

activities in a highly flexible and minimally burdensome, but fully accountable, manner.

Despite strong policy statements favoring public-private competitions, a number of commenters pointed out that the long-standing practice of permitting "direct conversions" (e.g., typically for work performed by 10 or fewer FTEs) undermines this policy. Until now, under the prior Circular, agencies have been allowed to convert activities from public to private sector performance, or the reverse, under certain circumstances without public-private competition. Commenters asserted that, overall, this authority encourages agencies to go directly to contract as a matter of administrative convenience, even where a more efficient, cost-effective government organization could be the better alternative.

OMB agrees that agencies may be foregoing opportunities to reap savings and make better economic decisions through public-private competitions when they undertake a direct conversion. At the same time, OMB appreciates that the current processes for public-private competition are often time-consuming, costly, and burdensome for use under the conditions in which direct conversions are typically applied. In addition, while the prior Circular provided for a streamlined cost comparison process for evaluating public and private sector performance for commercial activities performed by 65 or fewer FTEs, flexibility has been limited.

The revised Circular builds on the foundation created by the prior Circular's streamlined process, by adding flexibility and accountability. For activities performed by 65 or fewer FTEs, the streamlined process enables agencies to efficiently capture the benefits of public-private competition without the burdens associated with current processes. See §§ A.5.b. and C. of Attachment B.

The new streamlined competition gives agencies considerable latitude to make cost-effective choices. For example, when determining an estimated contract price for performing the activity with a private sector source, an agency may use documented market research or solicit proposals in accordance with the FAR. See § C.1.b. of Attachment B. Agencies are free to use streamlined acquisition tools, such as a Multiple Award Schedules contract (see FAR Subpart 8.4) to obtain proposals from the private sector. In light of the significant efficiencies offered by the new streamlined competition process and the general goal of relying on public-private

competitions, the revised Circular eliminates direct conversions.

The revised Circular incorporates a number of safeguards to ensure that agencies act as responsible stewards when using streamlined procedures. First, unlike the current procedures for streamlined cost comparisons, the revised Circular requires agencies to publicly announce both the start of a streamlined competition and the performance decision made by the agency. See ¶ B. of Attachment B. The notice announcing the initiation of a competition must include, among other things, the activity being competed, incumbent service providers, number of government personnel performing the activity, names of certain competition officials, and the projected end date of the competition. As noted above, agencies will have up to 135 calendar days to conduct a streamlined competition from the date it is publicly announced.

Second, the revised Circular ensures fairness by requiring that separate agency officials document cost estimates—one for agency performance and another for performance by either the private sector or a public reimbursable source. Cost calculations and comparisons must be documented on a standardized streamlined competition form (SLCF). See ¶ C.1. of Attachment B and ¶ A.12. of Attachment C.

Third, although the conversion differential typically used in a public-private competition does not apply to a streamlined competition, agencies must certify that the performance decision, as documented on the SLCF, is cost-effective. See Figure C3. of Attachment C. Agencies must make the certified SLCF available to the public upon request. See ¶ C.3.b. of Attachment B.

Fourth, agencies must track the results of competitions. In addition to reporting quarterly to OMB on the status of in-progress and completed competitions, agencies must monitor results, irrespective of the service provider, after the agency makes a performance decision. Agencies will be expected to implement a quality assurance surveillance plan, record the actual cost of performance, and collect performance information that may be considered in future competitions. See ¶ E.4. of Attachment B.

iv. *Creation of the MEO.* Several agency commenters stressed that effective public-private competition requires that agencies have the flexibility to adjust their in-house team's use of contract support when developing the MEO—i.e., the staffing plan that will form the foundation of the

agency's tender in a standard competition. The commenters noted that an existing mix of government personnel and contractor support may not be optimal given the agency's current needs and, on this basis, objected to language in the proposed Circular prohibiting the creation of new contracts as part of MEO development.

OMB seeks to vest agencies with the managerial authority they need to make sound programmatic decisions and has amended the Circular's coverage on standard competitions to give agencies the flexibility to create the best possible MEO. In developing their MEOs, agencies will be allowed to include contract support through new or potential contracts. However, agencies will not be permitted to include new MEO subcontracts if doing so would result in the direct conversion of work performed by government employees. See ¶ D 4.a.(1)(a). of Attachment B.

While agencies will have greater flexibility in standard competitions, they will be held fully accountable to the taxpayer for their actions. In addition to publicly announcing the start of a competition and performance decisions, the agency must perform and document a comprehensive calculation of costs on a standard competition form (SCF). As part of this effort, agencies must conduct price and cost realism analyses on all cost proposals and estimates, including the agency cost estimate. Directly interested parties may contest performance decisions (see below for additional discussion on contests). Upon resolution of a contest challenging a performance decision, or expiration of the time for filing such a contest, the certified SCF shall be available to the public upon request. Performance decisions under standard competitions, like those made under streamlined competitions, are subject to monitoring to ensure achievement of results. See ¶ E.4. of Attachment B.

b. Enhanced Inventories of Government Activities

An accurate inventory identifying an agency's commercial and inherently governmental activities is vital to a federal manager's ability to identify opportunities for which application of public-private competition is likely to yield the best return for the agency. For this reason, the revised Circular refines and expands guidance on the establishment of inventories. See Attachment A of the Circular. The revised Circular builds on existing statutory obligations set forth in the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105-270; 31 U.S.C. § 501 note) that require agencies to