that taxpayers receive the best overall value. To achieve these goals, the Department is required to:

- Identify all activities as commercial or inherently governmental
- Perform inherently governmental activities with government personnel
- Use standard or streamlined competitions to maximize effectiveness and efficiency
- Apply the FAR (48 C.F.R. Chapter 1)
- Comply with procurement integrity, ethics and standards of conduct (including 18 U.S.C. § 208)
- Designate a competitive sourcing official (CSO)
- Require accountability for officials designated with competitive sourcing responsibilities by establishing performance standards in annual performance evaluations
- Centralize oversight responsibility
- Develop cost estimates using COMPARE software
- Track streamlined and standard competitions
- Treat all DOC employees fairly and assist adversely affected employees

1.3 Scope

This Order applies to all staff with designated roles and responsibilities in examining commercial activities at the Department of Commerce. The Circular contains detailed procedures in the following sections:

Attachment A	Inventory Process
	Inventory Requirements
	Categorizing Activities Performed by Government Personnel as Inherently Governmental or Commercial
	Reason Codes for Commercial Activities

Inventory Challenge Process

- Attachment B Public Private Competition
 Preliminary Planning
 Public Announcements
 Streamlined Competition Procedures
 Standard Competition Procedures
 Post Competition Accountability for Streamlined and Standard
 Competitions
 Contests

- Attachment C Calculating Public-Private Competition Costs

For a detailed description of specific actions to be undertaken under the Circular, please refer to these sections and the Commerce Acquisition Manual section relating to A-76.

Section 2 Roles and Responsibilities

2.1 Competitive Sourcing Official: The Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA) is designated as the Department's CSO, and is responsible for implementing the Circular. Specific CSO responsibilities include:

- Obtaining prior written OMB approval before deviating from the Circular.
- Approving in writing the cancellation of a streamlined or standard competition.
- Granting time limit waivers, before the announcement of each standard competition, allowing a specific standard competition to exceed the 12-month time limit by no more than 6 months, for a maximum of 18 months from public announcement to performance decision.
- Obtaining prior written approval from OMB to use performance periods that exceed five years (excluding the phase-in period).
- Approving, in writing, the use of a tradeoff source selection process (if used) and forwarding a copy of the approval to OMB.
- Approving termination of the service provider for failure to perform.
- If no responsive, responsible offers are received from private or public reimbursable sources, making a written determination to either revise the solicitation or implement the agency tender. Consulting with Deputy Director of OMB if solicitation revision is chosen and would result in exceeding established time limit for the standard competition.
- Deciding appeals to FAIR Act inventory challenge decisions.

See Appendix A, Delegation of Major A-76 Responsibilities for a more complete list of CSO responsibilities (including those that have been redelegated to Heads of Operating Units).

2.2 CFO Council: The CFO Council performs a steering committee/advisory role with respect to CSO and other centralized competitive sourcing functions. Council responsibilities include:

- Championing the program within its own organization.
- Reviewing and recommending to the CSO Department-wide inventory and competitive sourcing management plans (including target opportunities).
- Oversight of post-MEO implementations.
- Identification and concurrence of needed program resources.

2.3 Department of Commerce Procurement Executive: The Procurement Executive operates a centralized competitive sourcing staff office that provides staff support to the CSO and:

- Interprets OMB Circular A-76 and other policy documents. Develops and revises Departmental policy, procedures and responsibilities for implementing the Circular.
- Maintains liaison with the staff of OMB on matters concerning the Circular.
- Responds to inquiries from the public, OMB, Congress, and the White House concerning Circular issues.

- Prepares reports to OMB that involve the submission and updating of inventories, and management plans and schedules for streamlined or standard competitions.
- Maintains records of decisions made as a result of cost competitions of commercial activities.
- Maintains inventory and competition database.
- Supports the CFO Council with respect to its competitive sourcing responsibilities.
- Assists operating units in their implementation of the Circular.
- Responds to challenges to multi-bureau or Office of the Secretary FAIR Act inventories.

2.4 Head of Operating Unit:

- Appoints Agency Competition Officials for standard and streamlined competitions to be conducted pursuant to the Circular, including:
 - Agency Tender Official (ATO)
 - Contracting Officer (CO)
 - Performance Work Statement (PWS) Team Leader
 - Human Resource Advisor (HRA)
 - Source Selection Authority (SSA)
 - Most Efficient Organization (MEO) Team
- Appoints Organization Coordinator to handle implementation of the Circular within the operating unit.
- Institutes processes to ensure that all responsibilities are performed consistent with the Circular and Appendix A, Delegation of Major A-76 Responsibilities.

2.5 Office of Budget:

The Office of Budget shall:

- Provide inflation guidance for use in developing MEOs.
- Provide information on the Department's operating costs for developing MEOs.

See Appendix A for a list of major delegated responsibilities of the CSO and other Departmental/Bureau officials.

DELEGATION OF MAJOR A-76 RESPONSIBILITIES

RESPONSIBILITIES UNDER THE CIRCULAR	TO BE PERFORMED BY:
Obtain prior written OMB approval before deviating from the Circular.	Required by the new Circular to be obtained from OMB by the Competitive Sourcing Official (CSO). [The DOC CFO/ASA has been appointed as the CSO]
Determine that Government personnel are performing an “inherently governmental” function. Make determination and justify it in writing. Justification “shall be made available to OMB and the public upon request.”	Head of the Operating Unit and approval by the CSO.
Exempt a commercial activity performed by government personnel from performance by the private sector (i.e. assign Reason Code A). Written exemption and justification that “shall be made available to OMB and the public upon request.”	Head of the Operating Unit (or designee). Approved by the DOC CSO and provided to OMB by the DOC CSO upon request.
Challenges to bureau-specific FAIR Act inventories.	Head of the Operating Unit.
Challenges to multi-bureau or Office of the Secretary FAIR Act inventories.	Procurement Executive, Office of Acquisition Management.
Appeals to FAIR Act inventory challenge decisions.	Competitive Sourcing Official.
Appoint competition officials (e.g. the Agency Tender Official (ATO), Contracting Officer (CO), Performance Work Statement (PWS) Team Leader, Human Resource Advisor (HRA) and Source Selection Authority (SSA)) for each standard competition and as appropriate for streamlined competitions. Hold them accountable for the timely and proper conduct of streamlined or standard competitions through the use of annual performance evaluations.	Head of the Operating Unit who may redelegate authority to a subordinate manager.
Approve in writing the cancellation of a streamlined or standard competition.	Required by the new Circular to be performed by the Competitive Sourcing Official (without delegation).
Grant time limit waivers, in writing, allowing a specific streamlined competition to exceed the 90-day time limit by no more than 45 calendar days, for a maximum of 135 calendar days from public announcement to performance decision.	Required by the new Circular to be performed by the Competitive Sourcing Official (without delegation).
Grant time limit waivers, before the announcement of each standard competition, allowing a specific standard competition to exceed the 12-month time limit by no more than 6 months, for a maximum of 18 months from public announcement to performance decision.	Required by the new Circular to be performed by the Competitive Sourcing Official (without delegation).
Obtain prior written approval from OMB to use performance periods that exceed five years (excluding the phase-in period).	Competitive Sourcing Official based upon recommendation from the Head of the Operating Unit.
Approve, in writing, the use of a tradeoff source selection process (if used) and forward a copy of the approval to OMB.	Required by the new Circular to be performed by the Competitive Sourcing Official (without delegation).
Determine if the ATO is able to resolve deficiencies in the agency tender, and advise the SSA whether to exclude the agency tender from the standard competition.	Head of the Operating Unit.
Approve termination of the service provider for failure to perform.	Required by the new Circular to be performed by the Competitive Sourcing Official (without delegation).
Identify savings resulting from completed streamlined and standard competitions in accordance with OMB Circular No. A-11, <i>Preparation, Submission and Execution of the Budget</i> .	CFO or Administrative Officer of the Operating Unit.
Approve the requirement of a private sector source to include a performance bond.	Head of the Operating Unit who may redelegate authority to a subordinate manager.

RESPONSIBILITIES UNDER THE CIRCULAR	TO BE PERFORMED BY:
Determine if procedures are in place permitting an agency tender to receive an award fee.	Head of the Operating Unit who may redelegate authority to a subordinate manager.
Determine (in consultation with the CO) if the solicitation closing date should be amended if the agency tender will not be submitted by the original closing date.	Head of the Operating Unit who may redelegate authority to a subordinate manager.
If no responsive, responsible offers are received from private or public reimbursable sources, make a written determination to either revise the solicitation or implement the agency tender. Consult with Deputy Director of OMB if solicitation revision is chosen and would result in exceeding established time limit for the standard competition.	Head of the Operating Unit with approval by the Competitive Sourcing Official if solicitation revision is chosen and would result in exceeding established time limit for the standard competition.
Justify and approve in writing the determination to provide government furnished property.	Head of the Operating Unit who may redelegate authority to a subordinate manager.
Ensure against inappropriate "grouping" of functions or services where the requirement would then be unlikely suitable for award to small business.	The CO or the Head of the Operating Unit.
Must consider small business set-aside or establish worthwhile subcontracting goals for any type of competition.	Contracting Officer.