

**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, DC 20503**

**November 14, 2002**

**CIRCULAR NO. A-76 (REVISED)**

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Performance of Commercial Activities

1. **Purpose.** This Circular establishes federal policy for the competition of commercial activities.
2. **Supersession.** This Circular supercedes Office of Management and Budget (OMB) Circular No. A-76 (Revised), August 4, 1983; OMB Circular No. A-97 (Revised), March 1981; Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, "Inherently Governmental Functions," September 23, 1992; and OMB Transmittal Memoranda 1 through 24, Performance of Commercial Activities.
3. **Authority.** 31 U.S.C. § 1111, Reorganization Plan No. 2 of 1970 (P.L. 97-258, § 5(b)) and Executive Order 11541; the Office of Federal Procurement Policy Act (41 U.S.C. § 405); and the Federal Activities Inventory Reform (FAIR) Act of 1998 (P.L. 105-270; 31 U.S.C. § 501 note).
4. **Policy.** The longstanding policy of the federal government has been to rely on the private sector for needed commercial services. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic growth. The federal government has grown to perform a myriad of commercial activities, in addition to providing citizens with a range of programs from law enforcement to stewardship of federal lands. Services in these and other areas are provided by a blend of federal government and private sector sources. For the American people to receive maximum value for their tax dollars, all commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular. In accordance with Attachments A-F, agencies shall:
  - a. Perform inherently governmental activities with government personnel.
  - b. Presume all activities are commercial in nature unless an activity is justified as inherently governmental.
  - c. Use a Competition or Direct Conversion process to determine the providers of commercial activities.
  - d. Comply with the Federal Acquisition Regulation (FAR), 48 C.F.R. Chapter 1 and this Circular for Competition, Direct Conversion, and the management of commercial activities.
  - e. Designate, in writing, an assistant secretary or equivalent level official with responsibility for implementing this Circular (hereafter referred to as the 4.e. official). Except as otherwise

provided by this Circular, the 4.e. official may delegate, in writing, responsibilities to comparable officials in the agency or agency components.

- f. Centralize oversight responsibility in one or more offices.
- g. Require full accountability of agency officials designated to implement and comply with this Circular through annual performance evaluations.

**5. Scope.**

- a. Except as otherwise provided by law, this Circular shall apply to executive departments named in 5 U.S.C. 101 and independent establishments as defined in 5 U.S.C. 104. These departments and independent establishments are referred to in the Circular as “agencies”. Except as otherwise provided by law, this Circular shall apply to military departments named in 5 U.S.C. 102.
- b. As provided by Attachment A, the 4.e. official may exempt an agency performed commercial activity from performance by the private sector.

**6. Attachments.**

- a. Attachment A - Inventory Process
- b. Attachment B - Public-Private Competition
- c. Attachment C - Direct Conversion Process
- d. Attachment D - Inter-Service Support Agreements (ISSA)
- e. Attachment E - Calculating Public-Private Competitions Costs
- f. Attachment F - Glossary of Acronyms and Definitions of Terms

7. **Effective Date.** This Circular is effective upon publication in the *Federal Register* and shall apply to all Direct Conversions and for Standard Competitions where the solicitation date is on or after January 1, 2003.

Mitchell E. Daniels, Jr.  
Director

## INVENTORY PROCESS

- Annual inventories identify all agency performed activities and categorize these activities as either commercial or inherently governmental.
- Activities are presumed commercial unless justified as inherently governmental.
- The inventory process is the initial step necessary for determining commercial activities subject to competition.

### A. INVENTORY REQUIREMENTS.

1. **Agencies.** Agencies shall, on an annual basis, inventory activities performed by agency personnel as either commercial or inherently governmental. Commercial activities may be found within larger organizations that perform inherently governmental or classified work.
2. **OMB.** OMB shall review each agency inventory, consult with the agency regarding the content of the inventory, and publish a notice in the *Federal Register* that annual agency inventories are available.

### B. INVENTORY SUBMISSIONS.

1. **Annual Inventories.** Agencies shall submit the following by electronic mail (e-mail) to OMB by June 30 of each year: (a) an inventory of agency performed commercial activities subject to the FAIR Act, (b) an inventory of agency performed commercial activities not subject to the FAIR Act, (c) an inventory of inherently governmental activities performed by civilian and military personnel, and (d) an Inventory Summary Report. When any inventory contains classified or national security data, agencies shall consult with OMB to determine the impact of releasing such information to the general public.
2. **Inventory Format and Data Elements.** For annual inventories, the OMB web site ([www.OMB.gov](http://www.OMB.gov)) shall provide format and data requirements. Function code definitions, located on the OMB web site, may be tailored to reflect agency-specific definitions.

### C. TYPES OF INVENTORIES.

#### 1. **FAIR Act Commercial Activities Inventory.**

- a. **Requirements.** In accordance with the FAIR Act and OMB requirements, agencies shall submit an inventory of the commercial work performed by agency Full Time Equivalents (FTE). After OMB review, consultation, and publication of an inventory availability notice in the *Federal Register*, the agency shall: (1) make the inventory available to Congress and the public, and (2) conduct the required challenge and appeal process (see paragraph F).

**b. Applicability.** The FAIR Act does not apply to: (1) the General Accounting Office (GAO), (2) a government corporation or a government controlled corporation as defined in 5 U.S.C. § 103, (3) a non-appropriated funds instrumentality if all employees meet the definition at 5 U.S.C. § 2105(c), or (4) depot-level maintenance and repair activities (defined at 10 U.S.C. § 2460) performed by the military services of the Department of Defense (DoD), (4) military personnel, and (5) foreign nationals.

2. **Non-FAIR Act Commercial Activities Inventory.** For all commercial activities that are performed by agency personnel, but are not otherwise listed on the FAIR Act inventory, agencies shall submit a separate inventory.
3. **Inherently Governmental Activities Inventory.** Agencies shall submit a separate inventory of all inherently governmental activities performed by agency personnel. Agencies shall justify these inherently governmental activities in accordance with paragraph E.
4. **Inventory Summary Report.** Agencies shall submit an Annual Inventory Summary using the following format to identify aggregate data. The total of the three agency inventories (FAIR Act, Non-FAIR Act, and Inherently Governmental) shall reasonably equate to an agency’s authorized personnel requirements.

ANNUAL INVENTORY SUMMARY			
FISCAL YEAR: _____			
	COMMERCIAL ACTIVITIES		INHERENTLY GOVERNMENTAL ACTIVITIES
	FAIR Act	Non-FAIR Act	
Agency Component A			
Agency Component B			
Agency Component C			
Agency Total			

**D. COMMERCIAL ACTIVITIES.**

1. Agencies shall presume all activities are commercial in nature unless justified as inherently governmental in accordance with paragraph E. A commercial activity is a recurring service that could be performed by the private sector and is resourced, performed and controlled by the agency through a contract, Commercial Inter-Service Support Agreement (ISSA), or agency employee performance. A commercial activity is not so intimately related to the public interest as to mandate performance by government personnel.
2. Agencies shall use the following reason codes to indicate the rationale for agency performance of a commercial activity (both FAIR Act and Non-FAIR Act Inventories). The 4.e. official may exempt, in writing with sufficient justification, agency performed commercial activities from private sector performance using Reason Code A. A more complete definition of annual requirements regarding the use of these reason codes may be found at the OMB website.

3. Agencies shall make the written justifications for designating activities inherently government available to OMB and the public upon request. Agencies shall also make the written justifications for agency performance of commercial activities, using Reason Code A available to OMB and the public upon request

REASON CODES FOR AGENCY PERFORMANCE COMMERCIAL ACTIVITIES INVENTORY	
REASON CODE	DEFINITION
A	Agency performance is not appropriate for outsourcing pursuant to a written determination of the 4.e. official.
B	Agency performance will be subject to a Standard Competition or Direct Conversion within specified time frame.
C	Agency performance is the subject of an in-progress Standard Competition or Direct Conversion.
D	Agency performance is a Most Efficient Organization (MEO) as a result of Standard Competition.
E	Agency performance is pending an agency approved restructuring, i.e., closure, realignment, decision within a specified time frame.
F	Agency performance is required due to a legislative prohibition against private sector performance.

- E. INHERENTLY GOVERNMENTAL ACTIVITIES.** Agency personnel designated as performing inherently governmental activities shall be justified, in writing by the 4.e. official, on the basis of the following.
1. An inherently governmental activity is 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 official discretion in the application of government authority and/or in making decisions for the government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. An inherently governmental activity involves:
    - a. Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
    - b. Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
    - c. Significantly affecting the life, liberty, or property of private persons; or
    - d. Exerting ultimate control over the acquisition, use, or disposition of property, real or personal, tangible or intangible, of the United States, including the establishment of policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.
  2. While inherently governmental activities require the exercise of substantial agency discretion, not every exercise of discretion is evidence that an inherently governmental activity is involved. Rather, the use of discretion shall have the effect of committing the government to a course of action when two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders or other guidance that: (a)

identify specified ranges of acceptable decisions or conduct; and (b) subject the discretionary authority to final approval or regular oversight by agency officials.

3. An activity may be provided by contract support (i.e., a private sector source or a public reimbursable source using contract support) where the contractor does not have the authority to decide on the course of action, but is tasked to develop options or implement a course of action, with agency oversight. Agencies shall consider the following to avoid the effect of transferring inherently governmental authority to a contractor:
  - a. Congressional legislative restrictions that define an activity as inherently governmental;
  - b. The degree to which official discretion is or would be limited, i.e., whether involvement of the private sector or public reimbursable provider is or would be so extensive that the ability of senior agency management to develop and consider options is inappropriately restricted;
  - c. In claims or entitlement adjudication and related services: (1) the finality of any action affecting individual claimants or applicants, and whether or not review of the provider's action is de novo on appeal of the decision to an agency official; (2) the degree to which a provider may be involved in wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures; (3) the degree to which matters for decisions may involve recurring fact patterns or unique fact patterns; and (4) the discretion to determine an appropriate award or penalty;
  - d. The provider's authority to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of this provider's need to resort to force in support of a police or judicial activity; whether force, especially deadly force, is more likely to be initiated by this provider or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. Contracting for guard, convoy security, pass and identification, and plant protection services, armed or unarmed, is not proscribed by these policies;
  - e. The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons; or
  - f. Whether the activity in question is already being performed by the private sector for the agency.

**F. FAIR ACT CHALLENGE AND APPEAL PROCESS.** Agencies shall implement the following process to comply with Section 3 of the FAIR Act.

1. **Appointment of FAIR Act Challenge and Appeal Authorities.** The 4.e. official shall designate an Inventory Challenge Review Authority and an Inventory Challenge Appeal Authority as follows.
  - a. Inventory Challenge Review Authority shall (1) be an agency official at the same or higher level in the agency than the individual who prepared the inventory and (2) review and respond to challenges to agency inventory decisions in writing.

- b. Inventory Challenge Appeal Authority shall (1) be an agency official that is independent and at a higher level in the agency than the Inventory Challenge Review Authority and (2) review and respond to appeals of decisions made by the FAIR Act Challenge Review Authority in writing.

## **2. The FAIR Act Inventory Challenge and Appeal Process.**

### **a. Challenges.**

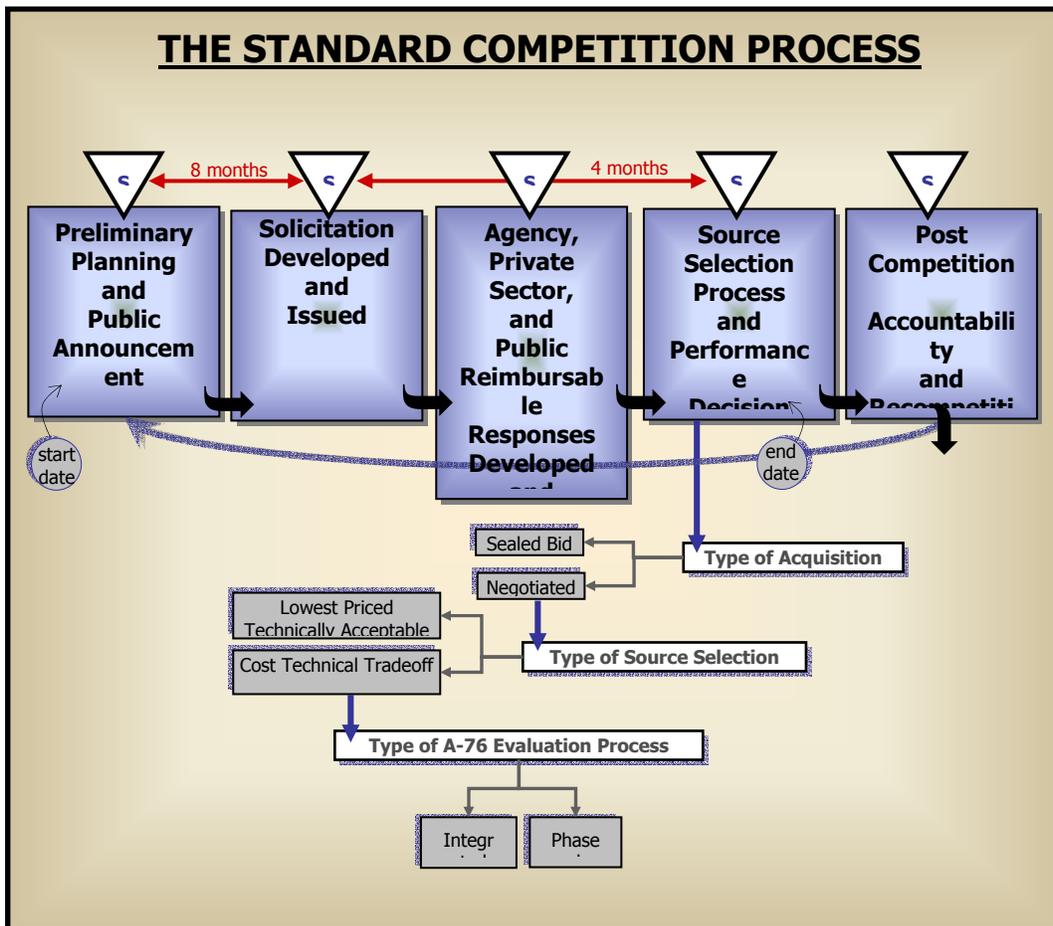
- 1. **Submissions.** After publication of OMB's *Federal Register* notice stating that an agency's FAIR Act Commercial Activities Inventory is available, an interested party shall have 30 working days to challenge, in writing, the inclusion or exclusion of a commercial activity. The written challenge shall be submitted to the agency's Inventory Challenge Review Authority and shall specify the agency, component, organization, function(s) and location(s) for the activities being challenged. The challenge shall be limited to identifying reasons a specific activity should be reclassified as (a) an inherently governmental activity based upon the application of paragraph E above or (b) a commercial activity based upon the application of paragraph D above. The application of Function and Reason Codes and their definitions shall not be subject to this Challenge and Appeal Process.
- 2. **Decisions.** Within 28 working days of receiving the challenge, the Inventory Challenge Review Authority shall (a) validate the commercial or inherently governmental classification of the activity based upon the application of paragraph D or E, above, in a written Challenge Decision and (b) transmit the Challenge Decision with rationale to the interested party and, if adverse, include an explanation of the interested party's right to file an appeal.

### **b. Appeals of Challenge Decisions.**

- 1. **Submissions.** Upon receipt of an adverse Challenge Decision, an interested party shall have 10 working days to submit an appeal of the decision to the Inventory Challenge Appeal Authority.
- 2. **Decisions.** Within 10 working days of receipt of the appeal, the Inventory Challenge Appeal Authority shall issue and transmit a written Inventory Appeal Decision to the interested party. This Inventory Appeal Decision shall include rationale for the decision.
- c. **Inventory Changes.** When the FAIR Act Challenge and Appeal Process results in a change to an agency inventory, the agency shall (1) transmit a copy of the change to OMB and the Congress, (2) make such changes available to the public, and (3) publish a notice of public availability in the *Federal Register*.

**PUBLIC-PRIVATE COMPETITION**

- Agencies shall use Competition to determine the providers of commercial activities and shall compete these activities on a recurring basis.
- Public-private Competition is implemented through the Standard Competition process.
- The five steps of the Standard Competition process are outlined in the flow chart below.



## **A. LIMITATIONS AND CRITERIA.**

### **1. Limitations When Performing a Standard Competition.**

- a. Deviations.** Agencies shall not deviate from the Standard Competition procedures or timeframes required. At competition announcement (start date), the 4.e. official (without delegation) may waive the timeframes required to complete a competition, if the competition is particularly complex, and issue a revised completion date, with notification to the Deputy Director for Management, OMB. The 4.e. official (without delegation) shall receive prior written OMB approval to use an alternative Competition process or make a specific procedural deviation from this Circular.
- b. Reorganization.** Agencies shall not reorganize or restructure a commercial activity to circumvent the competition requirements of this Circular.
- c. Government Performance of Private Sector Work.** Agencies shall not perform work as a contractor or subcontractor to the private sector or a public reimbursable source unless specific statutory authority exists or prior written OMB approval is obtained.

### **2. Criteria To Perform a Standard Competition.**

- a. To Change a Source.** Agencies shall use a Standard Competition to change the source of a commercial activity as follows:
  - (1) Agency Source.** From agency performance to either a (a) private sector source or (b) public reimbursable source that will use either contract support or government personnel to perform the activity.
  - (2) Private Sector Source.** From private sector performance to either (a) an agency source or (b) a public reimbursable source.
  - (3) Public Reimbursable Source.** From public reimbursable performance to either (a) an agency source or (b) a private sector source.
- b. To Justify a Source.** Agencies shall use Standard Competitions to justify the following:
  - (1) Commercial Inter-Service Support Agreement (ISSA).** A Commercial ISSA performed by a public reimbursable source.
  - (2) Most Efficient Organization (MEO).** Continued agency performance after completion of an MEO's performance period in a previous Competition.
  - (3) New Requirement.** Agency or public reimbursable performance of a new requirement. A Standard Competition is not required for private sector performance of a new requirement competed in accordance with the Federal Acquisition Regulation (FAR).
  - (4) Expansion.** Agency or public reimbursable performance of an expansion of existing commercial activities. An expansion is the modernization, replacement, upgrade, or increased workload of an existing agency performed commercial activity that increases

operating cost of the activity by 30 percent or more. To justify performance by an agency or public reimbursable source, a Standard Competition shall be performed on either (a) the entire activity including the expansion or (b) the expansion, if segregable. A Standard Competition is not required for private sector performance of a segregable expansion competed in accordance with the FAR.

**(5) State or Local Government Agreements.** Agency agreements with a state or local government to provide or receive commercial activities (see Attachment D).

## **B. DESIGNATIONS AND RESPONSIBILITIES.**

- 1. Agency Tender Official (ATO).** The ATO shall be an inherently governmental agency official with decision making authority and shall be independent of the CO, SSA, and AAA. The ATO shall comply with this Circular, shall develop and certify the Agency Tender, and shall represent the agency's Tender during source selection, and in any Appeals. When Standard Competitions are announced, the ATO shall designate the MEO Team. The ATO shall be considered a directly interested party.
- 2. Contracting Officer.** The CO shall be an inherently governmental agency official, shall comply with both the FAR and this Circular, and shall be independent of (1) the activity being competed and (2) the ATO and AAA. The CO shall designate and assist the PWS Team.
- 3. Human Resource Advisor (HRA).** The HRA shall be an inherently governmental agency official; shall be an HR expert; shall be independent of the CO, SSA, and AAA; may participate on the MEO Team; shall comply with this Circular; and shall be responsible for the following.
  - a. Employee and Labor-relations Requirements.** HRAs shall, at a minimum, perform the following employee relations assistance actions; (a) interface with affected civilian employees and their representatives from public announcement until full implementation of the decision; (b) identify civilian employees who will be adversely affected; (c) inform the incumbent service providers of the competition; (d) make public announcements at the local level and in *FedBizOpps* and include in these announcements the agency, location, resources being competed and agency officials responsible for its completion; (e) accomplish employee placement entitlements in accordance with 5 USC Part 351 (Reduction-in-Force procedures); (f) provide post-employment restrictions to employees; (g) consult with the Office of Personnel Management (OPM) to determine agency priority considerations for vacant positions and establish a reemployment priority list; and (h) for conversions to private sector or public reimbursable performance, provide the CO with a list of adversely affected civilian employees to implement the Right-of-First-Refusal (see paragraph D.2. below). The HRA, working in conjunction with the CO shall determine compliance with the Right-of-First-Refusal.
  - b. MEO Team Requirement:** The HRA shall assist the ATO and MEO Team with human resource related requirements during development of the Agency Tender including, but not limited to: (a) the Competition milestones to accomplish human resource actions for employee placement entitlements in accordance with 5 USC Part 351; (b) assist the MEO Team by advising on and classifying position descriptions; (c) performing labor market analysis to validate feasibility of MEO staffing; (d) assist in developing the agency cost

estimate by providing annual salaries, wages, night differential, premium pay, etc.; (e) assist in the development of the timing for the Phase-In Plan based on HR requirements; and (f) develop an Employee Transition Plan for the current organization early in the Competition process to identify projected employee impacts and the time to accommodate such impacts based on the potential outcomes of the Competition.

4. **Source Selection Authority (SSA).** The SSA shall be an inherently governmental official appointed consistent with FAR Part 15.303, and shall be independent of (1) the activity being competed and (2) the ATO and AAA. The SSA shall comply with both the FAR and this Circular.
5. **Administrative Appeal Authority (AAA).** The AAA shall be an inherently governmental agency official who is independent of the activity being competed, the ATO, CO, SSA, and HRA. The AAA may be assigned as the agency's AAA for all Standard Competitions or for each Standard Competition. The AAA shall comply with this Circular for conducting the Administrative Appeal Process.

## C. STANDARD COMPETITION PROCEDURES.

### 1. **Preliminary Planning For Public Announcement.**

- a. **Preliminary Planning.** Prior to public announcement (start date) of a Standard Competition, agencies shall: (1) determine the activities and positions to be competed, (2) conduct preliminary research to determine the appropriate grouping of activities as business units consistent with market and industry structures, (3) assess the availability of workload data, work units, quantifiable outputs of activities or processes, agency or industry performance standards, and other similar data, (4) establish data collection systems as necessary, (5) designate Competition Officials, (6) determine roles and responsibilities of participants in the process and their availability for the duration of the process, and (7) develop a preliminary completion schedule. (See paragraph D. for Special Considerations.)

### b. **Competition Preparation Considerations.**

- (1) **Designation and Responsibilities of Competition Officials.** Before public announcement, the 4.e. official shall appoint, in writing, the following Competition Officials: ATO, CO, HRA, SSA, and AAA. These officials shall be appointed in accordance with paragraph D and may be appointed for each or all Standard Competitions. The 4.e. official shall hold these Competition Officials accountable for the timely and proper conduct of Standard Competitions through the use of annual performance evaluations,
- (2) **Cancellation of a Standard Competition.** An agency is permitted to cancel a Standard Competition after the start date only if the commercial activity being competed will (a) be consolidated with an in-progress Standard Competition or a Standard Competition that will be announced within one year of the cancellation date; (b) be broken out into one or more Standard Competitions or Direct Conversions that will be announced within one year of the cancellation date; or (c) not be competed pursuant to a decision by the 4.e. official, without delegation, before a Performance Decision. Agencies shall publish a

notice in *FedBizOpps* of any cancellation of a Standard Competition and provide a similar notice to directly affected employees and their representatives.

- (3) **Timeframes.** A Standard Competition shall not exceed 12 months from public announcement (start date) to Performance Decision (end date), unless a deviation is granted. The 4.e. official may grant a one-time six-month extension if approved by the Deputy Director of Management of OMB.
- (4) **Conflict of Interest.** When conducting a Standard Competition, Competition Officials and individuals participating in any aspect of the process shall comply with procurement integrity, ethics and standards of conduct rules.
- (5) **Centralized Oversight.** Agencies shall centralize oversight responsibility in one or more offices to facilitate fairness in competitions and promote trust in the process. Agencies shall allocate resources to effectively apply a clear, transparent, and consistent competition process based on lessons learned and best practices.
- (6) **Relationship to the Budget.** In accordance with OMB Circular Number A-11, *Preparation and Submission of Budget Estimate*, the 4.e. official shall identify savings resulting from completing Standard Competitions.
- (7) **Cost Estimates.** An agency or public reimbursable source shall comply with Attachment E to develop cost estimates used in Standard Competitions. Agency budgetary costs shall not be used in cost estimates unless prior OMB written approval is received indicating these costs reflect the full cost of government performance to the taxpayer.
- (8) **Personnel Considerations.** Agencies shall provide assistance to adversely affected Federal civilian employees in accordance with 5 CFR Part 351.

## 2. The Solicitation and Quality Assurance Surveillance Plan (QASP).

- a. **Solicitation.** In addition to FAR requirements, the CO shall consider the following when developing and issuing a solicitation.
  - (1) **General.** The solicitation defines the activity, the performance standards and performance periods required. Development and issuance of the solicitation requires determining an agency's requirements, gathering workload data for the PWS, and includes releasing the QASP. A PWS that is developed in a Standard Competition shall be performance based with measurable performance thresholds and may encourage innovation. Agencies shall not issue a solicitation that increases, or places additional risk on one offeror over another; violates industry service or service grouping norms; or omits statutory obligations or necessary regulatory requirements.
  - (2) **Delayed Issuance.** Agencies shall issue a solicitation within eight months of the start date. If an agency is unable to issue a solicitation within this timeframe, the 4.e. official shall notify the Deputy Director for Management, OMB, in writing, no later than seven months after the start date and identify corrective actions that have been taken or are planned.

- (3) **FAR Provisions.** The agency shall determine, in accordance with FAR Part 7, whether a Sealed Bid or Negotiated Acquisition will be used for the Standard Competition process. For sealed bid procurements, the CO shall issue an Invitation for Bid (IFB) and the CO shall insert the provision at FAR 52.207-1 in the solicitation. For negotiated procurements, the CO shall issue a Request for Proposals (RFP) and insert the provision at FAR 52.207-2. Whenever a Direct Conversion or Standard Competition is performed and the agency is the incumbent service provider, the CO shall include in solicitations the Right-of-First-Refusal provision at FAR 52.207-3.
- (4) **Source Selection Provisions.** When a Standard Competition is performed, the CO shall state that the agency is performing a Standard Competition in accordance with this Circular and shall identify one of the following procedures will be used to select the source: (a) Sealed Bid in paragraph B.4.a.(2) of this Attachment; (b) Negotiated Procurement using Low Priced Technically Acceptable Source Selection Procedures in paragraph B.4.b.(a) of this Attachment (c) Negotiated Procurement using Cost/Technical Tradeoff Source Selection Procedures with an Integrated Evaluation Process in paragraph B.4.b.(b)1. of this Attachment; or (d) Negotiated Procurement using Cost/Technical Tradeoff Source Selection Procedures with a Phased Evaluation Process in paragraph B.4.b.(b)2. of this Attachment.
- (5) **Performance Periods.** Agencies shall apply the performance periods stated in the solicitation to the Agency Tender, prospective private sector offers, and public reimbursable tenders, consistent with FAR 17.204. An agency shall not use performance periods for the Agency Tender that differ from private sector offers and public reimbursable tenders.
- (6) **Phase-in and Phase-out Plans.** For a Standard Competition, the CO shall include in the solicitation a requirement for private sector offers, public reimbursable tenders and the agency tender to propose a phase-in plan to replace the existing incumbent service provider. Phase-in plans shall include details to minimize disruption, adverse personnel impacts, and startup requirements. The length and requirements of the phase-in must consider hiring, training, recruiting, security limitations, and any other special considerations to reflect a realistic phase-in plan. The costs associated with phase-out plans shall not be required by the solicitation or calculated on the Standard Competition Form (SCF).
- (7) **Government Furnished Property.** The PWS Team shall determine if government property is to be provided. The determination to provide government furnished property shall be justified, in writing, and approved by the 4.e. official. Consistent with FAR 45.102 and FAR Subpart 45.3, solicitations may offer the use of existing government facilities and equipment, and may make such use mandatory if the CO obtains prior approval from the 4.e. official. The determination to provide government property shall not be used to influence a specific outcome.
- (8) **Maximum Incentive Fee.** If a solicitation may result in a contract with an incentive fee, the CO shall state in the solicitation the maximum incentive fee.
- (9) **Innovation.** When performing Cost/Technical Trade-off (C TTO) source selections in negotiated acquisitions, the solicitation shall allow prospective offers and tenders,

including the Agency Tender, to propose innovative approaches and different performance standards than the requirements of solicitation.

**(10) Performance Bond.** If a solicitation requires a private sector source to provide a performance bond, the CO shall exclude the costs associated with the performance bond from the contract price before it is entered on Line 7 of the SCF.

**(11) Compliance Matrix.** To decrease the complexity of performing source selections in Standard Competitions, the CO may include a cross-reference compliance matrix in Section L of the solicitation. An example is provided below. A matrix shall clearly identify proposal reference information as it relates to the PWS, contract line items (CLIN), Sections L and M, Proposal Volume and Section, and Contract Data Requirements List (CDRL) references. This matrix should be modified to account for proposed performance standards that differ from the requirements in a solicitation when CTTO source selections are used (see paragraph C.4.a.(3)(b) below):

**CROSS-REFERENCE COMPLIANCE MATRIX (EXAMPLE)**

DESCRIPTION	PROPOSAL VOLUME & PARAGRAPH #	CLINs	CDRLs	PWS	SECTION L	SECTION M
Administrative Support				1.1	4.3	F1, 1.5.1
Records Management				1.1.1	4.3.1	F1, SF1
Forms and Publications	<b>Note:</b>			1.1.2	4.3.2	F1, 1.5.1.2
Operations & Maintenance	<i>This section is to</i>			1.2	4.4	F2 1.5.2
Equipment Records	<i>be completed</i>			1.2.1.1	4.4.2	F2, SF2,
Maintenance Analysis	<i>by tenders and offers</i>			1.2.2	4.4.3	SF3 1.5.2.3
Data Base Management				1.2.2.1	4.4.4	SF4, 1.5.2.4
Price					5.0	1.5.3
Performance Risk Assessment					7.0	1.5.4

**(12) Security Clearances.** A solicitation shall state when security clearances are necessary to have access to classified information to perform the activity (e.g., workload, specific position designations, level of security clearance). The costs associated with security clearance requirements shall not be included on the SCF for an agency tender, private sector offer, or public reimbursable tender.

**(13) Solicitation Exceptions for the Agency Tender.** A solicitation shall explicitly state which requirements will not be applied to the Agency Tender. Solicitation requirements for the following shall not apply to an Agency Tender: (1) labor strike plan, (2) small business strategy, (3) subcontracting plan goal, (4) participation of small disadvantaged businesses, (5) licensing or other certifications and (6) past performance criteria. For Agency Tenders where a government MEO has been implemented in accordance with paragraph C.6.b. (2) or a previous competition, the CO shall include Agency Tender past performance criteria in the solicitation and evaluation requirement, (except as provided in paragraphs C.6.b. (2) and C.6.d. (2) below).

**(14) Cancellation of a Solicitation After Performance Decision.** When the Performance Decision results in the issuance of an ISSA to a Public Reimbursable Tender or a letter of obligation to an Agency Tender, the CO shall cancel the solicitation in accordance with FAR Subpart 15.206. When a Performance Decision results in the selection of a private sector source but an agency cancels the solicitation and does not award the contract, the 4.e. official (without delegation) shall sign and forward to the Deputy

Director for Management, OMB, a written report that (1) states that the CO cancelled the solicitation in accordance with FAR Subpart 15.206, (2) justifies that cancellation of the solicitation was clearly in the public interest, (3) provides the agency's rationale for canceling the solicitation, and (4) states an approximate date for reissuance of the solicitation unless the justification for cancellation is that the agency no longer has a requirement for the service.

- (15) Quality Assurance Surveillance Plan (QASP).** The QASP identifies methods used to measure performance of the service provider against the requirements in the PWS. A quality control program (QCP) is also included in prospective offers and tenders to guarantee satisfactory performance. The agency may rely on the service provider to monitor daily performance. The agency retains the right to inspect all services. The 4.e. official shall assign individuals responsible for the QASP that are external to the selected service provider (i.e., agency, private sector or public reimbursable source) to perform quality assurance.

### **3. The Agency Tender, Private Sector Offers, and Public Reimbursable Tenders.**

- a. Agency Tender.** The Agency Tender is the agency response to the solicitation.

- (1) Procurement Sensitivity.** The Agency Tender shall be considered a procurement sensitive document, until a Performance Decision is reached. After a Performance Decision, an agency shall not consider any part of the Agency Tender to be procurement sensitive and shall release the Agency Tender to interested parties in the Administrative Appeal Process.
- (2) Developing the Agency Tender.** The ATO shall develop an Agency Tender that responds to the requirements and bid structure stated in the solicitation. The ATO shall prepare the Agency Tender in accordance with the requirements of Section L (Instructions, Conditions, and Notices to Offerors or Respondents) and Section M (Evaluation Factors for Award). The Agency Tender shall also include the following: (1) an MEO, (2) Agency Cost Estimate developed in accordance with Attachment E, (3) the MEO's Quality Control Plan (QCP), and (4) the MEO's Phase-in Plan. The Agency Tender shall exclude the exceptions noted in paragraph C.2.a.(13). The ATO shall provide the certified Agency Tender in a sealed package to the CO by the due date stated in the solicitation. Failure to submit the Agency tender on or before the due date established in the solicitation may result in the Agency tender not being considered.
- (3) Changes to the Agency Tender.** Prior to submitting the Agency Tender to the CO, changes are at the discretion of the ATO. After the due date stated in the solicitation, the ATO shall make changes to the Agency Tender only resulting from the following: (a) negotiations with the SSA, (b) official OMB, Office of Personnel Management (OPM), or Agency cost rate/factor updates approved by the 4.e. Office, (c) costing software version updates, or (d) as required through the Administrative Appeal Process. The CO and ATO shall retain auditable documentation for any changes to the original submitted Agency Tender after the due date stated in the solicitation. The Agency Tender may be revised if no private sector offers or public reimbursable tenders have been opened and if the CO extends the submission date to all offers and tenders. Other changes to the Agency Tender shall not be permitted.

- (4) Most Efficient Organization (MEO).** The MEO is an agency's staffing plan as identified in the Agency Tender. The MEO is not represented by the current organization but is the product of management analyses that include, but are not limited to, activity based costing, business case analysis, consolidation, functionality assessment, industrial engineering, market research, productivity assessment, reengineering, reinvention, utilization studies, and value engineering. New position descriptions are developed and classified based on the MEO, but employees are not hired to staff these positions unless the Agency Tender is the selected provider. An MEO may be comprised of either (1) Federal employees or (2) a mix of Federal employees and existing contracts (referred to as MEO subcontracts in this Circular). New contracts shall not be created as part of MEO development. Other elements of the MEO include an MEO organization chart, MEO position descriptions, QCP organization, specific details for MEO subcontracts, and material, equipment and facilities. Once announced, the Agency Tender shall not include a new agency contract or ISSA that results from in the conversion of agency performed work as a part of the MEO or Agency Tender.
- (5) Agency Cost Estimate.** The ATO shall develop and certify the Agency Cost Estimate (which represents the agency's cost proposal) in accordance with Attachment E. The ATO may make changes to the Agency Cost Estimate in accordance with paragraph C3.a.(3).
- (6) Quality Control Plan (QCP).** The ATO shall include a QCP in the Agency Tender outlining an MEO self-inspection plan that complies with the solicitation. The QCP shall describe the (a) internal staffing (which shall be included in the Agency Cost Estimate for personnel costs on Line 1 of the SCF) and (b) procedures that the MEO will perform to meet the quality, quantity, timeliness, responsiveness, customer satisfaction, and other aspects of service delivery as required by the solicitation.
- (7) Phase-in Plan.** The ATO shall include a Phase-in Plan in the Agency Tender to replace the existing service provider with the MEO (this requirement applies even if the agency is the existing service provider). A Phase-in Plan shall include details to minimize disruption, adverse personnel impacts, and startup requirements. Phase-in costs for the Agency Tender shall be included on Line 3 of the SCF.
- (8) Submission of the Agency Tender.** The ATO shall deliver the Agency Tender to the CO in a sealed package by the due date stated in the solicitation. The period available to deliver proposals shall be the same for all offers and tenders.
- (9) Delayed Delivery.** If the ATO does not submit the Agency Tender to the CO on or before the due date stated in the solicitation, the CO shall not open any received offers or tenders and shall notify the ATO, and 4.e. official that the Agency Tender was not submitted. The ATO shall provide the 4.e. official with a written rationale for not submitting the Agency Tender and the 4.e. official may: (1) instruct the CO to return received offers and tenders and amend the solicitation allowing additional time for resubmission of all offers and tenders, or (2) instruct the CO to proceed with source selection without the Agency Tender.

- b. Private Sector Offers.** Private sector offers respond to the solicitation in accordance with the FAR.
- c. Public Reimbursable Tenders.** Public reimbursable tenders respond to the solicitation in accordance with Attachment C and prepare tenders in accordance with paragraph C.3.a.
- d. No Responses to Solicitation.** When a Standard Competition is attempted but private sector offers or public reimbursable tenders are either not received, or those received are found to be non-responsive or not responsible, the agency shall take the following actions:
  - (1) Determine Reasons.** Through discussions with private sector or public reimbursable sources, the CO shall document, in writing, the following: (1) restrictive, vague, confusing, or misleading portions of the solicitation; (b) possible revisions to the solicitation to encourage participation; (2) the reasons provided by sources for not submitting responses; and (3) the reasons offers or tenders were either not responsive or not responsible. The CO and SSA shall evaluate the results of these discussions and propose a course of action in a written document to the 4.e. official. The CO shall provide a copy of this written document to the PWS Team, ATO, and to the public, upon request.
  - (2) Required Action.** The 4.e. official shall evaluate the CO's written documentation and make a written determination to either (a) revise solicitation or (2) implement the Agency Tender.
    - (a) Revise Solicitation.** Before revising or reissuing the solicitation, the CO shall return the sealed Agency Tender to the ATO. The CO shall then revise and reissue the solicitation.
    - (b) Implement Agency Tender.** The SSA shall proceed with evaluating the Agency Tender as required by the solicitation and the applicable source selection requirements in paragraph C.4.a.(1). The SCF is completed by leaving Line 7 blank, without calculating the costs on Lines 8-12, and by annotating "agency" on Line 18. The SSA shall document the reasons for not entering a price on Line 7 and attach the SCF the documentation required by paragraphs C.5.b. (1) (a) and (b). The ATO, SSA, and CO shall sign the SCF to certify the Performance Decision. The SSA shall provide the ATO, and directly affected agency civilian employees (and their representatives) a debriefing in accordance with FAR 15.503. The agency shall announce the Performance Decision and state that it is not subject to Administrative Appeal Process. The CO shall provide the SCF and the Agency Tender to the ATO, directly affected agency civilian employees (and their representatives), and, upon request, to the public. The ATO shall retain the SCF and the Agency Tender documentation with the Standard Competition documentation.

#### **4. The Source Selection Process and Performance Decision.**

##### **a. The Source Selection Process.**

- (1) Special Requirements.** The SSA and CO shall comply with the following requirements for all Standard Competitions.

**(a) Evaluation of Agency and Public Reimbursable Tenders.** The SSA shall evaluate all offers concurrently. Neither the SSA nor the CO shall: (1) direct or request adjustments to the Agency Tender that would identify a private sector or public reimbursable offeror's proprietary methodology; or (2) require, direct or make specific changes to the Agency Tender including the approach used by the agency and agency staffing requirements (e.g., adding a specific number of employee positions). The SSA or CO may question whether sufficient resources have been included in the MEO.

**(b) Cost/Price Realism.**

**1. Agency and Public Reimbursable Tender.** The SSA shall subject Agency Tenders and Public Reimbursable Tenders to a Cost Realism analysis to determine if the cost estimate reflects the requirements of the solicitation. The SSA shall validate the Agency Cost Estimates and Public Reimbursable Cost Estimates to determine if the estimates have been calculated in accordance with Attachment E and the solicitation. The SSA shall not assess monetary values for non-quantifiable elements of an Agency Tender or Public Reimbursable Tender. The SSA shall be responsible for the accuracy of cost data on Lines 7-18 of the SCF (see Attachment E) during source selection. The ATO shall respond to SSA requests for adjustments to the Agency Cost Estimate and make changes in accordance with paragraph C.3.a.(3).

**2. Private Sector Bids and Cost Proposals.** The SSA shall conduct price or cost realism on private sector offers during source selection as provided by the FAR. The SSA shall not assess monetary values for non-quantifiable elements of the private sector offers.

**(2) Sealed Bid Acquisition.** On the due date for receipt of offers and tenders stated in the solicitation, the CO shall open the Agency Tender, private sector bids, and public reimbursable tenders. The CO shall enter the price of the apparent lowest priced private sector bid or public reimbursable tender on Line 7 of the SCF that is submitted in the Agency Tender. The CO shall enter the lowest contract price or public reimbursable cost on Line 7 of the SCF, and validate that the cost adjustments to Lines 8-18 are made in accordance with Attachment E. The CO shall evaluate private sector bids for responsiveness and responsibility in accordance with the FAR. The CO shall evaluate the Agency Tender for responsiveness and cost realism in accordance with paragraph C.4.a.(1). The Performance Decision is made when the SCF is certified in accordance with paragraph C.4.b. The SCF is the decision document.

**(3) Negotiated Acquisition.**

**(a) Exchanges with Offerors or Tenders During Negotiated Acquisitions.** On the due date for receipt of offers and tenders stated in the solicitation, the CO shall open the Agency Tender, private sector bids, and public reimbursable tenders. Exchanges between the SSA and the ATO, officials responsible for public reimbursable tenders or other offerors after receipt of proposals may include: (1) clarifications, where offerors clarify certain aspects of proposals or resolve minor or clerical errors where

the CO intends to make award without discussion, (2) communications to address issues that must be explored to determine whether a proposal should be placed in the competitive range, and (3) discussions, which are undertaken after establishment of the competitive range with the intent of allowing the offeror to revise its proposal and are intended to maximize the government's ability to obtain the greatest overall benefit based on the requirement and the evaluation factors set forth in the solicitation. Exchanges that occur during a Standard Competition shall be governed by the procedures set forth in FAR 15.306, except that the following special procedures shall also apply with respect to exchanges involving the ATO.

- 1. Exchanges between the SSA and the ATO.** The SSA shall correspond with the ATO, in writing, through the CO. Although the ATO certifies that the Agency Tender is technically acceptable prior to submitting the tender to the CO, the ATO shall be responsive to SSA questions about the Agency Tender including technical acceptability.
- 2. Ambiguities.** If the SSA identifies any ambiguities in the Agency Tender, the ATO shall be given an opportunity to correct these ambiguities either through clarifications (see FAR 15.306(a) or communications, negotiations and discussions (see FAR 15.306(a) and depending on whether the CO contemplates making the award without discussions.
- 3. Deficiencies.** If the Agency Tender is materially deficient upon the SSA's initial review and prior to the determination of the competitive range, the SSA shall afford the ATO an opportunity to correct material deficiencies by responding to deficiency notices issued by the SSA and revising the Agency Tender. If the ATO responses to deficiency notices are satisfactory, the Agency Tender shall be included in the competitive range and Cost or Price Realism is performed on all offers and tenders (see paragraph C.4.a.(1)(b) above), the SCF is completed, and the SSA certifies the SCF and documents the Performance Decision as part of the source selection documentation. However, if the SSA and ATO cannot reach agreement on a specific issue related to the Agency Tender within a reasonable timeframe, the 4.e official shall appoint an individual (who has not been involved in the source selection process) to resolve the disagreement

**(b) Lowest Priced Technically Acceptable (LPTA) Source Selection.** During the source selection process, the SSA shall simultaneously evaluate private sector offers, public reimbursable tenders, and the Agency Tender to determine technical acceptability. The Performance Decision shall be based on the lowest cost of all offers and tenders determined to be technically acceptable. For LPTA source selection, if the SSA conducts discussions with any private sector offeror, public reimbursable tender or agency tender, the SSA shall allow all tenders and offers determined to be technically acceptable to submit their final proposal revisions (including public reimbursable and agency tenders). The SSA conducts discussions and cost or price realism in accordance with paragraph C.4.a.(1). When final proposal revisions are received, the CO shall enter the lowest contract price or public reimbursable cost on Line 7 of the SCF, and validate that the cost adjustments to Lines 8-18 are in accordance with Attachment E. The Performance Decision is made

when the SCF is certified in accordance with paragraph C.4.b. The SCF is the decision document.

**(c) Cost/Technical Tradeoff (CTTO) Source Selection.** The CTTO processes under FAR Subpart 15.101-1 may be used to evaluate private sector offers, public reimbursable tenders, and the Agency Tender. As provided at FAR 15.101-1, a Standard Competition using a CTTO source selection may be appropriate when the agency wishes to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. When agencies use the CTTO source selection process in a Standard Competition, agencies shall comply with FAR Part 15 unless otherwise noted in this Circular. Under the CTTO source selection process, an agency may accept an offer or agency tender that is not the lowest priced proposal if that offer is within the agency's current budgetary limitations. Agencies shall not use a CTTO source selection to justify increases in an agency's budgetary authorization and may include a not-to-exceed cost in the solicitation. Private sector offers, public reimbursable tenders and the Agency Tender may submit higher performance standards than the PWS. For purposes of the Standard Competition process, the SSA's rationale for tradeoffs required by FAR 15.406 shall be included in the decision documentation.

**1. Integrated Evaluation Process.** Agencies may use the Integrated Evaluation Process in a Standard Competition of: (1) information technology activities (as defined in Attachment F) performed by the agency personnel, (2) contracted commercial activities, new requirements, or segregable expansions where an Agency Tender will be submitted, or (3) any other commercial activities where the 4.e. official receives written approval from OMB prior to issuance of the solicitation. When using the Integrated Evaluation Process, the Agency Tender may be eliminated from the competitive range and the Performance Decision may be based on factors other than lowest cost. The SSA shall conduct negotiations and cost or price realism as required in paragraph C.4.a.(1). When using the Integrated Evaluation Process, if agreement cannot be reached between the ATO and SSA regarding any aspect of the Agency Tender, the individual appointed to resolve the disagreement between the SSA and ATO (see paragraph C.4.a.(1)(c) above) shall either (1) resolve the disagreement regarding the Agency Tender or (2) authorize exclusion of the Agency Tender from the competitive range. For all private sector offers and public reimbursable tenders determined to be in the competitive range, the CO shall enter on Line 8 of the SCF each contract price and public reimbursable cost for comparison of costs against the Agency Cost Estimate. The SSA may determine a Performance Decision on either low cost or other than low cost.

**a. Low Cost Decision.** If the decision is based on low cost, the SSA shall certify this decision by signing the SCF. The Performance Decision is made when the SCF is certified in accordance with paragraph C.4.b.

**b. Other Than Low Cost Decision.** If the Performance Decision is based on other than low cost, the SSA shall certify this decision by signing and documenting on Line 19 of the SCF the following: (1) a summary of the Source Selection Decision Document and (2) a narrative explanation of the

tradeoffs and a quantifiable rationale for a Performance Decision based on other than lowest cost. The SCF, combined with the Source Selection Decision Document, is the Performance Decision document. The Performance Decision is made when the SCF is certified in accordance with paragraph C.4.a. (3)

**2. Phased Evaluation Process.** Agencies may use the following Phased Evaluation Process for any Standard Competition. In the Phased Evaluation Process, an agency shall determine technical capability in Phase One and evaluate cost in Phase Two. The Performance Decision shall be based on lowest cost of all technically acceptable offers and tenders, and the decision document is the SCF. The SSA shall not end Phase One and commence Phase Two until the SSA agrees that the Agency Tender is technically acceptable. The Agency Tender shall be among the group of private sector offers and public reimbursable tenders considered in Phase Two.

**a. Phase One.** In Phase One, the SSA shall simultaneously evaluate the technical proposals from all offerors (private sector offerors, public reimbursable tenders, and the Agency Tender) for technical merit. The solicitation shall not require, and the SSA shall not evaluate the Agency Cost Estimate, public reimbursable cost estimates, or private sector price proposals during Phase One. The SSA may consider only the discrete cost or price differential associated with any performance standard proposed that differs from the requirements of the solicitation. The Agency Tender, private sector offers, and public reimbursable tenders shall clearly identify each proposed performance standard that differs from the requirements stated in the solicitation. For each proposed performance standard that differs from the requirements in the solicitation, the offers and tenders shall include the following in the compliance matrix (see paragraph C.2.a.(11) above): (1) clear identification of the proposed performance standard and an explanation of how it differs from the required performance standard, (2) the discrete cost or price difference between the solicitation and the proposed performance standard and (3) a cost-benefit analysis explaining the rationale for each performance standard that differs from the solicitation. In consultation with the requiring organization, the SSA shall determine whether any of the proposed performance standards are necessary and within the agency's current budget limitations. If none of the proposed performance standards are accepted, the SSA shall afford all offerors and tenders that proposed these performance standards an opportunity to resubmit a tender or offer based on the solicitation requirements. If any of the proposed performance standards are accepted, the CO shall issue a formal amendment to the solicitation that states the specific changes to the performance standard(s) in the PWS (without conveying proprietary information about technical approaches or solutions for meeting the new performance standard). Upon receiving proposal revisions and revised tenders, the SSA shall conduct negotiations in accordance with FAR Subpart 15.306 and paragraph C.4.a.(1) to determine technical acceptability of each offer or tender. When the SSA and the ATO determine that the Agency Tender meets the revised performance standards of the amended solicitation, the SSA shall proceed to Phase Two.

- b. Phase Two.** In Phase Two, the SSA formally requests cost proposals from all offerors and tenders that were determined to be technically acceptable at the conclusion of Phase One. The SSA shall notify private sector offers or public reimbursable tenders that were removed from the competitive range in Phase One (see FAR 15.307). If the solicitation is amended as a result of Phase One, the SSA shall request the ATO who bid the requirements of the solicitation to submit an update to the Agency Tender to meet the revised solicitation (see paragraph C.3.a.(3) above). When all cost proposals and cost estimates have been received, the SSA shall perform price/cost realism in accordance with paragraph C.4.a. (1) above, then enter lowest contract price or public reimbursable cost on Line 8 of the SCF. The Performance Decision is made when the SCF is certified in accordance with paragraph C.4.b. The SCF is the decision document.
- c. The Performance Decision.** To certify the Performance Decision, the ATO, SSA, and CO shall sign the SCF. The SSA shall provide all private sector offerors, public reimbursable tenders, the ATO, and directly affected agency civilian employees (and their representatives) a debriefing in accordance with FAR 15.503. The agency shall announce the Performance Decision. The CO shall provide the SCF and the Agency Tender to interested parties to commence the Administrative Appeal Process.

## **5. Post Competition Accountability.**

- a. Implementing the Performance Decision.** The head of the requiring organization shall: (1) implement the Performance Decision and QASP; (2) maintain the currency of the PWS; (3) monitor actual cost of performance; and (4) retain the Standard Competition documentation. To maintain currency to the PWS, an agency shall (1) retain the original PWS and (2) update a revised PWS no later than the end of each performance period to reflect requirements and scope changes made during that performance period. To monitor actual cost of performance for each performance period, the agency shall adjust actual costs as necessary to compare to estimated costs submitted in the Agency Tender, allowing for scope, inflation, and wage rate adjustments made during that performance period.

  - (1) Private Sector Source.** For a private sector source decision, the CO shall award a contract in accordance with the FAR.
  - (2) Public Reimbursable Source.** For a public reimbursable source decision, the head of the requiring organization shall issue an ISSA, with a copy to the 4.a. official.
  - (3) Agency Source.** For an agency source decision, the 4.e. official shall issue a Letter of Obligation to the ATO and the head of the requiring organization.
  - (4) Requirements for the Letter of Obligation and ISSA.** Agencies shall include the following in a Letter of Obligation or an ISSA: (a) the Performance Decision Date; (b) the expected date for full performance based upon the Phase-in Plan; (c) the option years and end date for performance based upon the performance periods specified in the solicitation; (d) the terms of the solicitation and tender (similar to FAR requirements for a

contract decision); (e) performance records based upon performance tracking required by the QCP and performance monitoring required by the QASP; (f) a requirement (in accordance with paragraph C.7.(a) above) to document changes to the PWS and MEO, and to track actual costs; (g) a requirement to retain the Standard Competition Documentation until the activity is recompeted; and (h) the recompetition date (see paragraph C.7.b.(2) below).

**b. Years of Performance and Follow-on Competition.**

- (1) **Private Sector Source Decision.** The CO shall exercise option years for contract decisions in accordance with FAR 17.207. By the end of the last year of performance used in the Competition, a recompetition shall be performed in accordance with the FAR and this Circular.
- (2) **Agency or Public Reimbursable Source Decision.** For an agency or public reimbursable decision, the head of the requiring organization shall exercise option years by approving another year of performance. The head of the requiring activity shall include the following statements in a written recommendation to approve another year of Agency or ISSA performance: (a) the activity continues to be an existing government requirement, (b) the PWS reflects the activity's current requirements at a cost that is affordable, (c) the Agency or ISSA meets the requirements of this PWS as demonstrated by the QCP and QASP, and (d) continued MEO or ISSA performance continues to be an advantageous to the agency. The head of the requiring organization shall not approve performance that exceeds the total number of years specified in the solicitation used in the Standard Competition. By the end of the last performance period stated on the SCF, another public-private Competition or Direct Conversion shall be completed in accordance with this Circular. For future Standard Competitions, the CO shall include agency past performance criteria in the solicitation requirement.

**c. Failure to Perform**

- (1) **Notification.** Agencies shall, as with any acquisition, notify a service provider of poor performance through deficiency notices, cure notices, and show cause notices. As part of administering post Competition requirements, the CO shall notify a private sector provider and the head of the requiring activity shall notify the Agency or public reimbursable provider.
- (2) **Termination.** If an agency, private sector or public reimbursable provider fails to perform to the extent that a termination for default is justified, agencies shall comply with the following: (a) for a private sector provider, the CO complies with FAR Part 49; (b) for an agency or public reimbursable provider, the head of the requiring organization shall issue a notice to terminate and shall recommend, in writing, that the 4.e. official approve either (1) a Direct Conversion based upon a Standard Competition Waiver or (2) a Standard Competition.
- (3) **Temporary Remedies.** If a service provider is terminated, agencies shall use interim contract or public reimbursable sources on an emergency basis, not to exceed one year. . Agencies shall not use agency personnel as a temporary remedy, unless approved by the 4.e. official.

## 6. The Administrative Appeal Process.

### a. The Administrative Appeal Process.

- (1) General.** The Administrative Appeal Process provides directly interested parties an opportunity to have an independent agency official review the Performance Decision. Following a Performance Decision, agencies shall allow directly interested parties to review the decision documentation (completed SCF and Agency or Public Reimbursable Tenders) to determine whether to submit an appeal. While private sector proposals shall not be subject to appeal, questions regarding a private a sector offeror's compliance with the scope and technical performance requirements of the solicitation may be appealed.
- (2) Appeal Submission Period.** An appeal shall only be submitted during the Appeal Submission Period. The Appeal Submission Period shall (1) begin on the date the decision documentation is provided or made available to all directly interested parties, and (2) last for 10 working days (which may be extended by the AAA to a maximum of 15 working days if the Standard Competition is particularly complex). Where private sector proprietary information is involved a redacted copy of the appeal and decision documentation will be made available.
- (3) Eligibility of Appeals.** An appeal shall only be eligible for consideration if the appeal: (1) is submitted in writing by an directly interested party; and (2) is received by the CO during the Review Period. Each appeal may address only the following issues:

  - (a) Compliance.** Factual questions regarding an agency's compliance with this Circular.
  - (b) Costs.** Factual questions regarding compliance with this Circular in the calculation of costs on the SCF including a rationale for questioning the costs.
  - (c) Source Selection.** Specific questions regarding how the SSA conducted the source selection process and determined that the level of performance meets the requirements of the solicitation or was based upon a CTTO.
- (4) Administrative Appeal Authority Determination.**

  - (a) Appeal Eligibility.** At the end of the Appeal Submission Period, the CO shall provide all appeals received to the AAA and the AAA shall evaluate all appeals for eligibility. The CO shall return all ineligible appeals to directly interested parties with an ineligibility rationale.
  - (b) Optional Comment Period.** The AAA may permit a comment period to allow directly interested parties to react to all eligible appeals. The CO shall provide directly interested parties who submitted eligible appeals with a copy of all eligible appeals (redacted for private sector proprietary information, as appropriate). The AAA shall not (1) allow the optional comment period to exceed ten working days, (2) review comments submitted that do not relate to an eligible appeal, (3) permit new or expanded appeals to be submitted, or (4) wait for the comment period to end before beginning to evaluate eligible appeals.

- (c) **Limitations.** The AAA shall not (1) make changes to the solicitation, or (2) review any issue not specifically addressed in an appeal including corrections to documentation (e.g., correcting mathematical errors) that may be raised outside the Administrative Appeal Process.
  - (d) **Single Administrative Appeal Process Decision Document.** The AAA shall simultaneously evaluate all eligible appeals (and comments if submitted in an optional comment period) and issue a single Administrative Appeal Process Decision Document within 30 working days (or 45 working days based on the complexity of the Standard Competition or submitted appeals). During this evaluation, the AAA shall adjudicate appeals that raise questions of compliance, costs and source selection (see paragraph C.4.a.(1) above). The Administrative Appeal Decision Document shall be signed by the AAA and shall provide the rationale for each eligible appeal decision. The AAA shall provide the Administrative Appeal Process Decision Document to the CO who, in turn, shall provide copies to directly interested parties that submitted eligible appeals, the ATO and SSA. To complete the Administrative Appeal Process, the ATO and SSA shall comply with the AAA's Administrative Appeal Process Decision Document.
  - (e) **Suspension of the Performance Decision.** If a valid administrative appeal is filed, the AAA may suspend implementation of the Performance Decision for 30 days or less.
- (5) **SCF Changes.** After the Performance Decision, agencies shall not make changes to the SCF unless identified in the Administrative Appeal Process Document. When SCF changes are identified in the Administrative Appeal Process Decision Document: (1) the ATO shall recompute the SCF and document the changes made to the Performance Decision SCF, (2) the ATO, CO, SSA, and AAA shall certify the revised SCF; and (3) ATO shall retain the revised SCF and Administrative Appeal Process Decision Document with the Standard Competition documentation.
- (6) **Sequential Reviews or Appeal Processes.** Agencies shall not conduct or permit any sequential appeal process, review an Administrative Appeal Decision document, or reverse an AAA's decision. Agencies shall implement the results of the AAA's Administrative Appeal Decision document unless an exception is requested by the agency 4.e official (without delegation) and approved by the Deputy Director for Management, OMB.

#### **D. SPECIAL CONSIDERATIONS.**

1. **Right-of-First-Refusal.** Agencies shall afford adversely affected Federal civilian employees with the Right-of-First-Refusal by including FAR 52.203 in the solicitation for all Standard Competitions and Direct Conversions. Adversely affected Federal civilian employees are afforded the Right-of-First-Refusal to non-management job vacancies created by a conversion of agency performed work to contract or public reimbursable performance as a result of either a Standard Competition or Direct Conversion. The Right-of-First-Refusal does not apply to: (1) conversions from public reimbursable sources to agency performance, (2) conversions from

contract performance to agency or ISSA performance, or (3) to temporary employees, nonappropriated fund civilian employees, foreign nationals, military personnel, or civilian employees who voluntarily separate or take early retirement. The HRA shall provide the CO with a list of adversely affected Federal civilian employees when the Performance Decision is made. The CO shall provide this list to the selected contractor or public reimbursable and determine the compliance with the Right-of-First-Refusal. When job openings are created by a conversion to contract or public reimbursable performance and the employees on this list are deemed qualified by the HRA for these job openings, the selected source contractor or public reimbursable shall be required to offer employment to these employees before hiring new or transferring existing employees to fill these job openings. The clause at FAR 52.207-3, Right-of-First-Refusal, may be used to affect this requirement in the solicitation:

## **2. Team Designations, Responsibilities, and Restrictions.**

**a. PWS Team.** The PWS Team shall be comprised of technical and functional experts and shall be responsible for (1) developing the PWS, QASP, supporting workload data, and any information relating to the activity being competed; (2) determining government furnished property, equipment and facilities; (3) assisting the CO in developing the solicitation; and (4) compliance with this Circular.

**(1) Conflict of Interest and Standards of Conduct.** To avoid any appearance of a conflict of interest, members of the PWS Team shall not be members of the MEO Team. Members of the MEO Team shall not be members of the SSEB

**(2) Right of First Refusal.** Agency personnel who are personally and substantially participating in developing the solicitation shall not be afforded the Right-of-First-Refusal (see paragraph D.1. above) (see FAR 3.104 and 41 U.S.C. 253). Agency employees are not personally and substantially participating in the development of the solicitation when they provide only the following: workload data, management information, costing data, organizational structure, efficiency improvements, or other technical support recommendations to be used by the CO and others in making the final determinations to be included in the solicitation.

**b. MEO Team.** The MEO Team shall (1) be comprised of technical and functional experts, (2) assist the ATO in developing the Agency Tender, and (3) comply with this Circular. The ATO shall make all final management decisions regarding the Agency Tender. Other individuals with expertise in management analysis, position classification, work measurement, value engineering (see OMB Circular A-131), industrial engineering, cost analysis, procurement, and the technical aspects of the activity may also assist this team.

**(1) Conflict of Interest and Standards of Conduct.** To avoid any appearance of a conflict of interest, members of the MEO team shall not be members of the PWS Team.

**(2) Right of First Refusal.** Agency civilian employees who are personally and substantially participating in developing the Agency Tender (see FAR 3.104 and 41 U.S.C. 253) shall not be afforded the Right-of-First-Refusal. Agency civilian employees are not personally and substantially participating in the development of the Agency Tender when they provide the following: workload data, management studies, costing data, organizational structure, efficiency improvements, or other technical support recommendations to be

used by the ATO and others in making the final determinations to be included in the Agency Tender.

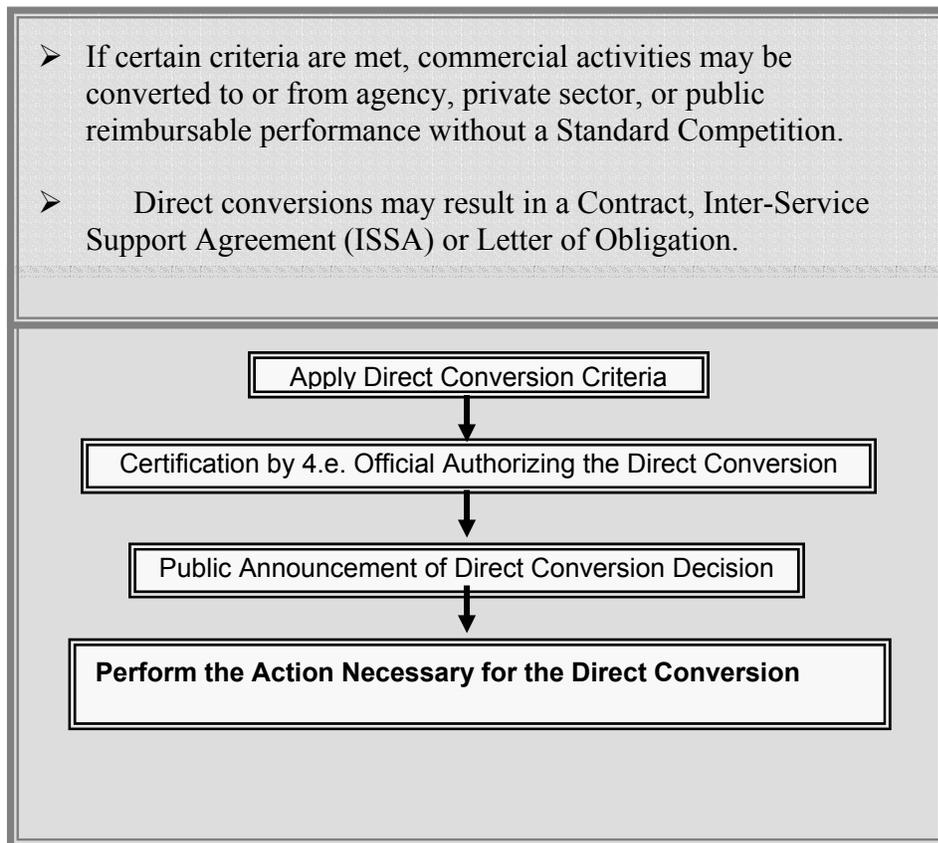
**c. Source Selection Evaluation Board (SSEB).** The SSA appoints an SSEB in accordance FAR Subpart 15.303 when a negotiated procurement is used in a Standard Competition. The SSEB shall comply with the source selection requirements in paragraph C.3.a.

**(1) Conflict of Interest and Standards of Conduct.** PWS Team members that are not directly affected personnel may participate on the SSEB. MEO Team members, directly affected personnel (and their representatives), and any individual with detailed knowledge of the MEO or Agency Cost Estimate in the Agency Tender submitted to the CO shall not be members of the SSEB.

**(2) Right of First Refusal.** Agency employees on the SSEB shall not be afforded the Right-of-First-Refusal.

**3. Participation of Directly Affected Employees and Representatives of Employees.** Directly affected employees and their representatives may participate in the Standard Competition process in accordance with paragraph D.3. above.

## DIRECT CONVERSION PROCESS



- A. **CRITERIA.** A Direct Conversion is permitted when changing to or from an agency, private sector, or public reimbursable source if a commercial activity meets any one of the following criteria.
1. **Small Activity.** An activity is or will be performed by an aggregate of 10 or fewer civilian employees.
  2. **No Employee Impact.** An activity is performed by civilian employees and: (a) all directly affected Federal civilian employees within the agency are on permanent appointments and are reassigned to comparable Federal positions or voluntarily retire; or (b) agency Federal civilian employees are on time limited appointments.

3. **R&D.** An activity provides direct research and development (R&D) (see Attachment F). Commercial activities providing R&D support shall be subject to the Competition requirements of this Circular.
4. **Direct Patient Care.** An activity provides direct patient care at Government-owned hospitals (see Attachment F). Other commercial activities performed at Government-owned hospitals shall be subject to the requirements of this Circular.
5. **Military.** An activity is performed by military personnel.
6. **National Defense and Security.** An activity is necessary for National Defense or Intelligence Security. The Secretary of the agency (or the 4.e. official without delegation), with the prior written concurrence of the Deputy Director for Management, OMB, shall authorize this type of direct conversion.
7. **Javits-Wagner-O'Day.** An activity may be converted to a source administered pursuant to Section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 44, 46-48).
8. **Competition Waiver.** An activity for which a Competition Waiver has been approved in accordance with paragraph C.
9. **Business Case Analysis.** An activity for which a Business Case Analysis has been performed in accordance with paragraph D.
10. **Law.** An activity where direct conversion is permitted by law.

**B. DIRECT CONVERSION CERTIFICATION.** The 4.e. official shall make a written certification of the following to authorize a Direct Conversion: (1) the activity meets one or more of the criteria in paragraph A, above, to permit a Direct Conversion, (2) the cost of obtaining the activity from another source is expected to be fair and reasonable in accordance with this Circular, OMB Circular A-25, when appropriate, and the FAR, and (3) the activity has not been reorganized or restructured for the sole purpose performing a Direct Conversion to avoid the Competition requirements of this Circular.

**C. COMPETITION WAIVER.** A Competition Waiver may be approved to permit a Direct Conversion to or from performance by an agency, private sector or public reimbursable source for any commercial activity.

1. **Approval Requirements.** Competition Waivers shall be approved, in writing, by the 4.e. official, without delegation.
2. **Competition Waiver Documentation.** Competition Waivers shall include: (a) the commercial activity; (b) the scope and performance requirements of the work being converted; (c) location; (d) incumbent service provider; (e) a waiver certification statement; and (f) an explanation of how the direct conversion results in either (1) a significant financial improvement based on full costs calculated in accordance with this Circular or (2) a significant service quality improvement that cannot be achieved by the current service provider. Competition Waivers for conversion to a private sector or public reimbursable source shall also include (a) an explanation that the conversion will not result in limiting future sources or competitions and (b) a statement that agency assistance will be provided to adversely affected civilian employees in accordance with 5

CFR Part 351 and that these employees will be provided the Right of First Refusal as required by FAR Part 52.207-3.

**D. BUSINESS CASE ANALYSIS.** If the requirements in paragraphs D.1 and D.2., below, are met, a Direct Conversion to or from performance by an agency, private sector or public reimbursable source based on a Business Case Analysis is permitted.

**1. Approval Requirements.** The 4.e. official shall make a written certification that the activity being analyzed meets all of the the following:

- a. The activity is or will be performed in aggregate by 50 or fewer agency civilians;
- b. The activity is commonly provided by the private sector to the Federal government by contracts of comparable, size, workload and scope;
- c. The activity has no more than \$5,000 in asset purchase requirements and will be predominately Government furnished/contractor operated;
- d. The business case can be made on a limited analysis of labor cost, material cost, and level of performance;
- e. The time-frame from the certification to conduct a Business Case Analysis by the 4.e. Official to completion of the business case analysis does not exceed fifteen working days;
- f. The cost of converting the activity to another source is fair and reasonable;
- g. The activity has not been reorganized or restructured for the sole purpose performing a Direct Conversion to avoid the Standard Competition requirements of this Circular;
- h. An MEO was not created for consideration in a Business Case Analysis for conversion from agency performance to private sector or public reimbursable performance; **and**
- i. Market surveys were not used in lieu of actual contracts.

**2. Business Case Analysis Documentation.**

- a. To perform a Direct Conversion based on a business case analysis, the ATO shall (1) provide the CO a description of the workload and (2) develop an Agency Tender in accordance with Attachment B. The ATO shall not develop an MEO when considering conversion from agency performance to a private sector source or public reimbursable source (the business case analysis shall be based upon agency's current organization, costs, performance and structure). The ATO shall calculate the Agency Cost Estimate by (1) completing Standard Competition Form (SCF) Lines 1, 2, 3, 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, and 18 in accordance with Attachment E; (2) including contract support costs to the Agency Tender on SCF Line 3, and (3) not calculating any other costs. The ATO shall sign and submit the Agency Tender to the CO in a sealed package.
- b. The CO shall not (1) begin establishing comparable contract or ISSA costs until the ATO submits the Agency Tender and (2) have knowledge of the Agency Cost Estimate while

establishing comparable contract or ISSA costs. Upon submission of the sealed Agency Tender, the CO shall: (1) identify four comparable, existing, fixed price, Federal contracts of similar size, workload and scope but shall not issue a solicitation at this point in the process. Existing public reimbursable agreements may be used but all costs shall be adjusted to reflect the total cost to the taxpayer in accordance with the costing requirements of this Circular); (2) determine that selected contracts are reasonably grouped; (3) select the low contract price; and (4) open the agency tender, complete, and sign the SCF. If the CO determines that the selected contracts (or ISSAs) cannot not be reasonably grouped or if four comparable contracts (or ISSAs) are not available to perform a Direct Conversion, the agency shall perform a Standard Competition in accordance with this Circular.

**E. DIRECT CONVERSION PROCESS.** At a minimum, Agencies shall perform the following phases.

**1. Start-Up Phase.** Prior to public announcement of a Direct Conversion, agencies shall: (a) apply the Direct Conversion Criteria in paragraph A, (b) authorize the Direct Conversion with a written certification by the 4.e. official, (c) identify, in accordance with Attachment B, the Agency Tender Official (ATO), Contracting Officer (CO) and Human Resource Advisor (HRA); (d) inform the incumbent service providers of the Direct Conversion; and (e) make public announcements at the local level and in *FedBizOpps* and include in these announcements the agency, location, resources being converted, designation of the responsible agency officials, and the criteria upon which a Direct Conversion is based.

**2. Conversion Phase.**

**a.** For conversions from agency performance to a public reimbursable or a private sector source, the CO shall (1) determine the acquisition strategy which may include using competitive or noncompetitive procedures as justified by FAR Part 6 to select the private sector source or may include converting agency performance to an existing contract; (2) prepare or modify a PWS; (3) issue a solicitation, if required by the acquisition strategy; and (4) determine fair and reasonable prices. When the CO determines a private sector or ISSA source is appropriate, the agency shall make an announcement of the selection at the local level and shall inform incumbent service providers of the start date. Agencies shall not develop an Agency Tender, including an MEO, when a direct conversion is performed to convert from agency performance to a private sector source.

**b.** For conversions from private sector or ISSA performance to an agency source, the 4.e. official shall determine that the cost of converting the activity is fair and reasonable. Agencies shall develop an Agency Tender, including an MEO, when a direct conversion is performed to convert from (1) private sector performance to agency performance, or (2) public reimbursable performance to agency performance. For conversions to agency or public reimbursable source, the agency shall (1) develop a PWS (2) issue a Letter of Obligation in accordance with paragraph C.6 of Attachment B, (3) notify the incumbent contractor in accordance with the FAR, and (4) make an announcement of the decision at the local level and in *FedBizOpps*.

**c. Post Conversion and Recompetition Phase.** Agencies shall implement the decision, administer performance, and recompetete the activity in accordance with paragraph C.6. in Attachment B.

- F. Personnel Considerations.** Agencies shall provide assistance to adversely affected Federal civilian employees in accordance with 5 CFR Part 351. When solicitations are issued in Direct Conversions from agency to private sector or ISSA performance, the solicitation shall state that as required by FAR Part 52.207-3, adversely affected Federal civilian employees are afforded the Right of First Refusal. (see paragraph D.2. in Attachment B).
- G. Conflict of Interest.** When conducting a Direct Conversion (including development of a Competition Waiver and Business Case Analysis), agency officials shall comply with procurement integrity, ethics and standards of conduct rules.
- H. Relationship to OMB Circular No. A-11 "Preparation and Submission of Budget Estimates."** The 4.e. official shall identify savings achieved as a result of Direct Conversions in accordance with the instructions of OMB Circular No. A-11.

## **COMMERCIAL INTERSERVICE SUPPORT AGREEMENTS (ISSA)**

- Commercial activities may be performed by agency, private sector, or public reimbursable sources.
- If a commercial activity is performed by a public reimbursable source on a fee for service basis, an Inter-Service Support Agreement (ISSA) exists between the requiring agency (customer) and the providing agency (fee for service).
- The providing agency may use either their agency personnel or an agency contract to provide the service.
- These Commercial ISSAs are subject to Competition requirements of this Circular.

**A. APPLICABILITY.** Customer agencies shall compete all Commercial ISSAs exceeding \$1 million annually. ISSAs are not subject to Competition if: (1) the revenue generated by the reimbursable rate does not exceed \$1 million annually, (2) the ISSA provides inherently governmental activities, (3) the ISSA is statutorily mandated, (4) the ISSA is designed to facilitate the use of a Federal multiple award schedule contracts (MASs), government-wide acquisition contracts (GWACs), or multi-agency contracts where the customer (service requiring agency) is directly responsible for contract performance and all contract payments, or (5) the ISSA facilitates lease or grant agreements.

**B. COMPETITION REQUIREMENTS.**

- 1. Timeframe.** Customer agencies shall compete all applicable existing Commercial ISSAs within five years of the effective date of this Circular. To meet this Competition requirement, customer agencies shall: (a) issue a solicitation to perform a Standard Competition (see Attachment B) or (b) perform a Direct Conversion from public reimbursable performance to agency or private sector performance (see Attachment C).
- 2. Recompetition.** Customer agencies shall compete all Commercial ISSAs on a recurring basis consistent with Post Competition requirements of Attachment B.
- 3. Commercial ISSA Renewal Constraint.** Customer agencies shall not renew or issue new Commercial ISSAs prior to compliance with this Competition requirement. All ISSAs not competed or directly converted within the 5-year timeframe shall be terminated, unless specific written approval is granted by the Deputy Director for Management, OMB, based upon a report submitted by the head of the customer agency showing why competition is not feasible.
- 4. Commercial ISSA Competition Plan.** Customer agencies with Commercial ISSAs shall submit to OMB an Annual Agency ISSA Competition Plan that (a) lists all existing Commercial ISSAs by customer agency (and component), function code, provider agency, the number of estimated provider agency FTE involved, the annual cost of the Commercial ISSA, and (b) provides a Competition

schedule for the listed commercial ISSAs. Agencies shall submit an Annual Agency ISSA Competition Plan no later than June 30 of each year.

**C. COMMERCIAL ISSA COMPETITION PROCESS.**

1. Customer agencies shall permit public reimbursable sources (agency vendors) to participate and provide Tenders for:
  - a. Standard Competitions of agency or private sector performed commercial activities as provided by Attachment B.
  - b. Direct Conversions of agency or private sector performed commercial activities as provided by Attachment C.
  - c. Resolicitations of commercial activities performed by the private sector and listed *in FedBizOpps*.
  - d. Re-Competitions of existing Commercial ISSAs.
  - e. Competitions for new requirements or expansions commercial activities. Agencies shall publish notices to renew or obtain new or expanded Commercial ISSAs in the *FedBizOpps*.
2. When competing against agency, private sector, or other public reimbursable sources, a public reimbursable source:
  - a. May respond, as a prime service provider, to a notice or solicitation advertised by a customer agency in *FedBizOpps*.
  - b. Shall be represented by a Public Reimbursable Tender Official who certifies and submits a Public Reimbursable Tender developed in accordance with Attachment B.
  - c. Shall calculate the cost estimate in the public Reimbursable Tender in accordance with Attachment E. When agencies determine the public reimbursable source through Standard Competitions or Direct Conversions performed in accordance with this Circular, the reimbursable rate charged to a customer agency shall rely on budget based reimbursable rates, prepared under current law and policy.

**D. AGENCY SOLICITATIONS.** When a customer agency issues a solicitation for private sector responses and a provider agency responds, the CO shall amend the solicitation stating that the Public Reimbursable Source is required to submit a tender in accordance with this Circular.

**E. PERSONNEL CONSIDERATIONS.** A customer agency shall provide assistance to the customer agency's affected Federal civilian employees in accordance with 5 C.F.R. Part 330. When a Standard Competition or Direct Conversion results in a private sector or public reimbursable decision, the customer agency's adversely affected Federal civilian employees shall be afforded the Right-of-First-Refusal for all federal and contract jobs vacancies created by a decision to either award a contract or issue an ISSA. When a customer agency converts from a public reimbursable provider to performance by either the customer agency or private sector, the vendor agency federal civilian employees shall not be afforded the Right-of-First-Refusal.

F. **CONFLICT OF INTEREST.** When conducting Competitions with public reimbursable sources, customer and vendor agency officials shall comply with procurement integrity, ethics and standards of conduct rules.

G. **RELATIONSHIP TO THE BUDGET.** In accordance with OMB Circular No. A-11, *Preparation and Submission of Budget Estimate*, the 4.e. official of the customer agency shall identify savings achieved from competing Commercial ISSAs.

H. **REIMBURSABLE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS.**

1. **Specialized and Technical Services.**

- a. In accordance with Section 302 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. § 6505), Executive Order 11541, Presidential Memorandum, November 8, 1968 (33 F.R. 16487), or other applicable law, specialized and technical commercial services may only be provided to State and local governments, as follows: upon the receipt of a State or local government's written request, Federal agencies may provide only specialized or technical commercial services to a State or local government if:
- (1) the written request demonstrates that the State or local government has sought but has been unable to identify a satisfactory private sector source;
  - (2) the provision of such specialized and technical services shall not require additional agency resources, beyond that necessary to meet Federal requirements;
  - (3) the commercial service is currently provided by the agency for its own use and, if commercial in nature, it has been competed in accordance with this Circular;
  - (4) the reimbursable rates or fees for the provision of the service are established in accordance with OMB Circular No. A-25, *User Charges*, to reflect fully allocated costs; and
  - (5) the written request and all supporting documentation shall be made available to the OMB and the public upon request.
- b. It is hereby determined that Federal agencies have the special competence to provide, and may provide, the following specialized or technical services and facilities related thereto, pursuant to Title III of the Intergovernmental Cooperation Act of 1968:
- (1) Any existing statistical or other studies and compilations, where the data gathering is conducted as a joint effort to meet the ongoing requirements of both a Federal and a State or local government requirement. This authority shall not extend to State or local data requests to conduct Federal surveys or other compilations in advance of Federal schedules for collecting the same data or compilations, unless specifically approved, in writing, by OMB.
  - (2) Preparation of unique statistical and other studies and compilations, tests and evaluations, surveys, reports, and documents, and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type that the Federal agency is authorized by law to conduct or prepare for itself.
  - (3) Highly specialized training of the type that the Federal agency is authorized by law to conduct for Federal personnel involved in inherently governmental activities or which is

similar to such training. Specialized or technical services do not include common administrative support services, facilities (base operating support or public work) operations and maintenance activities or other functions commonly performed by or for the private sector.

- (4) Technical aid in the preparation of proposals for development and other projects for which the Federal agency provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.
  - c. Any of the above specialized or technical services provided to the States and their political subdivisions by existing statutory authorities may also be provided under Title III of the Act and the terms of this Circular.
  - d. If a Federal agency receives a request for specialized or technical services that are not covered above, and the agency believes the service is consistent with the Act and the agency has a special competence to provide, the agency should forward the request to OMB for approval. Similarly, if there is doubt as to whether the service requested is covered by this Circular, the agency shall forward a written request to the Deputy Director for Management, OMB, for consideration.
  - e. Federal agencies may receive specialized or technical services from a State or local government, on a reimbursable basis. If the activity is commercial in nature, (1) the agency shall compete the activity in accordance with this Circular and (2) the reimbursable rates or fees to be paid by the Federal agency for the provision of the activity shall be fair and reasonable and reflect the provisions of OMB Circular No. A-25, "*User Charges*." The solicitation, and all supporting documentation, including the source selection technical evaluation documentation, shall be made available to the OMB and the public upon request.
  - f. An agreement for specialized or technical services between an agency and State and local government shall not continue beyond five years without written recertification that there is no satisfactory private sector or public reimbursable source. The recertification, with all supporting documentation, shall be made available to the OMB and the public upon request.
2. **Prohibition.** A Federal agency shall not perform a commercial activity for a private sector source providing a commercial activity to a state or local government.
  3. **Payment.** Payments or reimbursements to Federal agencies for activities provided to State and local governments shall be deposited or credited to the principal appropriation, franchise, working capital fund or other account for that activity.

## **CALCULATING PUBLIC-PRIVATE COMPETITION COSTS**

- To reflect the full cost of agency, private sector, and public reimbursable performance to the taxpayer, the following costing policy is required for public-private competitions.

### **A. SPECIAL PROVISIONS**

- 1. Proration of Performance Periods.** Agencies shall conduct Standard Competitions using not less than three years of proposal/cost data, excluding a phase-in period. Standard Competitions in excess of five years are permitted only when approved, in writing, by the 4.e. official prior to issuance of the solicitation. The SCF shall reflect the same number of performance periods as the solicitation. The recompetition requirements of this Circular shall also be determined by the number of years included in the SCF.
- 2. Standard Cost Factors.** Agencies shall use the standard cost factors stated in this Attachment. OMB shall approve all deviations from the standard cost factors prior to agency use.
- 3. Common Costs.** Costs that are the same for agency, private sector or public reimbursable sources are not calculated in the Standard Competition. Common costs (wash costs) shall be identified in the solicitation and Agency Tender. Examples include government furnished property and joint inventories.
- 4. Minimum Conversion Differential.** The minimum conversion differential is the lesser of 10 percent of agency personnel-related costs (Line 1 of the SCF) or \$10 million over all the performance periods in the solicitation. The minimum conversion differential precludes conversions based on marginal estimated savings and captures non-quantifiable costs related to a conversion such as disruption and decreased productivity. Agencies shall apply the minimum conversion differential to the non-incumbent sources when a Standard Competitions is performed. Agencies shall not include the minimum conversion differential for Standard Competitions conducted between private sector and public reimbursable sources]
- 5. Inflation.** Agencies shall apply the annual inflation rates developed for the President's Budget and issued by OMB on the OMB web-site for Standard Competitions. Agencies may use agency unique inflation factors (e.g., military inflation) with prior written OMB approval. In preparing agency cost estimates, agencies shall include all known or anticipated increases incurred before the end of the first performance period for each cost element, prorated as appropriate. For subsequent performance periods, the cost of anticipated changes in the scope of work, as described in the Solicitation, is calculated. Agencies shall then apply the inflation factors for pay and non-pay categories through the end of the first performance period.

6. **Phase-in and Phase-out Costs.** If the solicitation includes a separate contract line (CLIN) item for a phase-in period, the first performance period of the Standard Competition is the phase-in period and shall be calculated accordingly. Phase-in costs shall be limited to costs associated only with phase-in actions. Phase-out costs shall not be included in Standard Competitions. The private sector or public reimbursable price shall exclude any required phase-out costs from in the Line 7 of the SCF.
7. **Rounding Rule.** Round all line entries on the SCF to the nearest dollar.
8. **Retained Pay.** Retained pay shall not be calculated in a Standard Competition. An MEO reflects a new agency organization based on vacant positions.
9. **Cost of Competition.** The cost of conducting a Standard Competition shall not be calculated.
10. **Standard Cost Comparison Form (SCF) Calculations and Certifications.** In accordance with this Attachment: the ATO shall calculate the Agency Cost Estimate, sign the SCF and certify that the Agency Tender is calculated and otherwise reflects the requirements of this Circular. The SSA shall perform Cost Realism of the Agency Cost Estimate to validate compliance with this Circular and shall then also sign the SCF. Public reimbursable tenders shall prepare their cost estimate in accordance with Circular and sign the SCF certifying that the Public Reimbursable Tender has been calculated in accordance with this Circular. The SSA shall perform Cost Realism of the Public Reimbursable Tender to validate compliance with this Circular and shall then also sign the SCF. The following SCF format shall be used for Standard Competitions.

### STANDARD COMPETITION FORM

Date of Submission to Contracting Officer:			Solicitation Number:			
Competition Title:			Location:			
Line #	LINE TITLE	First Performance Period	Second Performance Period	Third Performance Period	Fourth Performance Period	Total
<b>COST OF AGENCY PERFORMANCE</b>						
1.	Personnel Costs	\$000	\$000	\$000	\$000	\$000
2.	Material and Supply Costs	\$000	\$000	\$000	\$000	\$000
3.	Other Specifically Attributable Costs	\$000	\$000	\$000	\$000	\$000
4.	Overhead Costs	\$000	\$000	\$000	\$000	\$000
5.	Additional Costs	\$000	\$000	\$000	\$000	\$000
6.	<b>Total Cost of Agency Performance</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>
<b>ADJUSTED COST OF PRIVATE SECTOR OR PUBLIC REIMBURSABLE PERFORMANCE</b>						
7.	Private Sector Price or Public Reimbursable Cost Estimate	\$000	\$000	\$000	\$000	\$000
8.	Contract Administration Costs	\$000	\$000	\$000	\$000	\$000
9.	Additional Costs	\$000	\$000	\$000	\$000	\$000
10.	One-time Conversion Costs	\$000	\$000	\$000	\$000	\$000
11.	Gain From Disposal or Transfer of Assets	(\$000)	(\$000)	(\$000)	(\$000)	(\$000)
12.	Federal Income Tax Adjustment	(\$000)	(\$000)	(\$000)	(\$000)	(\$000)
13.	<b>Total Adjusted Cost of Private Sector or Public Reimbursable Performance</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>
<b>DECISION CALCULATIONS</b>						
14.	Minimum Conversion Differential (Enter: Line 1 Total x .10)					\$000
15.	Adjusted Total Cost of Agency Performance (Enter: Line 6 Total)					\$000
16.	Adjusted Total Cost of Private Sector or Public Reimbursable Performance (Enter: Line 13 + Line 14)					\$000
17.	<b>Cost Difference (Enter: Line 16 – Line 15)</b>					<b>\$000</b>
18.	<b>PERFORMANCE DECISION</b>	_____ Agency Source	_____ Private Sector Source	_____ Public Sector Reimbursable Source		
<b>CERTIFICATIONS AND SIGNATURES</b>						
19.	<b>AGENCY TENDER CERTIFICATION</b>					
	I certify that: (1) this Agency Tender is responsive to the solicitation, (2) the Agency Tender reflects the agency's most efficient organization (MEO), (3) the costs reflected in the agency cost estimate are accurate and calculated in accordance with OMB Circular A-76, and, (4) to the best of my knowledge, the MEO is fully capable of performing the requirements of the solicitation. I also certify that competent agency authorities have approved the following in order to implement the Agency Tender: (1) the organizational structure, (2) the personnel requirements, and (3) capital and budgetary requirements. If selected, the Agency Tender shall be implemented in accordance with the Transition Plan and the agency has scheduled compliance with the re-competition requirements of OMB Circular A-76.					
	Agency Tender Official Signature				Date Signed:	
	Agency Tender Official Printed Full Name, Title, Agency/Office Symbol, Phone Number					
20.	<b>SOURCE SELECTION AUTHORITY CERTIFICATION</b>					
	I certify that: (1) that the costs reflected in this Agency Tender have been calculated in accordance with OMB Circular A-76, and (2) this Agency Tender reflects the requirements of the solicitation. My source selection decision has been based on evaluating all offers and the costs included on this Standard Competition Form. The Performance Decision is either (____) based on Line 17 of the Standard Competition Form or (____) based on the Source Selection Document, which is summarized as follows:					
	Source Selection Authority Signature:				Date Signed:	
	Source Selection Authority Printed Full Name, Title, Agency/Office Symbol, Phone Number					
21.	Contracting Officer's Signature				Date Signed:	
	Printed Full Name, Title, Agency/Office Symbol, Phone Number					
20.	Administrative Appeal Authority Signature (if applicable)				Date Signed:	
	Printed Full Name, Title, Agency/Office Symbol, Phone Number					

## **B. THE COST OF AGENCY PERFORMANCE (LINES 1-6 OF THE SCF)**

### **1. Personnel Costs (Line 1 of the SCF).**

**a. General.** This Line includes the cost of all direct agency labor, supervision, and management and related support necessary to accomplish the requirements specified in the solicitation, including quality control. Indirect labor support to the MEO shall also be included on Line 1.

### **b. Direct, Indirect and Prorated Labor.**

**(1) Direct Labor.** Personnel costs for labor that is dedicated to the MEO are considered “direct labor.” To determine SCF Line 1 Personnel costs, identify the agency staffing estimate and proper wage/grade classifications as described in the Agency Tender. Also included are salaries, wages, fringe benefits, and other entitlements, such as uniform allowances and overtime and other local personnel costs expended to perform the MEO.

**(2) Indirect Labor.** Personnel costs for labor that is not dedicated to the MEO but clearly have responsibilities to the MEO are considered “indirect labor.” Indirect labor includes, but is not limited to, personnel costs for MEO management and oversight activities, such as managers and supervisors above the first line of MEO supervision who are essential to the performance of the MEO. Indirect labor also includes the labor of individuals who are responsible for oversight and compliance actions implicitly required by the MEO in order to comply with the solicitation (e.g., supervision, human resources, comptroller, general counsel, environmental, Occupational Safety and Health Administration (OSHA) Act compliance management). While these individuals do not work in the MEO, they have responsibilities to the MEO that permit its operation. The cost of performing these responsibilities to the MEO are captured as an MEO cost that is reflected as an indirect labor cost in the agency cost estimate. The agency shall include in the Agency Cost Estimate, the cost of indirect labor to reflect personnel who are responsible to manage, control, regulate, preside over, oversee, or supervise MEO related activities but are not dedicated to the MEO as a direct labor cost.

**(3) Prorated Labor.** When a position or job function is not 100% dedicated to the MEO, its cost shall be prorated to Line 1 of the SCF according to the amount of dedicated time to the MEO. For example, a GS-13 position spends 20% of its time performing management oversight of an activity being competed; the prorated cost of this position would be entered on Line 1 as .20 FTEs in the grade of GS-13, step 5.

**c. Full-Time Equivalent.** Generally, agency staffing requirements are expressed in terms of productive work hours. With the establishment of the number of productive work hours required, a conversion to the number of FTEs is needed. For full-time and part-time positions, estimate the total hours required by skill and divide by 1,776 annual available hours to determine the number of FTE positions required. For intermittent positions to be expressed in FTE, estimate total hours required by skill and divide by 2,007 annual available hours to determine the number of FTE positions required. The military agency comptroller shall establish comparable productive hours for military personnel included in an MEO as a military position. The productive hours exclude annual leave, sick leave, administrative leave, training and other nonproductive hours. Identify the temporary and intermittent employee work years.

**d. Pay and Wages.** Use local pay salaries and wages based on the Government-wide representative rate of step 5 for GS and step 4 for FWS positions. Express civil service grade and step for pay

banded or demonstration project employees at the mid-grade or mid-band and mid-step level. Locality pay for each site for multiple site Competitions is also included. For personnel developmental position(s), the HRA shall determine the length of time for each grade in a developmental series.

- e. **Fringe Benefits and FICA.** Multiply the following Government wide standard factors by the appropriate basic pay.

**(1) Full- or Part-time Permanent Federal Civilian Employees.**

**(a) Standard Retirement Cost Factor.** The standard retirement cost factor represents the Federal Government's complete share of the weighted CSRS/FERS retirement cost to the Government, based upon the full dynamic normal cost of the retirement systems; the normal cost of accruing retiree health benefits based on average participation rates; Social Security, and Thrift Savings Plan (TSP) contributions. The current rate is 24.0 percent of base payroll for all agencies (18.9 percent pension plus 5.1 percent for retiree health). The revised retirement cost factors for special class employees are 33.0 percent for air traffic controllers (27.9 percent pension plus 5.1 percent for retiree health) and 38.2 percent for law enforcement and fire protection employees (33.1 percent pension plus 5.1 percent for retiree health).

**(b) Insurance and Health Benefit Cost Factor.** The cost factor for Federal employee insurance and health benefits, based on actual cost, is 5.7 percent, plus an additional 1.45 percent for Medicare.

**(c) Miscellaneous Fringe Benefit Cost Factor.** The cost factor to be used for Federal employee miscellaneous fringe benefits (workmen's compensation, bonuses and awards, and unemployment programs) is 1.7 percent. Based on the OPM civilian award policy, there are two general categories for civilian employee awards. Category one is for special acts (e.g., cash awards, bonuses) that are over and above a civilian employee's expected annual performance and category two is for awards that are based on a civilian employee's annual performance rating (e.g., cash awards, bonuses, Quality Step Increases). Category two civilian employee awards (that are based on civilian employee annual performance ratings) are included in the 1.7% miscellaneous fringe benefit factor. Category one civilian employee awards (that are considered special acts awards) are not included in the 1.7% miscellaneous fringe benefit factor and shall be included in Other Pay.

**(2) Temporary or Intermittent Federal Civilian Employees.** The FICA employer cost factor of 7.65 (or the current rate established by law) shall be applied to civilian positions not covered by either of the two civilian civil service retirement systems (normally intermittent and temporary employees). Apply the FICA rate to wages and salaries subject to the tax. There is an annual salary limitation for FICA tax.

**(3) Seasonal Federal Civilian Employees.** Seasonal employees work on an annually recurring basis for less than 12 months (1,776 hours) each year. Agencies shall calculate the cost of seasonal employee positions as a full-time or part-time position on the basis of the number of annual hours the employee will be scheduled to work. Seasonal positions designated as full-time receive benefits while temporary positions do not receive benefits. The agency shall calculate the cost of a seasonal position based on 1,776 annual productive hours.

- f. Other Pay.** Other Pay includes premium pay that is subject to FICA taxes. Some examples are night differential pay for GS employees, overtime, holiday, awards, bonuses, special acts awards and uniform allowances.
- g. Other Entitlements.** Work closely with the HRA to include all entitlements and obtain current factors. Examples include: night differential pay for FWS employees, environmental differential pay and premium pay for Federal civilian fire fighters and law enforcement officers.
- h. Non-foreign Area Cost-Of-Living Allowance.** The Government pays cost-of-living allowances (COLA) to Federal white-collar employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Therefore, these costs shall be included for MEO positions that will be performing the work at these locations.
- i. Administration and Inspection for MEO Subcontracts.** A Tender (MEO) that assumes a mix of agency labor and existing private sector or public reimbursable support shall include the cost of labor for the agency's administration and inspection of these support contracts or ISSAs on SCF Line 1. The actual cost of the MEO contract/ISSA support, including the cost of related agency furnished equipment and facilities, shall be entered on Line 3, Other Specifically Attributable Costs.
- j. Labor Escalation.** Labor escalation reflects the inflation for wages and salaries of Federal or private sector service positions. It is included in private sector cost proposals and Agency Cost Estimates based upon whether an Economic Price Adjustment (EPA) for labor is or is not included in a solicitation. An EPA for services and construction labor is mandated by the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) which is prescribed by FAR Part 22. The CO shall certify that positions are DBA. To calculate inflation for service employee positions on SCF Line 1 in the Agency Cost Estimate, the agency shall comply with the following (which is consistent with the FAR Part 22 requirement for submission of private sector offers):
- (1) When a solicitation includes either FAR clause 52.222-43 or FAR 52.222-44, inflation for labor costs as follows: (1) for employee positions that are subject to an EPA, inflation is applied only through the end of the first performance period stated in the solicitation and (2) for employee positions that are not subject to an EPA, inflation is applied through the end of all performance periods stated in the solicitation.
  - (2) When a solicitation does not include either of these FAR clauses (i.e., 52.222-43, 52.222-44), inflation is applied to all employee positions through the end of the last performance period stated in the solicitation.
  - (3) While the SCA and DBA do not apply to Federal positions, the SCA and Fair Labor Standards Act (FLSA) have the same definition for services employees. On the basis of this common definition and that the private sector uses the SCA and DBA (FAR Part 22) to determine which private sector positions are subject to an EPA, the ATO shall determine which MEO positions are subject to an EPA based upon FLSA. One of the OPM requirements when officially classifying a Federal position description is for the HRA to determine if the position is either exempt or nonexempt under FLSA. When the official position description is classified as exempt under FLSA, the MEO position is not subject to an EPA and the agency shall apply inflation for labor costs through the end of the last performance period. If the official position description is classified as nonexempt under FLSA, the MEO position is subject to an EPA only if the solicitation

includes either of the aforementioned FAR clauses (i.e., FAR 52.222-43 or FAR 52.222-44) and the ATO shall only apply inflation for these MEO positions through the end of the first performance period stated in the solicitation.

- k. Military Labor.** An Agency Tender may include existing military labor in the MEO, under the following conditions: (a) MEO military positions shall not exceed the number of pre-Competition military positions performing the activity, and (b) military positions cannot be converted to civilian positions. No civilian positions shall be converted to military positions. The cost of these positions shall be included in Line 1 based on the standard military composite rate published by the DOD or other applicable Comptroller. This standard military composite rate includes productive hours which excludes annual leave, sick leave, administrative leave, training and other nonproductive hours.
- l. Volunteers, Inmate Labor, and Borrowed Military Manpower.** Agencies shall only include these labor sources in an Agency Tender if a solicitation states the labor is available to all prospective offerors and tenders as a “common cost” labor source and that their use is not required. Since these labor sources are a “common cost”, the ATO shall not include this labor as a competitive cost in the Agency Cost Estimate.

## **2. Material and Supply Costs (Line 2 of the SCF)**

- a. General.** Material and supply costs are incurred in each performance period for goods such as raw materials, parts, subassemblies, components and office supplies. The MEO Team shall adjust historical or engineering estimates of material and supply use and cost data to reflect the solicitation requirements. Material and supply costs are calculated and included in the Agency tender only if the materials and supplies are required by the Agency Tender but will not be provided to the contractor or public reimbursable source by the Government. The CO includes instructions for material and supply costs in the solicitation (FAR 51.101). An Agency Cost Estimate shall comply with this guidance.
- b. Ceiling Cost.** If the solicitation includes a material and supply cost ceiling, the agency cost estimate shall reflect this ceiling on Line 2. If a solicitation does not include a material and supply cost ceiling, all offers and tenders are required to include the full material and supply costs.
- c. Material Related Costs.** Material cost includes material, transport, handling, availability/delay costs, established allowances for normal scrap, spoilage, overruns and defective work. List required material by quantity needed, unit price, escalation for out-years and total cost. A single entry may be made for miscellaneous items such as office supplies.
- d. Inflation.** Material and supply costs are projected for all performance periods, including adjustments for inflation consistent with the economic assumptions contained in the President's most recent Budget. Calculate unit prices to the end of the first performance period. Inflate and/or prorate the cost of materials and supplies in the cost estimate in accordance with instructions in the solicitation. Review Section B (Bid Schedule) and any special clauses in Section H of the solicitation to determine if an EPA provision applies to materials and supplies. If materials and supplies (that are not subject to an EPA) are listed in Section B of the solicitation, inflate costs by applying the applicable factors (if any) from the first performance period to the first and subsequent performance periods.

### 3. Other Specifically Attributable Costs (Line 3 of the SCF)

#### a. Depreciation.

- (1) **General.** Agencies shall use The Useful Life and Disposal Value Table (located on the OMB website) for calculating residual value and The Federal Accounting Standards for Property, Plant and Equipment to establish depreciation schedules, rates of depreciation and other related guidance. If an asset is (a) fully depreciated, (b) is to be used as a part of the Agency Tender, and (c) is not to be provided by the government to the private sector or public reimbursable source, extend the life of the asset through the end of the performance period or until replacement. Depreciation is then calculated using the extended life and original acquisition cost. If a capital asset involves a capital improvement, the ATO shall include the cost of the capital improvement as a separate asset on SCF Line 3 in the Agency Cost Estimate because the capital improvement costs are depreciated from the date of the capital improvement and not from the original acquisition date.
- (2) **Minor Items.** Individual assets costing less than \$5,000 are considered minor items and are not depreciated, but are added to other costs. If the MEO will share the use of a minor asset with another Federal activity that is not the subject of the Standard Competition and the minor asset is not provided by the Government in the solicitation for use by private sector and public reimbursable sources, the agency shall prorate the cost of this "joint" usage of a minor asset in the Agency Cost Estimate based upon the purchase price
- (3) **Major Items.** Assets costing more than \$5,000 are major items for depreciation. If the MEO will share these assets with another activity that is not the subject of the Competition (but the asset is not provided to other offerors), this "joint" use of the assets shall be prorated in the agency cost estimate.
- (4) **Calculation Method.** Calculate depreciation, using straight line accounting methods and include the results as annual depreciation for each performance period. If the asset was acquired through transfer, seizure or forfeiture, an industry specific standard or engineering appraisal may be used to establish the market or "acquisition" value of the asset.
- (5) **Facilities.** The useful life expectancies listed below shall be used by type of facility. If useful life has been exceeded, an engineering projection of anticipated remaining useful life is required. These costs shall be prorated to the MEO by a unit of measure that varies directly with consumption (e.g., floor space, type of facility, number of telephones). Estimates of expenses to be incurred for the first year of performance shall be based on recent experience, appropriately adjusted for anticipated requirements. Engineering estimates shall be used when historical data are not available. All estimates shall be appropriately documented with supporting detail. If an asset (such as a facility) has a capital improvement (such as a renovation), the capital improvement (renovation costs) shall be reflected as separate asset in the agency cost estimate because the capital improvement costs (renovation costs) are depreciated from the date of the capital improvement (renovation) not the original acquisition or construction date.

Facility Category	Useful Life
Permanent	75 years
Semi-Permanent	50 years
Temporary	25 years

- b. Cost of Capital.** The annual cost of capital shall be added to the depreciation cost of any asset costing more than \$5,000, if the asset is: (1) not provided for private sector or public reimbursable source's use, or (2) scheduled for purchase within the performance period. To estimate the annual cost of capital, agencies shall identify the total depreciable acquisition cost of new assets or, if acquired by transfer, forfeiture or seizure, the market value of the assets. The total cost results from the value of the asset, transportation costs (if not already included in the purchase price) and any installation costs to place the asset in operation. The cost of capital shall be computed by applying the nominal rate provided by OMB Circular A-94 to the determined total cost of the asset.
- c. Rent.** Rent is incurred for the use, operation and maintenance of land, building space, plant and machinery, etc., by the agency activity being compared but not furnished to private sector or Public reimbursable sources. Agencies shall calculate costs that are associated with the MEO on an allocated basis.
- d. Utilities.** Utility costs include charges for fuel, electricity, telephone, water and sewage services, etc., that will not be furnished to private sector or public reimbursable sources but are needed for the MEO. The amount of these costs shall be determined on an allocated basis.
- e. Insurance.** Operation of an agency activity involves risks and potential costs from property losses (e.g., fire, flood, accident) and liability claims that are covered by insurance in private sector offers. These costs are self-indemnified in the Government.
- (1) **Casualty Insurance.** If the solicitation does not provide all assets to all offerors, or if property losses may be assessed, agencies shall calculate casualty premiums for the MEO by multiplying .005 times the net book value of the MEO's equipment and/or facilities as of the beginning of the performance period, plus a one-month average value of material and supplies.
- (2) **Government Furnished Property (GFP) Casualty Insurance.** The FAR contains several GFP clauses that may be included in a solicitation depending on conditions of the acquisition. Table 2-2 provides an extract of these FAR GFP clauses that could appear in solicitations when Competitions are performed. To determine whether casualty insurance costs for GFP are included in the agency cost estimate, determine which GFP clause is included in the solicitation.

**GFP CLAUSES AND CASUALTY INSURANCE REQUIREMENTS**

FAR Reference	Liability Assigned to Private Sector or Public Reimbursable Offer	Is GFP Casualty Insurance Required in the Agency Cost Estimate?		
		Materials	Capital Assets	Minor Items
52.245-2	Yes	Yes	Yes	Yes
52.245-2 Alt I	No	No	No	No
52.245-4	Yes	Yes	Yes	Yes
52.245-5	No	No	No	No

For solicitations that include both firm fixed price and cost reimbursement contract lines items in section B, the solicitation will state which GFP clause applies to which contract lines item. For example, the solicitation may apply FAR 52.245-5 to the material ceiling cost, which means that insurance is not required on the material dollars. The same solicitation may designate FAR 52.245-2 to GFP vehicles, which means that the vehicles require casualty insurance cost. When GSA leased vehicles are not provided as GFP but used by the MEO the agency estimate includes the cost of casualty insurance if the GSA lease terms make the lessee liable for vehicle damage.

- (3) **Liability Insurance.** Personnel liability losses shall be computed by multiplying .007 times the total personnel-related costs on Line 1. Additional liabilities (not associated with personnel liability)

assigned to the private sector or public reimbursable source in the solicitation shall be computed by applying the standard .007 factor to the estimated liability ceiling identified in the solicitation and included in the agency cost estimate. If the solicitation requires additional insurance to cover certain high-risk activities (e.g., environmental, air traffic control, child care, ammunition handling, air cargo, nuclear fuel handling), the MEO shall include the cost of this additional insurance

**f. Travel.** The agency shall include the projected cost of travel the MEO is expected to be expended unless the solicitation includes a ceiling cost for travel reimbursement or states that travel is government furnished. If the solicitation includes a ceiling cost for travel, the Agency shall enter this amount on SCF Line 3. Historic costs should be readily available from budgeted amounts of per diem and transportation cost for the activity that is the subject of the Standard Competition. The Agency shall inflate travel costs through the end of the last performance period or as stated in the solicitation in the EPA clause.

**g. MEO Subcontracts.** Solicitations that include work currently performed by private sector or public reimbursable sources, should include the MEO cost of labor for the Government's administration and inspection of the continued support contracts on Line 1. When including an existing MEO subcontract in an Agency Tender, the agency shall calculate the following to account for the cost of the contract to be entered on SCF Line 3: (1) the actual cost of the contract or ISSA, (2) the cost of related Government furnished materials, equipment and facilities not provided to private sector or public reimbursable sources, (3) inflation for the performance periods stated in the solicitation, as appropriate, and (4) the offset for Federal income tax revenue to the Government (a downward adjustment using the appropriate tax rate on the OMB website).

**(1) Nonrecurring Workload.** Surge workload, overtime and other types of nonrecurring workload may be included as an MEO subcontract cost, if it is purchased using either a Government purchase card [e.g., International Merchant Purchase Authorization Card (IMPAC)] or a task order contract or other appropriate contract type. The cost of services purchased using a Government purchase card shall be recorded as a subcontract on Line 3 to account for the Federal income tax. Escalate costs for each performance period, as appropriate. Task order contract costs shall also be adjusted (downward) to offset for potential Federal income tax revenue to the Government.

**(2) New MEO Subcontracts.** MEO subcontracts shall only be permitted if the workload is performed under an existing contract. New or projected new contracts to support the MEO shall not be created nor shall agencies assume the Direct Conversion of work from Federal employees to MEO subcontract or public reimbursable performance as part of the MEO. The Competition (and solicitation) can be modified to exclude this work in order to perform a Direct Conversion (as a separate competitive sourcing initiative) if authorized as a Direct Conversion in this Circular.

**h. Other Costs.**

**(1) Other Costs** is a general category for specifically attributable costs. The Agency Tender shall: (a) include the cost of minor items that are not immediately consumed by the MEO and not provided to all offerors, and (b) estimate the cost of minor items for each performance period. Some examples are purchased services packaging and crating (if not already a part of material and supplies); transportation costs; and royalties, overhead projectors, office equipment, tools, chairs, desks, cabinets, etc.

- (2) When an award fee is established in the solicitation as a potential reward for performance to the selected provider resulting from competition including the Agency Tender, the MEO has the potential to earn the award fee stated in the solicitation. Agencies shall state the maximum award fee in the solicitation and the Agency Cost Estimate shall include 65% of the total award fee amount on Line 3, Other Specifically Attributable Cost, Other Costs.

**4. Overhead Costs (Line 4 of the SCF)**

- a. The Agency Tender shall include the overhead costs on Line 4 of the SCF. For each performance period, Line 4 is calculated by multiplying Line 1, including the fringe benefit cost factor, by 12 percent (.12) and entering the total on Line 4.
- b. The 12 percent overhead factor is a rate established by OMB to represent an overhead cost factor for all Federal agencies when performing Standard Competitions. Any deviation from the use of this standard cost factor shall be approved, in advance, by the Deputy Director for Management, OMB. This overhead factor represents costs that are not visible, allocable, or quantifiable to the agency, activity or MEO. Use of the rate accounts for all management and support costs internal and external to the agency not required on Line 1.

**5. Additional Costs (Line 5 of the SCF)**

- a. **General.** This SCF Line includes costs not otherwise represented or accounted for on Lines SCF 1 through 4. This cost category shall reflect additional costs resulting from unusual or special circumstances. Amounts entered on Line 5 should be supported by a definition of the type of cost reported, a justification for its inclusion in the Competition, an explanation of the underlying assumptions, and methods of computation.
- b. **Phase-in Costs.** The solicitation designates a phase-in period which shall be reflected as the first performance period and costs associated with converting from the agency's current organization to the MEO shall be included on Line 5. If the solicitation designates the first performance period as a phase-in period, these costs may be entered on Lines 1 through 5 may be used to document these costs.
- c. **Expansions, New Requirements, or Conversions From Contract To Agency Performance.** The one-time additional costs of an expansion, new requirement or conversion from a private sector or public reimbursable source to agency performance, which are added to the agency costs, shall be made on Line 5. New investment by an agency in facilities and equipment shall not be included as one-time costs. The costs incurred in acquiring facilities or equipment and installing the equipment shall be included in the capitalized cost of the MEO on Line 3. Government facilities and equipment will not normally be expanded to accommodate new or expanded agency requirement if cost-effective private sector or public reimbursable facilities and equipment are available. Likewise, agency ownership shall not preclude a private sector or public reimbursable source from competing for the new or expanded agency requirement. If the MEO is dependent upon the agency's purchase or construction of new facilities or other major capital asset purchases, the Competition and conversion to agency performance shall be delayed until the approval to purchase or construct such items is obtained, subject to the Competition.

- 6. Total Cost of Performance: Agency Source (Line 6 of the SCF).** Line 6 is the sum of Lines 1-5.

**C. THE ADJUSTED COST OF PRIVATE SECTOR OR PUBLIC REIMBURSABLE PERFORMANCE (LINES 7-13 OF THE SCF)**

**1. Contract Price or Public Reimbursable Cost Estimate (Line 7 of the SCF).** A private sector offeror's price or public reimbursable offeror's cost estimate (prepared in compliance with this Circular) is entered on Line 7 after the SSA performs Cost Realism on all offers and tenders. For a public reimbursable offeror, enter the cost from Line 6 of the public offeror's SCF. For private sector offerors, the price to be entered on Line 7 based on the contract type as follows:

- a. Sealed Bid, Firm Fixed Price.** Enter the price of the low responsible, responsive offeror.
- b. Negotiated Acquisitions.** Enter the contract prices as follows based on the type of contract stated in the solicitation.
  - (1) Firm Fixed Price Contract.** Enter the negotiated price.
  - (2) Cost-Reimbursement Contract.** Enter the negotiated estimate.
  - (3) Cost-Sharing Contract.** Enter the negotiated estimate.
  - (4) Contract with Award Fee.** Enter 65 percent of the award fee plus the estimated contract price or cost.
  - (5) Contract with Incentive Fee.** Enter 65 percent of the potential maximum incentive fee plus the estimated contract price.
  - (6) Time and Materials or Labor-Hour Contract.** Enter the estimated total cost of contract performance. For these types of acquisitions, comparable rates shall be developed for the agency cost estimate.
- c. Tax Exempt Organizations.** For a tax-exempt organization, the tax-exempt's contract price is adjusted by an amount equal to the estimated Federal income taxes that the lowest non tax-exempt offeror would pay. This adjustment is necessary to determine which offeror has the lowest overall cost to the Government. Calculate the Federal tax adjustment. Add the Federal taxes calculated to the tax-exempt's offer for Competition with other non tax-exempt offerors. Compare the tax-exempt's adjusted offer to the low non tax-exempt offer and any public reimbursable tenders. If the tax-exempt's adjusted offer is lower than the low non tax-exempt offer, the unadjusted tax-exempt's offer shall be entered on Line 7 and the Competition with the agency cost estimate is performed.
- d. Performance Bonds.** When a solicitation requires the private sector offer to provide a performance bond, the cost of the performance bond is excluded from the private sector offer when entered on Line 7. The solicitation bid structure should facilitate the elimination of this cost.

**3. Contract Administration Costs (Line 8 of the SCF)**

Agencies shall calculate contract administration costs to be entered on Line 8, in accordance with the following table based on the MEO staffing in Line 1. This Line reflects a full range on contractual

administration requirements, excluding inspections related to the QASP, which are common costs to all offerors.

**CONTRACT ADMINISTRATION FACTORS AND GRADES**

MEO STAFFING*	CONTRACT ADMINISTRATION FTE	GRADES			
		GS-12	GS-11	GS-9	GS-6
10 or less	.5	1	0	0	0
11 – 20	1	1	0	0	0
21 – 50	2	1	1	0	0
51 – 75	3	1	1	1	0
76 – 100	4	1	1	1	1
101 – 120	5	1	1	2	1
121 – 150	6	1	2	2	1
151 – 200	7	1	2	2	2
201 – 250	8	2	2	2	2
251 – 300	9	2	2	3	2
301 – 350	10	2	3	3	2
351 – 450	11	2	3	4	2
451 and above	2.5% of agency MEO staffing	Distribution automatically calculated by <i>win.COMPARE</i> <sup>2</sup>			

**4. Additional Costs (Line 9 of the SCF)**

- a. **ATO Requirement.** This cost element includes any additional costs to the Government such as transportation or purchased services resulting from unusual or special circumstances. The ATO shall document additional costs to describe the nature of the cost item, and indicate the reason the additional cost will not be incurred if the activity is performed with the agency's agency resources in the Agency Tender. When an agency activity is terminated in favor of contract or public reimbursable performance and the agency elects to hold MEO equipment and facilities on standby, solely to maintain performance capability, the standby costs are not to be charged to the cost of the contract. The SSA shall evaluate the costs provided by the ATO in the Agency Tender and enter the approved additional costs on Line 9.
  
- b. **Nonprofit Agency Fees.** When a Javits-Wagner-O'Day participating nonprofit agency (as defined by FAR Part 8 such as the National Institute for the Blind or NISH, participates in a Competition, the SCF shall include the 4% fee paid to the Committee for Purchase from People Who Are Blind or NISH. This is required to determine the total cost of contract performance to the Government for Competition purposes with the agency cost estimate. The SSA shall determine if the 4% is included in the contract price, and if so, this contract price is entered on Line 7 of the SCF. If the 4% is excluded from the contract price, then the fee shall be entered separately on Line 9 of the SCF.
  
- c. **Incentive Fees.** When an Indian Tribe competes against the Agency Tender or is a subcontractor to the competing private sector offer and the Indian Incentive Program described

in FAR Part 26 is authorized, the SSA shall include the 5% incentive fee allowed by the program on Line 9 of the SCF.

**5. One-time Conversion Costs (Line 10 of the SCF)**

- a. ATO Requirement.** When the Government converts from agency performance to a private sector or public reimbursable source, one-time costs may be incurred as a result of this conversion. The ATO shall include these costs in the Agency Tender, with supporting documentation to justify the type and calculation of the one-time conversion costs. The SSA evaluates these costs during Cost Realism, approves them, and enters them on Line 10 of the SCF.
- b. Severance Costs.** The SSA shall calculate one-time severance pay at four percent of Line 1 (without fringe benefits) for the first performance period, or for second performance period, if a solicitation provides a phase-in period of less than one full year. If the second performance period is also less than a full year, the agency shall annualize the basic pay (i.e., salary plus other entitlements) only for the purposes of determining a full year of costs for severance pay. The SSA shall evaluate severance costs on SCF Line 10 to determine if they are calculated in compliance with this Circular.
- c. Relocation, Retraining, and Other Costs.** The SSA shall calculate all remaining one-time conversion costs as one percent of Line 1 (without fringe benefits) for the first performance period, or for second performance period, if a solicitation requires a phase in period. Agencies shall not include separate one-time conversion costs for items such as Separation Incentive Pay (e.g., VERA, VSIP), security clearances, the cost of performing an Environmental Baseline Survey to the estimated cost of contract performance, etc.

**6. Gain on Assets (Line 11 of the SCF).**

- a. ATO Requirement.** The ATO shall include these estimated costs in the Agency Tender, with supporting documentation and to justify the type and calculation of asset disposal or transfer. The SSA evaluates these proposed costs during Cost Realism, approves them, and enters them on Line 11.
- b. Gain on Assets.** This entry represents the gain from the sale or transfer of government assets at the net book value of the asset as of the start date of the first performance period. These gains (revenue) are calculated to account for Government material or equipment included in the Agency Tender that are not provided to other offerors and will not be needed by the agency if the Competition favors private sector or public reimbursable performance. This revenue reduces the cost of private sector or public reimbursable performance and shall only be entered on the SCF as a negative number or zero.

<b>Gain on Assets (Sample Calculation)</b>			
<b>(A) Capital Asset</b>	<b>(B) Original Acquisition Cost</b>	<b>(C) Accumulated Depreciation</b>	<b>(D) Net Book Value (B minus C)</b>
Capital Equipment= Bus	\$30,000	\$24,900	\$5,100
Capital Facility= Cafeteria	\$625,000	\$502,000	\$123,000

Column	Instructions
A. Capital Asset	Identify the name of the each specific capital asset
B. Original Acquisition Cost	Enter the original acquisition cost of the asset, plus transportation and installation costs if not included in the purchase price, plus any capital improvement costs made to that asset
C. Accumulated Depreciation	Enter the accumulated depreciation for the asset
D. Net Book Value	Enter the net book value at the date of the first performance period This is the "gain on asset" cost entered on the SCF (The cost of disposal or transfer shall not be included in the net book value)

**7. Federal Income Tax Adjustment (Line 12 of the SCF).** This revenue reduces the cost of private sector or public reimbursable performance and may only be entered on the SCF as a negative number, unless the prospective private sector offeror is a tax-exempt organization. To calculate this line for each performance period, the SSA shall use the Tax Rate Table on the OMB website and enter on Line 12 the net increase of Federal income tax that may result from a conversion to a private sector. This table is provide by the Internal Revenue Service, by types of industry and appropriate tax rates in relation to business receipts and the industry groupings conform to the North American Industry Classification System (NAICS) issued by the Department of Commerce.

**8. Total Adjusted Cost of Private Sector or Public Reimbursable Performance (Line 13 of SCF).**  
Enter the sum of Lines 7, 8, 9, 10, 11, and 12 on Line 13 of the SCF.

**D. MINIMUM CONVERSION DIFFERENTIAL (LINE 14 OF THE SCF)**

**1. Calculation..** The SSA shall enter on Line 14 the minimum conversion differential based on the lesser of: (1) 10 percent of personnel costs (Line 1) or (2) \$10 million over all performance periods.

**2. Expansions, New Requirements, or Conversions From Contract To Agency Performance.**

a. The agency shall add and the SSA shall validate the appropriate conversion differential to SCF Line 6 of the Agency Cost Estimate when an agency is performing a Standard Competition to justify agency performance of a: (a) potential-conversion from a private sector source (contract performance) to agency performance, (b) potential for agency performance of a new requirement, or (3) potential for agency performance of an expansion of requirements for an existing commercial activity. The conversion differential represents the minimum level of savings that must exist in order to warrant a conversion. It is calculated as an advantage provided to the incumbent source (i.e., agency, private sector or public reimbursable). Since agency performance of new requirements and expansions of existing commercial activities are justified based upon Standard Competitions agencies shall consider private sector sources as the incumbent method of performance for any new requirements and expansions of existing commercial activities.

b. If agency performance of expanded workload (e.g., 30% increase) is preferred and there is reason to believe that contract service quality or prices may be unreasonable, then a Standard Competition of either (1) the 30% expanded workload if the work is severable or (2) the entire workload including the 30% increase shall be performed. The conversion differential is allocated between agency and contract/ISSA costs based on the percentage of Line 1 attributed to the expansion workload, as follows:

- (1) If a Standard Competition is performed only on the severable 30+% of the expanded work (i.e., new workload), all of Line 14 (minimum conversion differential) is added to Line 6 (total agency cost) to generate Line 15 (adjusted total cost of agency performance).
- (2) If a Standard Competition is performed on the entire commercial activity currently performed by the agency plus the 30+% expanded work, a percentage of agency personnel costs on Line 1 that represent the expanded work is multiplied by Line 14 (minimum conversion differential) and the result is added to Line 6 (total agency cost) to generate Line 15 (adjusted total cost of agency performance). The percentage of Line 1 (personnel) that represents the work currently performed by the agency is multiplied by Line 14 (minimum conversion differential), and the result is added to Line 13 (total contract/ISSA cost) to generate Line 16 (adjusted cost of contract/ISSA performance).

**3. Partial Conversion From Contract to Agency Performance.** When an agency performs a Standard Competition of a commercial activity that is performed by a mix of private sector, public reimbursable, and agency sources and the Agency Tender includes a partial conversion of work from private sector performance to agency performance using federal employees, the minimum conversion differential is apportioned to each source based upon the percentage of work performed by each incumbent source at the time of public announcement. Therefore, the agency shall calculate the minimum conversion differential as follows: (1) calculate the MEO minimum conversion differential, (2) calculate the value of the minimum conversion differential for the contracted work projected to be converted to agency performance using federal employees, and (3) enter the delta on SCF Line 14. If the Agency Tender includes an MEO subcontract, the ATO shall not calculate any minimum conversion differential for the MEO subcontract in the Agency Cost Estimate.

**E. ADJUSTED TOTAL COST OF AGENCY PERFORMANCE (LINE 15 OF THE SCF)**

If the Competition is being conducted to determine if an activity should be converted from private sector or public reimbursable performance to agency performance, the conversion differential from Line 14 is added to Line 6 and the sum is entered on Line 15. The total amount for all performance periods on Line 13 is then replicated on Line 16.

**F. ADJUSTED TOTAL COST OF PRIVATE SECTOR OR PUBLIC REIMBURSABLE PERFORMANCE (LINE 16 OF THE SCF)**

If the Competition is being conducted to determine if an activity should be converted from agency performance to a private sector or public reimbursable source, the conversion differential from Line 14 is added to Line 13 and the sum is entered on Line 16. The total amount for all performance periods on Line 6 is then replicated on Line 15.

**G. THE COMPETITION DECISION (LINES 17 AND 18 OF THE SCF)**

The Competition decision is computed by subtracting Line 15 from Line 16 and entering the sum on Line 17. A positive number on Line 17 of the SCF determines an agency decision, and a negative number on Line 17 of the SCF determines a decision favoring a private sector or public reimbursable source, which is indicated by an "x" on Line 18 next to the appropriate source.

**GLOSSARY OF ACRONYMS**  
**AND**  
**DEFINITION OF TERMS**

The acronyms and terms used in this Circular are unique to the inventory, public-private competition, and direct conversion processes. Agencies shall apply definitions as prescribed in this attachment.

**A. GLOSSARY OF ACCRONYNMS**

AAA	–	Administrative Appeal Authority
ATO	–	Agency Tender Official
CDRL	–	Contract Data Requirements List
CFR	–	Code of Federal Regulations
CLIN	–	Contract Line Item
COLA	–	Cost of Living Allowance
CSRS	–	Civil Service Retirement System
CTTO	–	Cost Technical Tradeoff
CO	–	Contracting Officer
DoD	–	Department of Defense
EPA	–	Economic Price Adjustment
FAIR	–	Federal Activities Inventory Reform Act
FAR	–	Federal Acquisition Regulation
FERS	–	Federal Employee Retirement System
FICA	–	Federal Insurance Contribution Act
FLSA	–	Fair Labor Standards Act
FTE	–	Full-time Equivalent
FWS	–	Federal Wage Schedule
GAO	–	General Accounting Office
GFP	–	Government Furnished Property
GS	–	General Schedule
GSA	–	General Services Administration
HRA	–	Human Resource Advisor
IFB	–	Invitation for Bid
IMPAC	–	International Merchant Purchase Authorization Card
ISSA	–	Inter-Service Support Agreement
LPTA	–	Low Priced Technically Acceptable

MEO	–	Most Efficient Organization
NAICS	-	North American Industry Classification System
OMB	–	Office of Management and Budget
OPM	–	Office of Personnel Management
PWS	–	Performance Work Statement
QASP	–	Quality Assurance Surveillance Plan
QCP	–	Quality Control Plan
R&D	–	Research and Development
RFP	–	Request for Proposals
SCA	–	Service Contract Act
SCF	–	Standard Competition Form
SSA	–	Source Selection Authority
SSEB	–	Source Selection Evaluation Board
TSP	–	Thrift Savings Program
VERA	–	Voluntary Early Retirement Authority
VSIP	–	Voluntary Separation Incentive Pay
USC	–	United States Code

## **B. DEFINITION OF TERMS**

**4.e. Official.** The inherently governmental agency official designated by an agency head, in accordance with paragraph 4.e., of the Circular, to be responsible for the implementation of this Circular in the agency.

**Activity.** A specific task or grouping of tasks that provides a specialized capability, service or product based on a recurring government requirement. Depending on the grouping of tasks, an activity may be an entire function or may be a part of a function. An activity may be inherently governmental or commercial in nature.

**Administrative Appeal Authority (AAA).** The AAA is an inherently governmental agency official who is independent of the activity being competed, the ATO, CO, SSA, and HRA. An individual may be assigned as the agency's AAA for all Standard Competitions or Direct Conversions or for an individual competition.

**Administrative Appeal Decision Document.** The written decision of the Administrative Appeal Authority that adjudicated appeals received as a result of a Performance Decision in a Standard Competition Decision or a Direct Conversion certification.

**Adversely Affected Civilian Employee.** Federal civilian employees serving on competitive or excepted service appointments in Tenure Groups I, II, or III that are identified for release from their competitive level by an agency, in accordance with 5 CFR Part 351 and Chapter 35 of Title 5, United States Code, as a direct result of a Standard or Direct Conversion competition decision.

**Agency Cost Estimate.** The part of the Agency Tender in a Standard Competition that includes the agency's cost proposal and represents the full cost of agency performance of the commercial activity based on the requirements in the solicitation and the costing policy at Attachment E.

**Agency Federal Civilian Employees.** Personnel employed by an agency serving on appointments without time limitation and paid from either (1) appropriated funds or (2) working capital funds.

**Agency Performance.** Performance of a commercial or inherently governmental activity with agency personnel. Often referred to as “in-house performance.”

**Agency Personnel.** Civilian personnel employed by an agency serving on appointments without time limitation and paid from either appropriated funds or working capital funds; nonappropriated fund employees; foreign national employees; temporary employees; term employees; and military personnel employed by an agency to perform activities.

**Agency Tender.** The Agency management plan submitted to respond to the requirements and bid structure of a solicitation for a Standard Competition or when converting from a private sector or public reimbursable source to agency performance for a Direct Conversion. The Agency Tender includes a most efficient organization (MEO), agency cost estimate, quality control plan for the MEO, and phase-in plan. The Agency Tender is prepared in accordance with this Circular and the solicitation requirements of Section L (Instructions, Conditions, and Notices to Offerors or Respondents) and Section M (Evaluation Factors for Award).

**Agency Tender Official (ATO).** An inherently governmental agency official with decision making authority, independent of the CO, SSA, and AAA. The ATO develops and certifies the Agency Tender, and represents the agency during source selection, and the Administrative Appeal Process. When Standard Competitions are announced, the ATO designates the MEO Team.

**Agency Source.** A service provider resourced with agency personnel.

**Borrowed Military Manpower.** Military manpower used to perform workload other than in their assigned work centers, including non-military essential activities, and often in other than their primary occupational specialties.

**Cancellation.** The termination of a Standard Competition or Direct Conversion. The cancellation of a solicitation is a FAR requirement and does not result in the termination of a Standard Competition or Direct Conversion.

**Commercial Activity.** A recurring service that could be performed by the private sector and is resourced and controlled by the agency through a contract, ISSA, or agency employee performance. A commercial activity is not an activity that is so intimately related to the public interest as to mandate performance by government personnel. Commercial activities may be found within larger organizations that perform inherently governmental or classified work.

**Commercial Inter-Service Support Agreement (Commercial ISSA).** A reimbursable fee-for-service agreement between an agency (or agency component) and a public reimbursable source to provide a commercial activity. An agency that buys a service from another agency is a customer agency. An agency that sells a service to another agency on a reimbursable basis is the vendor agency and is referred to as a “public reimbursable source” in this Circular.

**Competition.** A formal evaluation of sources to provide a commercial activity using prearranged rules (e.g., FAR, this Circular). Competitions between private sector sources are performed in accordance with the FAR. Competitions between agency, private sector and public reimbursable sources are performed

only in accordance with the FAR and this Circular. The term “competition,” as used in this Circular, includes FAR based competitions for contracted, new and expanded work, activities performed by Commercial ISSAs, and the Standard Competition Process.

**Competition Officials.** The agency official appointed before a Standard Competition or Direct Conversion is announced. These individuals perform key roles and have essential responsibilities for the successful completion of the Standard Competition or Direct Conversion. These include the Agency Tender Official, Contracting Officer, Source Selection Authority, Human Resource Advisor and Administrative Appeal Authority.

**Competition Waiver.** A document that permits a Direct Conversion of a commercial activity that would otherwise be subject to the Standard Competition requirements of this Circular. A Competition Waiver is approved by the 4.e. official to permit a Direct Conversion to or from private sector, public reimbursable, or agency performance and is prepared in accordance with Attachment D.

**Component.** An agency’s subordinate organizational grouping such as a bureau, center, military service, field activity.

**Contracting Officer.** An inherently governmental agency official that designates and assists the PWS Team, is responsible for the issuance of the solicitation, the selection of the Source Selection Board and the source selection evaluation methodology. If a decision is reached to award a contract, the Contracting Officer shall award the contract. If a decision is reached to retain a function or convert to agency or public reimbursable performance, the contracting Officer shall announce the decision, and advise the 4.e. official

**Conversion From Contract.** A conversion from contract occurs when an agency changes the source of a commercial activity from a private sector provider to agency performance.

**Conversion To Contract.** A conversion to contract occurs when an agency changes the source of a commercial activity from agency performance to a private sector provider.

**Cost/Technical Tradeoff (CTTO).** An evaluation process under FAR Subpart 15.101-1 that trades cost or price against factors governing technical performance or quality. CTTO does not include tradeoff processes where the technical factor is graded on a Pass/Fail, Go/No-Go or similar rating system where all offers and tenders meet the same level of performance and where cost or price is then traded off only against non-technical factors (e.g., past performance, management capability, risk).

**Customer Agency.** A federal agency that monetarily reimburses another federal agency for a provided service.

**Direct Conversion Process.** A conversion process permitted by this Circular to change performance to or from an agency, private sector, or public reimbursable provider without conducting a Standard Competition. (Attachment C)

**Direct Patient Care.** Provision of highly specialized expertise and technical capability in critical areas that involve the authority to determine therapies and treatment for patients in government-owned or military hospitals.

**Directly Affected Civilian Employees or Military Personnel.** Federal civilian employees, or military personnel whose job or work is included in a competition.

**Expansion.** An expansion is the modernization, replacement, upgrade, or increased workload of an existing agency performed commercial activity that increases the activity's operating cost by 30%. Before the expansion is performed by an agency or public reimbursable source, a Standard Competition is performed on either (a) the entire activity including the 30% expansion or (b) the 30% expansion, if segregable. The 30% expansion, if segregable, may be performed by a private sector source if competed in accordance with the FAR.

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

**Full-Time Equivalent (FTE).** Staffing of Federal civilian employee positions, expressed in terms of annual productive work hours (1,776) rather than annual available hours (2,080 hours).

**Function Code.** The numerical code used to categorize an agency's commercial and inherently governmental activities for inventory reporting purposes.

**Human Resource Advisor (HRA).** The HRA shall be an inherently governmental agency official; shall be an HR expert; shall be independent of the CO, SSA, and AAA; and may participate on the MEO Team.

**Incumbent Provider.** The current source (i.e., agency, private sector, or public reimbursable source) providing the service when competition begins.

**Information Technology.** A commercial activity that provides any equipment or interconnected system(s) or subsystem(s) of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency. For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires (1) its use or (2) to a significant extent, its use in the performance of a service or the furnishing of a product. The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources and it does not include any equipment that (1) is acquired by a contractor incidental to a contract; or (2) contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, heating, ventilation, and air conditioning (HVAC) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

**Inherently Governmental Activities.** As provided by Attachment A, an inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by Government personnel.

**Interested Parties.** A directly interested party or other interested party.

- **Directly Interested Party.** The Agency Tender Official that submitted the Agency Tender, a private sector offeror, or the official that certifies the public reimbursable tender.
- **Other Interested Parties** For purposes of (1) challenging the contents of an agency's

Commercial Activities Inventory under the Federal Activities Inventory Reform Act, an interested party is:

- a. A private sector source that: (1) is an actual or prospective offeror for a contract or other form of agreement to perform the activity; and (2) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source;
- b. A representative of any business or professional association that includes within its membership private sector sources referred to in (1) above;
- c. The head of any labor organization referred to in section 7103(a) (4) of Title 5, United States Code that includes within its membership officers or employees of the federal organization referred to above;
- d. Federal employees performing the commercial activity included in the competition or their appointed representative when they are not officially represented by a formal labor organization.

**Inventory:** A by-location, by-function code, by-position list of agency personnel performing either commercial activities or inherently governmental activities at the end of a given fiscal year that is provided to OMB annually.

**Lowest Price Technically Acceptable (LPTA):** A negotiated acquisition source selection process that is appropriate when best value is expected to result from selection of the technically acceptable offer with the lowest evaluated price. (Note: a contract awarded using other than sealed bidding procedures is a negotiated contract.) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be delineated in the solicitation, which shall specify that award will be made on the basis of the lowest evaluated price of offers and tenders meeting or exceeding the acceptability standards for non-cost factors. Tradeoffs are not permitted when using a LPTA source selection, and offers and tenders are evaluated for acceptability but not ranked using the non-cost/price factors.

**MEO Team.** A group of individuals, comprised of technical and functional experts, formed to assist the Agency Tender Official to develop the Agency Tender.

**Most Efficient Organization (MEO).** The staffing plan of the Agency Tender developed to represent the most efficient government organization. An MEO is required for a Standard Competition or when the Direct Conversion process converts an activity performed by a private sector or public reimbursable source to agency performance. An MEO may include a mix of Federal employees and existing private sector support (referred to as MEO subcontracts).

**Negotiated Acquisition.** A type of procurement process permitted under the FAR where offerors and tenders are submitted in response to a Request for Proposal and the SSA performs negotiations during the source selection process.

**New Requirement.** A new requirement is a newly established need for a commercial product or service that is not performed by the agency with agency personnel, via a Commercial ISSA with a public reimbursable source, or contract with the private sector. An activity that is performed by the agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient but still essentially provides the same service is not considered a new requirement—new ways of performing existing work are not new requirements

**Offer.** In response to a Request for Proposals or Invitation for Bid, an offer is a private sector company's formal response to a solicitation. The term "offeror" refers to the specific company rather than the response.

**Overhead.** Overhead is a cost that is included in all cost proposals. The overhead used in cost estimates submitted by agency or public reimbursable sources is the OMB required standard cost factor identified in Attachment E. This standardized cost factor accounts for indirect costs that are comparable to those included in private sector offers, represent costs to the taxpayer that are not necessarily visible at the installation, headquarters level or Department level, but are provided by the Government's budget at an expense to the taxpayer. *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective. 48 C.F.R. 9904.402-30 (a)(5).

**Past Performance.** An indicator that may be used in the source selection process to evaluate an offeror's previous performance on work comparable to that being competed for the purpose of predicting the quality of future performance relative to other offers or public reimbursable tenders (See FAR 42.1501 for a description of the information used to evaluate past performance and FAR 15.305(a)(2) regarding the consideration of past performance in the source selection process.

**Performance Standards.** Verifiable, measurable levels of service in terms of quantity, quality, timeliness, location, and work units. Performance standards are used in a performance based PWS to: (1) assess (i.e., inspect and accept) the work during a period of performance, and (2) provide a common output-related basis for preparing private sector offers and public tenders and for comparing the offers and tenders to the PWS. The requiring activity's acceptable levels of service are normally stated in the PWS.

**Performance Work Statement (PWS).** A statement in the solicitation that identifies the technical, functional and performance characteristics of the government's requirements. The PWS is performance-based (not requirements driven), identifies essential functions to be performed, determines performance factors, and, specifies the location, units, quality and timeliness of the work.

**Phase-in Plan.** A specific requirement in the solicitation that requires all offerors (agency, private sector and public reimbursable sources) to propose a phase-in approach to replace the existing service provider. The Phase-in Plan includes details on minimizing disruption, adverse personnel impacts, and startup requirements.

**Provider.** An agency, private sector or public reimbursable source that is performing or will perform a commercial activity.

**Public Announcement.** Formal notification to the incumbent providers (i.e., directly affected employees and their representatives, public reimbursable sources, or private sector providers), state and local government officials, or congressional members, to formally announce the (1) start of a Standard Competition, (2) Performance Decision, (3) Direct Conversion, and (4) Administrative Appeal Process decision.

**Public Reimbursable Official.** An inherently governmental official with decision-making authority who is responsible for and certifies the public reimbursable tender.

**Public Reimbursable Source.** A service provider from a federal agency (vendor agency) that could perform a commercial activity for another federal agency (or customer agency) on a reimbursable basis (fee for service) via a commercial ISSA. The public reimbursable source performs the service with either (1) vendor agency federal civilian employees or (2) vendor agency federal contracts with the private sector. Public reimbursable sources include franchise funds, revolving funds and working capital funds authorized by the Clinger/Cohen Act, the Federal Property and Administrative Services Act of 1949, the Economy Act of 1932 (31 U.S.C. 1535), the Government Management Reform Act of 1994 (103 U.S.C. 356), and other statutes authorizing agencies to acquire or perform commercial activities on a reimbursable basis.

**Public Reimbursable Tender.** The vendor agency's formal response to a customer agency's solicitation. The Public Reimbursable Tender (1) is developed in accordance with Attachment B; (2) is structured to meet the solicitation requirements of Section L (Instructions, Conditions, and Notices to Offerors or Respondents) and Section M (Evaluation Factors for Award); (3) includes cost estimates prepared in accordance with Attachment E; and (4) responds to the requirements and bid structure of a solicitation for either a Standard Competition or a competition soliciting only private sector offers.

**PWS Team.** A group of individuals comprised of technical and functional experts, formed to develop the PWS, QASP, and assist the CO in developing the solicitation.

**Quality Assurance Surveillance.** The method by which Federal agency personnel monitor agency, private sector or public reimbursable performance to determine if the performance output requirements of the solicitation are met by the service provider within the costs submitted to the Government.

**Quality Control Plan (QCP).** A self-inspection plan. All offerors and tenders are required to submit a QCP when responding to a solicitation. The QCP outlines a self-inspection plan that complies with the PWS and describes the internal staffing and procedures that will be used by the prospective offeror to meet the quality, quantity, timeliness, responsiveness, customer satisfaction, and other aspects of service delivery as required by the PWS. A QCP is included in all prospective private sector offers and public tenders to guarantee satisfactory performance.

**Quality Assurance Surveillance Plan (QASP).** The government's inspection plan. The QASP documents methods used to measure performance of the service provider against the requirements in the PWS. The agency relies the service provider to monitor daily performance via the Quality Control Plan. The agency retains the right to inspect all services. The ATO assigns individuals responsible for the QASP that are external to the selected service provider (i.e., agency, private sector or public reimbursable source) to perform quality assurance. When a Performance Decision is rendered, the agency is required to re-evaluate and modify the QASP based upon the selected provider.

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

**Direct Research and Development.** Activities that have direction, control and conduct of science and technology programs. R&D does not include program management of systems acquisition or other administrative, facilities or equipment support. R&D includes conducting mid- and long-range planning, programming, and budgeting; developing and issuing policies; providing policy guidance; reviewing,

analyzing, and evaluating program performance; and allocating and distributing resources for science and technology. Basic Research for Pure R&D includes scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs.

**Resources.** Funding allocated for contracts, manpower, facilities or equipment, to perform agency requirements.

**Sealed Bid Acquisition.** A type of procurement where sources submit bids in response to an invitation for bids.

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

**Source Selection Evaluation Board (SSEB).** The team that assists the SSA when a negotiated acquisition is used in a Standard Competition.

**Specialized or Technical Services** means statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, highly specialized training activities, surveys, reports, documents, and or any other similar service functions that a Federal agency is especially equipped and authorized by law to perform for itself., services which may be required to meet the needs of the Federal Government or to carry out the normal program responsibilities of the Federal agencies involved, technical aid or instruction in the preparation of proposals and applications for development and other projects for which the Federal agency provides grants or other assistance, provided such aid primarily strengthens the ability of the State or local government recipient in developing its own capacity to prepare proposals; and services that a Federal agency receives a request for and that it believes is consistent with the Act and that it has a special competence to provide, that are approved by the Deputy Director for Management, OMB, to provide. If there is doubt as to whether the service requested is covered by this definition, the request should be forwarded to the Deputy Director for Management, OMB for consideration. Specialized or technical services do not include common administrative support services or extend to State or local data requests to conduct Federal surveys or other compilations in advance of Federal schedules for collecting the same data or providing the same or similar services, unless specifically approved by the Deputy Director for Management, OMB.

**Standard Competition Documentation.** The Agency Tender at the time the Performance Decision is made. Supporting documentation includes information, data, worksheets, files, and records supporting the data included on the SCF.

**Standard Competition End Date.** The date that a Performance Decision is made.

**Standard Competition Form (SCF).** The certified agency form that documents all costs calculated in the Standard Competition in accordance with Attachment E. Lines 1-6 of the SCF represent the total cost of agency performance and Lines 7-13 represent the total cost of contract or public reimbursable provider performance. The Standard Competition Form is the decision document in all Standard Competitions.

**Standard Competition Process.** A public-private competition process that is required by this Circular for competition between (1) private sector, public reimbursable, and agency sources or (2) private sector and public reimbursable sources. A Standard Competition is a formal competitive process to be used in

conjunction with the FAR when an agency selects a provider based upon formal offers or tenders submitted in response to an agency solicitation.

**Standard Competition Start Date.** The day the agency makes a public announcement of a Standard Competition to the directly affected employees and their representatives, incumbent contractors or public reimbursable sources, and other interested individuals.

**State or local Government.** The term "State" is defined as any of the official states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of a State. The term "political subdivision" or "local government" is defined as any local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or pursuant to State law, or combinations thereof.

**Transition Plan.** A written plan for the transition of employees from the current organizational structure to the prospective service provider.

**Vendor Agency.** A federal agency that provides a service to another federal agency that pays for the service.