

performance, (2) ensures fairness, integrity, and transparency in sourcing decisions, and (3) strengthens agency accountability for achieving results.

1. Facilitating Strategic Use of Competition

The revised Circular seeks to promote strategic decision making by ensuring that application of public-private competition results in performance by the best available source—irrespective of the sector. The revised Circular also aims to make processes clear and accommodate agency needs.

a. Competition-based Policy Orientation

The revised Circular, like the prior Circular, relies on competition as the foundation for determining whether government personnel should perform a commercial activity. *See* ¶ 4.c. of the revised Circular. The revised Circular requires use of either streamlined or standard competitions. The agency's competitive sourcing official (CSO)—*i.e.*, a specific agency official responsible within the agency for implementing the Circular—must justify, in writing, most decisions to exempt a commercial activity performed by government personnel from competition. *See* ¶ 5.b. of the revised Circular. In addition, deviations from the Circular's policies or the procedures set forth in the attachments must be approved by OMB. *See* ¶ 5.c. of the revised Circular.

i. *Emphasis on sector neutral competition.* Because OMB seeks to emphasize selection of the best service provider, as determined through competition, the revised Circular deletes a longstanding statement that the government should not compete with its citizens. Various commenters opposed the deletion, arguing that an important message will be lost regarding the significant role the private sector plays in facilitating the effective operation of government. OMB appreciates the critical contributions made by the private sector. Without the private sector, the government would not be able to meet the many needs of our citizenry. Deletion of the "reliance" statement from the revised Circular is not intended to denigrate this contribution. Nor does this action signal a retreat from the Administration's commitment to a market-based government that is unafraid of competition, innovation, and choice. The deletion is simply meant to avoid a presumption that the government should not compete for work to meet its own needs. Such a suggestion conflicts with the Circular's main function of providing policies and procedures to

determine the best service provider—irrespective of the sector the provider represents.

The main policy tenets of the Circular have been refined to ensure that government performance of commercial activities does not result in unfair competition. In particular, a new proviso has been added to make clear that, with rare exception, an agency shall not perform work as a contractor or subcontractor to the private sector. *See* ¶ 4.l. of the revised Circular. In addition, the Circular will continue to prohibit an agency from reorganizing or restructuring a commercial activity to circumvent the Circular. *See* ¶ 5.f. of the revised Circular. As a more general matter, the revised Circular is intended to encourage greater trust and more robust participation in public-private competition by both sectors through processes that promote fairness, integrity, and transparency.

ii. *Establishment of competition timeframes.* Timeframe standards have been incorporated into the revised Circular to motivate agencies to complete competitions and to instill greater confidence that agencies will follow through on their plans. Current processes have been criticized for allowing agencies to extend public-private competitions indefinitely. Under the revised Circular, a standard competition must generally be conducted within a 12-month period beginning on the date the competition is publicly announced and ending on the date a performance decision is made. *See* ¶¶ D.1. & D.6.b. of Attachment B. A standard competition is the general competitive process provided by the revised Circular when an agency selects a provider based on formal offers or tenders submitted in response to an agency solicitation.

While a majority of the commenters supported the concept of time limits, there was considerable disagreement over the appropriate time limits. Several agency commenters requested that the timeframes for a standard competition be lengthened by several months and that greater leeway be given to agencies in need of extensions. Some commenters also complained that the 15-day time limit in the proposed Circular for use of streamlined processes is unrealistic.

The revised Circular continues to impose a 12-month limit as a general rule. In addition to instilling confidence in the process, time limits ensure that the benefits of competition are realized. However, to provide sufficient flexibility to the agencies, the revised Circular provides that the CSO, without delegation, may extend the 12-month

period by 6 months with notification to OMB. The revised Circular does not adopt a provision in the proposed Circular that would have allowed the CSO (referred to as the "4.e. official" in the proposed Circular) to waive the one-year completion requirement at announcement of the competition and set an alternative completion date if the competition was particularly complex and notification was provided to OMB. However, if specified timetables are insufficient, an agency could seek longer completion periods using the Circular's deviation procedures. *See* ¶ 5.c. of the revised Circular.

As discussed below, the revised Circular significantly refines the framework for using streamlined processes. In doing so, the Circular modifies the proposed timeframes. Specifically, a streamlined competition must be completed within 90 calendar days from public announcement (described below) to performance decision unless the CSO grants a time limit waiver. Time limit waivers may not exceed 45 calendar days, for a maximum of 135 calendar days from public announcement to performance decision. If an agency cannot complete an announced streamlined competition within the time limit, the agency must either convert the streamlined competition to a standard competition or request an extension from OMB using the deviation procedure in paragraph 5.c. of the Circular. *See* ¶ C.2. of Attachment B.

For added transparency, the revised Circular calls for public announcements of certain key actions taken in connection with either standard or streamlined competitions. In particular, agencies must publicly announce the beginning of competitions, performance decisions made at the end of a competition, and any cancellation of an announced competition. Announcements must be made through FedBizOpps, <http://fedbizopps.gov>, the government-wide point of entry on the Internet for information on federal business opportunities. FedBizOpps is a user-friendly web site that is well known to service providers wishing to help federal agencies meet their missions. Announcements of competition and performance decisions must also be publicized locally. *See* ¶ B. of Attachment B.

iii. *Elimination of direct conversions and creation of new streamlined competition process.* The revised Circular makes a number of modifications regarding the handling of activities involving 65 or fewer FTEs. These changes seek to instill greater use of public-private competition for small