

[Below are several citations from OMB Circular-A-76 that may be helpful in reviewing the Performance Decision related portions of the Circular. Please see Attachment B for all of the provisions of the Circular regarding Public-Private Competitions]

D. STANDARD COMPETITION PROCEDURES.

6. Performance Decision in a Standard Competition.

a. Certification. To certify a performance decision in a standard competition, the SSA and CO shall sign the SCF.

b. End Date. The end date of a standard competition shall be the date that all SCF certifications are complete, signifying a performance decision. An agency shall not make any changes (including corrections) to the SCF, agency tender, or public reimbursable tender after this date, except in response to a contest under paragraph F of this Attachment.

c. Public Announcement of the Performance Decision. An agency shall make a formal public announcement (at the local level and via FedBizOpps.gov) of the performance decision. In the announcement of a performance decision for a sealed bid acquisition, the agency shall include the information made public at bid opening, under FAR Subpart 14.4. In the announcement of a performance decision for a negotiated acquisition, the agency shall include the information regarding offers and tenders identified in FAR 15.503(b). If an agency tender includes any MEO subcontracts, the agency shall not release proprietary information contained in these subcontracts.

d. Debriefing. 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.

e. Release of the Certified SCF and Tenders. An agency shall release the certified SCF, agency tender, and public reimbursable tenders, only as provided in this paragraph. Until resolution of any contest under paragraph F. of this Attachment, or expiration of the time for filing a contest, only legal agents for directly interested parties shall have access to the certified SCF, agency tender, and public reimbursable tenders. The agency shall require, as a condition of access, that a legal agent of a directly interested party sign a non-disclosure agreement. The agreement shall provide that a signatory may share the information covered by the agreement only with other signatories, and only for purposes of challenging the performance decision. Upon resolution of a contest challenging a performance decision (i.e., when the agency renders a written decision in compliance with FAR Subpart 33.103, as required by paragraph F.1.b. of this Attachment), or expiration of the time for filing such a contest, the certified SCF, agency tender, and

public reimbursable tenders, shall be available to the public, upon request. Proprietary information of private sector providers of sub-contracts included in agency or public reimbursable tenders shall not be released.

f. Implementing a Performance Decision. An agency shall implement the performance decision resulting from a standard competition as follows:

(1) Private Sector Provider.

(a) Awarding the Contract. For a performance decision favoring a private sector source, the CO shall award a contract in accordance with the FAR.

(b) Right of First Refusal. When the agency is the incumbent service provider, the CO shall comply with FAR 7.305(c) regarding the right of first refusal. The HRA shall provide the CO with a list of adversely affected employees as soon as possible after the performance decision is made.

(2) Public Reimbursable Provider.

For a performance decision favoring a public reimbursable source, the CO shall develop a fee-for-service agreement with the public reimbursable source. The CO shall incorporate appropriate portions of the solicitation and public reimbursable tender into the fee-for-service agreement and distribute the agreement to the appropriate individuals.

(3) Agency Provider.

For a performance decision favoring the agency, the CO shall establish an MEO letter of obligation with an official responsible for performance of the MEO. The CO shall incorporate appropriate portions of the solicitation and the agency tender into the MEO letter of obligation and distribute the letter to appropriate individuals including the ATO.

F. CONTESTS.

1. Standard Competitions. A directly interested party (see Attachment D) may contest any of the following actions taken in connection with a standard competition: (1) a solicitation; (2) the cancellation of a solicitation; (3) a determination to exclude a tender or offer from a standard competition; (4) a performance decision, including, but not limited to, compliance with the costing provisions of this circular and other elements in an agency's evaluation of offers and tenders; or (5) a termination or cancellation of a contract or letter of obligation if the challenge contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the performance decision. The pursuit of a contest by a directly interested party and the resolution of such contest by the agency shall be governed by the procedures of [FAR Subpart 33.103](#).

2. Streamlined Competitions. No party may contest any aspect of a streamlined competition.

[Below are several definitions from OMB Circular-A-76 that may be helpful in reviewing the Performance Decision related portions of the Circular above. Please see Attachment D of the Circular for all of the definitions]

B. DEFINITIONS.

Agencies shall use these definitions to implement and comply with this circular and the Attachments.

Agency Tender. The agency management plan submitted in response to a solicitation for a standard competition. The agency tender includes an MEO, agency cost estimate, MEO quality control plan, MEO phase-in plan, and copies of any MEO subcontracts (with the private sector providers' proprietary information redacted). The agency tender is prepared in accordance with Attachment B and the solicitation requirements.

Agency Tender Official (ATO). An inherently governmental agency official with decision-making authority who is responsible for the agency tender and represents the agency tender during source selection.

Contracting Officer (CO). An inherently governmental agency official who participates on the PWS team, and is responsible for the issuance of the solicitation and the source selection evaluation methodology. The CO awards the contract and issues the MEO letter of obligation or fee-for-service agreement resulting from a streamlined or standard competition. The CO and the SSA may be the same individual.

Directly Affected Employees. Civilian employees whose work is being competed in a streamlined or standard competition.

Directly Interested Party. The agency tender official who submitted the agency tender; a single individual appointed by a majority of directly affected employees as their agent; a private sector offeror; or the official who certifies the public reimbursable tender.

End date. The end date for a streamlined or standard competition is the date that all SCF certifications are completed, signifying an agency's performance decision.

FedBizOpps.gov. The website where the government electronically advertises solicitations or requirements.

Most Efficient Organization (MEO). The staffing plan of the agency tender, developed to represent the agency's most efficient and cost-effective organization. An MEO is required for a standard competition and may include a mix of government personnel and MEO subcontracts.

MEO Letter of Obligation. A formal agreement that an agency implements when a standard or streamlined competition results in agency performance (e.g., MEO).

Performance Decision. The outcome of a streamlined or standard competition, based on SLCF or SCF certifications.

Public Announcement. An agency's formal declaration that the agency has made a (1) decision to perform a streamlined or standard competition, or (2) performance decision in a streamlined or standard competition. The CO makes these announcements via FedBizOpps.gov.

Public Reimbursable Tender. A federal agency's formal response to another federal agency's solicitation for offers or tenders. The public reimbursable tender is developed in accordance with this circular and includes a cost estimate, prepared in accordance with Attachment C [of the Circular].

Representatives of Directly Affected Employees. In the case of directly affected employees represented by a labor organization accorded exclusive recognition under 5 U.S.C. § 7111, a representative is an individual designated by that labor organization to represent its interests. In the case of directly affected employees not represented by a labor organization under 5 U.S.C. § 7111, a representative is an individual appointed by directly affected employees as their representative.

Source. One of three specific categories of service providers (i.e., agency, private sector, or public reimbursable) that can perform a commercial activity for an agency.

Source Selection Authority (SSA). A competition official with decision-making authority who is responsible for source selection as required by the FAR and this circular. The SSA and CO may be the same individual.

Standard Competition Form (SCF). The agency form that documents and certifies all costs calculated in the standard competition.

References:

OMB Circular A-76, Performance of Commercial Activities (May 2003)

http://www.ma.mbe.doe.gov/a-76/a76_052903.pdf

Federal Acquisition Regulations (for Protests to the Agency, see Subpart 33.103)

<http://www.arnet.gov/far/>