

# Circular No. A-76, Performance of Commercial Activities

Appendix B. CATEGORIZING ACTIVITIES PERFORMED BY GOVERNMENT PERSONNEL AS INHERENTLY GOVERNMENTAL OR COMMERCIAL. 1. Inherently Governmental Activities. The CSO shall justify, in writing, any designation of government personnel performing inherently governmental activities. The justification shall be made available to OMB and the public upon request. An agency shall base inherently governmental justifications on the following criteria:

a. An inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. An inherently governmental activity involves: (1) Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise; (2) Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise; (3) Significantly affecting the life, liberty, or property of private persons; or (4) Exerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

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## Office of Management and Budget (OMB)

### Stakeholder(s):

**Mitchell E. Daniels, Jr. :**  
Director

### Private Sector :

The longstanding policy of the federal government has been to rely on the private sector for needed commercial services... Appendix B.2. Commercial Activities. A commercial activity is a recurring service that could be performed by the private sector and is resourced, performed, and controlled by the agency through performance by government personnel, a contract, or a fee-for-service agreement. A commercial activity is not so intimately related to the public interest as to mandate performance by government personnel. Commercial activities may be found within, or throughout, organizations that perform inherently governmental activities or classified work.

### Federal Agencies :

5. Scope. a. Except as otherwise provided by law, this circular shall apply to executive departments named in 5 U.S.C. § 101 and independent establishments as defined in 5 U.S.C. § 104. These departments and independent establishments are referred to in this circular as "agencies". Except as otherwise provided by law, this circular shall apply to military departments named in 5 U.S.C. § 102.

### Competitive Sourcing Officials (CSO) :

b. As provided by Attachment A, the CSO may exempt a commercial activity performed by government personnel from performance by the private sector. c. The CSO (without delegation) shall receive prior written OMB approval to deviate from this circular (e.g., time limit extensions, procedural deviations, or costing variations for a specific streamlined or standard competition, or inventory process deviations).

Agencies shall include any OMB approved deviations in the public announcement and solicitation for a streamlined or standard competition. Agencies are encouraged to use this deviation procedure to explore innovative alternatives to standard or streamlined competitions, including public-private partnerships, public-public partnerships, and high performing organizations... e. The CSO shall identify savings resulting from completed streamlined and standard competitions in accordance with OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget.

### Government Personnel :

d. A streamlined or standard competition is not required for private sector performance of a new requirement, private sector performance of a segregable expansion to an existing commercial activity performed by government personnel, or continued private sector performance of a commercial activity. Before government personnel may perform a new requirement, an expansion to an existing commercial activity, or an activity performed by the private sector, a streamlined or standard competition shall be used to determine whether government personnel should perform the commercial activity. [See OMB Memorandum M-08-11 (February 20, 2008), number 4, when applying this provision.]

### Department of Defense CSO :

h. The Department of Defense CSO (without delegation) shall determine if this circular applies to the Department of Defense during times of a declared war or military mobilization.

## Vision

The American people receive maximum value for their tax dollars

## Mission

To establish federal policy for the competition of commercial activities

## Values

**Competition:** To ensure that the American people receive maximum value for their tax dollars, commercial activities should be subject to the forces of competition.

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**a. Activities**

*Identify all activities performed by government personnel as either commercial or inherently governmental.*

**A. INVENTORY REQUIREMENTS.**

**a.1. Categorization**

*Prepare annual inventories categorizing activities performed by government personnel as commercial or inherently governmental*

1. Agency Inventories. An agency shall prepare two annual inventories that categorize all activities performed by government personnel as either commercial or inherently governmental.

**a.2. Submissions**

*Make annual submissions*

2. Annual Requirement. By June 30 of each year, an agency shall submit the following by electronic mail (e-mail) to OMB (a) an inventory of commercial activities performed by government personnel; (b) an inventory of inherently governmental activities performed by government personnel; and (c) an inventory summary report. An agency may provide aggregate data for uniformed services personnel and foreign nationals performing inherently governmental activities. For annual inventories, an agency shall use the format and data requirements found at the OMB web site ([www.omb.gov](http://www.omb.gov)).

**a.3. Review & Consultation**

*Review agency inventories and consult with the agencies regarding the content*

3. OMB Review and Consultation. OMB shall, on an annual basis, review both agency inventories and consult with the agency regarding the content of both agency inventories.

**Stakeholder(s):**  
**OMB**

**a.4. Access**

*Make inventories available to Congress and the public*

4. Congressional and Public Notification. After OMB review and consultation, an agency shall make both inventories available to Congress and the public unless the inventory information is classified or otherwise protected for national security reasons. OMB shall publish a notice of availability in the Federal Register.

**Stakeholder(s):**  
**Congress**

**The Public**

**a.5. Summaries**

*Submit inventory summaries annually*

5. Inventory Summary Report. An agency shall submit an annual inventory summary in the format in Figure A1. to identify aggregate data. The total of the two agency inventories shall reasonably equate to an agency's authorized personnel requirements. An agency shall make the annual inventory summary report available to the public unless the inventory information is classified or otherwise protected for national security reasons.

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**b. Performance**

*Perform inherently governmental activities with government personnel.*

**Stakeholder(s)**

**Government Personnel**

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### **c. Competition**

*Use a streamlined or standard competition to determine if government personnel should perform a commercial activity.*

[See OMB Memorandum M-08-11 (February 20, 2008), number 4, when applying this provision.]

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**d. Acquisition**

*Apply the Federal Acquisition Regulation (FAR), 48 C.F.R. Chapter 1, in conjunction with this circular, for streamlined and standard competitions.*

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**e. Integrity, Ethics & Conduct**

*Comply with procurement integrity, ethics, and standards of conduct rules, including the restrictions of 18 U.S.C. § 208, when performing streamlined and standard competitions.*

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## f. Responsibility

*Designate, in writing, an assistant secretary or equivalent level official with responsibility for implementing this circular, hereafter referred to as the competitive sourcing official (CSO).*

### **Stakeholder(s)**

#### **Competitive Sourcing Officials :**

*Except as otherwise provided by this circular, the CSO may delegate, in writing, specified responsibilities to senior-level officials in the agency or agency components.*

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**g. Accountability**

*Require full accountability of agency officials designated to implement and comply with this circular by establishing performance standards in annual performance evaluations.*

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## **h. Oversight**

*Centralize oversight responsibility to facilitate fairness in streamlined and standard competitions and promote trust in the process.*

Agencies shall allocate resources to effectively apply a clear, transparent, and consistent competition process based on lessons learned and best practices. Lessons learned and best practices resulting from a streamlined or standard competition process shall be posted on SHARE A-76!

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## **i. Costs**

*Develop government cost estimates for standard and streamlined competitions in accordance with Attachment C using the COMPARE costing software.*

Agencies shall not use agency budgetary estimates to develop government cost estimates in a streamlined or standard competition.

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**j. Execution**

*Track execution of streamlined and standard competitions in accordance with Attachment B.*

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## k. Employee Assistance

*Assist adversely affected federal employees in accordance with 5 C.F.R. Parts 330 and 351.*

**Stakeholder(s)**

**Federal Employees**

**Veterans :**

*The statutory veterans' preference for appointment and retention (5 U.S.C. §§ 1302, 3301, 3302, 3502) applies to actions taken pursuant to this circular.*

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## I. Contracting

*Not perform work as a contractor or subcontractor to the private sector, unless specific statutory authority exists or the CSO receives prior written OMB approval.*

**Stakeholder(s)**

**Private Sector**

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