

Frequently Asked Questions OMB Circular A-76

Q1. I keep hearing about OMB Circular No. A-76. What is it?

Answer. OMB Circular No. A-76 sets the policies and procedures that executive branch agencies must use in identifying commercial-type activities and determining whether these activities are best provided by the private sector, by government employees, or by another agency through a fee-for-service agreement. The term formerly used to describe this process is "competitive sourcing." On May 29, 2003, the Office of Management and Budget unveiled long-awaited revisions to OMB Circular A-76, which went into effect immediately. The new revisions made a fundamental policy change to make the circular more friendly to the federal worker by doing away with the longstanding presumption that all commercial-type activities in government belong in the private sector. The new emphasis is simply on getting the best value for the citizen, irrespective of who performs the work.

Q2. I hear that the program is not funded. Does this end all studies and existing MEOs?

Answer. It is true that both the Omnibus Appropriations Acts of 2009 thru 2012 stated no funds were appropriated for any new Circular A-76 competitions. As a result, NIH did not begin any new Circular A-76 competitions in FY 2009 thru FY2011 and has no plans to conduct new Circular A-76 competitions in FY 2012.

Existing Most Efficient Organizations (MEOs) will continue through the end of the final performance period in their Letter of Obligation (LOO). Typically a LOO is a five year period consisting of five one-year performance periods. All staffing and budget considerations applicable to the LOO will continue and post-competition accountability (PCA) will be conducted as usual.

Q3. What is Commercial Services Management?

Answer. OMB renamed the Competitive Sourcing initiative "Commercial Services Management" (CSM) to recognize that agencies improve the operation of their commercial functions using a variety of techniques. In those circumstances, this would include a Business Process Reengineering (BPR) analysis.

Q4. Why is competitive sourcing such a hot issue?

Answer. Under competitive sourcing, executive agencies must study some of the commercial activities currently performed by federal employees. Since one possible outcome of these studies is that some government employees may be reassigned or lose their jobs, there is understandably general concern in the federal workforce. Congress has not funded any new Circular A-76 studies in 2009 thru 2012.

Q5. How do people know if their job is going to be competed?

Answer. The OMB A-76 Circular requires an agency to make a formal public announcement for each competition. An agency will notify affected employees, and the employees' unions, that their jobs will be part of the competition before the formal announcement. Depending on the particular situation, this advance notice may be weeks or months before the formal announcement.

Q6. If my job is going to be competed, what are the odds that I'll lose my job?

Answer. Experience has shown that the government wins the competitions more than half of the time. As agencies gain more experience with Circular A-76 studies, it is likely that the government will win an even greater percentage of the competitions. NIH has conducted 38 competitions since 2003 and won all but one. Long experience at the state and local government levels has shown that even when the government loses a competition, a relatively small percent of employees actually lose their jobs. Normal attrition, retirements, and transfers are common instead.

Q7. Do Circular A-76 studies do any good for anybody?

Answer. The government spends billions of dollars every year for commercial services provided by government employees. Competition can easily result in savings of an average of 30 percent, whether government employees or private sector employees ultimately do the work. At the Defense Department, a survey of the results of hundreds of competitions done since 1994 showed savings averaging 42 percent. These savings can be re-invested in pursuit of the agency mission. This means there is enormous potential for more productive use of available funding, with no reduction in quality of service. It makes sense to periodically evaluate whether or not any organization is organized in the best possible way to accomplish its mission. This self-examination is fundamentally what public-private competition is intended to achieve.

Q8. How long are Circular A-76 studies going to continue?

Answer. The OMB Circular and the study process will continue. However, NIH currently does not have any new Circular A-76 studies planned for FY 2012.

Q9. What's the difference between a commercial function and an inherently governmental function?

Answer. An inherently governmental function is defined as an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. A commercial activity is a service that could be performed by the private sector, because it is not so intimately related to the public interest. As a result, commercial activities, unlike inherently governmental activities, can be subject to competition.

Q10. What is the Federal Activities Inventory Reform (FAIR) Act?

Answer. The FAIR Act—requires executive agencies to make an annual accounting of the commercial activities performed by federal employees and submit them to the Office of Management and Budget (OMB). The OMB A-76 Circular requires that agencies also account for inherently governmental activities performed by federal employees. The agency lists that result from this are referred to as "FAIR Act Inventories." After OMB reviews and approves an agency's inventory, the agency must post it on its public web site. Keep in mind that the inventory reflects activities, which are not the same thing as positions. One single employee may perform both inherently governmental and commercial activities.

Q11. Once an agency decides it wants to compete a function, what comes next?

Answer. The agency must conduct preliminary planning to identify affected positions, time frame, type of study, competition officials, communication plan, and other items. The agency then needs to consult with any affected employees and their unions.

Q12. What happens in a streamlined competition?

Answer. In a streamlined competition, an agency determines an estimated contract price for performing the work by an outside contractor. The agency has a fair amount of latitude in determining the estimated contract price. For example, the agency may solicit proposals from prospective contractors (although this is not required) or may instead conduct more informal market research, including basing the estimate on contractor prices from multiple award schedule contracts.

The agency also determines how much it costs to perform the function in-house, with government employees. The agency can cost either the existing organization or develop a plan to streamline the organization (called a "most efficient organization," or MEO) and base its in-house cost estimate on that plan. After the costs for both the public and private sectors are compared, the organization that costs the least wins. A streamlined competition must be completed—which means a decision is made to keep the work in-house or contract it out—within 90 days from the date it was publicly announced.

The agency's Competitive Sourcing Official, who is responsible for implementing the Circular within the agency, can grant a time limit extension of 45 days for a streamlined competition that involves a solicitation or development of a MEO, for a maximum of 135 days from the date the competition is announced until a decision is made. The OMB A-76 Circular also allows the Competitive Sourcing Official to extend the deadline beyond 135 days with prior written approval from OMB.

Q13. How does an agency go about figuring how much it costs to perform the function in-house? Are there any rules?

Answer. Yes, there are rules. Attachment C of the Circular spells out the detailed process that agencies must use for both streamlined and standard competitions in estimating the cost of performance by a government agency. Agencies are required to use COMPARE—computer software that incorporates the costing procedures of the Circular—to develop their cost estimates. Agency officials must certify that the cost estimate is accurate and has been calculated in accordance with the Circular.

Q14. What happens in a standard competition?

Answer. In a standard competition, an agency selects a service provider based on formal offers submitted in Answer to an agency contract solicitation. The government submits its own offer along with prospective private contractors. In a standard competition, the government organization develops what is called a "most efficient organization" or MEO, where the agency develops the staffing plan that will form the basis for the agency's offer in the competition. The MEO typically involves streamlining of the existing organization and is designed to place the government in the best competitive position against the private sector offerors.

A standard competition must be completed within 12 months of the date that it was publicly announced. The Competitive Sourcing Official can extend this deadline by an additional 6 months, and, as in a streamlined competition, this deadline could be extended even further with OMB's prior written approval.

Q15. Who wins the competition? The lowest-cost bidder?

Answer. Not necessarily. The OMB A-76 Circular provides that an agency may choose from several different procedures for determining the winner of a competition, and two of these give an agency leeway to consider non-cost factors. However, cost will in all cases continue to be an important factor, often the most important factor, in selection decisions.

Q16. The Circular requires the Competitive Sourcing Official to appoint competition officials for every standard competition and, as appropriate, for streamlined competitions. What are the names of the officials and what are their roles?

Answer. The agency Competitive Sourcing Official (CSO), as mentioned above, is responsible for implementation of the OMB A-76 Circular within the agency. This person is typically a senior official in the agency.

The Agency Tender Official (ATO) is responsible for developing the agency offer (the MEO submitted in response to a solicitation for a standard competition), and represents the government team's offer during source selection.

The Human Resources Advisor (HRA) is a human resources expert who is responsible for assisting the agency tender official in human resource-related matters related to the agency bid.

The Performance Work Statement (PWS) team leader develops the performance work statement and quality assurance plan, determines if the government will furnish property, and assists the contracting officer in developing the solicitation.

The Source Selection Authority (SSA) is responsible for determining the winner.

The Contracting Officer (CO) is responsible for issuance of the solicitation and the source selection evaluation, and serves as a member of the PWS team.

Q17. If the government loses a competition against the private sector, do the affected employees have any chance of being hired by the contractor who won the competition?

Answer. Yes. The OMB A-76 Circular requires that where the agency is the incumbent provider of the service and a contractor wins the competition, the contractor shall give government employees who have been or will be adversely affected or separated as a result of the award of the contract the right of first refusal for employment openings under the contract in positions for which they are qualified (so long as no post-government employment conflicts of interest are involved).

While this does not require the contractor to hire any government employee, it prohibits the contractor from hiring anyone else without first offering vacant positions to qualified displaced government employees. It is important to understand that the federal government cannot tell a private contractor whom to hire; neither can the government dictate a private contractor's hiring process. The "right of first refusal" is not a job guarantee for displaced government employees.

Q18. What steps are being taken to ensure that minority, women, and persons with disabilities are not disproportionately impacted by Circular A-76 studies?

Answer. The NIH Office of Equal Opportunity and Diversity Management (OEODM) has been involved with A-76 initiatives from the start. OEODM has been evaluating the potential effects of these studies in an effort to predict and prevent any unintentional adverse impact. In addition, the NIH Diversity Council formed a subcommittee to coordinate workforce issues related to restructuring and Circular A-76 studies.

Q19. How far down the management structure is management protected from Circular A-76 studies?

Answer. Nobody is protected from Circular A-76. A manager may be conducting a commercial activity for part of their time. In addition, the management structure may also be restructured even if the work is retained in-house.

Q20. What performance measurement and consequences will be put in place to hold contractors to performing the work for the price?

Answer. Contractors are held to standards and requirements as required by the Federal Acquisition Regulations (FAR). Contractors are evaluated based upon a number of criteria, including their performance relative to the Statement of Work to which they bid. A contractor who does not perform will be replaced.

Q21. How much notice will employees received if their work is contracted?

Answer. We give as much notice as possible. Typically, it takes six to 12 months from the employee notice for the government to convert to a new service provider.

Q22. If a function is reviewed, when will it be reviewed again?

Answer. Review of functions occurs again during the last performance period of the current MEO. Most MEOs are made up of five service periods, each a yearlong.

Q23. Who in NIH is involved in Circular A-76 studies?

Answer. There are many people involved in Circular A-76 studies at NIH. The Deputy Director for Management (DDM) makes key decisions. The Commercial Activities Steering Committee (CASC) makes key recommendations to the DDM and oversees the entire process. The Commercial Activities Review Team (CART) in the Office of Management Assessment (OMA) has primary operational responsibilities for drafting documents, coordination, training, and study oversight. The Transition Center is responsible for communication and placement assistance, if needed. The Office of Equal Opportunity and Diversity Management (OEODM) is responsible to mitigating adverse impact. The Office of Acquisition Management and Policy provide acquisition support. NIH management may serve as competition officials Management and employees may serve on competition teams.

Q24. Where can I get more information?

Answer. This website contains additional pages of information. Just press a Tab on the folder at the top of the webpage to access additional pages. One tab includes additional Non-NIH links. NIH employees can access additional information <http://oma.nih.gov/dms/programs/A76/default.aspx> (NIH employee access only).