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ADS Chapter 104

Performance of Commercial Activities Within USAID

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ADS 104 – Performance of Commercial Activities Within USAID
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****This chapter has been reformatted and revised in its entirety.***

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ADS 104 – Performance of Commercial Activities Within USAID

104.1 OVERVIEW

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This chapter provides the policy directives and required procedures for determining whether commercial activities are to be performed under contract by a commercial source or internally using Government resources.

104.2 PRIMARY RESPONSIBILITIES

Effective Date: 12/15/2003

- a. The **Assistant Administrator, Bureau for Management (AA/M)** ensures that Office of Management and Budget (OMB) Circular A-76 is properly implemented within the Agency. The AA/M is also designated as the Agency Competitive Sourcing Official (CSO) with overall responsibility for implementation of the Circular.
- b. The **Office of Human Capital and Talent Management, Policy, Planning, and Information Management Division (HCTM/PPIM)** coordinates Agency implementation of OMB Circular A-76 and advises Agency personnel regarding its provisions. In addition, HCTM/PPIM conducts the annual FAIR Act inventory that serves as a basis for all A-76 activities and prepares the annual FAIR Act Report to OMB and Congress.
- c. Heads of Bureaus, Offices, and overseas organizations (see also [ADS 103, Delegations of Authority](#)) implement OMB A-76 provisions within their areas of responsibility; identify in-house functions for review; and assess the application of OMB A-76 when considering an organization change.
- d. The **Bureau for Management, Office of Acquisition and Assistance (M/OAA)** participates in cost comparison reviews by serving as the liaison between USAID and the private sector in determining the cost of performing a function under contract.
- e. The **Office of Human Capital and Talent Management, Personnel Operations Division (HCTM/POD)** assesses the impact of OMB A-76 provisions on Agency employees and identifies appropriate reassignments for employees who are adversely affected.
- f. **Administrative Management Services (AMS) Officers** provide HCTM/PPIM with information regarding commercial activities performed by USAID employees for the annual A-76 inventory required by the Circular.

104.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

104.3.1 Provisions of OMB Circular A-76

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OMB A-76 provides the following guidelines regarding the A-76 process:

- a.** The longstanding policy of the Federal government has been to rely on the private sector for needed commercial services. To ensure that the American people receive maximum value for their tax dollars, commercial activities should be subject to the forces of competition.
- b.** Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees. These functions are not in competition with the private sector; therefore, they must be performed by U.S. Government employees.
- c.** USAID must utilize commercially available sources to provide commercial products and services whenever these services and products of comparable quality can be procured more cheaply from commercial sources. The Agency may not begin or carry out an activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.
- d.** USAID must maintain an inventory of commercial activities in accordance with the provisions of OMB Circular A-76 and the FAIR Act.

104.3.2 Agency Responsibilities Under the FAIR Act and OMB Circular A-76

Effective Date: 12/15/2003

HCTM/PPIM maintains the inventory identifying all commercial activities performed in the Agency. On an annual basis, HCTM/PPIM reports this information to OMB in accordance with the FAIR Act. AMS Officers provide HCTM/PPIM with updated inventories annually upon request.

In accordance with Circular A-76, the Agency must identify all activities performed by Government personnel as either commercial or inherently governmental. Only Federal employees can perform inherently governmental activities. Either a streamlined or a standard competition, in conjunction with the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, is used to determine if Government personnel should perform a commercial activity. Within USAID, all positions are identified as either inherently governmental or commercial based on the functions the position performs, regardless of whether the position is designated as civil service or foreign service. The positions of Foreign Service Officers serving in Washington, DC who are performing commercial activities are typically determined to be commercial in nature. However, since the Foreign Service Act of 1980 requires that the Agency retain positions in Washington for

all backstops for rotational purposes, these positions are retained in-house in accordance with Attachment A of Circular A-76 and will not be competed.

In addition, the revised Circular A-76 requires that USAID designate in writing an assistant secretary or equivalent with responsibility for this Circular. This individual is called the Competitive Sourcing Official (CSO). The Administrator has designated the AAM to fulfill this function.

104.3.3 Overview of Circular A-76 Process

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When the CSO identifies a commercial activity for review, the following steps are taken:

a. Preliminary Planning:

At this stage, the CSO determines the activities and full-time equivalent (FTE) positions to be competed. Preliminary research is conducted to determine the appropriate grouping of activities as business units. During this planning stage, workload data, work units, quantifiable outputs of activities or processes, agency or industry performance standards, and other similar data are assessed. Also during this stage, the baseline costs of the activities are determined and the decision is made on whether to conduct a streamlined or standard competition. A preliminary schedule for the competition and its completion is developed and the roles and responsibilities of all participants are determined.

Circular A-76 requires the CSO to establish the following competition officials for each competition:

- Agency Tender Official (ATO)
- Contracting Officer (CO)
- Performance Work Statement Team Leader
- Human Resource Advisor (HRA)
- Source Selection Authority (SSA)

b. Performance Work Statement (PWS):

The PWS describes the acceptable quality levels and output required by the Government. The PWS provides a baseline for comparing the cost of performing a function in-house and through the private sector. Circular A-76 Attachment B provides detailed guidance on the development of the PWS.

c. Public Announcement:

USAID must make a formal public announcement for each streamlined or standard competition using *FedBizOpps.gov*. This public announcement is the official start date of the competition.

d. Cost Comparison:

The cost comparison process determines the cost to the Government of acquiring a service by contract and of providing the service with in-house Government resources. This comparison is conducted in strict accordance with Circular A-76 Attachment C.

e. Performance Decision:

USAID must also make a formal public announcement of the performance decision of each competition, again using *FedBizOpps.gov*. This performance decision date is the official end date of the competition.

104.4 MANDATORY REFERENCES

104.4.1 External Mandatory References

Effective Date: 12/15/2003

- a. [Federal Activities Inventory Reform Act \(FAIR\) of 1998, Public Law 105-270, October 19, 1998](#)
- b. [OMB Circular A-76, Performance of Commercial Activities](#), as revised May 29, 2003

104.4.2 Internal Mandatory References

Effective Date: 12/15/2003

- a. [ADS 103, Delegations of Authority](#)

104.5 ADDITIONAL HELP

Effective Date: 12/15/2003

There are no additional help documents for this chapter.

104.6 DEFINITIONS

Effective Date: 12/15/2003

Agency Tender Official (ATO)

An inherently governmental official with decision-making authority who is responsible for the agency tender and represents the agency tender during source selection. (Chapter 104)

commercial activity

An activity conducted by a Federal agency that provides a product or service that could be obtained from the private sector. (Chapter 104)

competition

A formal evaluation of sources to provide a commercial activity that uses pre-established rules. Competitions between private sector sources are performed in accordance with the Federal Acquisition Regulation (FAR). Competitions between agency, private sector, and public reimbursable sources are performed in accordance with the FAR and OMB Circular A-76. The term “competition” includes streamlined and standard competitions performed in accordance with Circular A-76 and FAR-based competitions for agency-performed activities, contracted services, new requirements, expansions of existing work, and activities performed under fee-for-service agreements. The term also includes cost comparisons, streamlined cost comparisons, and direct conversions performed under previous versions of OMB Circular A-76. (Chapter 104)

competition officials

The agency officials appointed before a standard competition is announced who perform key roles and have essential responsibilities for the successful completion of the standard competition. Competition officials are the Agency Tender Official, Contracting Officer, Source Selection Authority, Human Resource Advisor, and Performance Work Statement (PWS) team leader. (Chapter 104)

Competitive Sourcing Official (CSO)

An inherently governmental agency official responsible for the implementation of Circular A-76 within USAID. (Chapter 104)

full-time equivalent (FTE)

The staffing of Federal civilian employee positions, expressed in terms of annual productive work hours (1,776). FTEs may reflect civilian positions that are not necessarily staffed at the time of public announcement, and staffing of FTE positions may fluctuate during a streamlined or standard competition. The staffing and threshold FTE requirements stated in Circular A-76 reflect the workload performed by these FTE positions, not the workload performed by actual government personnel. FTEs do not include military personnel, uniformed services, or contract support. (Chapter 104)

government personnel

Civilian employees, foreign national employees, temporary employees, term employees, non-appropriated fund employees, and uniformed services personnel employed by an agency to perform activities. (Chapter 104)

Human Resources Advisor (HRA)

An inherently governmental agency official who is a human resource expert and is responsible for performing human resource-related actions to assist the Agency Tender Official (ATO) in developing the agency tender. (Chapter 104)

inherently governmental function

A function that is so intimately related to the public interest as to mandate performance by government employees as provided by Attachment A of Circular A-76. (Chapter 104)

most efficient organization (MEO)

The staffing plan of the agency tender, developed to represent the agency's most efficient and cost-effective organization. An MEO is required for a standard competition and may include a mix of government personnel, and MEO subcontracts. (Chapter 104)

performance decision

The outcome of a streamlined or standard competition. (Chapter 104)

Performance Work Statement (PWS)

A statement in the solicitation that identifies the technical, functional, and performance characteristics of the agency's requirements. The PWS is performance-based and describes the agency's needs (the "what"), not specific methods for meeting those needs (the "how"). The PWS identifies essential outcomes to be achieved, specifies the agency's required performance standards, and specifies the location, units, quality, and timeliness of the work. (Chapter 104)

public announcement

An agency's formal declaration that the agency has made a decision to perform a competition or a performance decision in a competition. The Contracting Officer (CO) makes these announcements via *FedBizOpps.gov*. (Chapter 104)

PWS team

A group of individuals, comprised of technical and functional experts, formed to develop the Performance Work Statement (PWS) and quality assurance surveillance plan, and to assist the Contracting Officer (CO) in developing the solicitation. (Chapter 104)

Source Selection Authority (SSA)

A competition official with decision-making authority who is responsible for source selection as required by the Federal Acquisition Regulation (FAR) and OMB Circular A-76. The SSA and the Contracting Officer (CO) may be the same individual. (Chapter 104)

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