

eliminating direct conversions and (ii) requiring that commercial activities competed under this Circular be periodically recomputed to ensure that the cost and quality of performance remain reasonable;

- Provide a level playing field for public-private competitions to ensure that commercial activities are performed by the best source at the lowest possible cost;

- Improve public trust by incorporating appropriate mechanisms of transparency, fairness, and integrity into public-private competition; and
- Strengthen accountability by: (i) centralizing agency oversight, (ii) holding public sector service providers to the same performance standards as those imposed on private sector providers, and (iii) requiring that the performance of service providers (both public and private) be tracked so that current experiences may inform and improve future decisions.

In addition to making significant substantive changes, OMB is modifying the organization of the Circular to improve clarity and ease of use. The main body of the Circular describes overarching policy tenets and the scope of agency responsibilities. The procedures for carrying out these policies are set forth in three attachments:

Attachment A, Inventory Process, describes how agencies develop lists of commercial and inherently governmental activities.

Attachment B, Public-Private Competition, identifies the required steps for conducting competitions between the public and private sectors (e.g., planning, soliciting, negotiating), making performance decisions, and tracking implementation.

Attachment C, Calculating Public-Private Competition Costs, defines how agencies determine the cost of public sector performance and compare these costs to a private sector offer.

A fourth attachment, Attachment D, Acronyms, Definitions, and Index provides a detailed glossary and index of key terms used in the Circular and its attachments.

The proposed Circular would have incorporated long-standing limitations imposed on federal agencies regarding the reimbursable services they provide to state and local government. OMB Circular No. A-97, *Provision of Specialized or Technical Services to State and Local Units of Government by Federal Agencies Under Title III of the Intergovernmental Cooperation Act of 1968*, currently implements these requirements. Circular No. A-97 remains in effect as a separate, stand-

alone Circular, and is unchanged by the final revisions to Circular No. A-76.

## B. Background

Federal agencies rely on a mix of public and private sector sources to perform a wide variety of commercial activities. OMB Circular No. A-76 establishes the policies and procedures for identifying commercial activities and determining whether these activities should be provided by a private sector provider through a contract, by government personnel through a letter of obligation, or by a public reimbursable source (another agency) through a fee-for-service agreement.

Before an agency shifts commercial work from one source to another (e.g., to or from performance by government personnel to performance by a contractor or public reimbursable source), Circular No. A-76 historically has required the agency to conduct a public-private competition in which the cost of performance is compared between the public and private sectors. The Circular has traditionally required agencies to perform a “cost comparison” by:

- Developing a performance work statement (PWS);
- Creating a management plan to determine the government’s “most efficient organization” (MEO);
- Establishing an in-house government cost estimate that is certified by an independent reviewing official;
- Issuing a solicitation in accordance with the FAR seeking offers from private sector and public sector sources, except for the in-house source, whose cost estimate is submitted and evaluated independently;
- Identifying the best offer submitted in response to the solicitation and comparing it to the in-house estimate; and
- Making a decision based on the lowest cost alternative, which is subject to review under an administrative appeals process.

The Circular has recognized a variety of circumstances in which agencies are not required to conduct cost comparisons. For example, the Circular has allowed agencies to directly convert work to or from the private sector without cost comparison under certain circumstances, such as where an activity was or would be performed by an aggregate of 10 or fewer “full-time-equivalent” employees (FTEs). For additional discussion regarding the mechanics of Circular No. A-76, see 67 FR 69769, 69770–71 (November 19, 2002).

On November 19, 2002, OMB issued a notice in the **Federal Register** of proposed changes to Circular No. A-76 to significantly improve the procedures used to conduct, and the results achieved from, competitions between public and private sources. The changes OMB proposed were intended to address recurring complaints about the Circular’s effectiveness. More than 700 public comments were submitted to OMB in response to the **Federal Register** notice. For a description of the proposed changes to the Circular and the accompanying Supplemental Handbook (hereinafter collectively referred to as the “prior Circular”), see 67 FR 69769, 69771–74. For copies of the public comments on the proposed revisions, see <http://www.omb.gov>.

The next section of this preamble discusses the new features of the revised Circular, including its relationship to the President’s Management Agenda. The discussion highlights the most significant public comments and explains how these comments are addressed in the revised Circular.

## C. An Improved Framework for Managing the Government’s Commercial Activities

The Administration’s general policy is to rely on competition to select the providers of commercial activities. This policy is supported by published reports and historical data demonstrating that public-private competition generates significant cost savings, efficiency, and innovation.

Despite the benefits that public-private competition generates, many of the government’s 850,000 FTEs that agencies have identified as performing commercial activities (nearly half of all federal employees) remain insulated from the dynamics of competition. To reverse this trend, the President’s Management Agenda called upon agencies to develop plans for opening their commercial activities to the discipline of competition. In response, agencies across government have developed tailored plans that lay the foundation for institutionalizing public-private competitions.

Circular No. A-76 seeks to ensure that competition plans—and the President’s broader vision of a market-based government—are successfully implemented. The revisions to the Circular achieve this result by significantly improving the processes for applying public-private competitions to government-performed commercial activities.

In particular, the revised Circular: (1) Facilitates strategic use of competition as a tool to improve overall agency