



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

March 16, 2007

The Honorable Bart Gordon
Chairman
Committee on Science and Technology
House of Representatives

Subject: *Implementation of OMB Circular No. A-76 at Science Agencies*

You requested that we determine how the Department of Commerce (National Institute for Standards and Technology and the National Oceanic and Atmospheric Administration), the Department of Energy, the Environmental Protection Agency (EPA), and the National Aeronautics and Space Administration (NASA) have implemented the May 2003 revised Office of Management and Budget (OMB) Circular A-76 process, which seeks to put commercial activities now performed by government out for public-private competition. You were particularly interested in outcomes where public-private competitions resulted in commercial activities being contracted out to the private sector. On December 14, 2006, we briefed your staff on the preliminary results of our review. Attached is an updated version of the briefing document we used.

In summary, we found that the five science agencies under the Committee's jurisdiction generally implemented the A-76 process as revised in May 2003. However, we did find one exception and two deviations. The exception involved the Department of Commerce, which had not put out for competition any commercial activity performed by National Institute for Standards and Technology personnel. Additionally, OMB granted deviations to the new A-76 process requirements for two other agencies. OMB allowed NASA to put out for competition new commercial scientific and technological research activities—called NASA Research Announcements—outside the normal A-76 process. Nearly all of NASA's public-private competitions have been competed under this deviation. OMB also approved the Department of Energy's pilot program for determining whether use of the General Services Administration's Multiple Award Schedules would increase competition.

We also found that, while the five agencies generally implemented the A-76 process, few of the hundreds of commercial activities they determined suitable for public-private competition were competed. According to agencies officials, agencies recognized that activities performed by 10 or fewer employees were so small that the costs of conducting public-private competitions would outweigh any expected savings. As a result, agencies did not conduct competitions on those activities, except EPA, which conducts public-private competitions for activities performed by 10 or fewer employees.

Finally, we found that the private sector won few of the science agency activities put out for competition. Specifically, from fiscal year 2003 through fiscal year 2005, the agencies

held 22 public-private competitions. In-house organizations won 19 of these competitions and the private sector won 3. The agencies estimated that the contracts for the three activities won by the private sector were performed by 337 federal employees and would save over \$45 million.

To determine how the science agencies have conducted the revised A-76 process, we reviewed OMB guidance, performance reports, agency competitive sourcing policies and procedures, and analyzed historical documents such as agency competitive sourcing plans, and studies used to make sourcing decisions. We interviewed officials responsible for managing competitive sourcing programs to document A-76 procedures at the Department of Commerce (National Institute for Standards and Technology and the National Oceanic and Atmospheric Administration), Department of Energy, EPA, and NASA. To obtain information about activities competed and contracted out to private-sector entities, we performed detailed analyses of the agencies' fiscal years 2003 through 2005 commercial activity and competitive sourcing reports of competitions. We conducted our work from August 2006 through January 2007 in accordance with generally accepted government auditing standards.

We provided this report to the Department of Commerce, the Department of Energy, EPA, and NASA for review and comment. The Department of Commerce and NASA responded in formal letters, which are included in enclosures II and III, respectively. The Department of Energy and EPA provided comments via email. All agencies agreed with our findings and observations. The Department of Commerce and EPA provided technical comments, which we incorporated into the report as appropriate.

As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will then send copies of the report to interested congressional committees, the Director of OMB, the Secretaries of Commerce and Energy, and Administrators of the Environmental Protection Agency and the National Aeronautics and Space Administration. We will make copies available to others upon request. In addition, this report will be available on the GAO Web site at www.gao.gov.

If you or your staff have questions concerning this report, please contact me at (202) 512-4841 or liA@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other key contributors to this briefing were James Fuquay, Assistant Director; Myra Watts-Butler, Greg Campbell, Jean Lee, Sanford Reigle, and Sylvia Schatz.

Sincerely,



Allen Li
Director, Acquisition and Sourcing Management

Enclosure

Briefing

Why GAO Did This Study

The Office of Management and Budget (OMB) Circular A-76 tasks federal agencies with identifying work that could be considered for private-public competition. In May 2003, OMB revised the Circular. The Chairman of the House Committee on Science requested GAO to (1) determine how the revised Circular A-76 process has been conducted at the five science agencies under the Committee's jurisdiction, and (2) obtain information about activities competed and contracted out to private sector entities.

Background

In 1966, the Bureau of the Budget, predecessor of the OMB, issued Circular A-76 to provide guidelines for determining whether a commercial activity should be performed by a federal agency or under contract. However, early implementation of the A-76 process was roundly criticized as inconsistent and frequently inequitable. Over the next 3 decades, OMB made several revisions to the circular to provide a more streamlined and equitable process. Despite these efforts, debate continued about the value and limitations of the A-76 process. In 2001, to help institutionalize use of competitive sourcing, OMB mandated that agencies compete at least 5 percent of their full-time equivalents (FTE) listed on their commercial activities inventories by the end of fiscal year 2002 and another 10 percent by the end of fiscal year 2003. Congress criticized these targets as arbitrary and potentially damaging, and directed GAO to convene a panel to study the government's competitive sourcing policies and procedures. In April 2002, the Commercial Activities Panel reported its findings and recommended the development of an integrated competition process bringing elements of the Federal Acquisition Regulation into Circular A-76 to provide greater accuracy, enhance accountability, and ensure greater fairness.

Briefing for Congressional Staff

Implementation of OMB Circular A-76 at Science Agencies

Summary

The science agencies that GAO reviewed—the National Institute for Standards and Technology (NIST) and the National Oceanic and Atmospheric Administration (NOAA), which are bureaus within the Department of Commerce; Department of Energy (DOE); Environmental Protection Agency (EPA); and National Aeronautics and Space Administration (NASA)—generally implemented the A-76 process as revised in May 2003. Exceptions include:

- Commerce had not put out for competition any commercial activity performed by NIST personnel. According to Commerce competitive sourcing officials, language in a conference report (House Report 108-010) prohibited NIST from competing activities under Circular A-76.
- OMB granted deviations to the new A-76 process requirements for two other agencies.
 - OMB approved Energy's program for determining whether use of the General Services Administration's Multiple Award Schedules under a standard competition, which have a significant number of qualified contractors, would increase competition.
 - OMB granted NASA's request to hold competitions for new commercial scientific and technological research activities—called NASA Research Announcements (NRA)—outside the normal A-76 process. Nearly all of NASA's competitions held in fiscal years 2003 through 2005 fell under this A-76 deviation approved by OMB.

While the five science agencies we reviewed perform hundreds of commercial activities that they determined suitable for public-private competition, few of these activities were competed in fiscal years 2003 through 2005 and very few competitions were won by the private sector.

- According to agencies officials, most activities involved 10 or fewer federal employees and were eliminated from public-private competition because the cost of conducting a competition would outweigh any expected saving. EPA was the exception and did conduct competition for 10 or fewer employees.
- Agencies held 22 public-private competitions. Of these competitions, in-house organizations won 19 and the private sector won 3.

The agencies estimated that more efficient performance of the 19 activities won in-house would save them about \$583 million and the contracts for the 3 activities formerly performed by 337 federal employees would save about \$45 million over the performance periods specified.

How has the A-76 process been conducted?

Key Points in OMB Circular A-76 and May 2003 Revision

Circular A-76:

- Does not prescribe how an agency is to select which commercial activities will undergo competition.
- Directs that before government personnel may perform a new requirement, competition shall be used to determine whether government personnel should perform the commercial activity. NASA Research Announcements -- new commercial scientific and technological research activities -- are new requirements.
- Encourages agencies to obtain deviations from circular procedures to explore innovative alternatives to standard or streamlined competitions.

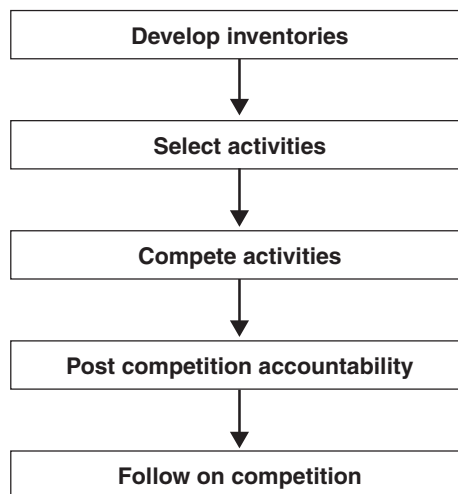
In May 2003, OMB issued its most recent and arguably the most significant revision to Circular A-76. Changes made were generally consistent with the Commercial Activities Panel's recommendations and should provide an improved foundation for competitive sourcing decisions. Key changes include:

- centralized oversight and post-competition accountability rules—performance standards and quality assurance surveillance plans—are required for both public and private providers;
- greater reliance on procedures in the Federal Acquisition Regulation to provide a more consistently applied competitive process; and
- expanded reporting to measure results—estimated and actual cost of performance must be tracked.

Agencies Follow Circular A-76 Although Deviations Have Been Granted

The five science agencies generally follow the A-76 competitive sourcing process, as revised in May 2003. The revised Circular A-76 established process requirements for agencies to subject commercial activities performed by the federal government employees to competition. The process can be viewed as having five basic steps, depicted in the figure. A detailed discussion of each step is contained in appendix II.

Five Basic Steps of the A-76 Process



Source: OMB Circular A-76, May 29, 2003.

Incorporated within each of these basic steps are management control procedures such as OMB reviews and consultations, standard data requirements, and prescribed reporting formats. Under the revised A-76 process, agencies are encouraged to explore innovative alternatives to competitions.

While each of the science agencies conducts similar A-76 processes under the revised circular, we identified several differences—how agencies select commercial activities for competition and deviations to the A-76 requirements OMB granted to NASA and Energy. Also, with the May 2003 revision, research and development activities were no longer exempted from A-76 competitions.

How has the A-76 process been conducted?

Agencies Follow Circular A-76 Although Deviations Have Been Granted (Cont'd)

We found that all five agencies did not use the same procedures to select activities for competition. Commerce (NIST and NOAA), Energy, and NASA chose to use feasibility studies to select which commercial activities to compete. However, the EPA relied on a competitive sourcing council consisting of managers within the agency to select candidates for competition. The council met numerous times over an 18-month period to make its selections. According to the EPA Director of Competitive Sourcing, the council did not follow any formal procedures or criteria in its deliberations.

We also found that OMB granted NASA and Energy deviations from the process.

NASA Deviation: In June 2003, NASA requested a Circular A-76 deviation from a standard or streamlined competition to conduct public-private competitions for scientific and technological research and development using broad agency announcements, pursuant to FAR Part 35 and NASA's FAR Supplement, since the circular did not specifically address how to conduct these competitions. OMB granted the request to enable NASA to serve as a prototype to develop best practices for public-private competitions for research and development activities and to allow NASA to continue conducting public-private competitions for commercial scientific and technological research activities under NASA regulations. OMB acknowledges, however, that these deviations focus on contracting for new work requirements rather than improving the efficiency of existing workloads. For a number of years, NASA has opened many of its new research and development requirements to competition between scientists at NASA, industry, academia, and other institutions. NASA invites scientists from throughout the scientific community to submit proposals in response to broad agency announcements publicized in FedBizOpps, the government's Web site listing contracting opportunities. Panels of experts evaluate submitted proposals and make awards based on best value as determined by scientific merit and cost reasonableness. According to OMB, the deviation could enable NASA to serve as a prototype to develop best practices for public-private competitions for research and development activities. Nearly all (38 of 40) NASA competitions held in fiscal years 2003 through 2005 have been competed under the deviation.

Energy Deviation: In March 2004, Energy requested a deviation from the A-76 process requirements to conduct a pilot program for determining whether use of the General Services Administration's Multiple Awards Schedules (MAS) to obtain private-sector offers would increase competition. Energy sought the deviation based on the significant number of qualified contractors offering the needed services. OMB granted the request in May 2004. Energy held two

Activities Competed and Contracted Out

FAIR Act Requirements

The Federal Activities Inventory Reform (FAIR) Act of 1998 (Public Law 105-270) requires federal agencies to annually submit inventories of their commercial activities. Prior to the act, some agencies failed to submit inventories or failed to submit them on time. In 1999, OMB incorporated the FAIR Act requirements into the A-76 process.

Section 647(b) of Division F of the Consolidated Appropriation Act, 2004 (Public Law 108-199) requires each executive agency to report annually to Congress on specific data on their competitive sourcing efforts under the FAIR Act inventory submitted the prior fiscal year. Also, OMB requires agencies to update savings and performance data on competitions completed since fiscal year 2003.

Limited Number of Competitions Held

competitions—one using a full and open competition and one using the supply schedules. Both activities—one for human resource training and one for logistics support—were of similar size. The full and open competition received only the agency in-house bid, whereas, the supply schedule competition received three bids—two MAS vendors and one from within the agency. According to the Energy’s Director of Competitive Sourcing, whenever possible the federal supply schedule should be used as a procurement vehicle for A-76 competitions.

As part of the commercial activity inventory process, the agencies identified their activities suitable for public-private competition. Although the science agencies had hundreds of activities available for competition, few were likely to be competed. According to agencies officials, activities performed by 10 or fewer employees were so small that the costs of conducting a public-private competition would outweigh any expected savings. EPA, however, was the exception and did conduct competitions for 10 or fewer employees. For example, of the 11 competitions held by EPA between fiscal years 2003 and 2005, eight of the competitions were for activities performed by 10 or fewer employees.

We found that most of the activities available for competition in fiscal years 2003 through 2005 were performed by 10 or fewer federal employees. The table on the following page shows the distribution of activities and associated FTEs.

Activities Competed and Contracted Out

Limited Number of Competitions Held (Cont'd)

Commercial Activities Available for Competition by FTEs

Agency	FTEs per Activity	FY 2003		FY 2004		FY 2005	
		Activities	FTEs	Activities	FTEs	Activities	FTEs
Energy	0 - 10	1829	2343	1621	2049	1690	2265
	11 - 65	8	123	12	221	13	288
	> 65	0	0	0	0	0	0
	Total	1837	2466	1633	2270	1703	2553
EPA	0 - 10	506	737	525	717	993	1524
	11 - 65	14	270	7	128	19	347
	> 65	0	0	0	0	0	0
	Total	520	1007	532	845	1012	1871
NASA	0 - 10	321	865	285	738	271	687
	11 - 65	42	915	35	708	35	826
	> 65	9	2600	8	2014	8	1892
	Total	372	4380	328	3460	314	3405
NIST	0 - 10	32	106	37	110	32	99
	11 - 65	7	187	10	223	12	261
	> 65	2	239	2	196	2	196
	Total	41	532	49	529	46	556
NOAA	0 - 10	417	752	368	758	346	688
	11 - 65	10	165	12	207	12	209
	> 65	0	0	0	0	0	0
	Total	427	917	380	965	358	897

Source: Agencies FAIR Act inventories for fiscal year 2003 through fiscal year 2005.

Except for NIST, over 86 percent of the commercial activities available for competition at each agency were performed by 10 or fewer federal employees. For example, in 2005, 1,690 of 1,703 activities or over 99 percent of the activities at Energy were performed by 10 or fewer federal employee. At NIST, 32 of 46 NIST activities or nearly 70 percent were performed by 10 or fewer federal employees.

Prior to the May 2003 revision, agencies could directly convert activities with 10 or fewer FTEs to the private sector. However, under the revised Circular A-76 direct conversions are no longer allowed. According to OMB, direct conversions of government activities to the private sector were eliminated to close loopholes that diminish the taxpayer's return on investment and to improve agency performance. According to agencies' officials, most small activities have been removed from public-private competitions. Most agencies did not conduct

Activities Competed and Contracted Out

Commerce's Interpretation of Congressional Direction

According to officials of the Department of Commerce, they are prohibited from competing commercial activities performed in their NIST bureau.

House Report 108-010 – Making Further Continuing Appropriations for the Fiscal Year 2003, and for Other Purposes states:

“Competitive sourcing. The conferees understand that there are efforts within the Department of Commerce and other Departments, to use the implementation of the President’s Management Initiative for Competitive Outsourcing (the A-76 process) as a way to reduce staff by more than 50 percent. This initiative is designed to compete or directly convert 15 percent of those positions identified as commercially competitive. However, the conferees understand that efforts are underway to identify roughly 75 percent of NIST’s positions as commercial for purposes of this initiative. While the conferees certainly agree that there are certain advantages to competitive outsourcing, there is a concern that blind implementation could severely inhibit the operations of the Institute in the future. The conferees direct NIST to provide a detailed plan to the Committees on Appropriations prior to any changes in support of ‘competitive outsourcing.’”

Senate Report 108-144 – Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Bill, 2004 directs

“NIST to consult with the Committees on Appropriations before proceeding with further implementation of

Limited Number of Competitions Held (Cont'd)

competitions on activities performed by 10 or fewer employees. For example, NASA’s competitive sourcing plan states that activities performed by 10 or fewer employees will not be reviewed for possible competition because there is little likelihood of achieving tangible benefits. However, EPA is an exception. Unlike the other science agencies, EPA held 8 of its 11 competitions for activities performed by 10 or fewer employees between fiscal years 2003 and 2005.

Although the science agencies had hundreds of commercial activities deemed suitable for competition, few competitions were held. The table below shows the number of competitions held with associated FTEs for each of the five science agencies during fiscal years 2003 through 2005.

Competitions Held during FY 2003 - 2005

Agency	Competitions	FTEs involved	Expected savings (in millions)
Energy	7	1,207	\$532.5
EPA	11	91	3.6
NASA	2 ^a	237	46.0
NIST	0	0	0
NOAA	2	43	1.2
Total	22	1,578	\$583.3

Source: Agency 647 reports.

^aNASA completed competitions do not include the 38 research announcements competed under an A-76 deviation.

While Commerce identified NIST activities suitable for public-private competition in each of the fiscal years, it held no competitions. According to Commerce competitive sourcing officials, feasibility studies are being done to identify possible candidates for competition. The conference report language (*House Report 108-010*) only required NIST to submit a detailed plan, which was submitted to the chairmen and ranking minority members of the House and Senate Appropriation subcommittees for NIST on November 28, 2003. Moreover, the conference report refers to a concern about the direct conversion of FTEs, which is no longer a concern since the revised A-76 eliminated the use of direct conversions of commercial activities. According to officials at Commerce, so far, no activity at NIST has been found that would result in a good return on investment; but should one be identified, they will inform Congress of their intent to conduct an A-76 competition.

Activities Competed and Contracted Out

Commerce's Interpretation of Congressional Direction (Cont'd)

competitive outsourcing and that no funds be used for FAIR Act studies in support of the A-76 contracting process.

Limited Number of Competitions Held (Cont'd)

Activities competed in fiscal years 2003 through 2005 were concentrated within 15 categories. The following table identifies the type of activities competed by each agency.

Activities Competed During Fiscal Years 2003 through 2005

Activity	Energy	EPA	NASA	NIST	NOAA
Accounts Payable		1			
General Accounting	1				
Data Collection and Analysis	1				
FIFRA/FDCA Risk Analysis		1			
FSCA Risk Analysis		1			
Contracting (Operational)			1		
Industrial Plant Equipment	1				
RDT&E Administrative Support		5			
RDT&E			1		
Other S&T and R&D Management and Support Activities					1
Supply Operations	2	1			
Training Management	1				
Computing Services and Data Base Management	1	1			
Other Computing Services					1
Systems Design, Development and Programming Services		1			
Total	7	11	2	0	2

Source: Agency 647 reports.

The table does not include the 38 NASA research announcements competed under special deviation authority during fiscal years 2003 through 2005. NASA reported all 38 announcements as Research, Development, Test and Evaluation activities. Appendix III lists these announcements.

Activities Competed and Contracted Out

Agency View of Activities That Can Be Successfully Contracted Out

According to agency competitive sourcing officials, they expect the in-house organization to win most competitions. For example, Energy officials told us that they expect the in-house win rate to be higher than the private-sector win rate because most commercial type activities such as cleaning and general maintenance have already been contracted out. The remaining activities are more complex and require greater knowledge about agency operations, which officials said gives agency employees an advantage. Similarly, NASA officials told us that NASA started off about 30 years ago contracting out many of its commercial services and now has fewer such services to compete.

Limited Number of Competitions Held (Cont'd)

Of the 22 commercial activity competitions held by the science agencies in fiscal years 2003 through 2005, the in-house team won 19 or about 86 percent and the private sector won 3 or about 14 percent. The following table shows the Circular A-76 competitions completed by each of the science agencies from fiscal years 2003 through 2005.

Completed A-76 Competitions (FY 2003 – FY 2005)

Agency	In-house	Private sector	Total
Energy	6	1	7
EPA	10	1	11
NASA	1	1	2
NIST	-	-	-
NOAA	2	-	2
Total	19	3	22

Source: Agency 647 reports.

The three competitions that the private sector won were for activities performed by 337 FTEs or 21 percent of the total FTEs competed. According to competitive sourcing officials at Energy and EPA science agencies, all tasks under these contracts have been moved out of the agency and assumed by the contractor. Tasks under the NASA contract are scheduled to be moved out of the agency by August 31, 2008. The agencies estimated that the three contracts with a value of nearly \$259 million will save them over \$45 million. The table following describes these three contracts.

Activities Competed and Contracted Out

Limited Number of Competitions Held (Cont'd)

Competitions Won By Contractors (FY 2003 through FY2005)

Dollars in millions

Activity competed	No. of FTEs competed	Contractor	Contract performance period	Contract value	Expected savings	All tasks converted
Energy						
HQS Logistics	136	Logistics Applications Inc.	May 01, 2006 through July 20, 2011	\$28.7	\$3.1	Yes
NASA						
NASA Shared Services Center	200	Computer Sciences Corporation	Sep. 01, 2005 through Aug. 31, 2010	230.0	42.0	Aug. 31, 2008
EPA						
Fleet and Property Management	1	Mandaree Enterprise Corporation	Jan. 01, 2004 through Dec. 31, 2006	.158	.012	Yes
Total	337			\$258.858	\$45.22	

Source: Agency data on A-76 activities.

Note: Competitions awarded under the deviation by NASA are not included in this table.

Although the private sector won only 3 of 22 Circular A-76 competitions held by the science agencies, the private sector won the majority of NASA research announcements competed under the special A-76 deviation. According to NASA, the private sector won over 89 percent of these competitions. However, because each announcement resulted in multiple awards in each area of study, the exact number of awardees funded could have been more numerous. For example, the Advanced Component Technology (ACT) Program announcement resulted in 14 different awards. Another announcement, the Astronomy and Physics Research and Analysis program, resulted in 47 awards. According to the Deputy Director responsible for NASA competitive sourcing, the competitive sourcing office does not specifically track the awards made under each announcement. Appendix III lists NASA's research announcement competitions in fiscal years 2003 through 2005.

Appendix I

Scope and Methodology

To determine how the science agencies have conducted the revised A-76 process, we reviewed OMB guidance, performance reports, and quarterly evaluations. We also reviewed agency competitive sourcing policies and procedures, and analyzed historical documents such as agency competitive sourcing plans, and studies used to make sourcing decisions. We interviewed officials responsible for managing competitive sourcing programs to document A-76 procedures at the Department of Commerce (National Institute for Standards and Technology and the National Oceanic and Atmospheric Administration), Department of Energy, Environmental Protection Agency, and the National Aeronautics and Space Administration.

To obtain information about activities competed and contracted out to private sector entities, we performed detailed analyses of the agencies' fiscal years 2003 through 2005 commercial activity and competitive sourcing reports, which were submitted to OMB.

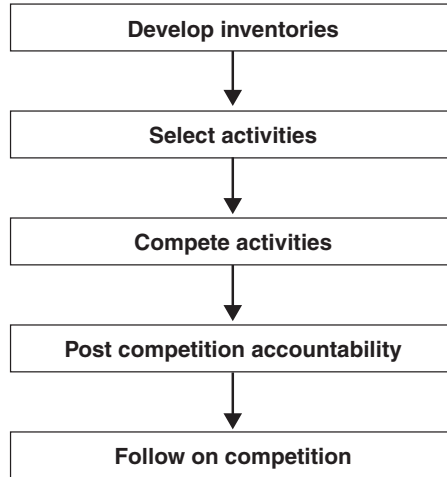
We conducted our work from August 2006 through January 2007 in accordance with generally accepted government auditing standards.

Appendix II

Revised Circular A-76 Process

The revised Circular A-76 establishes process requirements for agencies to subject commercial activities performed by the federal government employees to competition. As established, the process can be viewed as having five basic steps. Incorporated within these steps are management control procedures such as OMB reviews and consultations, standard data requirements, and prescribed reporting formats that can enhance the accuracy, accountability, and equity of public-private competitions. These basic steps are depicted and more detailed discussion follows.

Five Basic Steps of the A-76 Process



Source: OMB Circular A-76, May 29, 2003.

Develop Inventories. As the first step for implementing the A-76 process, by June 30th each year an agency submits two inventories categorizing all activities performed by federal personnel.

- **Inherently governmental inventory:** This is a list of activities that are so intimately related to the public interest as to mandate their performance by government personnel. As a consequence, inherently governmental activities cannot undergo public-private competition. The competitive sourcing official (CSO)—agency official responsible for implementing the A-76 process—justifies, in writing, any activity designated as inherently governmental and provides justifications to OMB and the public upon request.
- **Commercial activities inventory (FAIR Act inventory):** This is a list of activities performed by federal government personnel that, in the judgment of the head of the agency, are not inherently governmental activities. The CSO determines whether each commercial activity is available for public-private competition and codes each activity to indicate the rationale for the determination made. The reason codes used to describe the commercial activities performed by federal employees are as follows:

Appendix II

Revised Circular A-76 Process (Cont'd)

Reason code	Reason code definition
A	Commercial activity is not appropriate for private-sector performance pursuant to a written justification by the CSO. Written justifications are available to OMB and the public, upon request.
B	Commercial activity is suitable for a streamlined or standard competition.
C	Commercial activity is the subject of an in-progress streamlined or standard competition.
D	Commercial activity is performed by federal employees as the result of a standard or streamlined competition within the past 5 years.
E	Commercial activity is pending an agency approved restructuring decision (e.g., closure, realignment).
F	Commercial activity is performed by federal employees due to a statutory prohibition against private-sector performance.

Source: OMB.

For all activities coded “A”, the CSO provides written justification. Written justifications are not required for use of any other reason code.

OMB establishes the annual format and data requirements for each of the inventories. Since fiscal year 2004, OMB has required agencies to provide the following data for activities listed on either inventory.

- Organization: agency, bureau, and unit name or abbreviation.
- Location: city, state, and country.
- Status of Full-Time Equivalent employees (FTE): number of FTEs, function code, status (commercial or inherently governmental), and reason code (commercial activities only).
- Additional Information: first year the activity appeared on the inventory. (commercial activities only).
- Contact Information: person responsible for the activity.

OMB reviews and consults with the agencies regarding inventories' contents. Upon completion of the OMB review, the agencies make their inventories available to the Congress and the public unless the inventory information is classified or otherwise protected for national security reasons. OMB must publish notice of the inventories' availability in the *Federal Register*. Interested parties—contractors, federal employees, federal labor unions, business, or professional associations—have 30 working days from publication of the notification to challenge the designation of an activity as commercial or inherently governmental or the reason code of a commercial activity.

Appendix II

Revised Circular A-76 Process (Cont'd)

Select Activities: Circular A-76 does not prescribe how an agency will select which commercial activities will undergo public-private competition from those listed in its commercial activities inventory with reason code B—suitable for a streamlined or standard competition. In deciding whether to use competitive sourcing, however, agencies weigh potential performance improvements and expected cost savings against the investment costs and risks associated with performing the competition.

While OMB recognizes the value of using feasibility studies and business case analyses, the circular does not require agencies to develop either analysis. The circular specifically requires that before announcing a public-private competition an agency complete the following steps:

- identify activities and FTEs positions to be competed;
- research whether to group activities as business units consistent with market and industry structures;
- assess workload data, quantifiable outputs, and performance standards;
- document the activity's baseline costs as currently performed;
- select the type of competition to be held—streamlined or standard;
- develop preliminary competition and completion schedules; and
- identify the roles and responsibilities of participants.

Finally, prior to beginning the public-private competition, the agency informs incumbent service providers of the date that the competition will be publicly announced.

Compete Activities: Once an agency has selected the activities to undergo public-private competition, it makes a formal public announcement to begin each competition. The announcement, which is made locally and via FedBizOpps.gov, includes at a minimum identification of the:

- activity being competed;
- agency, agency component, and location of the activity;
- type of competition to be held;
- incumbent service providers;
- number of government personnel performing the activity;
- names of the CSO, Agency Tender Official (ATO), and contracting officer (CO); and
- projected end date of the competition.

The revised Circular A-76 established two types of public-private competitions—standard and streamlined. The key differences between the two types of competition are size and duration. Standard competitions are required when the activity is performed by more than 65 FTEs and are generally required to be completed in 12 or less months. Streamlined competitions can be used when an

Appendix II

Revised Circular A-76 Process (Cont'd)

activity is performed by 65 or fewer FTEs and are generally required to be completed in 90 calendar days. With some exceptions, agencies using fiscal year 2005 appropriations must show the private-sector bid will result in government costs savings of 10 percent of personnel-related costs or \$10 million, whichever is less, before awarding the private sector an activity with more than 10 FTEs. Competitions of activities performed by 10 or fewer FTEs do not require a cost differential. The agency's announcement of the performance decision concludes the competition step of the A-76 process.

Standard competitions

After public announcement, the agency forms several teams of technical and functional experts with specific competition process roles:

- Performance Work Statement (PWS) team—develops the performance work statement (a statement in the solicitation that identifies the technical, functional, and performance characteristics of the agency's requirements with supporting workload data and performance standards) and the quality assurance surveillance plan (a plan that identifies the methods the agency will use to measure the performance of the service provider against the PWS requirements).
- Most Efficient Organization (MEO) team—assists the ATO in developing the agency tender (agency management plan responding to a solicitation). The MEO represents the agency's most efficient and cost-effective organization for implementing the agency tender. It usually is a product of management analyses such as activity based costing, business case analysis, reengineering, market research, and consolidation.
- Source Selection Evaluation Board (SSEB)—assists the Source Selection Authority (SSA) in selecting the source to provide the service under a negotiated acquisition.

PWS team members not directly affected by the competition can also serve on the SSEB. However, PWS team members can not serve on the MEO team. MEO team members cannot serve on either the PWS team or the SSEB.

The CO, in consultation with the PWS team and in accordance with the Federal Acquisition Regulation, develops and issues the solicitation for the public-private competition. The solicitation identifies the acquisition procedures (sealed bid or negotiated), type of source selection process (such as lowest price technically acceptable or phased evaluation), and evaluation factors to be used. The private sector, incumbent agency (agency tenders), and other public agencies (public reimbursable tenders) can submit offers in response to the solicitation. Private sectors offers must respond as required by the solicitation. In addition to the solicitation, agency and public reimbursable tenders must comply with Circular A-76 requirements.

Appendix II

Revised Circular A-76 Process (Cont'd)

- **Agency tender:** The ATO develops and submits the agency tender that includes an MEO cost proposal, quality control plan, phase-in plan, and copies of any proposed subcontracts. To develop and certify the agency cost proposal, the ATO must use COMPARE—software that incorporates the costing procedures of Circular A-76. All agencies must use COMPARE to calculate and document the costs presented on the standard competition forms.
- **Public reimbursable tender:** Another federal agency develops and submits an offer responding to the solicitation. In addition to the offer, the agency must also submit proposal and plans required of an MEO.

The contracting officer performs price analysis and determines cost realism of all offers including the calculation of the cost differential applied to the non-incumbent service provider and the review of the Standard Competition Form (SCF) preparation. The agency compares offers using the SCF. For sealed bid acquisition competitions, the contracting officer makes the performance decision by certifying SCF. For negotiated acquisition competitions, the SSA makes the performance decision by certifying the SCF. Upon certification of the SCF, ending the public-private competition, the agency formally announces the performance decision and later makes the certified SCF and agency and public reimbursable tenders available to the public, upon request.

For performance decisions favoring a private sector offer, the contracting officer awards a contract in accordance with the Federal Acquisition Regulation. The contracting officer develops a fee-for-service agreement for performance decisions favoring a public reimbursable provider. Where the performance decision favors the agency tender, the contracting officer establishes a letter of obligation with the official responsible for MEO performance.

Streamlined competitions

Procedures for streamlined competitions can mirror those required for standard competitions. However, since streamlined competitions are smaller in size and shorter in duration, less analyses and documentation are required. For example, when the competed activities are performed by 10 or fewer employees, the streamlined procedures do not require a conversion differential showing a government savings of 10 percent of agency personnel costs or \$10 million, whichever is less. Further, agencies may:

- form an MEO;
- base its agency cost estimate on the incumbent organization; and
- establish a private-sector cost for performing an activity using market research or solicitation of cost proposals in accordance with the Federal Acquisition Regulation.

Appendix II

Revised Circular A-76 Process (Cont'd)

In addition to the final performance decision, the agency officials certify the agency tender and private-sector costs. Unlike standard competitions, Circular A-76 does not specify which agency official is to make which certification. However, the circular does require that each certification be made by a different individual. Also, the agency allows the incumbent service provider to review the certified Streamlined Competition Form prior to the public announcement of the performance decision.

As with standard competition performance decisions, the contracting officer implements the streamlined competition performance decision by awarding a contract for performance decisions favoring a private-sector, a fee-for-service agreement for performance decisions favoring a public reimbursable provider, or a letter of obligation with the official responsible for a decision favoring the incumbent provider. For a private-sector or public reimbursable performance decision, the contracting officer may issue a solicitation before a contract can be awarded to a private-sector or public reimbursable service provider.

Post Competition Accountability: Regardless of the selected service provider or the type of competition held, the agency tracks execution of their competitions from the date of the public announcement through either the completion or cancellation of the competition and maintains a historical record of each competition. Best practices and lessons learned resulting from the competition are posted on the Share A-76 Web site.

During the performance periods following each competition, the agency measures success and calculates savings by:

- monitoring performance against the performance work statement;
- recording the actual costs of performance; and
- comparing actual costs to those recorded on the competition forms.

At the end of each fiscal quarter, the agency submits a Competitive Sourcing Quarterly Report to OMB. The report provides detailed information for in-progress competitions (those pending performance decisions) and completed competitions. Annually, the agency develops a report detailing its competitive sourcing activities of the year and the savings or quantifiable performance improvements derived from implementing competitions completed under the revised A-76 process. After an OMB review for compliance with Circular A-76 guidance, the agency transmits the annual report to Congress.

To achieve a rating of “green” for its competitive sourcing on the President’s Management Agenda scorecard, the agency submits for OMB review and

Appendix II

Revised Circular A-76 Process (Cont'd)

approval its competitive sourcing plan. An essential component of the plan is identifying, by fiscal year, through 2008, which commercial activities the agency plans to announce for competition. For each planned competition, the agency identifies the activity (with the function codes and locations), number of FTEs involved, fiscal quarter in which the announcement is expected to be made, and the type of competition. The table shows OMB's standards for measuring competitive sourcing success.

Standards of Success for Competitive Sourcing

Yellow	Green
<p>An agency will earn a "yellow" status when it has:</p> <ul style="list-style-type: none"> • an OMB approved "yellow" competition plan; • completed one standard competition or publicly announced standard competitions that exceed the number of positions identified for competition in the agency's yellow competition plan; • in the past 2 quarters, completed 75 percent of streamlined competitions in a 90-day timeframe; and • in the past 2 quarters, cancelled less than 20 percent of publicly announced standard and streamlined competitions. 	<p>An agency will earn a "green" status when it has:</p> <ul style="list-style-type: none"> • an OMB approved "green" competition plan; • publicly announced standard competitions in accordance with the schedule outlined in the agency "green" competition plan; • since January 2001, completed at least 10 competitions (no minimum number of positions required per competition); • in the past year, completed 90 percent of all standard competitions in a 12-month time frame; • in the past year, completed 95 percent of all streamlined competitions in a 90-day time frame; • in the past year, canceled fewer than 10 percent of publicly announced standard and streamlined competitions; and • OMB-approved justifications for all categories of commercial activities exempt from competition.

Source: OMB.

Our review of the science agencies' competitive sourcing plans found that three agencies—EPA, Energy, and NASA—have approved “green” plans. Commerce (NIST and NOAA) has an approved “yellow” plan.

Follow On Competition: By the end of the last performance period under an agency or public reimbursable (fee-for-service) performance decision, the agency must complete another streamlined or standard competition, unless the competitive sourcing official grants an exemption.

Appendix III

NASA Research Announcements – FY2003 through FY2005

Advanced Component Technology Program
Astrobiology: Exobiology and Evolutionary Biology
Astronomy & Physics Research
Astronomy & Physics Research & Analysis
Astrophysics Theory
Biological and Fluid Physics Research for Human Support Technology
Carbon Cycle Science
Earth System Science Research using Data and Products from TERRA, AQUA and ACRIM Satellites
Engineering for Complex Systems
Ground-Based Studies for NASA Specialized Center of Research for the Estimation of Solid Tumor Cancer Risks from Space Radiation
Inspiring the Next Generation of Earth Explorers; Integrated Solutions for K-16 and Informal Education
Instrument Incubator Program
Interdisciplinary Science in the NASA Earth Science Enterprise
Mars Fundamental Research
Mission and Science Measurements Technology
Modeling, Analysis and Prediction Climate Variability and Change
NASA Research Announcement Soliciting Ground-based Research Proposals Biomedical Research and Countermeasures Program
New Frontiers Program STEP 1
New Investigator Program
New Millennium Program Space Technology
Oceans & Ice
Ocean Surface Topography/Science Team
Planetary Data System Nodes
Research Opportunities for Flight Experiments in Space Life Sciences
Research Opportunities for Ground-Based Research in Space Radiation Biology and Space Radiation Shielding Materials
Research Opportunities in Physical Science Fluid Physics
Research Opportunities in Physical Science Fundamental Physics
Research Opportunities in Space Biological Sciences, Advanced Human Support Technology Program
Research Opportunities in Space Life Sciences, Fundamental Space Biology, Ground-based Research
Research Opportunities in Space Science 2003
Research Proposals for NASA/ESA/CNES International Long-term Bed Rest Study
Research Proposals for Using Ground-based Analogs of Space Flight
Research Opportunities Soliciting Ground-Based Studies for Human Health in Space
Research Opportunities Soliciting Ground-Based Studies for Radiation Biology and Radiation Shielding Materials
SEC Theory
Small Explorers
TPF/Coronagraph Instrument
Tropical Cloud Systems and Processes (TCSP)

Enclosure II: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899-
OFFICE OF THE DIRECTOR

March 9, 2007

MEMORANDUM FOR Allen Li
Director, Acquisitions and Sourcing Management

From: James Hill *JMH*
Acting Deputy Director *JTH*

Subject: Comments on Draft Report on A-76

Thank you for the opportunity to comment on the draft Government Accountability Office (GAO) report "Implementation of OMB Circular A-76 at Science Agencies."

Attached are the Commerce Department's comments.

attachment

NIST

Technical and factual comments on the GAO Report entitled “CONTRACT MANAGEMENT: Implementation of OMB Circular No. A-76 at Science Agencies”

Page 1, first paragraph

The report states that according to Commerce officials, “language in a conference report (House Report 108-010) prohibited NIST from competing activities under Circular A-76.” It was not the Department’s intention to imply that the report itself prohibited competitions but rather, as GAO explains later in the report, that NIST was to provide the Committees on Appropriations a detailed plan prior to implementation of competitive sourcing.

NIST prepared the detailed plan called for in this report. It was transmitted to chairmen and ranking minority members of both the House and Senate Appropriation Subcommittees for NIST on November 28, 2003.

The report laid out a plan for NIST to study the activities of seven administrative and support organizational units for commercialization. The activities performed by the seven organizational units under review required 308 federal positions and represented a total of 18.9% of NIST’s FAIR Act Inventory at that time, exceeding the President’s target of 15 percent of “commercial activities.” NIST also took steps to procure the services of two expert contractor firms familiar with the A-76 process to help in the studies, undertook streamlining of a variety of administrative support activities, and prepared to support the NIST employees with professional services in the downsizing that might take place. NIST made it clear in the plan that it intended to support the President’s Management Agenda.

In consultation with the Department of Commerce, NIST did not compete any commercial activity because of the absence of guidance from the Congress after transmittal of the NIST Plan. Also, language in the Senate FY 2004 Appropriation Committee Report directed NIST to consult with the Appropriations Committees before proceeding with competitive sourcing efforts and to refrain from using appropriated funds for an A-76 effort.

It would be more accurate to state that NIST, in consultation with Department of Commerce, did not compete any commercial activities because of this absence of guidance and need to consult with the Appropriations Committees before proceeding to use appropriated funds for A-76 efforts.

Page 5, chart:

The chart on page 5 shows the availability of commercial activities for competition by FTE range. This is absolutely critical in explaining the relatively low number of competitions overall. With over 86 percent of commercial activities involving ten FTEs or less, the return on investment for study costs for these small groups can be minimal.

Page 6, paragraph 3

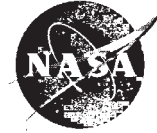
It would be more accurate, and consistent with the requested changes to page 1, to simply state that feasibility studies are being conducted, and strike out the rest of the sentence from "are being done." This would also be more consistent with the rest of the paragraph on the conference report language.

General comment:

Finally, for historical and planning purposes, the report shows that when competitions are held, significant savings can be expected. In this regard, we were also glad to see cost savings data from studies for organizations in addition to DOD.

Enclosure III: Comments from the National Aeronautics and Space Administration

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



Reply to Attn of:

Office of Procurement/Analysis Division

FEB 27 2007

Mr. Allen Li
Director
Acquisition and Sourcing Management
United States Government Accountability Office
Washington, DC 20548

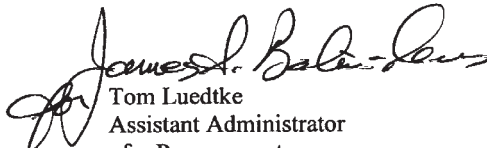
Dear Mr. Li:

The National Aeronautics and Space Administration (NASA) has reviewed the draft GAO report entitled "CONTRACT MANAGEMENT: Implementation of OMB Circular No. A-76 at Science Agencies" (GAO-07-434R) and thanks you for the opportunity to provide comments.

The report contains no recommendations for NASA. The technical comments NASA provided at the exit conference held on January 10, 2007, have been incorporated into the draft report. Therefore, NASA has no additional comments.

If you have any questions or require additional information, please contact me at (202) 358-2090.

Sincerely,


Tom Luedtke
Assistant Administrator
for Procurement

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548