

CHAPTER 2. PERFORMANCE OF COMMERCIAL ACTIVITIES

- 2-1 POLICY. This chapter establishes Departmental responsibilities for implementing OMB Circular A-76. It supplements and is to be used in conjunction with OMB Circular A-76, the A-76 Revised Supplemental Handbook, OFPP Policy Letter 92-1, "Inherently Governmental Functions," and FAR Subparts 7.3 and 7.5.
- 2-2 BACKGROUND. Many of the commercial-type services and products used by the Government are available from commercial sources. When the Government produces goods and services for its own use, which are identical to those available in the private sector, it is, in effect, competing with private sector sources. OMB Circular A-76 "Performance of Commercial Activities," dated August 4, 1983, requires that the Government rely on the private sector for needed commercial products and services whenever it is more economical to do so. A-76 also requires that each Executive Department conduct "A-76 reviews" to help when deciding between performing these services in-house and obtaining them through procurement contracts. However, OFPP Policy Letter 92-1 and FAR Subpart 7.5 prohibit the use of service contracts for the performance of inherently governmental functions (see FAR Subpart 7.5) and provide additional guidance on which types of services may be obtained by contract and how such services should be acquired by HUD.
- 2-3 RESPONSIBILITIES.
- A. The Chief Financial Officer (CFO) has overall responsibility for managing the implementation of OMB Circular A-76. This includes coordinating with affected Departmental offices to establish policies, responsibilities, authorities, and procedures necessary to ensure that the Department effectively implements and complies with A-76. The CFO is responsible for:
1. Providing staff support for the overall management of the A-76 program in HUD.
 2. Developing and implementing the policies, plans, responsibilities, procedures, incentives, controls, and other management actions needed to conduct and implement an effective A-76 review program.
 3. Monitoring, coordinating, and/or initiating actions and reporting requirements necessary to: develop commercial activity inventories; schedule and complete reviews; conduct cost comparisons; implement decisions; and, otherwise comply with A-76.
 4. Maintaining liaison with and reporting to the Office of Management and Budget (OMB), on matters relating to A-76.

5. Assisting HUD offices in using the Circular and its Revised Supplemental Handbook to conduct A-76 reviews.
 6. Serving as the Department's central point of contact on matters relating to A-76.
 7. Reviewing the inventory of commercial activities to assist in identifying activities that should be added, deleted, or changed.
 8. Providing the Labor Relations Branch of the Office of Human Resources, Office of Administration with a copy of any documentation required by existing labor-management contracts, if a decision is made to contract-out under the Circular.
 9. Notifying the affected program manager of any known concerns or priorities of HUD's OMB budget examiners with respect to A-76 reviews.
 10. Identifying planned A-76 reviews in proposed budget submissions as required by OMB Circulars A-76 and A-11.
- B. Contracting Officers within the OCPO and the Field Contracting Operations are responsible for conducting the procurement aspects of the A-76 process. They shall process the request for contract services in accordance with conventional contracting procedures except for those differences specified in FAR Subpart 7.3. Contracting Officers and the program offices have a joint responsibility to ensure the confidentiality of the in-house cost estimate. The confidentiality of both the in-house cost estimate and the bids in sealed bidding cost comparison studies shall be maintained until the time of public disclosure to ensure that they are completely independent. For cost comparison studies conducted using negotiation, confidentiality and independence shall be maintained until completion of negotiations, selection of the most advantageous offer, and completion of the cost-comparison process.
- C. The Office of Human Resources, Office of Administration, is responsible for ensuring that the Department's obligations under Part I, Chapter 1, Paragraph H of the A-76 Revised Supplemental Handbook, which relate to personnel considerations, are satisfied.
- D. Each POH is responsible for the following:
1. Complying with the provisions of A-76, its Revised Supplemental Handbook, and this chapter.
 2. Conducting A-76 reviews of commercial activities under his/her control when required by the Circular.

3. Designating an official to serve as the organization's A-76 Coordinator and central point of contact on all matters relating to the Circular. This official will be responsible for developing the inventory for his/her organization, ensuring that A-76 reviews are carried out in accordance with this chapter and OMB Circular A-76 and its Revised Supplemental Handbook, and generally ensuring compliance therewith for his/her respective organization.
4. Ensuring preparation of an in-house estimate which is audited, sealed, dated, and submitted to the Contracting Officer not later than the time established for receipt of initial offers or bid opening. Personnel who have knowledge of the cost figures set forth in the Government in-house cost estimate shall not participate in the bid opening, or, in negotiated procurements, the entire contractor selection process.
5. Reviewing his/her organization's functions to determine which are commercial activities and which are Government functions.
6. Responding to administrative requirements issued by the CFO for developing commercial activity inventories, scheduling and conducting A-76 reviews, and implementing his/her A-76 decisions.
7. Notifying the CFO of activities that are new starts or expansions as soon as serious consideration is given to establishing or expanding these activities.
8. Appointing an official who will be the A-76 Review Project Leader responsible for the actual conduct of the A-76 review. This person has the direct responsibility for complying with the provisions of this chapter, OMB Circular A-76 and its supplement, other related directives, and the oral and written guidance provided by management relating to the actual conduct of the A-76 review.
9. Ensuring that the A-76 Review Project Leader and his/her team members receive training in conducting A-76 reviews.
10. Making the final decision on Government versus commercial source performance of commercial activities under his/her control, unless otherwise delegated. Such delegation, however, shall not be lower than the Office Director level.

E. The Office of Inspector General is responsible for:

1. Conducting an independent review of each in-house cost estimate and each subsequent cost comparison. Both reviews are conducted to determine whether the documentation is in compliance with Part II of the

A-76 Revised Supplemental Handbook. If significant discrepancies are noted during either review, the discrepancies will be reported to the A-76 Review Project Leader for recommended correction and resubmission;

2. Signing the cost comparison form, as appropriate, after completion of each review; and,
3. Providing advice concerning the preparation of in-house cost estimates and adequacy of supporting documentation.

2-4 APPEAL PROCEDURES.

- A. In order to protect the rights of directly affected parties, the Department will consider appeals relating to determinations resulting from A-76 cost comparisons, or justifications to convert to contract without a cost comparison. Appeals shall be decided by an official organizationally higher than the official who approved the original decision. In most cases, appeals will be decided by the Deputy Secretary.
- B. The Department will handle all A-76 appeals in the manner prescribed by Part I, "Policy Implementation," of the A-76 Revised Supplemental Handbook.
- C. Appeals relating to justifications to convert to contract without a cost comparison must be filed with the Contracting Officer no later than 15 working days after the release of the solicitation.
- D. Appeals resulting from A-76 cost comparisons must be received in accordance with the time frame specified in the solicitation document.
- E. All appeals must be submitted to the Contracting Officer identified in the solicitation. He/she will note the time the appeal is received and forward it to the official organizationally higher than the official who approved the original decision. That official will prepare a written decision that addresses all the relevant issues and affirms or denies the appeal. Such decision shall be final and shall be provided within 30 calendar days from receipt of the appeal by the Contracting Officer.