



DEPUTY DIRECTOR
FOR MANAGEMENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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M-04-12

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Clay Johnson III 
Deputy Director for Management

SUBJECT: Performance Periods in Public-Private Competitions

The purpose of this memorandum is to inform you of a new law affecting performance periods established in connection with public-private competitions and its effect on Office of Management and Budget (OMB) Circular A-76. Section 647(c) of the Transportation, Treasury, and Independent Agencies Appropriations Act (Division F of the Consolidated Appropriations Act, FY 2004, P.L. 108-199) states that regulations, directives, or policies, including Circular A-76, may not require the head of an executive agency to automatically limit to five years or less the performance period in a letter of obligation or other agreement with federal employees to provide commercial activities for the agency.

Circular A-76, as revised, generally limits the length of performance periods to five years. See Paragraph D.3.a.(7) of Attachment B. This limitation shall no longer apply. However, agencies must continue to incorporate performance periods in their contracts and letters of obligation. In determining an appropriate performance period, agencies should consider the nature and risk associated with the services to be provided.

Section 647(c) applies to all competitions that are publicly announced on or after January 23, 2004 as well as to any in-progress competitions for which a performance decision has not been publicly announced as of January 23rd. OMB intends to publish a notice in the *Federal Register* formally amending the Circular to reflect the new law.

Agencies should review affected competitions in light of this change. No agency action is required on an in-progress competition, except where the agency decides to modify the performance period. If an agency modifies the performance period on an in-progress competition, the modification must be publicly announced.

Thank you for your attention to this matter. Questions regarding this memorandum may be referred to Mathew Blum of OMB's Office of Federal Procurement Policy at (202) 395-4953.