

PERFORMANCE OF COMMERCIAL ACTIVITIES

I. Purpose

This Directive establishes Department of Homeland Security (DHS) policies, responsibilities and procedures to implement: (a) the Federal Activities Inventory Reform (FAIR) Act of 1998, and (b) public-private competitions conducted in accordance with the Revised OMB Circular A-76 and applicable Federal Acquisition Regulations. This Directive will also serve as Departmental guidance regarding the development and implementation of privatization alternatives that do not result in a service contract, a reimbursable agreement with another Federal agency or require a public-private competition.

II. Scope

A. This Directive applies to all DHS organizational elements, including research and development activities and the offices of the Inspectors General. The competition requirements and procedures set forth by the Revised OMB Circular A-76 and this Directive apply to (1) the possible conversion of a commercial activity performed by Federal employees to performance by contract, (2) the possible conversion of a commercial activity from performance by contract or other reimbursable agreement to performance by DHS employees and (3) the possible performance of a newly initiated or expanded commercial activity by federal employees, except (a) those determined exempt by the Competitive Sourcing Official (CSO), or (b) activities specifically designated as exempt by law, Executive Order, treaty or international agreement.

B. The definitions, responsibilities, requirements and procedures of this Directive generally follow those provided by the FAIR Act, the Revised OMB Circular A-76 and applicable Federal Acquisition Regulations and must be read in conjunction with those documents.

III. Authorities

A. The Homeland Security Act, 6 U.S.C. §§ 101, et seq.

B. The Federal Activities Inventory Reform (FAIR) Act, Pub. L. 105-270, 31 U.S.C. § 501 note.

C. OMB Circular A-76 (revised) (August 15, 2003)

IV. Definitions

A. **Letter of Obligation (LOO)**: As required by the Revised OMB Circular A-76, a Letter of Obligation (LOO) represents the contract that is created between the Government and the in-house Agency Tender, when a function is retained in-house as a result of a Streamlined or Standard A-76 competition. The LOO reflects the commitments made by the Contracting Officer (CO) for the Government and the official who is responsible for executing the Agency Tender (the ATO or MEO Team Leader) to perform the services described in the solicitation within the costs contained in the Agency Tender. The LOO is the contract between the Government and the employees included in the Most Efficient Organization (MEO). Modifications to the LOO will be made, as are contract modifications, to reflect performance changes, changes in scope, or cost changes. Budget reductions may require re-negotiation of the LOO and the possibility of corresponding changes in scope, performance or cost. The standard DHS LOO is provided at paragraph VI.I, of this Directive.

B. **A Directly Interested Party**: As provided at Attachment D of the Revised OMB Circular A-76, a directly interested party is one who may submit a protest/appeal of the A-76 competition decision to the agency in accordance with Attachment B para. F – page B-20 of the Revised OMB Circular A-76 and this Directive and includes (1) the Agency Tender Official who submitted the agency tender; (2) a single individual appointed by a majority of directly affected employees as their agent; (3) a private sector offeror; and (4) the official who certifies and submits a public reimbursable tender.

V. Responsibilities

A. The Secretary: exercises ultimate authority and responsibility for the Department with respect to assuring compliance with the FAIR Act and the Revised OMB Circular A-76. The Secretary will:

1. Designate an official at the assistant secretary or equivalent level responsible for implementation of this Directive, hereafter referred to as the DHS Competitive Sourcing Official (CSO),
2. Require that performance standards related to the implementation of the FAIR Act, OMB Circular A-76 and this Directive are incorporated into the annual performance evaluations of the officials listed in paragraph V, (see paragraph 4.g of the Revised OMB Circular A-76), and

3. In accordance with paragraph 4.h. of the Revised OMB Circular A-76, centralize oversight responsibility by staffing one or more offices to facilitate compliance, conduct competitions and promote trust in the process.

B. The Under Secretary for Management (USM): is designated the DHS Competitive Sourcing Official (CSO), as required by the Revised OMB Circular A-76. Acting as the CSO, the Under Secretary for Management or designee shall:

1. Issue Department-wide policies and procedures provide systems and assist in the provision of training necessary to implement this Directive,
2. Chair the DHS Competitive Sourcing Executive Board (CS Executive Board), which shall be comprised of the Organizational Element (OE) Under Secretaries and other Designated Officials. The Board shall (1) resolve issues with regard to whether functions are inherently governmental or commercial, (2) establish overall DHS and OE/Component competitive sourcing goals, (3) approve OE competitive sourcing plans and schedules and (4) determine how resources and expected savings will be allocated,
3. In coordination with the CS Executive Board, approve all privatizations of commercial activities currently performed by OEs,
4. Approve responses to congressional correspondence and testimony regarding the implementation of this Directive,
5. Approve work as inherently governmental or commercial in nature,
6. Approve the use of FAIR Act inventory Reason Codes applicable to commercial activities or otherwise exempt commercial activities from the competition requirements of this Directive,
7. Approve requests to OMB to permit OEs to perform work as a contractor or subcontractor, not otherwise explicitly authorized in law,
8. Approve requested time limit waivers for Streamlined or Standard A-76 competitions,
9. Determine if the Circular applies to the United States Coast Guard (USCG) during a declared war or military mobilization, and

10. Determine whether the threat or required response to an act of terrorism or other emergency precludes or warrants a delay in the application of the Circular.

C. The Chief Financial Officer (CFO): shall ensure that the budgetary resources necessary to implement this Directive are reflected in applicable Departmental budgets. As provided by Sub-part 31.9 of OMB Circular No. A-11, "Preparation and Submission of Budget Estimates," the CFO or designee shall:

1. Coordinate, review and approve requests for funding necessary to comply with this Directive, and
2. Coordinate requests to retain or redistribute related budget savings to other critical mission requirements.

D. The Chief Human Capital Officer (CHCO): shall ensure that the administrative human resource requirements necessitated by the development of a Most Efficient Organization (MEO) or in-house Agency Tender (offer) are coordinated and will also mitigate the potential adverse impacts of a competitive sourcing or privatization decision on employees. The CHCO or designee shall:

1. Coordinate labor relations activities to keep potential adversely affected employees informed on the progress of a competition or privatization,
2. Mitigate potential impacts, and
3. Ensure compliance with all applicable regulations.

E. The Chief Procurement Officer (CPO): shall ensure that procurement policy and operational support is provided in order to fully implement this Directive and meet approved competition schedules. The CPO or designee shall:

1. Act as a central point-of-contact for questions related to the implementation of the FAIR Act, the Revised OMB Circular A-76 and other privatization issues,
2. Coordinate procurement activities necessary to comply with this Directive and ensure that all requirements of the Revised OMB Circular A-76 and the Federal Acquisition Regulation are met in conducting Streamlined or Standard A-76 competitions,

3. Approve the determination to not provide existing assets, equipment, materials or property, used as a part of the Agency Tender or Most Efficient Organization (MEO) to other potential private sector offerors and justify, in writing, that such decisions are in the best interests of the Government,
4. Approve requests to require a performance bond not applicable to the Agency Tender,
5. Approve the determination of the CO that a material deficiency exists in an Agency Tender, that the Agency Tender's material deficiency cannot be corrected within a reasonable timeframe, or that a material deficiency has not been corrected. With this determination, the CPO (without delegation) may direct the CO to exclude the Agency Tender from a Standard competition. (See Attachment B, para.D.5.c.(3) – page B-15)
6. Provide for the expeditious resolution of protests filed by directly interested parties, (see Attachment D) in accordance with FAR Subpart 33.103, the OMB Circular A-76 (Attachment B, Paragraph F – page B-20) and this Directive,
7. Review and Approve inventories, including required justifications for inherently governmental determinations and the application of Reason Code A to commercial functions.
8. Serve as the Appeal Official for all appeals filed in accordance with the annual FAIR Act inventories.
9. Provide staff support to the CSO and the DHS/CS Executive Board, to include the development of acceptable goals, plans and schedules for conducting competitive sourcing competitions
10. Prepare and make available DHS-wide reporting and tracking systems, including appropriate web-sites, necessary to comply with the FAIR Act, Revised Circular A-76, the Competitive Sourcing PMA and this Directive.

F. All Under Secretaries and Designated Officials: as it relates to their areas of responsibility, shall be responsible for compliance with this Directive and shall designate a senior (SES/Flag) official responsible for the implementation of the FAIR Act, OMB Circular A-76 and this Directive. This individual, hereafter referred to as the OE/ Competitive Sourcing and Privatization Official (CSPO) or designee, shall:

1. Act as the central point-of-contact for questions related to the OE's implementation of the FAIR Act, the Revised OMB Circular A-76 and other privatization issues,
2. Coordinate submission of annual FAIR Act inventories to the CPO, in accordance with this Directive and annual DHS and OMB guidance,
3. Develop and submit to the CSO and the CS Executive Board annual Competitive Sourcing Plans and schedules,
4. Designate the OE FAIR Act inventory Challenge Official,
5. Designate the Agency Tender Official (ATO), MEO Team Leader (if appropriate), Human Resource Advisor, Contracting Officer, PWS Team Leader and the Administrative Appeal Authority for that specific or group of Streamlined or Standard A-76 competition(s), conducted in accordance with the Revised OMB Circular A-76 and this Directive,
6. Coordinate and establish resource (FTE and Dollar/budgetary) parameters (both in-house and contract) available to conduct Streamlined and Standard A-76 competitions and with respect to potential capital investments,
7. Within the parameters authorized by the CSPO, CSO and (possibly) the agency Capital Acquisition Plan, make decisions regarding capital investments available to the MEO and to other offerors,
8. Coordinate, review and approve proposed budgetary allocations and savings estimates.

G. The Agency Tender Official(s) (ATO): shall, as provided at Attachment B, paragraph A.8.a. – page B-2 of the Revised OMB Circular A-76, be an inherently governmental agency official assigned to manage specific MEO efforts. When competitions are announced in FedBizOpps, the ATO shall:

1. Form a team of technical and management experts who are capable of preparing organizational, workload and productivity analyses, and of developing an Agency Tender that is responsive to the requirements of a solicitation issued as a part of an A-76 competition,

2. Comply with and inform MEO Team members of applicable statutory and regulatory requirements and restrictions as well as; (a) the requirements of the Circular A-76, (b) the procurement restrictions contained in 41 U.S.C. § 423 and FAR 3.104; and (c) the ethics and standards of conduct rules as advised by agency ethics counselors so as to avoid even the appearance of an improper business practice or a conflict of interest,
3. Provide, manage and approve resources (both in-house and contract) to conduct the assigned A-76 Streamlined or Standard A-76 competition MEO, Management Plan and, in cooperation with the MEO Team Leader, respond to the agency solicitation,
4. Within the parameters authorized by the OE/CSPO, CSO and, when appropriate, the agency Capital Acquisition Plan, make decisions regarding capital investments available to the MEO,
5. Certify the in-house cost estimate as compliant with the Revised OMB Circular A-76, and
6. Sign the Letter of Obligation (LOO) if the function is retained in-house and the incumbent is deemed to be responsible for the execution of the requirements of the LOO.

H. The MEO Team Leader: when appropriate, may be designated to lead the MEO Team and be held responsible for developing the Agency Management Plan, technical proposal and cost estimate and support the ATO in the development, certification and submission of the Agency Tender (offer). The MEO Team Leader should be a part of the function under review and a potentially adversely affected employee, with a direct, vested interest in the outcome of the competition. The ATO, MEO Team Leader, MEO Team members and any other individual with substantive knowledge of the Agency Tender shall respect the proprietary nature of the competition and shall not participate on the PWS Team or on the SSEB. Agency employees who participate on the MEO Team, but do not have decisional authority with respect to the work of the MEO Team or the Agency Tender shall sign non-disclosure agreements and shall retain the A-76 Right-of-First Refusal. The MEO Team Leader shall;

1. Develop recommendations regarding the formation of the Agency Tender for approval by the ATO,
2. At the direction of the ATO, develop the Agency Tender, sign the LOO and be held responsible for the performance of the MEO, and

3. Certify the in-house cost estimate as compliant with the Revised OMB Circular.

I. The Competition Human Resource Advisor (HRA): is the OE's inherently governmental agency official with human resource/personnel experience that is designated by the CSPO. The HRA shall ensure that the OE affords adversely affected employees the Right-of-First-Refusal (FAR 52.207-3) and will establish mechanisms to enforce compliance with the Right-of-First-Refusal. The HRA shall:

1. In cooperation with the CSPO, advise affected agency employees and their representatives of the Competition,
2. Assist the ATO and MEO Team Leader with human resource related requirements during development of the Agency Management Plan and Agency Tender,
3. Coordinate any required labor/employee negotiations/elections,
4. Certify, in writing, that the position descriptions and proposed grade structure of MEO employees are compliant with all related regulations and can be implemented if the Agency Tender is selected. This includes a determination that MEO position descriptions prepared pursuant to the submission of the Agency Tender are or are not comparable to private sector positions that are or are not exempt from economic price adjustments under the Fair Labor Standards Act,
5. Develop employee Transition Strategy Plans early in the competition process to identify employee impacts and the time to accommodate such impacts based on the potential outcomes of the A-76 competition, and
6. If the decision is to convert work to private sector or reimbursable performance, the HRA shall (1) provide the CO a list of adversely affected civilian employees to implement the Right-of-First-Refusal (FAR 52.207-3), and (2) coordinate with the CO to assure full contractor or public reimbursable compliance with the Right-of-First-Refusal.

J. The Contracting Officer (CO): is the inherently governmental agency official at the OE Procurement Executive/Head of Contracting Activity, in cooperation with the headquarters level, with warranted contracting authority and experience that is appointed by the OE Procurement Executive in cooperation with the CPO and the CSPO. The CO shall:

1. In cooperation with the other designated A-76 Competition Officials, determine the type of contract and source selection methodology employed,
2. Ensure full compliance with the FAR, the Revised OMB Circular A-76 and this Directive, to include approval of award fees,
3. Designate the SSA and SSEB,
4. Open bids or offers as required by the solicitation, conduct technical reviews, including the evaluation of each submission by CLIN, price analysis and cost realism, facilitate source selection, and conduct the competition, including the completion of the Streamlined or Standard Cost Comparison Form, coordinate an announcement with the HR advisor and in FEDBIZOPPS,
5. Receive all protests, contests & appeals related to the competition,
6. Award a contract as required under the Circular A-76 and the FAR,
7. Sign and coordinate with the ATO, MEO Team Leader or the official deemed responsible for the performance of the LOO, as appropriate, if the Agency Tender is selected to perform the work described in the solicitation.
8. Coordinate with the ATO or MEO Team Leader, as appropriate, regarding post-award performance and designate a Quality Inspection Official, and
9. Implement the Agency Quality Assurance Surveillance Plan (QASP) and take all appropriate actions related to its findings, in accordance with the LOO.

K. The PWS Team Leader: is the agency official designated by the CSPO, in cooperation with the CO, to be responsible for developing the scope of work, performance measures and related A-76 competition solicitation. The PWS Team Leader should be a functional manager with a detailed knowledge of the technical performance requirements of the function and one who can work with the CO to develop the solicitation and QASP. PWS Team members that do not hold positions in the commercial activity being competed may participate on the SSEB. PWS Team members shall comply with (1) procurement restrictions contained in 41 U.S.C. § 423 and FAR 3.104; (2) ethics and standards of conduct rules, as advised by agency ethics counselors, in order to avoid the appearance of improper business practices, and (3) shall sign a non-disclosure statement. The PWS Team Leader shall:

1. Form a team of technical and management experts familiar with the function under review and who are capable of developing the scope of work, performance measures, and a solicitation for the work in competition. Care must be taken that the solicitation reflects the Government's requirements and not necessarily the historical performance of existing in-house or contract resources,

2. Under the general direction of the CO, the PWS Team leader shall develop the scope of work, performance criteria, organizational structure of the solicitation, the technical or bidder's library and develop the QASP.

L. The Source Selection Authority (SSA): is the inherently governmental agency official designated by the CSPO, in cooperation with the CO to be responsible for conducting the source selection process, in accordance with the FAR, the Revised OMB Circular A-76 and this Directive. The SSA, along with the members of the Source Selection Evaluation Board (SSEB), shall not (a) hold positions in the commercial activity being competed or (b) generally be co-located with the commercial activity under competition. Co-location of the SSA and SSEB with the operational employees being competed should be avoided whenever possible. Neither the SSA or the SSEB shall have direct operational responsibility for the function being competed. The SSA and SSEB shall comply with (1) procurement restrictions contained in 41 U.S.C. § 423 and FAR 3.104; (2) ethics and standards of conduct rules, as advised by agency ethics counselors, in order to avoid the appearance of improper business practices, and (3) shall sign a non-disclosure statement.

M. The Quality Assurance Official (QAO): shall implement the quality assurance surveillance program (QASP), and shall submit reports to the CO and other responsible functional authorities, as appropriate, regarding Agency Tender or contract performance and cost compared to the requirements of the solicitation (LOO/contract).

VI. Policy & Procedures

A. Policy:

1. The Department will secure the Nation's borders, transportation systems and ports; ensure safety in our waters, prepare for and respond to National emergencies; advance and harness science and technology; improve information analysis and infrastructure protection; improve immigration services, and perform other non-homeland security activities. The critical nature of this work requires that managers and employees be focused on the mission and be committed to using all available resources in the most efficient manner possible; bringing to bear the best mix of in-house, contract and reimbursable support resources. Whether it is to inspect cargo, agriculture products, or travelers; secure our waterways or

airspace; respond to emergencies; provide law enforcement services or develop new technologies in support of the Department's mission, it is the policy of the Department of Homeland Security to seek the maximum value for each and every tax dollar.

2. It is, therefore, incumbent upon all managers and employees to incorporate competitive sourcing techniques into all planning for the performance of commercial activities, to include; staffing plans, reorganization planning, the submission and review of proposals under the Investment Review Process (IRB), the submission and review of annual budget requests and the review of commercial activities performed by contract, government and reimbursable personnel.

B. **Performance Evaluations:** Paragraph 4.g. of the Revised OMB Circular A-76, provides that agencies shall require the full accountability of agency competition officials (see paragraph V, above) designated to implement the Circular, including other team members when appropriate. This accountability requires the establishment of performance standards in applicable individual performance evaluations. Each of the officials identified in paragraph V "Responsibilities," shall have the following incorporated into their performance standards and be evaluated accordingly.

"Within his/her scope of influence, the incumbent has established appropriate goals, plans and competition schedules necessary to comply with the FAIR Act, Circular A-76 and this Directive, has ensured that the resources necessary to meet these goals, plans and schedules have been made available and has taken all reasonable actions necessary to complete competitions in accordance with those goals, plans and schedules."

C. **Competitive Sourcing Goals:**

1. The Department is committed to using competition to determine the provider of commercial goods and services. To this end, emphasis is being placed on bringing competition to those commercial goods and services that are amendable to competition and that have not undergone or have not regularly undergone the dynamics of competition. This requirement to compete may be met through competitions with the private sector and/or with other agencies that perform the activity on a reimbursable basis. Over time, the CS Executive Board will establish Departmental goals related to the competition of in-house, contracted and reimbursable work, in accordance with the Revised OMB Circular A-76 process.

2. In accordance with Section 2 (d) of the FAIR Act, "Competition Required," the head of the agency shall review the commercial inventory list and, "when considering the possibility of private sector performance of the function, shall utilize a competitive process to determine who shall perform the work." The determination that a function is or should be properly classified as Reason Codes B, C or D on the annual FAIR Act inventory shall constitute the head of the agency's FAIR Act review of the commercial function. (See Section 6.F.8. for a schedule of the OMB FAIR Inventory Reason Codes). Commercial functions designated Reason Code B, C or D on the annual FAIR Act inventory may then be scheduled for competition, unless otherwise removed from consideration by the CSO.

D. **Privatization Goals:** OEs will consider whether they need to continue to provide or assure the direct provision of commercial activities. In some cases, work may no longer be required to administratively support the DHS mission. Changes in workload, technology, the private sector economy, statutory changes, changes in potential liabilities, the development of industrial (private sector) capabilities or other changes may now permit the Department to eliminate certain functions and costs – with or without continuing regulatory oversight. If such conditions appear to exist, such that the activity (a) may no longer be needed, (b) can be performed by other than federal employees, and (c) can be provided without the provision of a federal service contract relationship, agencies are requested to advise the CSO and consider the possibility of terminating federal performance.

E. **Competitive Sourcing Plans.**

1. The FAIR Act requires that agencies submit their annual inventories to OMB not later than June 30 of each year. OMB is then required to review and consult with the agencies regarding the content of the annual inventories and announce when those inventories are available for public for review. Upon OMB's release of the DHS FAIR Act inventory, OEs will submit updated annual and long-term plans for submitting commercial functions to competition. These plans, with associated resource requirements to conduct the competitions, will reflect a reasonable and consistent effort to submit available commercial FTE to competition.

2. Each OE will submit their annual and long-term competition plans to the CPO for review and coordination not later than May 15 of each year. Each plan will be reviewed by the CS Executive Board and will identify by function and location the FTE that are to be competed, the type of competition (standard or streamlined), the year of competition start (when FedBizOpps notice is issued) and the projected date of completion.

3. OE plans may include the possibility of one or more multi-OE competitions for approval by the CS Executive Board.

4. OE plans may also include plans for the submission of current or projected reimbursable work and work contracted to the private sector to public-private competition in accordance with the Revised OMB Circular A-76.

5. As provided at paragraph 5.c., of the Revised OMB Circular A-76, OE Competitive Sourcing Plans may also include proposals for the establishment of High Performing Organizations (HPO). OEs that seek to develop a HPO as a part of their annual or long-term Competitive Sourcing Plan, shall coordinate with the CPO, in advance, for approval by the CSO. A HPO development proposal shall (a) justify why competition of the commercial activity should be postponed until the completion of a major reorganization, restructuring or technology investment and (b) why such a reorganization, restructuring or technology investment could not be accomplished as a part of the development of a competitive Agency Tender. OEs that opt to develop a HPO should be prepared to identify minimum expected performance improvements and cost reductions in advance of beginning the HPO project

F. *Implementation of the Federal Activities Inventory Reform (FAIR) Act and Attachment A of the Revised OMB Circular A-76.*

1. In accordance with Revised OMB Circular A-76 and annual OMB and DHS guidance, OEs shall submit their annual FAIR Act Inventories to the CPO for review and consultation not later than May 15th of each year. Except as noted by this Directive, the annual OE FAIR inventory submission will include the information specified for all activities performed by government employees. These elements are included in the data entry portion of the DHS Inventory Automated Data Collection System. Included with this submission will be the name, title, telephone number and e-mail address of the CSPO and the official responsible for putting the OE FAIR Act inventory together. Upon review, the CPO shall submit the DHS FAIR Act inventory of commercial activities and the inventory of inherently governmental activities required by the Revised Circular to OMB NLT June 30 of each year.

2. A separate Inventory of inherently governmental and commercial activities performed by military personnel will be submitted to the CPO, as noted in paragraph VI.F.1, above. However, as a matter of national security, DHS will separate all military (USCG) inventories of inherently governmental and commercial activities from the FAIR Act submission, and will make public only aggregate data for both inherently governmental and commercial functions performed by military/uniformed (USCG) personnel.

3. OEs that seek to withhold FAIR Act inventory information from public review, in whole or in part, on the basis of national security interests or if the information is or should be properly classified (see Attachment A. paragraphs A.4. and A.5 – page A-1 of the revised Circular), shall coordinate the request to withhold this information with the CPO for approval by the CSO.
4. OEs will utilize the DHS Inventory Automated Data Collection System available through the DHS On-line Portal
5. OEs shall submit a written justification, approved by the CSPO, for functions designated as inherently governmental, by location and function. Each justification will include a description of the function, the applicable language from the Revised OMB Circular A-76 that defines this function to be inherently governmental, a description of the decisional authority held, the percentage of FTE in the function that is inherently governmental, and a statement that no such work is currently provided by reimbursable agreement or contract, that no such work will be provided by reimbursable agreement except as approved by the CSO, and that no such work will be provided by contract. The determination that work is mission essential is not a part of the definition of an inherently governmental activity.
6. Designation of a function as inherently governmental and its justification will be initially approved by the CSPO. Upon review by the CPO, the designation may be approved by the CPO or submitted to review by the CSO. Upon the rejection of an OE's inherently governmental determination by the CSO, the DHS/OE may ask for review by the CS Executive Board

7. Use of the OMB FAIR inventory Reason Codes.

OMB Reason Code	OMB "Reason"
A.	The Commercial Activity is not appropriate for private sector performance pursuant to a written determination by the CSO.
B.	The Commercial Activity is suitable for a streamlined or standard competition.
C.	The Commercial Activity is the subject of an in-progress streamlined or standard competition.
D.	The Commercial Activity is performed by government personnel as a result of a standard or streamlined competition (or a cost comparison, streamlined cost comparison or direct conversion) within the past five years.
E.	The Commercial Activity is pending an agency approved restructuring decision (e.g., closure, realignment).
F.	The Commercial Activity is performed by government personnel due to a statutory prohibition against private sector performance.

a. DHS use of Reason Code A

OEs may use FAIR Act inventory Reason Code A if the CSPO approves a written justification explaining why this work - though commercial - should not be competed or performed by contract. OE use of Reason Code A is subject to the approval of the CPO and, if necessary, to review by the CSO. The determination to apply Reason Code A is also subject to the challenge and appeal process provided by the FAIR Act. At a minimum, the Reason Code A justification for the continued performance of a commercial activity by government personnel - without competition - shall be site and functionally specific, will demonstrate that no such work is currently performed by contract and will explain why, for example, skilled retired federal employees should not be eligible to perform this work under a contract or reimbursable agreement. OEs that seek to retain commercial work in-house to maintain a minimum residual corps of skilled federal employees, for sea-shore rotational purposes or for other purposes such as career training and advancement, shall (a) identify the requirement, (b) identify the percentage of work at the site that is designated as inherently governmental, (c) the percentage of work performed by contract, (d) the percentage currently performed in-house and (e) the percentage of work that is proposed to be listed under Reason Code A. The justification shall be submitted through the DHS FAIR Act Inventory Data System and, upon approval, will be made available to OMB and the public.

b. DHS use of Reason Code B

Reason Code B applies to all commercial activities that have been found to be available for competition that are not otherwise listed under Reason Code C or Reason Code D.

c. DHS use of Reason Code C

DHS use of Reason Code C will only apply to those commercial activities that are currently engaged in an announced (FedBizOpps) Streamlined or Standard competition, as a part of the OE's approved competitive sourcing plan.

d. DHS use of Reason Code D

DHS use of Reason Code D will identify functions that have been retained in-house as a result of a completed A-76 competition conducted since January 1981. Activities assigned Reason Code D must have a completion date.

e. DHS use of Reason Code E

DHS use of Reason Code E shall be approved, in advance, by the CSPO and the CSO. It requires a written description of the proposed reorganization, the time-frame associated with the reorganization and how the function will be affected, discontinued or otherwise performed, such that the reorganization cannot be accommodated within the context of an MEO and/or a competition.

f. DHS use of Reason Code F

DHS use of Reason Code F shall be limited to commercial activities where performance by government personnel is required due to a statutory provision or due to a statutory prohibition against conversions to private sector performance. Use of this code shall be approved by the Office of the General Counsel, as it involves a specific interpretation of law.

8. The annual FAIR Act inventories of commercial activities are subject to challenge and appeal. The CSPO shall designate an official to review annual FAIR Act Challenges. The CPO is the DHS Appeal Authority for resolution of all DHS FAIR Act appeals.

9. As provided by Attachment A, para. D.2 – page A-4, of the Revised OMB Circular A-76, inventory challenges and appeals shall be limited to (a) the inclusion or exclusion of an activity from the FAIR inventory (classification as inherently governmental or commercial) or (b) the application of reason codes. Challenges and appeals may not argue, for example, that work is inherently governmental and should be excluded and that if that position is rejected the function should be inventoried as Reason Code A. Reason Code A challenges and appeals may address only functions designated by the OE as commercial.

10. Upon completion of the annual FAIR Act challenge and appeal cycle, each OE will submit a summary report of all changes to the annual FAIR Act inventory resulting from Challenges and Appeals to the CPO for coordination and submission to OMB and the Congress. The OE will then make all appropriate changes to the inventory for posting on the DHS website. (See Attachment A, paragraph D.6. of the Revised OMB Circular A-76.)

G. *Implementation of Public-Private Competitions (Attachment B of the Revised OMB Circular A-76).*

1. Preliminary Planning.

a. In accordance with DHS Competitive Sourcing goals, plans and schedules, OEs can and should begin the preliminary planning process outlined by the Revised OMB Circular A-76 as soon as possible. This approach, which is applicable to Streamlined and Standard competitions, should be accomplished prior to announcement of the study in FedBizOpps and will ensure that (1) required goals, plans and schedules are met, (2) that the quality of service will be improved and (3) that expected savings (FTE and Dollars) can be redirected to meet other priorities and budget requirements.

b. In conducting the Preliminary Planning process that may lead to a competition, OEs should: (a) define the general scope of the proposed competition consistent with mission requirements and industry standards, (b) define and begin to collect the historical and projected workload and performance data, (d) define data collection and system requirements and (e) begin to establish the preliminary baseline cost data.

c. Preliminary planning may also include the provision of initial advisories to employees regarding the function(s), scope and schedule of the possible competition and related, town hall meetings. Preliminary performance measures may be developed so as to align with OE organizational strategy and service improvement requirements. Pilot studies to test possible MEO initiatives, productivity enhancements and preliminary wage/grade classification reviews may also begin. The key is to begin to define “what is,” “what could be” and “what is required” while eliminating barriers to innovation.

d. Preliminary planning ends when the agency is ready to make final decisions regarding the scope of the study or “studies,” decisions are ready to be made whether the competition will be conducted as a Streamlined or Standard competition, and the preliminary performance requirements and quality assurance inspection plan is established. As part of Preliminary Planning, OEs may submit requests to extend the 12 month (standard) or 90 day (Streamlined) competition completion requirements, or any other deviation requests. With the completion of these activities the OE is prepared to go forward with the formal FedBizOpps announcement and the designation of the study specific competition officials, e.g., the CSPO, CO, SSA, HRA, ATO, and the MEO and PWS Team Leaders. The PWS and MEO teams shall be formed at or after the public FedBizOpps announcement. All members of the PWS and MEO Teams (in-house or contract) shall be subject to non-disclosure agreements.

2. FedBizOpps Announcements and Study Starts.

a. OE announcements of formal Streamlined and Standard competitions will reflect approved OE competitive sourcing plans and competition schedules. Each announcement will identify the:

- (1) OE and agency involved
- (2) Location or locations involved (number of locations if nation-wide)
- (3) Type of competition (Streamlined or Standard)
- (4) FAIR Act Function Code and OMB functional description

- (5) Estimated in-house FTE and the estimated dollar value of contract support likely to be included in the competition(s)
- (6) The names of the Competition Officials, assigned to this competition, e.g., the CSPO, CO, SSA, HRA, and ATO.
- (7) The start date (same as date of FEDBIZOPPS)
- (8) The projected Solicitation(s) issuance date,
- (9) The expected contract type
- (10) The expected source selection method
- (11) The projected date that all offers and tenders will be due to the CO, and
- (12) The projected end date (completion of the source selection process and announcement of the decision) subject to possible appeals or protests

b. OE FedBizOpps announcements to start or cancel a Streamlined or Standard competition will be coordinated in advance with the CPO. The CPO will consolidate OE announcements, when appropriate, and will coordinate the announcements with the Department's Legislative and Public Affairs office. Cancellations may only be issued with the CSO's written approval.

c. With formal announcement of the competition in FedBizOpps, all members of the PWS and MEO Teams will be designated and subject to the procurement restrictions contained in 41 U.S.C. § 423 and FAR 3.104; and the ethics and standards of conduct rules as advised by agency ethics counselors - specifically tailored to avoid even the appearance of improper business practices or a conflict of interest.

d. Employees, their representatives and OE A-76 support contract employees are eligible to participate on the PWS Team and the MEO Team. No one individual will, however, serve on both the PWS Team and the MEO Team. Labor relations issues regarding participation on the MEO or PWS teams, the standards of performance or the development of the Agency Tender, shall be forwarded to the CPO for coordination.

e. Except for the officials noted in paragraph V, participants may sign non-disclosure agreements – without becoming procurement officials. PWS and MEO Team members shall disclose all contacts and all attempted contacts regarding the competition to the CO.

f. With the FedBizOpps announcement, OEs shall meet with their employees and their representatives to advise them that the agency is now engaged in a formal competition, its scope and schedule. Additional OE town hall meetings may take place and affected managers and employees may be trained in general A-76 requirements. As provided at Attachment D of the Revised OMB Circular A-76, employees shall be advised of the contest/appeal provisions of the Circular and this Directive, including the need to designate a single individual appointed by a majority of directly affected employees as their agent. Clearly, the designated representative shall not be the SSA or on the SSEB. The agency may provide the designated individual A-76 detailed training comparable to training received by the PWS and MEO team members.

g. Public bi-monthly briefings for interested parties (in-house employees who are not on the MEO or PWS Teams and potential private sector offerors) are recommended.

3. Streamlined Competitions (see Attachment B, para. C, page B-4 of the Revised OMB Circular A-76).

a. As a part of the preliminary planning process, OEs shall determine if a function that is available for competition is eligible for being competed in accordance with the streamlined competition procedures provided by the Revised OMB Circular A-76. The FedBizOpps announcement shall declare whether the competition will be performed as a Streamlined or Standard competition.

b. Streamlined Competitions involving 10 or more FTE shall be based upon a certified Most Efficient Organization (MEO).

c. The MEO shall be based upon a PWS that is of sufficient detail to ascertain the scope of work, the Government's performance requirements/standards, and one that can be reasonably used to (a) identify comparable existing contracts or market costs and (b) be converted to a formal solicitation for private sector offers, if a decision to outsource results from the competition. This PWS will be incorporated into the Streamlined Competition Letter of Obligation (LOO) if it is decided to continue to perform the function in-house.

d. The Streamlined competition Agency Tender shall be sealed and provided to the CO (1) after the development of the Streamlined PWS by the CO or PWS Team and (2) prior to the CO's identification, collection or evaluation of any private sector pricing or market data.

e. The in-house certified MEO (Agency Tender) shall then be compared to:

(1) The average cost of not less than four (unless contraindicated and approved by the CPO) existing federal contracts of comparable size, scope and performance requirements. Existing reimbursable agreements may be used if adjusted for the differences between budget costs and fully allocated (A-76 costs).

(2) If other market research based costing techniques are to be used to calculate the expected private sector contract price in a Streamlined competition, a written research plan shall be developed and approved, in advance, by the CSPO. The plan shall be implemented and the results of the plan shall be made available to the public upon request - after FedBizOpps announcement of the Streamlined competition's completion.

(3) Note: OEs will not solicit cost proposals in accordance with the FAR for Streamlined competitions, as is permitted at Attachment B, paragraph c.1.b. – page B-4 of the Revised OMB Circular, unless specifically authorized by the CPO. Agencies that wish to solicit private sector proposals shall do so in accordance with the requirements of a Standard Competition, to include an MEO and a possible appeal of the decision.

f. As noted above, baseline costs shall be developed prior to the FedBizOpps announcement that the agency will conduct a Streamlined competition, sealed and provided to the CO.

g. All DHS competitions are complex. Therefore, all streamlined competitions shall be completed within 135 calendar days from the start date (FEDBIZOPPS Announcement) (see Para C.2 of the Revised OMB Circular A-76).

h. OEs shall not release any documentation regarding a streamlined competition prior to announcement of the decision in FedBizOpps. All documentation related to the development of the MEO, the selection of private sector pricing and/or any market research shall be made available to any interested party after the public (FedBizOpps) announcement only and only upon request.

i. If, upon completion of the Streamlined competition process, the decision is to convert the work to contract performance, the OE shall (a) issue a solicitation for a formal contract award to the private sector or, (b) award a contract using a schedule contract (GSA, MOBIS, GWAC or other).

j. If, upon completion of the Streamlined competition process, the decision is to retain the function in-house, the OE shall award a LOO and retain the function in-house.

k. Note: there is no administrative appeal process for the review of Streamlined Competitions provided by the Revised OMB Circular A-76 or this Directive. If errors are found in a Streamlined competition subsequent to the FedBizOpps announcement of the final Streamlined competition decision, the OE shall (1) will continue to implement the decision, including the issuance of a solicitation or task order and (2) advise the CPO of the error. With CPO approval, consideration may be given to recompeting the function.

4. Standard Competitions (see Attachment B, para. D, page B-6 of the Revised OMB Circular A-76).

a. As a part of the preliminary planning process, OEs shall determine if a function is available for being competed in accordance with the Standard Competition procedures provided by the Revised OMB Circular A-76. OEs shall include in the FedBizOpps announcement what kind of source selection process is to be used.

b. Note that Attachment B of the Revised Circular A-76 at para. D.1 – page B-6 provides that a Standard Competition shall be completed within 12 months, unless the CSO, without delegation, grants a time limit waiver of not more than an additional 6 months for a total of 18 months from the time the public announcement in FEDBIZOPPS is issued. This time limit waiver must be granted in advance and included in the FedBizOpps announcement and must, therefore, be requested and granted as a part of the preliminary planning process.

c. Requests to the CSO for extensions of the 12 month time limit for Standard Competitions shall describe (a) the complexity of the function under review, (b) the reasons that this competition is unique, including the reasons that existing contracts administered by DHS or other agencies cannot serve as a guide, (c) whether or not the extension is based on the expected issuance of a draft PWS or solicitation for agency and public comment (see Attach B para. D.3 – page B-7), and (d) the resources expected to be allocated to the conduct of the competition (in-house and contract). The request should explain why additional resources could not bring the completion timeframe to within the 12 month limit.

d. In accordance with Attachment B of the Revised Circular A-76 at para. D. 3.a.7 – page B-9, requests to exceed the standard 3-5-year performance period shall be prepared to OMB for the endorsement of the CSO.

e. Use of Trade-off Source Selections

Use of the FAR Part 15 Cost Technical Trade-Off (CTTO) source selection process for public-private competitions (see Attachment B, para. 5. b. - page B-13 of the Revised OMB Circular A-76) will be approved by the CSO. OEs wishing to conduct a negotiated acquisition using the Phased or the CTTO Process (see page B-13) will brief the CPO on the approach, the weighting of performance and cost in the selection process, the timing of public and private sector evaluations, and the use of, for example, position descriptions, resumes, subcontracting plans, small business plans, licensing and past performance (see Attachment B, para D.3.a.4 – page B-8).

f. Use of Cost Plus Contracts

Cost plus contracts will be used in the context of competitive sourcing only upon the approval of the CPO. This decision will be made as a part of the preliminary planning process.

g. Use of Indefinite Quantity Contracts (IDIQ)

IDIQ contracts will be used only upon the approval of the CPO. This decision will need to be made as a part of the preliminary planning process. IDIQ techniques may, however, be used as a portion of the contract – not to exceed 50 percent, at the discretion of the CO.

h. Provision of Government Property

In the development of the solicitation, the CO and the PWS Team will need to consider the provision of government furnished property (GFP) and equipment (GFE) and must determine what assets, if any, shall be provided to the Agency Tender but not to other offerors. The provision of government assets that are to be used by the Agency Tender and not provided to the private sector, requires a special justification to the CO that demonstrates that (a) the decision to not provide the asset was in the Government's best interest and (b) that no known competitive advantage was conveyed to the Agency Tender by not making that asset available to other offerors. The justification will be included in the solicitation so that all offers are aware of the distinction and its A-76 costing implications.

i. MEO Subcontracts

(1) Attachment B, paragraph D.a (1) (a) -page B-10 of the Revised OMB Circular A-76 provides that "Agencies shall not include new MEO subcontracts that would result in the conversion of work performed by government employees." Conversion to an MEO subcontract is permissible, however, if (a) a Streamlined comparison, conducted by the MEO Team in accordance with this Circular, determines that it would be more cost effective to outsource the work element, and (b) the ATO certifies that the MEO conversion serves to improve the overall competitive position of the Agency Tender.

(2) The completion of a Streamlined Competition conducted as a part of a larger Standard competition is not subject to appeal.

(3) Pursuant to Attachment B, para. D.4 a(1) - page B-10 of the Revised OMB Circular A-76, the Government may also submit conditional subcontract plans and price estimates if the award of a MEO subcontract is conditional upon the selection of the Agency Tender. This may be appropriate for new or expanded requirements included in the scope of an A-76 competition or due to conversions authorized in paragraph VI.G.4.i(1), above

j. Bid Structure

(1) The Revised OMB Circular A-76 changed the way the Agency Tender is to be submitted to the CO. Except for the provisions related to the government's submission of subcontracting plans, employee certifications and past performance information in a CTTO Source Selection, (see Attachment B, para D.3.a.4 – page B-8 and Attachment B, para. D.4.a (1) - page B-10, the Agency Tender is required to submit its tender in accordance with the bid structures (CLINs) and other requirements of the solicitation applicable to private sector offers. Simple submission of the Management Plan, Technical Performance Plan and the Cost Comparison Form is not sufficient and shall not be considered responsive to the solicitation.

(2) The ATO (or MEO Team Leader, if appropriate) shall submit the Agency Tender in accordance with the CLIN and bid structure of the solicitation. In addition, a summary SCCF shall be prepared that roles up all CLIN estimates, calculated in accordance with the costing requirements of the Circular.

k. Use of Military Personnel

(1) The United States Coast Guard (USCG) is authorized to include both existing military and existing civilian personnel as a part of an Agency Tender in either Streamlined or Standard competitions. If retained in-house, the MEO relationships between military and civilian employees and with potential MEO contract support will be implemented. If the performance decision is to convert to contract or reimbursable performance, the "contract" offer will be implemented and military personnel currently assigned as a part of the MEO will be reassigned.

(2) Commercial functions performed by USCG military personnel may be converted directly to civilian performance or to contract performance. If a decision is made to convert USCG military personnel directly to contract or to civilian performance, the military personnel currently assigned as a part of the MEO will be reassigned.

(3) Commercial functions performed by USCG military personnel may also be converted directly to civilian performance or to contract performance as a part of a larger Agency Tender (MEO). If a decision is made to convert USCG military personnel directly to contract or to civilian performance, the military personnel currently assigned as a part of the MEO will be reassigned.

5. No Satisfactory Private Sector or Public Reimbursable Sources.

a. In accordance with attachment B, para D. 4.d., - page B-12 of the Revised OMB Circular A-76, if there are no satisfactory private sector or public reimbursable offers/tenders to the solicitation, the CO shall (a) leave the Agency Tender sealed and retain it, (b) consult with actual or prospective offerors to determine the reasons and submit a report on the findings directly to the OE Procurement Executive and CPO.

b. The OE Procurement Executive and CPO shall evaluate the CO's report and determine if the solicitation should be revised or if the Agency Tender should be opened and evaluated to see that it is responsive to the solicitation. If the determination is to revise the solicitation, the CPO may be required to notify OMB of any change in schedule. The Agency Tender shall then be returned to the ATO/MEO Team Leader for revision in accordance with the revised solicitation. If the determination is to open the Agency Tender and if the Agency Tender is responsive to the solicitation, the CO shall proceed to award the LOO.

6. Administrative Appeals for Standard Competitions.

a. Procurement Sensitivity and the Release of Information

(1) No information regarding the Agency Tender or any other offer is to be made available to the public, except in accordance with Attachment B, para D.4.a.4 – page B-11 and Attachment B, para. D.4 e – page B-18 of the Revised OMB Circular A-76.

(2) Until all “contests” are completed, only the legal agents representing adversely affected employees are to have access to any information and only if that information is not otherwise proprietary information that was submitted by the private sector or in an existing MEO subcontract. Upon completion of any “contests” all information related to the Agency Tender shall be made available to the public upon request, except for proprietary information contained in an existing MEO subcontract.

(3) Existing or other performance information – unless determined to be procurement sensitive to the Agency Tender by the CO - shall be made available through a bidder's library, a technical performance library or other technical exhibits, prior to the date established in the solicitation for the submission of offers/tender.

(4) OEs are not required to provide original research or any special reports to interested parties - before the submission of offers. Special reports or analyses generated in support of the efforts of the MEO Team shall not be made available to the public until the contest period begins and as noted paragraph VI.G.6.a(1), above. Special reports or analyses generated in support of the efforts of the PWS Team and are designed to communicate the scope, size or complexity of the function shall be made available to all offerors/Tenders.

(5) As provided at Attachment B, Para. F – page B-20 of the Revised OMB Circular A-76, the pursuit of a contest by a directly interested party and the resolution of such contests by the agency shall be governed by the procedures of FAR Subpart 33.103.

(6) As a part of the FedBizOpps Standard competition source selection announcement, (after completion of the competition and the SCCF) the CO shall advise all interested parties to submit written questions and concerns (protests) regarding the source selection to the CO in accordance with FAR 33.103. Protests shall include:

- (a) The Name, address, fax and telephone numbers of the protester.
- (b) The Name, address, fax and telephone numbers of the protester's Legal Counsel.
- (c) Solicitation or contract number.
- (d) A detailed statement of the legal and/or factual grounds for the protest (including compliance with the Circular), to include a description of resulting prejudice to the protester.
- (e) Copies of relevant documents.
- (f) Requested ruling(s) by the agency.
- (g) Statement as to the form of relief requested.
- (h) All information establishing that the protester is an interested party for the purpose of filing a protest.

(i) All information establishing the timeliness of the protest.

(7) In an effort to expeditiously resolve protests, the CO may arrange for a hearing to address all questions submitted within 10 days of the submission of the protest. The CSPO shall appoint an independent headquarters OE or Equivalent Hearing/Appeals Examiner at a level consistent with the size and complexity of the competition, but not less than one seniority level above the ATO.

(8) Consistent with Attachment B, para D.4.a.4 – page B-11 and attachment B, para. D.4 e – page B-18 of the Revised OMB Circular A-76, DHS procurement officials, legal agents for the interested parties and other directly affected parties accepted by the CO and who have signed non-disclosure agreements may attend this hearing.

(9) Within 20 calendar days of the receipt of a protest – whether or not a hearing was held, the headquarters OE or Equivalent Hearing/Appeals Examiner shall submit final written response to all issues, including a determination of actions to be taken by the CO. Any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a) (3)).

H. *Calculations of Public-Private Competition Costs (Attachment C of the Revised OMB Circular A-76).*

1. Baseline Costs.

Pursuant to Attachment B, para A.4.e B-1 of the Revised OMB Circular A-76, OEs are required to determine the activity's baseline costs, as performed by the incumbent service provider, prior to the FedBizOpps competition commencement announcement. These costs should not reflect any pilot studies or other changes developed as a part of preliminary planning or the Agency Tender. Agencies are required to calculate Baseline cost estimates in accordance with Attachment C.

2. Costs of Conducting the Competition.

The cost of conducting a streamlined or standard competition is not to be included in the competition for purposes of determining who will perform the commercial work (see Attachment C para. A.4.-page C-2, of the Revised OMB Circular A-76.

3. Phase-in Costs.

As provided at Attachment C, para. A.8. – page C-2 of the Revised OMB Circular A-76, OEs shall include phase-in and phase-out requirements in the solicitation (a separate CLIN for this item should be considered) and in the Agency Tender's cost estimates. Phase in/out costs are generally one-time costs necessitated by the Phase-in/out Plans submitted to the CO and the SSEB that are above and beyond the Agency Tender's cost of performance for the first period of performance. These costs may include transitional training and coordination between the incumbent and the follow-on service provider and other special efforts to mitigate adverse impacts.

4. Calculating the USCG Composite pay Rates and Fringe Factors for Military Personnel.

The USCG will develop an adjustment factor to accommodate the inclusion of military positions in the Agency Tender. This factor will be submitted to the CPO for review and approval.

5. Administration and Inspection Costs for an MEO Letter of Obligation.

OEs shall include in the Agency Tender cost estimates to cover the cost of Quality Control. The CO and the SSEB shall review these cost estimates, as they would a contractor's cost estimate for internal quality control plan sufficiency and cost reasonableness (see Attachment C, para., B.2 c. – page c-7). Quality assurance and inspection conducted by the Government – whether or not the function is retained in-house or by contract – is a wash cost and is not added to either the Agency Tender or any other offeror (contract or reimbursable).

6. Civilian Position Pay and Wages.

As Provided at Attachment C, para. B.2.e. – page C-8 of the Revised OMB Circular A-76, agency and public reimbursable sources shall calculate civilian pay and wages for cost estimates using (a) local pay salaries and wages at a rate of step 5 for GS, and step 4 for FWS, positions; (b) the mid-grade, or mid-band and mid-step level for pay-banded or demonstration project positions; (c) the locality pay for the location, or each location in a multi-location competition; and (d) the length of time in grade for each grade in a developmental series, as determined by the HRA. However, if a national-wide competition is being conducted – and the location or locations of performance are not specifically defined in the solicitation, OEs will coordinate with the CPO to determine the appropriate civilian pay scales to be used.

I. **Standard Letter of Obligation (LOO).**

The Letter of Obligation (LOO) – like any other contract - shall be signed by the CO and addressed to the agency official who submitted the Agency Tender and is deemed to be responsible for the performance of the Agency Tender. In some cases this may be the Agency Tender Official (ATO) and in other cases this may be the MEO Team Leader. A standard DHS sample LOO follows:

Letterhead

From: (Insert CO name, title)

To: (Insert name, title and contact information)

Re: A-76 Competition Name (function) and solicitation information

This Letter of Obligation is issued pursuant to the provisions of Attachment B, paragraphs C.3.d. (2) and D.6.f. (3) of the Revised OMB Circular A-76 and applies to the work described in solicitation (insert RFP No.) for the performance of (insert commercial activity function code(s) and description(s)) at (insert agency and location(s)). The Circular A-76 makes clear that a Letter of Obligation (LOO) is intended to be the equivalent of a formal contract award to a Federal entity resulting from the completion of an A-76 competition. It provides a written record of the fact that the Agency Tender submitted on (date) has won the (Streamlined or Standard) A-76 competition included in the FedBizOpps announcement (Date and number) and the above solicitation and is now obligated to perform to the prescribed standards of the solicitation at the costs submitted with the Agency Tender.

As the individual responsible for the development, submission and implementation of the stated Agency Tender and for the operational performance of functions articulated in the solicitation, this letter shall serve to inform you of the Government's final decision and your obligation to perform within the following requirements:

1. The Agency Tender is obligated to perform the services and provide the products required in Section C of the RFP.
2. The Agency Tender is obligated to complete the workload specified in the RFP.
3. The Agency Tender is obligated to perform at the quality and timeliness standards specified in the RFP.

4. The Agency Tender is obligated to commence performance in accordance with the timelines specified in the RFP
5. The Agency Tender is obligated to perform in accordance with the proposed organization, staffing levels (number and grades), processes (including quality control) and costs identified in the Agency Tender.
6. The Agency Tender is obligated to support and comply with the Government's performance monitoring activities, including quality assurance, maintenance of "contract" files, recording actual costs, documentation of past performance, and other government reports.
7. The Government will comply with FAR 17.207 to determine when to exercise option periods for performance.
8. The Government will comply with FAR Part 49 to notify the MEO of poor performance, a termination decision for failure to perform or a decision to resubmit the function to competition.

You are hereby obligated to notify me or my designated representative of any changed conditions that would warrant material changes in the statement of work, changes in workload, performance quality or cost. The attachments to this letter include the specific RFP requirements and Agency Tender proposal data that are considered to be part of the terms and conditions of this Letter of Obligation.

(Insert Name, organization and contact information) is appointed as the Contracting Officer's Technical Representative (COTR) for this LOO. Please communicate directly with the COTR in connection to any issues with this letter, transition or performance. You must inform the COTR of: (1) an alternate for your position, (2) any change in your status in relationship to the MEO and (3) name any replacement or co-official that is appointed.