

T3.2.1.3 - Implementing OMB Circular No. A-76 Revised 1/2009

A Guidance for Implementing for OMB Circular No. A-76

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A Guidance for Implementing for OMB Circular No. A-76

1 OMB Circular A-76, Performance of Commercial Activities

OMB Circular No. A-76, "Performance of Commercial Activities," states the policy of the Government to: (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel; and (b) consider relative cost in deciding between Government and contractor performance. In comparing the costs of Government and contractor performance, the Government bases contractor cost of performance on firm offers.

2 Applicability of AMS Revised 10/2018

a. The FAA follows A-76 policy and procedures, except when the Circular is inconsistent with AMS or other FAA statutory authority. The Circular requires compliance with the Federal Acquisition Regulation (FAR), such as when conducting standard and streamlined competitions, publicizing competitions, when establishing certain roles or responsibilities, and some decision-making. References to FAR, FAR-based processes or terminology, or other Government procurement requirements in the Circular are not applicable to FAA.

b. Procurement procedures, except as noted in this guidance, are based on AMS procurement policy (section 3.0) and guidance. AMS is used to plan procurements; solicit, evaluate and select sources; resolve protests and disputes; and manage contracts.

c. Except as described in this guidance, AMS-required decisions, mandatory planning documents, and lifecycle phase-related activities described in AMS policy (sections 1.0 and 2.0) are not applied to Circular A-76 competitions. AMS documentation, when applicable, is appropriately tailored. Joint Resources Council decisions follow A-76 milestones rather than AMS phases.

3 Responsibilities Revised 1/2009

a. *Service Director of the organization responsible for conducting A-76 competitions:*

Appoints an acquisition team to lead the competition. An acquisition team is a cross-functional, empowered team given an operating budget and resources necessary to acquire specific services identified as commercial in nature by a Federal Activities Inventory Reform (FAIR) Act inventory.

b. *Acquisition Team*

(1) Develops an Implementation Strategy and Planning (ISP) document, tailored as necessary.

(2) Develops public announcements, evaluation criteria and plans, screening information requests, evaluation reports, and debriefs potential service providers.

c. Joint Resources Council (JRC):

(1) Prior to issuance of the official start date (public announcement):

- (a) Baselines the cost of as-is performance;
- (b) Approves the acquisition strategy;
- (c) Revalidates the need for the function identified in the functional scoping study.

(2) Prior to issuance of the final screening information request (SIR):

- (a) Establishes an activity cost baseline (independent government cost estimate);
- (b) Approves the ISP and Risk Management Plan;
- (c) Approves the Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP).

(3) Prior to Source Selection decision:

- (a) Approves the final cost baseline;
- (b) Approves the recommended source selection decision.

4 Primary Phases for A-76 Competitions

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5 Preliminary Planning

The general process for the public-private competition within a competitive sourcing study falls into four distinct phases: Preliminary Planning, Public Announcements, Competition Procedures, and Post Competition Accountability.

a. *Functions.* Before initiation of a competition, a FAIR Act inventory will have already identified the function or activity as a commercial activity suitable for competition; the existing service is deemed to satisfy needed capabilities.

(1) A functional scoping study conducted during the preliminary planning phase of a public-private competition inventories functions that deliver "as is" services/capabilities. It also determines whether users have continued need for all, some, or none of those services. The functional scoping study incorporates mission need related activities and is used to document mission requirements. Therefore, a Mission Need Statement is not prepared.

(2) From the functional scoping study, an initial set of technical and performance requirements is derived and documented in a functional scoping summary document (FSSD). The FSSD refines functions and subfunctions to describe minimum, required levels of technical performance. Functions are described in such a way as they can be measured and evaluated. The FSSD is developed before the public announcement and approved by the JRC.

b. *Market Survey*. A market survey is conducted to determine if sufficient interest and capability exists in the marketplace to perform the service being competed. This market survey is in lieu of AMS-prescribed investment analysis activities. A Requirements Document, Investment Analysis Report, and Acquisition Program Baseline are not required.

c. *Initial Acquisition Strategy*. A high-level acquisition strategy is developed and approved by the JRC.

d. *As-is Cost Baseline*.

(1) A cost baseline is developed for the service as it is currently provided. This cost baseline is presented to the JRC for information before the public announcement.

(2) Baseline costs for the competition are calculated in accordance with the guidance provided in Attachment C of OMB Circular A-76 (Revised).

6 Public Announcement (Official Start Date) Revised 7/2021

The public announcement starts the competition process. The announcement indicates that the FAA will conduct the source selection in accordance with AMS. The FAA uses Contract Opportunities on SAM.gov to make public announcements.

7 Competition Procedures Revised 1/2009

a. *Stakeholder Involvement*. A overarching goal is user and/or customer satisfaction along with achievement of planned value and performance levels. This requires the acquisition team to work with key stakeholders, including affected employees and associated collective bargaining units, to ensure that all issues necessary for success are identified and resolved.

b. *Notice of OMB Waivers*. Any specific deviations from the Circular that require a waiver from the OMB will be described in the SIR and public announcement.

c. *AMS Planning Documents.* The detailed strategy for the overall program is defined in an Implementation Strategy and Planning (ISP) document. An ISP is:

- (1) Prepared to describe program actions and activities;
- (2) Developed prior to release of the final SIR; and
- (3) Approved by the JRC.

d. *Availability of Data.* Historical data and other information available to the ATO or the MEO Team are made available by the Contracting Officer (CO) to all prospective providers. However, information related to the performance or productivity of an incumbent MEO is not released.

e. *Source Selection.*

- (1) An ISP, appropriately tailored, describes the specific procurement approach to be used.
- (2) The Source Selection Authority (SSA) in the Circular is synonymous with the FAA's Source Selection Official (SSO).
- (3) Use of AMS clauses "Notice of Cost Comparison" and "Right of First Refusal of Employment" is mandatory. The public announcement also states that award to a private potential service provider is contingent on results of the cost comparison.
- (4) Cost and pricing data is required from all potential service providers in accordance with the Circular. Common costs will be identified in the SIR.
- (5) The SIR includes a requirement for potential service providers to submit a quality control plan.
- (6) *Special Considerations*
 - (a) Private sector offers and agency tenders are not evaluated separately. The CO, SSO, and evaluation team ensure that all potential service providers are treated fairly.
 - (b) Deficiencies in an offer or tender are handled by the CO in accordance with the provisions of Attachment B of the Circular.
 - (c) To the maximum extent possible, Government property is made available for use by service providers. The acceptance and use of such property, however, is not mandatory.

(7) Within three days after contract award, the CO provides written notice to each potential service provider remaining in the competition, but not selected for award. This notice includes:

- (a) The number of potential service providers solicited;
- (b) The number of proposal received;
- (c) The name and address of each potential service provider receiving an award;
- (d) The items, quantities, and any stated unit prices of each award (The total contract price may be furnished if it is impractical at this time to provide unit prices but the unit prices must be made available upon request.);
- (e) In general terms, the reasons the potential service provider's proposal was not accepted, unless the price information reveals the reason. In no event shall a potential service provider's cost breakdown, profit, overhead rates, trade secrets, manufacturing process or techniques, or other confidential business information be disclosed to any other potential service provider.

f. Period of Performance.

(1) Contracts awarded under the Circular are for a minimum of three years, excluding the phase-in period. OMB approval is required for performance periods exceeding five years, excluding the phase-in period. Performance periods for the agency tender and for private sector potential service providers will be identical.

(2) Potential service providers, including the MEO, propose a phase-in plan to replace the incumbent service provider. The plan, intended to minimize disruption and start-up requirements, considers recruiting, hiring, training, security limitations, and other special considerations. The phase-in period is considered the first performance period of a new contract.

g. Contests. The FAA will follow the FAA Dispute Resolution process in total, which supersedes the provisions of Section B, Part F, of the Circular. The Office of Dispute Resolution for Acquisition (ODRA) is available to assist all parties of an A-76 acquisition, including the MEO, when objections arise concerning the competition or source selection decision.

h. No Satisfactory Response. If no satisfactory offer or tender is received in response to an A-76 solicitation, the CO determines the reasons for non-responsiveness and proposes a course of action to the Competitive Sourcing Official (CSO). The CSO then takes action in accordance with the provisions of Attachment B to the Circular.

i. New Technology and Operational Processes. There is no required testing of existing

services when they become the responsibility of a new service provider unless new services or technologies are introduced. The purpose of test and evaluation remains the mitigation of potential operational risks and the verification of operational readiness for the In-Service Decision. The Acquisition Team determines the type of testing, if required, prior to transition to a new service provider. An In-Service Decision is not required to deliver a set of services using existing technology or processes. The In-Service Decision is a key program milestone if new technology or service concepts are introduced as a result of the competition or during the service delivery timeframe.

j. *Lessons Learned*. The office responsible for conducting the acquisition maintains a database of lessons learned from each competition to ensure a consistent competition process and development of best practices.

k. *Competitive Sourcing Official (CSO)*. The CSO is responsible for the implementation of the Circular within the FAA. Specific duties of the CSO are spelled out in the Circular.

8 Post Competition Accountability

a. In-Service Management begins when the new service provider initiates phase-in. At this point an organization known as the Continuing Government Activity (CGA) assumes responsibility for monitoring and assessing performance of the service provider. Members of the CGA are appointed by the responsible service director. The manager of the acquisition team coordinates closely with the manager of the CGA to assure a smooth transition of responsibilities.

b. For a performance decision favoring the agency, the CO establishes an MEO letter of obligation with the official responsible for performance of the MEO. Appropriate portions of the solicitation and the agency tender are incorporated into the letter of obligation which is then distributed to appropriate individuals, including the ATO.

c. The CGA will accomplish the post competition accountability procedures required by the Circular and will institute the appropriate monitoring mechanisms.

9 Adversely Affected Employees

a. In accordance with the FAA Performance Management System (PMS) Chapter 1, paragraph 14, Federal civilian employees serving competitive or excepted service appointments in Tenure Groups I, II, or III, who are identified for release from their competitive level by the FAA as a direct result of a performance decision resulting from a Circular competition are considered adversely affected employees.

b. The new service provider must give such employees the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

c. Within 10 days after contract award, the CO provides the new service provider a list of all Government employees who have been or will be adversely affected or separated as a result of the award. The new service provider then reports, within 120 days after contract

performance begins the names of individuals identified on the list who were hired within 90 days after contract performance began.

10 The Agency Tender

a. The Agency Tender is the FAA management plan submitted in response to a Circular competition. It includes the MEO, a cost estimate, an MEO quality control plan, an MEO phase- in plan and other elements required by the Circular and the SIR. It is not required to include a labor strike plan, a small business strategy, a subcontracting plan goal, participation of small disadvantaged businesses, licensing or other certifications, nor past performance information (except in unique circumstances identified in the Circular). The date for delivery of offers and tenders is the same.

b. When preparing the Agency Tender the MEO Team may consider the use of commercial contractors or teammates to help achieve performance requirements. In such cases the MEO is required to comply with the AMS.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)