

May 28, 2003

MEMORANDUM FOR THE PRESIDENT'S MANAGEMENT COUNCIL

FROM: Angela B. Styles  
Administrator

SUBJECT: Release of Revised OMB Circular No. A-76, "Performance of  
Commercial Activities"

On Thursday, May 29, 2003, the revised Office of Management and Budget (OMB) Circular No. A-76, "Performance of Commercial Activities," will be published in the Federal Register. The revised Circular replaces the current OMB Circular No. A-76 and is effective upon publication. The revised Circular makes significant revisions to the processes and practices for determining whether a commercial activity will be performed by a public or private source.

In finalizing the Circular, the Office of Federal Procurement Policy received valuable input and assistance from members of the President's Management Council and the agencies. I want to express my appreciation for the support that you and members of your staff provided. The revised Circular would not have been possible without the excellent support we received from the agencies.

To assist you and your agencies in responding to questions regarding the revised Circular, I am attaching three documents. The first document provides a summary of the revisions and responds to questions that we anticipate will be asked about the Circular. The second document compares key provisions of the revised Circular with the old Circular, and the third document is the full text of the Federal Register preamble. The preamble provides a detailed summary and explanation of the revisions that were made to the Circular.

If you need any additional information about the Circular, please do not hesitate to call me at 202-395-5802.



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## **Background and Facts on Competitive Sourcing and Revisions to Circular A-76**

Since taking office, President Bush has fostered the building of a citizen-centered, results-oriented, and market-based government. In August 2001, the Administration released the President's Management Agenda, a plan to reform the federal government through five government-wide initiatives. Competitive sourcing is one of the five initiatives.

### **What does competitive sourcing do?**

It helps improve the performance and efficiency of commercial activities performed for the federal government. Competitions are held in which the costs and overall value of services are compared among private sector and federal government providers. It does not matter who wins – the desired outcome is the delivery of better services at the best value for the American taxpayer.

### **What is the status of the competitive sourcing initiative?**

Over the past two years, 26 agencies have been asked to determine which activities performed by government personnel should be competed with the private sector, with the option of using commercial sources or in-house government facilities and personnel to perform the work. Most federal agencies have now built an infrastructure to conduct such public-private competitions. In many cases, typical competitions would look like the pair below:

- The Department of Energy has opened for competition services provided by graphics designer, computer, and financial services personnel.
- Since every major airline contracts with the private sector to receive weather reports, some 2,700 flight services employees at the Federal Aviation Administration (FAA) are now taking part in a public-private competition. Previously, these federal workers would provide weather reports to private pilots without the benefit of having had a competition.

In fact, much remains to be done to hold more competitions across the government. Competitive sourcing is the only initiative in the President's Management Agenda in which every federal agency receives a "Red" grade for status. A major reason for the difficulties is a complex set of rules governing these competitions found in a document known as Circular A-76.

### **What is Circular A-76?**

Circular A-76 is a set of policies and procedures to help determine whether public or private sources will undertake the federal government's commercial activities and services, ranging from software consulting, research and lab work to facilities management.

### **What is the history of Circular A-76?**

The roots of Circular A-76 can be traced to the former Bureau of the Budget's Bulletin 55-4

(issued January 15, 1955), which stated that the federal government would “not start or carry on any commercial activity” that the private sector could do. Revisions have been made periodically ever since.

The policy first appeared in its current “A-76” form on March 3, 1966. It has been changed three times: in 1967, 1979, and 1983. In 1979, a “Supplemental Handbook,” which spells out the complex details on holding competitions, was issued. The handbook also has been revised three times (first in 1983, then in 1996, and again in 1999), and will be abandoned as part of this package of changes.

### **What will the Administration’s revisions do?**

The revisions encourage department and agency managers to significantly expand public-private competitions for in-house or outside activities currently taking place without the benefit of rival service providers. Federal law already requires agencies to publicly identify activities that are commercial along with those that are inherently governmental in nature. For business activities performed for the federal government, the revised Circular A-76 will make complex competitions easier while also reducing the time it takes to hold them from as long as four years to one.

### **When do the revisions go into effect?**

These revisions to Circular A-76 take effect immediately.

### **Which entities does the revised Circular A-76 apply to?**

The circular applies to all executive branch agencies.

### **What are the main reasons behind the latest set of changes?**

The process for holding competitions has become inordinately long and complex, and actually discourages them from taking place. For competitions that do occur, they can last as long as four years. Moreover, accountability for delivering promised results is limited. Neither the government nor private sector providers of services operate with the proper mix of incentives to ensure sound performance. This new process holds both public and private sector service providers to the same performance benchmarks.

### **What benefits does the Administration expect from these changes?**

Studies and real-world experience show that competition will improve the performance and effectiveness of services provided on the federal government’s behalf. These changes are designed to give agencies the best tools for doing their jobs well, while delivering the best value possible to citizens. Anticipated savings will offer additional benefits. Although figures vary by case, competitions consistently have amounted to more than 30 percent in savings, according to General Accounting Office and Center for Naval Analysis evaluations.

### A-76 Side-by-Side Comparison

Old A-76	November 2002 Draft	New A-76
<u>Minimal guidance on preliminary planning</u>	Express guidance on preliminary planning	Further expansion of preliminary planning requirements
No mandatory <u>time frames</u> for conducting competitions -- reporting requirement for failure to meet 18 and 36 months goals.	12 month timeframe with opportunity to seek 6 month extension.	12 month timeframe with 6 month extension for complex competitions.
<u>Decisions made based on low cost</u>	Creation of "Integrated" source selection process allowing for broader consideration of cost and quality primarily used for IT activities.	Name changed to "Tradeoff" source selection process. Greater agency flexibility to use for activities beyond IT.
<u>Unique Procurement Process</u>	Integration of some current federal procurement regulations	Further integration of federal procurement regulations with emphasis on equal application of requirements to public and private sources.
- <u>Direct conversions allowed</u> - <u>Streamlined approach</u> authorized for public private competitions	- Direct conversions allowed - Creation of new "business case" with short deadline	- <u>Direct conversions eliminated</u> - <u>Enhancement</u> of streamlined processes with expanded deadlines.
<u>Competition</u> cited as underlying element of policy, but preference for private sector	-Stronger policy emphasis on competition - Preference for best result for taxpayer (not outsourcing) when competition conducted with express recognition of important role played by private sector	Same as Draft

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Old A-76	November 2002 Draft	New A-76
No <u>presumption</u> that activities are commercial	Creation of a presumption that all activities are commercial, unless proven otherwise. Justification required for functions agencies identify as inherently governmental.	Elimination of presumption, but justifications required for functions agencies identify as inherently governmental
<ul style="list-style-type: none"> <li>- <u>Preference</u> for private sector policy statement</li> <li>- <u>Reliance</u> on private sector</li> </ul>	<ul style="list-style-type: none"> <li>- Elimination of preference for private sector performance</li> <li>- Reliance statement maintained</li> </ul>	<ul style="list-style-type: none"> <li>- Same</li> <li>- Same</li> </ul>
No requirement to identify <u>inherently governmental</u> activities in agency inventories	Requirement to list all inherently governmental positions	<ul style="list-style-type: none"> <li>- Same</li> <li>- Challenges to the "reason" codes allowed</li> </ul>
<u>Guaranteed seat at table</u> for in-house offer in spite of deficiencies ("Endless bites at apple")	Express right to exclude in-house source under very limited circumstances (i.e., in one type of source selection process (Integrated))	Express right to exclude in-house source or private sector offer if materially deficient. Requires steps to ensure in-house offer gets full opportunity to be considered -- e.g., high level agency official must decide whether with additional resources the agency can submit a more competitive offer
No <u>centralized oversight and reporting</u>	Centralized oversight and reporting	Expanded reporting
Minimal post-competition <u>accountability</u> for in-house offeror	Creation of accountability rules for in-house providers	Expanded accountability for all sectors