

1 OMB A-76 - Procurement of Commercial Activities

“In the process of governing, the Government should not compete with its citizens.” —OMB Circular A-76

The federal government engages in over \$20 billion worth of commercial service. OMB Circular No. A-76, “Performance of Commercial Activities,” provides the fundamental program for interjecting the competitive market system into government management. The purpose of this program is to ensure that commercial services are obtained from the most cost-effective sources.

The A-76 program applies to all executive agencies and rests on three precepts:

1. *Retain Governmental Functions In-House.* Some functions, such as criminal investigations, and intelligence are inherently governmental functions. They are not in competition with the commercial sector, and are performed by federal employees.
2. *Achievement of Economy and Productivity through Competition.* Whenever commercial sector performance of a government-operated service is feasible, there shall be a comparison of the cost of contracting in a competitive environment against in-house performance to determine who shall do the work.
3. *Rely on the Commercial Sector.* The federal government relies on commercially available sources to provide commercial products and services. The government will not start or carry on any activity if the product or service can be procured more economically from a commercial source.

OMB Circular A-76 defines the basic terms applicable to this type of contracting as follows:

- **Commercial Activity**—One which is operated by a federal executive agency and which provides a product or service which could be obtained from a commercial source.
- **Conversion to Contract**—The changeover of an activity from government performance to performance under contract by a commercial source.
- **Conversion to In-house**—The changeover of an activity from performance under contract to government performance.
- **Commercial Source**—A business or other non-federal activity located in the United States that provides a commercial product or service.
- **Government Function**—A function which is so intimately related to the public interest as to mandate performance by government employees.
- **Cost Comparison**—The process of developing an estimate of the cost of government performance of a commercial activity and comparing it, in accordance with specific guidelines, to the cost to the government for contract performance of the activity.
- **Preferential Procurement Programs**—Certain programs are mandatory source programs such as:
 - Federal Prison Industries (FPI)
 - Workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped
 - Small, minority, and disadvantaged businesses
 - Labor surplus set-asides
 - Awards made under section 8(a) of the Small Business Act

1.1 Commercial Activity Inventory Lists

Government agencies must identify which of their activities and functions are governmental functions and which are commercial activities.

Commercial activities (existing, expansions, and new requirements) are inventoried separately by workyear size, based on a measurement termed a Full-Time Equivalent (FTE). One FTE is the planned use of 2,087 straight time paid hours in a fiscal year. Two inventory lists are developed:

- One for 10 FTEs or less
- One for more than 10 FTEs

Each agency updates its commercial activity inventory lists annually.

Example Categories of Commercial Activities

- Audiovisual Products and Services
- Automatic Data Processing
- Food Services
- Health Services
- Industrial Shops and Services
- Maintenance, Overhaul, Repair, and Testing
- Management Support Services
- Manufacturing, Fabrication, Processing, Testing, and Packaging
- Office and Administrative Services
- Printing and Reproduction
- Real Property
- Security
- Special Studies and Analyses
- Systems Engineering, Installation, Operation, Maintenance, and Testing
- Transportation

Reviews

There are three basic procedures for a decision to contract, based on reviews for:

- Existing government activities and expansions
- New requirements
- Existing contracts

Special Exceptions

Commercial activities have special considerations for retaining the work in-house:

- **No satisfactory commercial source available.** No commercial source is capable of providing the needed product or service, or use of such a source would cause unacceptable delay or disrupting of an essential program.
- **National Defense.** The Secretary of Defense has the authority to exempt critical commercial activities required for national defense reasons.
- **Patient Care.** Decisions to retain in-house commercial activities at hospitals may be made for the “best interests of direct patient care.”
- **Lower Cost.** If a cost comparison demonstrates that the government can operate at a lower cost, the commercial activity may be retained in-house.

1.2 Procurements under OMB Circular A-76

Procurements under OMB Circular A-76 are similar to conventional procurements except that a **cost comparison** is often required prior to awarding to a commercial source. In-house costs are developed by the headquarters of the controlling agency and compared to those of the selected contractor after BAFO. The lowest cost source is selected. There are three types of situations for considering procurement from a commercial source.

Figure 1 shows the major exceptions for each type of situation

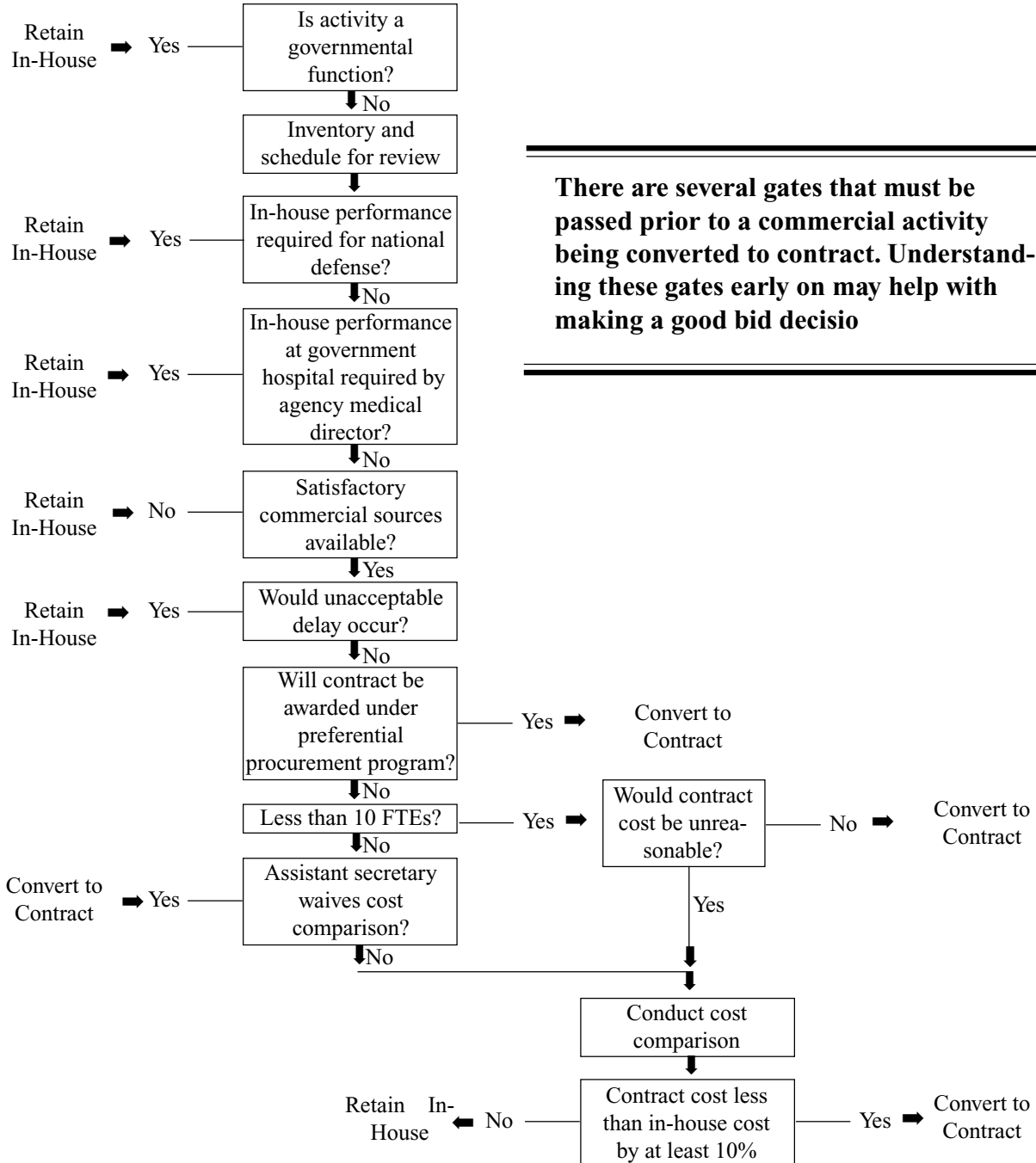
- Conversion to contract for existing government activities and expansions
- Contract for new requirements
- Existing contracts

Figures 2, 3, and 4 on the following two pages identify the decision flow that must be addressed for each procedure.

Consideration	Conversion to Contract for Existing Activities and Expansions	Contract for New Requirements	Existing Contracts
1. An activity which is purely a governmental function	Retain in-house	Retain in-house	Not applicable
2. An activity which is required for national defense purposes	Retain in-house	Retain in-house	Not applicable
3. A medial service which must be performed in-house because it is needed to maintain the quality of direct patient care	Retain in-house	Retain in-house	Not applicable
4. An activity for which there is no satisfactory commercial source to do the work	Retain in-house	Retain in-house	Not applicable
5. Competing the work for commercial contract would cause an unacceptable delay	Retain in-house	Retain in-house	Not applicable
6. An activity which should be contracted to a non-competitive preferential procurement program source in accordance with regulations	Convert to contract	Convert to contract	Not applicable
7. Activity requires less than 10 FTEs	Conduct cost comparison if contract cost is unreasonable	Conduct cost comparison if contract cost is unreasonable	Not applicable
8. Current contract cost is unreasonable or performance is unsatisfactory	Not applicable	Not applicable	Conduct cost comparison if in-house performance is feasible and open to other competition

Figure 1. Exceptional Considerations for A-76 Contracting. *Each contracting circumstance has special considerations prior to considering proposal evaluation and contract award.*

OMB Circular No. A-76, Conversion to Contract for Existing Government Activities and Expansions



There are several gates that must be passed prior to a commercial activity being converted to contract. Understanding these gates early on may help with making a good bid decision

Figure 2. Flow Chart for Converting to Contract. Analysis of existing commercial activity indicates its candidacy for commercial source work. Note the last criterion—contractor work must be at least 10% cheaper than in-house cost.

OMB Circular No. A-76, Contract for New Requirements

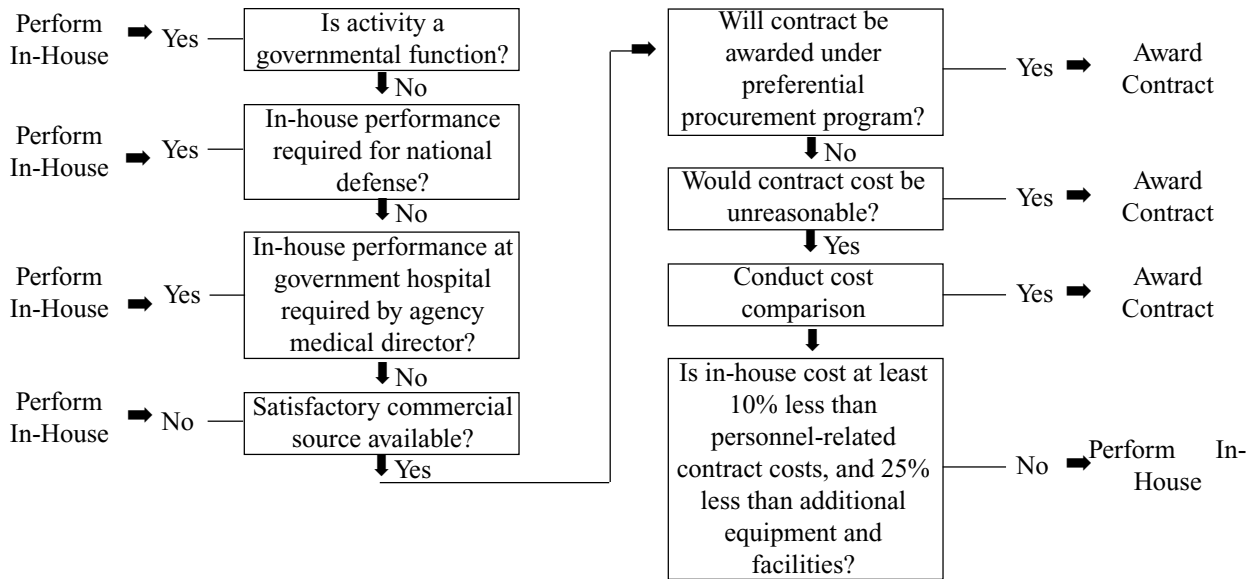


Figure 3. Flow Chart for New Requirement. For new requirements, a contract award may be made without cost comparison, if contract costs are deemed competitive and reasonable.

OMB Circular No. A-76, Existing Contracts

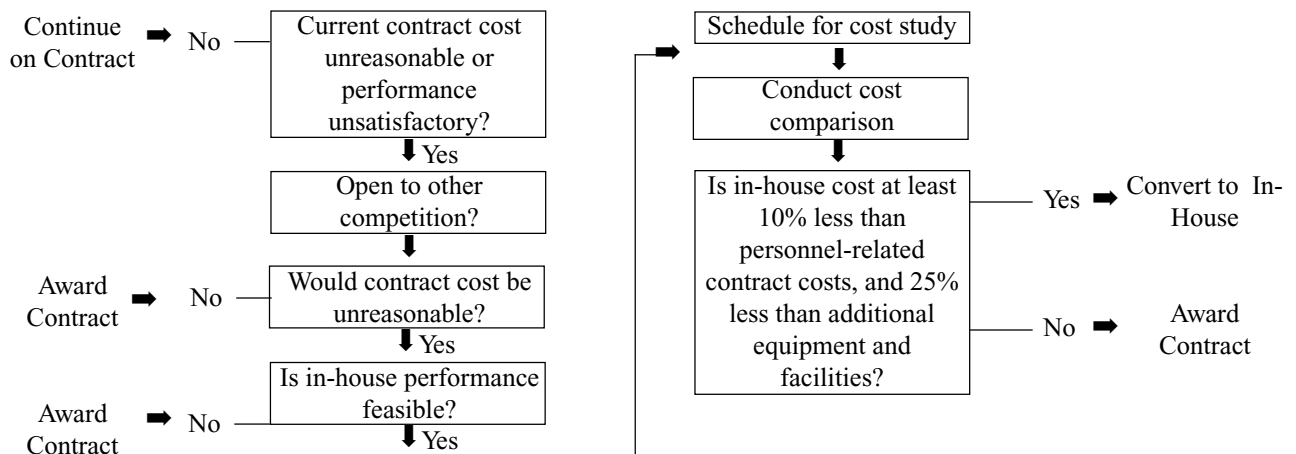


Figure 4. Flow Chart for Existing Contract. Unsatisfactory performance or unreasonable cost can result in opening the bid to other commercial competition or converting to in-house work.

1.3 Costs of A-76 Proposals

Understanding how the government compares in-house costs to contractor costs is essential to your pricing strategy. Price is usually more sensitive for service contracts than product procurements. You must structure your organization and solution to minimize cost while being able to effectively perform on the contract.

Service procurements often have fewer and less significant discriminators than product-oriented contracts. Frequently, service contracts use government facilities and the majority of the existing government employees for “conversion to contract” type of procurements. Often the customer sees little difference between major competitors and then cost becomes the driving discriminator.

Cost comparisons drive selections for procurements under A-76.

Cost comparisons are accomplished for all OMB A-76 contracts, except under special conditions for:

- Small procurements (10 or less FTEs)
- Specific waivers
- Contract cost reasonableness for new requirements

The Supplement to OMB Circular No. A-76 indicates the basic categories for the cost comparisons for both in-house performance and for contract performance.

In-House Performance Costs

1. Personnel costs
2. Material and supply costs
3. Other specifically attributable costs
 - Depreciation
 - Rent
 - Maintenance
 - Utilities
 - Insurance
 - Travel
 - Other
4. Overhead costs
5. Additional costs
6. Total in-house costs

Contract Performance Costs

7. Contract price
8. Contract administration
9. Additional costs
10. One-time conversion costs
11. Gain or loss on disposal transfer of assets
12. Federal income tax (deduct)
13. Total contract costs

During the government’s cost comparison, the contract price is adjusted by cost items 8 through 12.

To perform the cost comparison, the total contract price is further adjusted through a “conversion differential” (10 percent of the personnel costs and 25 percent for any additional equipment and facilities). These cost adjustments for comparison make the minimization of your basic contract price so critical to developing the winning proposal.

Figure 5 on the next page shows a typical Cost Comparison Form as used for A-76 contracts.

Agency _____ Location _____ Function _____

Cost Comparison Form

In-House vs. Contract Performance

<u>In-House Performance Costs</u>	Performance Periods					<u>Refer-</u>
<u>ence</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>Add'l</u>	<u>Total</u>	<u>ence</u>
1. Personnel Costs						
2. Material & Supply Costs						
3. Other Specifically Attributable Costs						
4. Overhead Costs						
5. Additional Costs						
6. Total In-House Costs	_____	_____	_____	_____	_____	
<u>Contract Performance Costs</u>						
7. Contract Price						
8. Contract Administration						
9. Additional Costs						
10. One-time Conversion Costs						
11. Gain or Loss on Disposal Transfer of Assets						
12. Federal Income Tax (Deduct)	()	()	()	()	()	
13. Total Contract Costs	_____	_____	_____	_____	_____	
<u>Decision</u>						
14. Conversion Differential					_____	
15. Total (Line 13 plus Line 14)					_____	
16. Cost Comparison (Line 15 minus Line 6)					_____	
Do the cost comparison calculation only for the total column						
Positive result on Line 16 supports decision to accomplish function in-house.						
17. Cost Comparison Decision (check block)			<input type="checkbox"/> Accomplish In-House <input type="checkbox"/> Accomplish by Contract			
	Name/Title/Organization	Signature	Date			
In-House Estimate Prepared By:	_____	_____	_____			
In-House Estimate Reviewed By:	_____	_____	_____			
Cost Comparison Accomplished By:	_____	_____	_____			
Cost Comparison Reviewed By:	_____	_____	_____			
Cost Comparison Decision Approved By:	_____	_____	_____			

Figure 5. Typical Cost Comparison Form for OMB A-76 Procurements. Line 14, “Conversion Differential” provides a 10% margin for government personnel-related costs and a 25% margin for the risks inherent in government investment in capital assets.

2 Source Selection Organization and Responsibilities

The federal government uses a hierarchical source selection organization, the size of which depends on the size, complexity, and importance of the procurement. The decisionmaker, called the Source Selection Authority, is supported by an advisory council and the evaluation team, which is called the Source Selection Evaluation Board.

To enhance and ensure open competition on a major acquisition, the government uses an elaborate system of checks and balances for source selection. A typical

source selection organization, with adjunct organization for OMB A-76 procurements, is shown in figure 6.

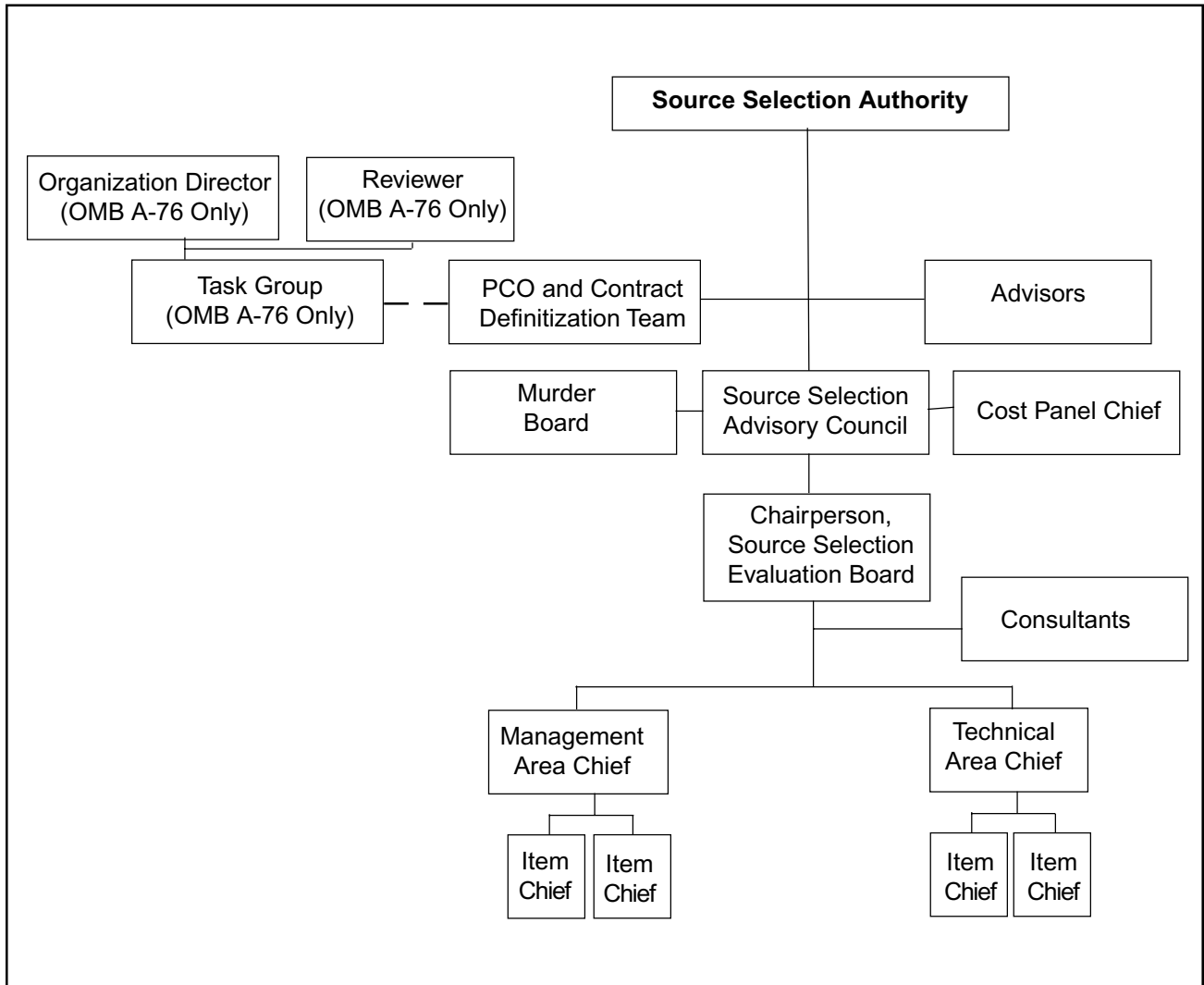


Figure 6. Source Selection Organization The Source Selection Evaluation Board conducts the detailed proposal evaluations. For OMB A-76 procurements, cost comparisons are conducted by the task group, independently reviewed by the reviewer, sealed, and provided to the contracting officer to compare to the selected BAFO contractor.

2.1 Source Selection Authority (SSA)

The Source Selection Authority:

- Is responsible for the acquisition; ensures that source selection is conducted properly and efficiently
- Approves the Acquisition Plan (or Source Selection Plan)
- Appoints the chair and members of the Source Selection Advisory Council (SSAC)
- Makes the competitive range decision
- Makes the final source selection decision
- Approves execution of the contract

2.2 Source Selection Advisory Council (SSAC)

The Source Selection Advisory Council:

- Consists of senior military personnel and civilians who advise the SSA
- Develops the evaluation criteria and assigns weights
- Appoints the chair and members of the Source Selection Evaluation Board (SSEB)
- Approves the RFP
- Reviews and weights SSEB findings
- Compares proposals and prepares its own findings
- Reports its findings to the SSA; may make source selection recommendations

2.3 Organization Director (OMB A-76)

The organization director:

- Establishes task group
- Approves and signs the cost comparison form (CCF) after the public review period and resolution of possible appeals
- Initiates manpower reprogramming actions to reflect the in-house staffing estimate

2.4 Reviewer (OMB A-76)

The reviewer:

- Reviews in-house cost estimate
- Ensures any corrections are made to the CCF
- Signs the CCF

2.5 Task Group (OMB A-76)

The task group:

- Develops the Performance Work Statement, management study, and acquisition plan
- Conducts in-house cost estimate, fills out the Cost Comparison Form (CCF), then gives it to an independent reviewer for review
- Completes CCF, including entering the Best and Final Offer, compares contract versus in-house costs, and determines results of cost comparison

2.6 Primary, Principal, or Procuring Contracting Officer (PCO)

The primary, principal, or procuring contracting officer:

- Oversees the regulatory process; ensures compliance with the FAR, DoD FAR Supplement, OMB Circular A-76, and other relevant regulations
- Acts as staff advisor to the SSA, SSAC, task group, and SSEB
- Often chairs the SSAC (especially in the Air Force)
- Ensures that evaluation criteria set forth in the Acquisition Plan (AP) or Source Selection Plan (SSP) are properly addressed in the RFP
- Ensures that the RFP solicits proposals that permit verification of cost credibility
- Decides whether to conduct a preproposal conference and how to conduct it
- Decides whether to respond to bidder inquiries and how to respond to them
- Makes the competitive range recommendation
- Decides whether to conduct discussions and how to conduct them; chairs the discussions
- Is responsible for contract terms, conditions, and pricing
- Conducts negotiations
- Notifies contractor that contract will be awarded if it is more economical than in-house cost (OMB A-76)
- Makes CCF available for review by affected parties (OMB A-76)

- Prepares the contract award documents
- Announces cost comparison result and makes CCF available for public review (OMB A-76)

2.7 Advisors

Advisors:

- Are government personnel
- Assist the SSA, SSAC, and SSEB but do **not** participate in evaluation
- Usually provide advice on costing, contracting, or legal issues

2.8 Source Selection Evaluation Board (SSEB)

The Source Selection Evaluation Board:

- Consists of a chair (often the program manager) and other military or civilian contracting, technical, and management personnel
- Evaluates each proposal and reports its findings (summary and detailed) to the SSAC
- Is forbidden by law to compare proposals
- Is required to evaluate proposals using only the information available in the proposals

2.9 Consultants

Consultants:

- Are non-government personnel
- Provide expertise in specific (usually technical) areas
- Do **not** evaluate proposals

2.10 OMB A-76 Procurement Unique Steps

The OMB A-76 procurement provides the capability to compare costs between in-house work and contract work to obtain the most efficient and cost-effective operations.

The government agency must conduct a management study that develops the most efficient in-house organizational structure, and then develop a performance work statement and an acquisition plan. Once that study is complete and approved, an in-house cost estimate is based on the management study.

The significant additions to the conventional procurement process for a negotiated procurement, separated by pre-evaluation and post-evaluation steps, are as follows:

Pre-Evaluation Actions

1. The organization director establishes a task group.

The agency responsible for the activity approves or directs a cost comparison study. The agency advises unions, employees, and Congress, if required. The organization director then establishes a task group to carry out the necessary functions.

2. The task group begins developing the Performance Work Statement (PWS), management study, and acquisition plan

The PWS describes the work to be accomplished and is normally located in Section C of an RFP. If required, the task group initiates an Environmental Impact Assessment (EIA).

3. The agency headquarters reviews the PWS.

The task group submits the PWS, the most efficient organization from the management

study, and the acquisition plan to headquarters for review and approval. If an EIA was required, the EIA is submitted to headquarters for review and approval or environmental determination, as required.

4. The agency headquarters approves the PWS, the most efficient organization, and the acquisition plan, and acts on any EIA.

PWS must include all necessary work and is often the most controversial document. It must cover the essentials but not include “nice to have” work that may have been performed by the current government work force.

The most efficient organization is developed from a study of the activity for shaping the most efficient and cost-effective method for the government to perform that activity.

5. The task group completes the in-house cost estimate on the Cost Comparison Form.

The completed CCF is sent to the independent reviewer for review.

6. The reviewer reviews the cost estimate.

The review agency annotates items needing corrections, signs the CCF after any corrections are made, and returns the CCF to the task group.

7. The task group submits the CCF to the contracting officer.

Once the CCF is approved, the task group places it in a sealed envelope and submits it to the contracting officer.

