

OMB Circular A-76

OMB Circular A-76, 10 U.S.C. 2461, governs the role of commercial activities vis-à-vis government contracting. OMB circular A-76 provides the executive branch regulatory policies regarding the performance of commercial activities. The underlying principle of A-76 is that the Government should not compete with the private sector for the performance of commercial activities and should instead rely on the private sector to provide products and services. A-76 requires the Government to perform a cost comparison between performance by the private sector and by in-house resources whenever conversion of performance of a commercial activity is being considered, unless an exception or waiver applies. Exceptions and waivers are issued on a case-by-case basis.

A-76 contracting is generally analyzed in terms of the Department of the Revised Supplemental Handbook (RSH) (March 1996) to OMB Circular A-76. The RSH provides guidance for implementing OMB Circular A-76, including guidance on exceptions, waivers and the preparation of cost estimates. This document is critical to the consideration of converting public functions to private control, also known as privatization. The RSH defines "privatization" as:

Privatization is the process of changing a public entity or enterprise to private control and ownership. It does not include determinations as to whether a support service should be obtained through public or private resources when the Government retains full responsibility and control over the delivery of those services.

RSH, Appendix 1. This definition is consistent with the generally accepted view that privatization is essentially the result of a policy decision, which may be based on factors other than cost savings alone, to relinquish government control to the private sector. However, a major focus of A-76 and RSH is the cost comparison between the Government and the private sector to determine which can perform a particular commercial activity most economically -- a critical process in any outsourcing decision.

Both OMB Circular A-76 and the RSH should be consulted before any decision to outsource is made because they also include requirements to notify Congress under certain situations when civilian employees may be displaced by the privatization action. Likewise, for DOD activities, the DOD Appropriations Act should also be consulted. It usually contains language which prohibits the appropriation of funds for conversion to contractor performance of a DOD activity or function performed by more than 10 DOD civilian employees until a most efficient and cost effective organizational analysis is completed and the results certified and reported to Congress.

