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Federal Contracting of Commercial Activities: Competitive Sourcing Targets

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Federal Contracting of Commercial Activities: Competitive Sourcing Targets

Summary

The Bush Administration initiated a distinctive program of competitive sourcing in 2001. The thrust of this reform is to subject commercial activities to public-private competition, using the policy and instructions contained in Office of Management and Budget (OMB) Circular A-76. (Commercial activities are defined as federal activities that could be performed by the private sector.) As required by the Federal Activities Inventory Reform (FAIR) Act (P.L. 105-270), agencies compile lists of their commercial activities (and associated full-time equivalents (FTEs)) and submit them to OMB by June 30 of each year.

An important component of the Administration's initiative has been the introduction of goals or targets. In 2001, OMB announced a long-term goal for competitive sourcing: submit 50% of the FTEs listed on FAIR inventories to competition. No deadline accompanied this goal. OMB also established interim goals for agencies: compete 5% in FY2002 and an additional 10% in FY2003. OMB also developed an executive branch management scorecard to rate agency progress on the President's Management's Agenda (PMA), of which competitive sourcing is one component.

In 2002, some critics of the competitive sourcing targets suggested that they were arbitrary. Congressional interest in the competitive sourcing targets, and how they were developed, was reflected in two legislative measures in 2003. Section 647 of P.L. 108-7, Division J (H.J.Res. 2, 108th Congress) required OMB to "provide considered research and sound analysis" in support of its goals or face the possibility that funds made available in the bill (which was the Consolidated Appropriations Resolution) could not be used to apply, enforce, or establish any goal or target for competitive sourcing. The House Committee on Appropriations report (H.Rept. 108-243) that accompanied H.R. 2989, the FY2004 appropriations bill for Transportation, Treasury, and Independent Agencies, directed OMB to submit reports to the Senate and House Appropriations Committees on any new competitive sourcing targets. H.R. 2989, as amended and passed by the Senate, also included two provisions on competitive sourcing, though neither addressed the issue of targets or goals.

An OMB report, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, issued on July 24, 2003, explains competitive sourcing strategy. Although the report did not explicitly state that it was responding to Section 647 of P.L. 108-7, Division J, it did note that OMB had dropped its numerical targets, opted for a collaborative (OMB-agency) process in the development of competition plans, and revised the competitive sourcing criteria for the executive branch management scorecard. A second OMB report, dated September 2003, focused on agency competitive sourcing activities. In December 2003, OMB released guidance on the preparation of agency competition plans. This report will be updated if additional guidance regarding competitive sourcing plans or targets is released.

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Federal Contracting of Commercial Activities: Competitive Sourcing Targets

Introduction

Competitive sourcing, a term coined by the Administration of President George W. Bush, refers to a government-wide initiative to subject activities or functions performed by federal agencies that are deemed commercial to public-private competition. A commercial activity is defined by the Office of Management and Budget (OMB) as “a recurring service that could be performed by the private sector,” whereas “an inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel.”¹ As explained by the Administrator of the Office of Federal Procurement Policy (OFPP) in early 2002:

Competitive sourcing is a means to an end, with the means being competition (generally public-private competition) and the end being better management of our government and better service for our citizens.²

OMB expects competitive sourcing to result in “significant performance improvements,” such as reducing costs, improving accountability, or increasing efficiency.³

¹ U.S. Office of Management and Budget, Circular No. A-76 (Revised), May 29, 2003, pp. D-2 and A-2. Available at [http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf], visited Jan. 3, 2005.

² U.S. Congress, House Committee on Armed Services, Subcommittee on Military Readiness, statement of Angela B. Styles, Administrator, Office of Federal Procurement Policy, unpublished hearing, 107th Cong., 2nd sess., Mar. 13, 2002, available at [<http://armedservices.house.gov/schedules/2002.html#mar02>], visited Jan. 6, 2005, p. 5. Angela Styles resigned as Office of Federal Procurement Policy Administrator effective Sept. 15, 2003. Robert Burton served as interim Administrator until Nov. 21, 2004, when David Savian was confirmed as the Administrator.

³ Testimony of Office of Federal Procurement Policy Administrator Angela Styles, in U.S. Congress, Senate Committee on Governmental Affairs, *Who's Doing Work for the Government?: Monitoring, Accountability and Competition in the Federal and Service Contract Workforce*, hearing, 107th Cong., 2nd sess., Mar. 6, 2002 (Washington: GPO, 2002), p. 49.

The policy and instructions for conducting public-private competitions are found in OMB Circular A-76 and accompanying attachments. Initially issued in 1966, the circular was released in its most recent revised form on May 29, 2003.⁴

Inventories of commercial functions and inherently governmental activities are another component of the competitive sourcing initiative. The Federal Activities Inventory Reform (FAIR) Act of 1998⁵ requires federal agencies to compile lists of their commercial activities and submit them to OMB by June 30 of each year. The first set of inventories was produced in 1999. The requirement for agencies to prepare lists of their inherently governmental activities and to submit them to OMB along with their FAIR inventories was established in an OMB memorandum dated April 3, 2001.⁶

This report examines OMB's competitive sourcing targets and the executive branch management scorecard, and shows how they have changed over time.

Competitive Sourcing Targets

2000 Targets

The Bush Administration's interest in competitive sourcing apparently began during the 2000 presidential campaign. Then-Governor George W. Bush reportedly said in a speech on June 9, 2000:

Today, hundreds of thousands of full-time federal employees perform tasks that could be done by the private sector. I will put as many of these tasks as possible up for competitive bidding. If the private sector can do a better job, it should get the contract.⁷

2001 Targets

Shortly after the inauguration of President Bush, OMB issued two memoranda on government reform, which included references to Circular A-76 competitions. These two documents constituted the initial public announcement of what would later be designated the Administration's competitive sourcing initiative. The first memorandum, dated February 14, 2001, notified agencies and departments that the President envisioned a government that would be citizen-based, results-oriented, and

⁴ See also U.S. Office of Management and Budget, "Performance of Commercial Activities," *Federal Register*, vol. 68, no. 103, May 29, 2003, pp. 32134-32142; CRS Report RL32017, *Circular A-76 Revision 2003: Selected Issues*, by L. Elaine Halchin.

⁵ P.L. 105-270 (Oct. 19, 1998); 112 Stat. 2382; 31 U.S.C. 501 note.

⁶ U.S. Office of Management and Budget, "Year 2001 Inventory of Commercial Activities," Memorandum M-01-16, April 3, 2001, available at [<http://www.whitehouse.gov/omb/memoranda/index.html>], visited Jan. 5, 2005.

⁷ Tichakorn Hill, "OMB Plans to Compete 400,000 More Jobs," *Federal Times*, vol. 37, no. 3, Feb. 19, 2001, p.1.

market-driven. The five government-wide reforms announced in the memorandum were:

delaying management levels to streamline organizations; reducing erroneous payments to beneficiaries and other recipients of government funds; making greater use of performance-based contracts; expanding the application of on-line procurement and other E-Government services and information; and expanding A-76 competitions and [developing] more accurate FAIR Act inventories.⁸

A second memorandum from OMB, issued March 9, 2001, provided additional guidance, setting specific competitive sourcing targets for FY2002. The memorandum directed agencies to compete or convert a minimum of 5% of the full-time equivalents (FTEs)⁹ listed on their FAIR inventories using Circular A-76 procedures.¹⁰ This memorandum also included a long-term goal for competitive sourcing:

The President's commitment is to open at least one-half of the Federal positions listed on the FAIR Act inventory of commercial functions to competition with the private sector.¹¹

No deadline accompanied the long-term goal. In a memorandum prepared for the July 11, 2001, meeting of the President's Management Council, OMB reportedly applied the 50% target to the 2000 FAIR inventories.

Review of the 2000 FAIR Act inventories identified 850,000 civilian Full-Time Equivalents (FTE) performing commercial work. This figure represents 53% of the government's civilian workforce. The President has committed to incrementally opening one-half of these 850,000 FTEs, or 425,000 of the FTE[s] identified on the 2000 FAIR Act inventories, to public-private competition or direct conversion to private sector performance.¹²

⁸ U.S. Office of Management and Budget, "Performance Goals and Management Initiatives for the FY 2002 Budget," Memorandum M-01-11, Feb. 14, 2001, p. 2. Available at [<http://www.whitehouse.gov/omb/memoranda/index.html>], visited Jan. 5, 2005.

⁹ A full-time equivalent (FTE) is "[t]he staffing of Federal civilian employee positions, expressed in terms of annual productive work hours (1,776 [hours]) rather than annual available hours that includes non-productive hours (2,080 hours)" (U.S. Office of Management and Budget, *Circular No. A-76 (Revised)*, p. D-5).

¹⁰ U.S. Office of Management and Budget, "Performance Goals and Management Initiatives for the FY 2002 Budget," Memorandum M-01-15, March 9, 2001, p. 1, available at [<http://www.whitehouse.gov/omb/memoranda/index.html>], visited Jan. 5, 2005. The direct conversion option, which could be used only under certain circumstances, allowed agencies to convert work from the public sector to the private sector without holding a competition between the government and private contractors. Direct conversions are no longer permitted. This alternative was eliminated by OMB when it wrote the 2003 revision to Circular A-76.

¹¹ U.S. Office of Management and Budget, "Performance Goals and Management Initiatives for the FY 2002 Budget," p. 1.

¹² "July 11 OMB Review of Agencies' FAIR Act Lists," *Government Executive*, Daily (continued...)

Congressional testimony provided by the OFPP Administrator in 2002 confirmed these figures:

The aggregate government-wide goal, established at the outset of the initiative, envisions the competition of 425,000 full-time equivalent employees (FTEs) — i.e., 50 percent of commercial FTEs.¹³

In June 2001, a second interim target was established. In correspondence sent to federal agencies, OMB advised agency heads that the competition/conversion target for FY2003 was an additional 10% of the FTEs listed on their FAIR inventories.¹⁴

A third OMB memorandum, which was issued on April 3, 2001, effected a significant change. Whereas FAIR required the compilation of lists of commercial activities, OMB Memorandum M-01-16 directed agencies to prepare inventories of their inherently governmental functions and submit them with their annual FAIR inventories to OMB.¹⁵

In August 2001, President Bush released the *President's Management Agenda — FY 2002* (PMA).¹⁶ The agenda consisted of government management reforms in five areas: competitive sourcing, human capital, financial performance, electronic government (e-government), and budget and performance integration.¹⁷ The executive branch management scorecard, which was introduced in the President's FY2003 budget proposal, and the accompanying standards for success are used to assess and rate an agency's status on the Administration's five government reforms.¹⁸ The ratings are green (successful), yellow (mixed results), and red (unsatisfactory). To achieve a green rating, an agency would have to:

¹² (...continued)

Briefing, July 23, 2001, available at [<http://www.govexec.com/dailyfed/0701/072301p1a.htm>], visited Jan. 5, 2005.

¹³ U.S. Congress, House Committee on Government Reform, Subcommittee on Technology and Procurement Policy, *Oversight Hearing to Review the Findings of the Commercial Activities Panel*, hearing, 107th Cong., 2nd sess., Sept. 27, 2002 (Washington: GPO, 2003), p. 43.

¹⁴ Information provided electronically by the Office of Federal Procurement Policy, Jan. 14, 2003.

¹⁵ U.S. Office of Management and Budget, "Year 2001 Inventory of Commercial Activities," Memorandum M-01-16, April 3, 2001, available at [<http://www.whitehouse.gov/omb/memoranda/index.html>], visited Jan. 5, 2005, p. 1.

¹⁶ U.S. Office of Management and Budget, *The President's Management Agenda — FY 2002*, (Washington: OMB, Aug. 2001).

¹⁷ See CRS Report RS21416, *The President's Management Agenda: A Brief Introduction*, by Virginia A. McMurtry.

¹⁸ *Ibid.*, p. 10.

[Complete] public-private or direct conversion competitions on not less than 50% of the full-time equivalent employees listed on the approved FAIR Act inventories;

[Conduct] competitions and direct conversions ... pursuant to [an] approved competition plan; [and]

[Ensure that] commercial reimbursable support service arrangements between agencies ... [were] competed with the private sector on a recurring basis.¹⁹

An agency that achieved some, but not all, of the green criteria, and avoided any red conditions, would earn a yellow rating. An agency that met one or more of the following criteria would earn a red rating:

Completed public-private or direct conversion competition[s] on less than 15 percent of the full-time equivalent employees listed on the approved FAIR Act inventories.

[Did not conduct] competitions and direct conversions ... in accordance with approved competition plan.

No commercial reimbursable support service arrangements between agencies ... [were] competed with the private sector.²⁰

Information about agency ratings on the competitive sourcing initiative, from 2002 through 2004, is available in Appendix A.

2002 Targets

No additional interim goals were announced in 2002, but two notable developments concerning competitive sourcing targets occurred during the year. Initially, agencies were expected to compete a total of 15% of their commercial FTEs by the end of FY2003. Congressional testimony provided by the then-Administrator of OFPP in March affirmed that this had been the original goal.

We put 15 percent up over 2 years as a goal that we thought was appropriate for almost every department and agency to meet because they had not subjected, as a general proposition — particularly at the civilian agencies — they had never subjected any of these jobs that are clearly commercial in nature to the pressures of competition.²¹

¹⁹ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 1, available at [http://www.whitehouse.gov/omb/procurement/comp_sourcing_072403.pdf], visited Jan. 5, 2005, Attachment B.

²⁰ Ibid.

²¹ Testimony of Office of Federal Procurement Policy Administrator Angela Styles, in U.S. Congress, Committee on Governmental Affairs, *Who's Doing Work for the Government?: Monitoring, Accountability and Competition in the Federal and Service Contract* (continued...)

However, the Administrator also noted that OMB had begun working with agencies to develop goals suited to their particular circumstances.

[W]e sat down with each department and agency over the period of the past, I would say 6 to 9 months, to determine what was an appropriate plan for that agency. There are agencies where it is not appropriate right now for them to be competing 15 percent.²²

Next, at a hearing in September, the Administrator explained that the combined target of 15% was a government-wide goal, not a goal that each agency was required to meet.

I would like to take an opportunity to clarify what is a tremendous amount of confusion and misrepresentation about our goals. First, it's an aggregate 15 percent governmentwide goal. It's not 15 percent at each agency.²³

Criticism of OMB's competitive sourcing targets surfaced in 2002. The primary allegation was that the goals or targets were arbitrary. In March, for example, Senator George V. Voinovich voiced his concerns about OMB's targets.

I am concerned that the benchmarks the administration has adopted for its competitive sourcing are arbitrary and potentially damaging, as were the Clinton Administration's downsizing efforts. What measurement criteria did the administration use to come up with a 50 percent figure? What is the logic behind it?²⁴

In April, the Commercial Activities Panel (CAP) issued its report on Circular A-76 and related issues.²⁵ One of the panel's recommendations was that the government adopt 10 sourcing principles developed by CAP. The sixth principle was: "Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals." While the panel did not comment explicitly about the Administration's competitive sourcing targets, it did explain its rationale for avoiding arbitrary goals.

²¹ (...continued)
Workforce, p. 18.

²² *Ibid.*

²³ U.S. Congress, House Committee on Government Reform, Subcommittee on Technology and Procurement Policy, *Oversight Hearing to Review the Findings of the Commercial Activities Panel*, p. 139.

²⁴ U.S. Congress, Senate Committee on Governmental Affairs, *Who's Doing Work for the Government?: Monitoring, Accountability and Competition in the Federal and Service Contract Workforce*, pp. 19-20.

²⁵ The Commercial Activities Panel (CAP) was established at the direction of Section 832 of P.L. 106-398. Convened in spring 2001 by the Comptroller General, the panel was charged with examining Circular A-76 and FAIR. Members included senior federal government officials, industry and union representatives, and competitive sourcing experts. After a year-long study, CAP released its report, *Improving the Sourcing Decisions of the Government*, on April 30, 2002.

This principle reflects an overall concern about arbitrary numbers driving sourcing policy or specific sourcing decisions. The success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. Any FTE or other numerical goals should be based on considered research and analysis. The use of arbitrary percentage or numerical targets can be counterproductive.²⁶

Later in 2002, the Comptroller General commented, in correspondence and in congressional testimony, on OMB's targets.

I have seen no evidence to indicate that [OMB's] numerical FTE goals were based on considered research and sound analysis.... In addition, I am not aware that OMB's FTE goals took into full account the capacity of agencies, particularly civilian agencies, to conduct public-private competitions.²⁷

... I believe the administration's current quotas, targets, call it whatever you want, violate the [sourcing] principles [recommended by CAP], because they are arbitrary.²⁸

OMB's response to these charges was that the interim goals were an effort to prompt agencies to establish the infrastructure necessary to conduct competitions. At a hearing in September, the then-Administrator of OFPP elaborated on this point.

Let me be clear about the application of this aggregate government-wide goal [of 15%]. It is not intended as an arbitrary quota, such as the ones that were put into effect through most of the 1990s when the workforce was reduced by 324,580 FTEs Like you, Mr. Chairman [Representative Thomas M. Davis], I have always opposed arbitrary FTE cuts and caps. As this Subcommittee has heard me say before, competitive sourcing is not about outsourcing or downsizing the workforce. To the contrary, it is about creating incentives and opportunities for efficiency and innovation through competition.... Thus, as we work with agencies and evaluate their progress, the real issue is whether an agency's plan first builds an infrastructure for public-private competition and then implements competitions over the long-term. While OMB will presume that an agency has built such an infrastructure if it competes 15 percent of its commercial FTEs, we have been careful not to apply this goal in a rigid or arbitrary manner.²⁹

2003 Targets

P.L. 108-7 (H.J.Res. 2, 108th Congress) Consolidated Appropriations Resolution, 2003. Congressional interest in the Administration's competitive

²⁶ Commercial Activities Panel, *Improving the Sourcing Decisions of the Government* (Washington: GAO, 2002), p. 47.

²⁷ David M. Walker, Comptroller General, "Commercial Activities Panel: Use of Numerical Goals," letter to Senator George V. Voinovich, Aug. 9, 2002, GAO-02-1022R, p. 2.

²⁸ U.S. Congress, House Committee on Government Reform, Subcommittee on Technology and Procurement Policy, *Oversight Hearing to Review the Findings of the Commercial Activities Panel*, p. 137.

²⁹ *Ibid.*, pp. 43-44.

sourcing targets, and the question of whether the goals were arbitrary or were the result of research and analysis, were reflected in Section 647 of P.L. 108-7, Division J, the Consolidated Appropriations Resolution, 2003. The legislation was signed by the President on February 20, 2003.³⁰ In an effort to prevent the use of arbitrary quotas and to learn more about OMB's development of its competitive sourcing targets, Congress included this provision in P.L. 108-7:

While nothing in this section shall prevent any agency of the executive branch from subjecting work performed by Federal Government employees or private contractors to public-private competition or conversions, none of the funds made available in this Act may be used by an agency of the executive branch to establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of the executive agency to public-private competitions or for converting such employees or the work performed by such employees to private contractor performance under the Office Management and Budget Circular A-76 or any other administrative regulation, directive, or policy unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency.

The accompanying conference report provided additional guidance:

If any goals, targets, or quotas are established following "considered research and sound analysis" under the terms of this provision [Section 647], the conferees direct the Office of Management and Budget to provide a report to the Committees on Appropriations no later than 30 days following the announcement of those goals, targets, or quotas, specifically detailing the research and sound analysis that was used in reaching the decision.³¹

OMB Projection for Competitive Sourcing. In April 2003, the Administration reportedly revised the executive branch management scorecard criteria and its goals for competitive sourcing and the other four PMA reforms. Clay Johnson III, who was the nominee for the position of Deputy Director for Management at OMB at the time, and was confirmed subsequently, sent a memorandum dated April 17, 2003,³² to the President's Management Council that included projections from the managers of the five government-wide initiatives for their respective reforms. The projections listed revised scorecard criteria and the accomplishments that each manager expected for his or her program by July 1, 2004. The revised criteria for a green rating on the executive branch management scorecard were:

³⁰ P.L. 108-7 (Feb. 20, 2003); 117 Stat. 11, at 474; Consolidated Appropriations Resolution, 2003.

³¹ U.S. Congress, Conference Committee, 2003, *Making Further Continuing Appropriations for the Fiscal Year 2003, and for Other Purposes*, conference report to accompany H.J.Res. 2, H.Rept. 108-10, 108th Cong., 1st sess. (Washington: GPO, 2003), p. 1343.

³² Jason Peckenpugh, "OMB Sets New Targets for Management Agenda," *Government Executive*, Daily Briefing, May 21, 2003, available at [<http://www.govexec.com/dailyfed/0503/052103p1.htm>], visited Jan. 5, 2005.

Agency has initiated plans to complete competitions on 50% of federal government's commercial activities (appropriate percentage and timing determined for each agency individually);

Agency has completed at least 10 standard competitions since January '01;

Agency completes 90% of all standard competitions in 12-month timeframe since June '03;

Agency completes 95% of all streamlined competitions in 90-day timeframe since June '03;

Agency cancels less than 10% of publicly announced standard and streamlined competitions since June '03;

Agency consistently identifies commercial and inherently governmental activities; [and]

All commercial activities exempt from competition have OMB-approved justifications.³³

The revised criteria for yellow were:

Agency has completed the implementation of an OMB approved competition plan for 2002-2003;

Agency has completed one standard competition or has publicly announced standard competitions that exceed approved competition plans for 2002-2003;

Agency completes 75% of streamlined competitions in 90-day timeframe;

Agency cancels less than 20% of publicly announced standard and streamlined competitions; [and]

Agency has initiated plans to consistently identify commercial and inherently governmental inventories throughout the agency.³⁴

The 2004 projection for competitive sourcing included these goals:

[50% of all agencies will have] people, systems and resources ... in place to conduct more than five public/private competitions a year in each agency;

75% of all agencies will have completed competitions within an average of 12 months;

³³ "OMB 'Proud to Be' Assessment for Competitive Sourcing," *Government Executive*, Daily Briefing, Nov. 4, 2003, available at [<http://www.govexec.com/dailyfed/0503/0503p1a.htm>], visited Jan. 5, 2005.

³⁴ *Ibid.*

Competitions for 15% of government's commercial activities will have been initiated or completed;

\$1.5 billion in annual savings from completed competitions will have been realized;

60% of all agencies will have demonstrated improved productivity;

Stretch goal: If DOD commits to subject an additional 130,000 positions to competitions, the civilian agencies will subject additional positions to competition.³⁵

These revised criteria and goals were in place for only a few months before OMB opted for a different approach to competitive sourcing.

OMB's July Report on Competitive Sourcing. In July 2003, OMB announced that it had abandoned its numerical goals and that agencies would develop customized competition plans. However, the Administration's executive branch management scorecard remains in place, and OMB issued new criteria for the competitive sourcing portion. These changes were provided in congressional testimony by the then-OFPP Administrator on July 24, 2003, and were presented in an OMB report, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner* (hereafter referred to as the "competitive sourcing report"), which was released the same day.

In its July 24, 2003 report, OMB described the Administration's "strategy for institutionalizing public-private competition ..." and explained how its approach toward the establishment and application of goals had changed. The strategy includes:

1. Agency-specific competition plans that are *customized*, based on considered research and sound analysis, to address the agency's mission and workforce mix; and will be *continually refined* to reflect changed circumstances, improved insight into agency programs, and experiences with conducting competitions;
2. A dedicated infrastructure within each agency to promote sound and accountable decision making; and
3. Improved processes for the fair and efficient conduct of public-private competition.³⁶

In an explanation of its initial decision to use competitive sourcing goals and its subsequent decision to eliminate these targets, OMB stated:

³⁵ Ibid.

³⁶ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 1. (italics in original)

To begin the process of opening commercial activities identified on workforce inventories to competition, OMB instructed agencies to complete competitions on 5 percent of these activities by the end of fiscal year 2002 and an additional 10 percent by the end of fiscal year 2003. These figures were intended to ensure a level of commitment that would help institutionalize use of the tool within each agency.... With experience, OMB recognized that its initial numerically-based directions were inadequate. The guidance provided no management incentives or disincentives, no process for evaluating progress, and no mechanism for interacting with the agencies to reinforce strengths and correct weaknesses. To address these concerns, OMB created scorecards to measure progress using a traffic-light (i.e., “red-yellow-green”) grading system.... Under the scorecard approach, numerical mandates were converted to incentives: an agency would move from a “red” score to a “yellow” score if it completed competitions for 15% of the total commercial positions listed on their inventories.... The 50% figure was meant to ensure that the dynamics of competition would be brought to bear on a significant portion of commercial activities over time.... Through individual interactions with the agencies to evaluate progress, OMB learned that baselines would need to vary based on mission needs and conditions unique to the agency. Through individual interactions with the agencies to evaluate progress, OMB learned that baselines would need to vary based on mission needs and conditions unique to the agency.³⁷

In congressional testimony provided the same day that the OMB report was issued, the then-Administrator of OFPP described how agencies prepare their competition plans.

The preparation of competition plans begins with the development of workforce inventories, as required by OMB guidance and the Federal Activities Inventory Reform (FAIR) Act. Agencies first differentiate inherently governmental activities from commercial activities.... Agencies then separate commercial activities that are available for competition from those that are not. In deciding whether a commercial activity is inappropriate for potential performance by the private sector, agencies take various factors into consideration, such as the unavailability of private sector expertise, preservation of core competencies, or the need for confidentiality in support of senior level decision making.... Once an agency has identified commercial activities available for competition, they consider, in a disciplined way, which of these might benefit most from comparison with the private sector. Agencies are generally focusing use of public-private competition on commonly available routine commercial services where there are likely to be numerous capable and highly competitive private sector contractors worthy of comparison to agency providers. They also consider factors such as workforce mix, attrition rates, capacity to conduct reviews, the percentage of service contracts, and the strength of the agency’s contract management capabilities.³⁸

³⁷ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, pp. 4-5.

³⁸ U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Then and Now: An Update on the Bush Administration’s Competitive Sourcing Initiative*, hearing, 108th Cong., 1st sess., July 24, 2003 (Washington: GPO, 2004), pp. 59-60.

OMB's competitive sourcing report provided sample profiles of agency competition plans. For each agency listed, the profile identified the number of positions and examples of commercial activities in the competition plan, and also listed examples of commercial activities excluded from the plan. The report also noted that OMB would provide information by September 26, 2003, on agencies it tracks.³⁹

OMB also used its 2003 competitive sourcing report to announce that it had revised the competitive sourcing criteria for the executive branch management scorecard. The first column of **Table 1** is a verbatim listing of OMB's criteria for a "green" rating. The second column sets forth possible questions that could be raised and comments that could be made by agencies seeking to earn a "green" rating.

³⁹ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 6.

Table 1. Revised Scorecard Criteria — Green

Criteria An agency must have:	Analysis
An approved “green” competition plan to compete commercial activities available for competition. ^a	1. Does the criteria for a green competition plan differ substantially from OMB’s initial plan to have agencies compete 50% of their commercial FTEs? 2. What was the rationale for selecting FY2008 as the target date to have competitions publicly announced?
Publicly announced standard competitions in accordance with the schedule outlined in the agency “green” competition plan.	1. Apparently, an agency will have to announce publicly all standard competitions listed in its competitive sourcing plan in order to receive credit for this standard. 2. Streamlined competitions are not included in this standard.
Since January 2001, completed at least 10 competitions (no minimum number of positions required per competition).	1. Does this item refer to standard competitions, streamlined competitions, or both? 2. Why does the measurement period begin January 2001?
In the past year, completed 90% of all standard competitions in a 12-month time frame.	1. An agency that announces and completes only one standard competition within 12 months will receive credit for this criterion. An agency that undertakes 10 standard competitions, but completes only eight within the 12-month time frame will not receive credit for this criterion. 2. How many agencies have sufficient resources and infrastructure to complete 90% of all standard competitions within the time frame? 3. Apparently, an agency will not receive credit for competitions for which the competitive sourcing official has granted a time limit waiver. ^b
In the past year, completed 95% of all streamlined competitions in a 90-day time frame.	1. An agency that announces and completes only one streamlined competition within 90 days will receive credit for this criterion. An agency that undertakes 10 streamlined competitions, but completes only nine within the 90-day time frame will not receive credit for this criterion. 2. How many agencies have sufficient resources and infrastructure to complete 95% of all streamlined competitions

Criteria An agency must have:	Analysis
	<p>within the time frame?</p> <p>3. If an agency decides to create a most efficient organization (MEO) for a function undergoing a streamlined competition, what is the probability that the agency will meet the 90-day deadline and develop a competitive agency tender and most efficient organization (MEO)?^c</p> <p>4. Apparently, an agency will not receive credit for competitions for which the competitive sourcing official has granted a time limit waiver.^d</p>
In the past year, canceled fewer than 10% of publicly announced standard and streamlined competitions.	An agency that announces and completes one standard or one streamlined competition will receive credit for this criterion. An agency that undertakes 10 standard or streamlined competitions, and then cancels a minimum of two will not receive credit for this criterion.
OMB-approved justifications for all categories of commercial activities exempt from competition.	Circular A-76 does not state explicitly that agencies must obtain OMB approval for written justifications for functions assigned reason code A. ^e

Source: U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 1, available at [http://www.whitehouse.gov/omb/procurement/comp_sourcing_072403.pdf], visited Jan. 5, 2005, p. 8.

Notes:

- a. OMB guidance on the preparation of green competition plans was issued December 22, 2003. The document is available at [<http://www.whitehouse.gov/omb/procurement/index.html>], visited Jan. 5, 2005.
- b. A competitive sourcing official (CSO) may grant a time limit waiver of up to six months for a standard competition. Under the 2003 revision to Circular A-76, agencies are required to designate a CSO (an assistant secretary or equivalent level official) who will have responsibility for implementing the circular.. (U.S. Office of Management and Budget, Circular No. A-76 (Revised), May 29, 2003, pp. 1 and B-6, available at [http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf], visited Feb. 10, 2004.)
- c. An agency tender is the government’s response to a solicitation. The MEO is the staffing plan of the agency tender. It is the entity that would perform the work where the government wins the competition. A competitive agency tender (or MEO) is one that has a reasonable chance of being selected to perform the work.
- d. A CSO may grant a time limit waiver of up to 45 days for a streamlined competition (U.S. Office of Management and Budget, *Circular No. A-76 (Revised)*, p. B-5).
- e. *Ibid.*, p. A-3.

The first column of **Table 2** is a verbatim listing of OMB’s criteria for a “yellow” rating. The second column sets forth possible questions that could be raised and comments that could be made by agencies seeking to earn a “yellow” rating.

Table 2. Revised Scorecard Criteria — Yellow

Criteria An agency must have:	Analysis
An OMB approved “yellow” competition plan to compete commercial activities available for competition.	1. Apparently, OMB and each agency will determine jointly how many FTEs must be competed in order for a competition plan to be approved by OMB as a “yellow” plan. ^a What are the other criteria, if any, for an approved yellow plan? 2. What are the components of a yellow plan?
Completed one standard competition or publicly announced standard competitions that exceed the number of positions identified for competition in the agency’s “yellow” competition plan.	Are these two criteria comparable?
In the past two quarters, completed 75% of streamlined competitions in a 90-day time frame.	1. How many agencies have sufficient resources and infrastructure to complete 75% of all streamlined competitions within the 90-day time frame? 2. Why is there no criterion for completing a specific percentage of standard competitions within the 12-month time frame? 3. If an agency decides to create an MEO for a function undergoing a streamlined competition, what is the probability that the agency will meet the 90-day deadline and develop a competitive MEO? ^b 4. Why is the measurement period two quarters instead of one year? (The measurement period for the comparable “green” criterion is one year.) 5. An agency that announces and completes only one streamlined competition within 90 days will receive credit for this criterion. An agency that undertakes 10 streamlined competitions, but completes only 7 within the 90-day time frame, will not receive credit for this criterion. 6. Apparently, an agency will not receive credit for competitions for which the competitive sourcing official has granted a time limit waiver. ^c
In the past two quarters, canceled less than 20% of publicly announced standard and streamlined competitions.	1. An agency that announces and completes only one standard or one streamlined competition will receive credit for this criterion. An agency that

Criteria An agency must have:	Analysis
	<p>undertakes 10 standard or streamlined competitions, and then cancels a minimum of three, will not receive credit for this criterion.</p> <p>2. Why is the measurement period two quarters instead of one year? (The measurement period for the comparable “green” criterion is one year.)</p>

Source: U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 1, available at [http://www.whitehouse.gov/omb/procurement/comp_sourcing_072403.pdf], visited Jan. 5, 2005, pp. 7-8.

Notes:

- a. U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, p. 6.
- b. Under the 2003 revision to Circular A-76, an MEO is required for a standard competition, but it is optional for a streamlined competition.
- c. A competitive sourcing official (CSO) may grant a time limit waiver of up to 45 days for a streamlined competition. Under the 2003 revision to Circular A-76, agencies are required to designate CSO (an assistant secretary or equivalent level official) who will have responsibility for implementing the circular. (U.S. Office of Management and Budget, Circular No. A-76 (Revised), May 29, 2003, pp. B-5 and 1, available at [http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf], visited Jan. 5, 2005).

In summary, OMB’s initial competitive sourcing efforts, particularly those efforts related to targets or goals, sought to institutionalize public-private competition across the federal government and spur the development of sufficient infrastructure within agencies for carrying out competitive sourcing tasks and activities. The initial goals remained in place, with some modification — which lasted briefly, as a result of Clay Johnson III’s April 17 memorandum — until the then-OFPP Administrator’s congressional testimony on July 24, 2003. There does not appear to be any publicly available information that documents whether OMB’s goals were successful in prompting agencies to establish infrastructures sufficient for conducting competitions and performing related tasks. If only some agencies were successful in this area, it remains to be seen what means OMB might use to continue to promote infrastructure development among federal agencies. Another related issue is whether OMB plans to assess the capability of each agency to handle its competitive sourcing workload. While the revised scorecard criteria may provide some insight into these issues, the criteria alone may not be sufficient. The criteria tend to focus on output. However, output-based criteria are not necessarily well-suited to measuring other features or characteristics, such as agency capacity or the quality of competitions and inventories.

H.R. 2989, Transportation, Treasury and Independent Agencies Appropriations Act, 2004. The House Committee on Appropriations report that accompanied the Transportation, Treasury, and Independent Agencies appropriations bill for FY2004 (H.R. 2989, 108th Congress) included a recommendation concerning competitive sourcing targets. The committee report stated:

The statement of the managers accompanying the Treasury and General Government Appropriations Act, 2003 [P.L. 108-7] directed OMB to “provide a report to the Committees on Appropriations no later than 30 days following the announcement of those [competitive sourcing] goals, targets, or quotas, specifically detailing the research and sound analysis that was used in reaching the decision.” Although the 15 percent competitive sourcing target has been reiterated on several occasions since the enactment of that Act, OMB’s position is that the reporting requirement has not been triggered because no new target has been announced. The Committee notes that the 15 percent target is government-wide, and separate targets could be established for individual agencies depending on their circumstances. To the extent that OMB establishes individual agency targets in its internal guidance, the agency is directed, within 30 days of establishing such targets, to submit a report to the House and Senate Committees on Appropriations that indicates each agency’s competitive sourcing target. The report should specifically detail the research and analysis that was used in determining each agency’s individual target, goal or quota. To the extent that such targets change over time, OMB is directed to maintain an up-to-date record of such changes and convey the changes periodically to the House and Senate Committees on Appropriations and the appropriate legislative committees.⁴⁰

H.R. 2989 was enacted as Division F of P.L. 108-199, which came to be known as the Consolidated Appropriations Act for FY2004.⁴¹ The competitive sourcing provisions are found in Section 647. Section 647(a), which apparently applies only to those federal agencies that receive appropriated funds under Division F, requires agencies, for certain types of public-private competitions, to prepare a plan for a most efficient organizations and to take into consideration how the conversion differential would affect the contractor’s cost estimate. Sections 647(a) through (e) are thought to apply government-wide. Section 647(b) requires agency heads to submit annual reports to Congress on their competitive sourcing activities. Required elements include the number of completed competitions; the number of announced, but not yet completed, competitions; the number of FTEs associated with completed and announced competitions; the cost of conducting competitions; estimated savings; actual savings; the projected number of FTEs scheduled to be competed in the next fiscal year; and a description of the agency’s competitive sourcing decision-making process. The initial report is due 120 days after the date of enactment, which was January 23, 2004. The remainder of Section 647 allows agency heads to establish a performance period greater than five years for any agency function that was won by federal employees in a public-private competition; permits agency heads to use appropriated funds for monitoring the performance of any activity that has been subjected to a public-private competition; and requires that any work converted to contractor performance cannot be moved to a location outside the United States if the work had previously been performed by federal government employees within the United States.

⁴⁰ U.S. Congress, House Committee on Appropriations, *Departments of Transportation and Treasury and Independent Agencies Appropriations Bill*, report to accompany H.R. 2989, 108th Cong., 1st sess., H.Rept. 108-243 (Washington: GPO, 2003), pp. 167-168.

⁴¹ H.R. 2673, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY2004.

Providing “Considered Research and Analysis” to Congress. It is unclear whether OMB’s 2003 report qualifies as an appropriate response to the requirement for providing considered research and analysis on competitive sourcing goals to Congress, as required by P.L. 108-7 and reaffirmed by House action on H.R. 2989 in 2003. Without explicitly stating that it was responding to Congress’s request for information, OMB’s report provided an explanation for its initial goals of 5%, 10%, and 50%, and stated that OMB had dropped these goals in favor of targets established through a collaborative process between itself and agencies.⁴² Should the explanation for OMB’s interim and long-term goals be deemed insufficient, the fact that OMB has abandoned these goals could possibly be construed as relieving it of the responsibility to provide considered research and analysis for its original targets.

Nevertheless, it is possible that interest in competitive sourcing targets, and OMB’s role in their development, could continue. Should Congress wish to obtain the research and analysis used to develop agency competition plans, it may need to contact federal agencies and departments, including OMB. Language in OMB’s competitive sourcing report noted that

[a]gencies have developed competition plans using their commercial inventories as a baseline.⁴³ Specifically, agencies have considered, in a disciplined way, which of the commercial activities available for competition might benefit most from comparison with the private sector. Agency decisions have been informed by a wide variety of factors, including, but not limited to: workforce mix, attrition rates, capacity to conduct reviews, the percentage of service contracts, and the strength of the agency’s contract management capabilities.⁴⁴

OMB also acknowledged its role in agency competition plans.

Through individual interactions with the agencies to evaluate progress, OMB learned that baselines would need to vary based on mission needs and conditions unique to the agency.⁴⁵ OMB reviewed all agency baselines and negotiated new baselines with a number of agencies. These negotiations, in combination with the continued broad discretion afforded to agencies to identify appropriate

⁴² However, in a written response to a July 24, 2003 letter from Senator Joseph Lieberman on competitive sourcing targets, OMB Director Joshua B. Bolten stated that OMB’s competitive sourcing report, also dated July 24, 2003, included “facts, rationale, and strategy supporting competitive sourcing.” (Joshua B. Bolten, Director, U.S. Office of Management and Budget, letter to Senator Joseph Lieberman, July 30, 2003.)

⁴³ The use of past tense in this passage suggests that OMB had dropped its initial goals and had begun working with agencies on customized competition plans prior to the release of its July 24, 2003 report.

⁴⁴ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 4.

⁴⁵ The competitive sourcing report did not define or explain its use of the term “baselines.” Apparently, the reference in the second passage concerned the number of FTEs sufficient for an agency to earn a yellow rating on its scorecard. (Information provided by the U.S. Office of Management and Budget by telephone to the author, Aug. 18, 2003.)

commercial activities, have allowed agencies to create customized plans for the successful application of public-private competition.⁴⁶

An agency develops its own competition plan, presumably following the process described in OMB's competitive sourcing report.⁴⁷ However, it appears that this is only an initial plan. The final plan is a product of negotiations between the agency and OMB.⁴⁸ The rationale for a final plan could include, in addition to an agency's documentation, the research and analysis OMB used in making its determination about the contents of the agency's plan and any changes that resulted from OMB-agency negotiations.

The recommendation in the report accompanying H.R. 2989 notes that, in the event that "OMB establishes individual agency targets in its internal guidance," a report on competitive sourcing targets is due to the House and Senate Appropriations Committees. The question is how to interpret "internal guidance." A broad interpretation could include written and verbal guidance, including negotiations between OMB and agencies. A possible benefit of increasing the visibility of OMB's guidance to agencies could be to dispel any concerns that OMB's expectations or instructions are communicated, treated, or perceived as targets. Encouraging or requesting agencies to publicize their competition plans prior to entering into negotiations with OMB also could shed light on this phase of the competition plan process. On the other hand, increased visibility of the process, particularly communications between agencies and OMB, could disrupt the development of agency competition plans and provide an opportunity for outside parties to attempt to influence the process.

OMB's Expectation: Compete 416,000 FTEs. By dropping the 50% target, it would appear OMB had abandoned its goal of ensuring that "the dynamics of competition would be brought to bear on a significant portion of commercial activities."⁴⁹ However, as OMB noted in its July 2003 report, "approximately 26% of the workforce from agencies being tracked under the PMA are engaged in commercial activities that should be available for competition."⁵⁰ This statement could possibly be construed as a prescription for federal government agencies.

The 26% equates to 416,000 FTEs.⁵¹ OMB estimated that there are 751,000 inherently governmental FTEs and 858,000 commercial FTEs. The number of

⁴⁶ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 5.

⁴⁷ *Ibid.*, pp. 3-4.

⁴⁸ *Ibid.*, p. 5.

⁴⁹ U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 5.

⁵⁰ *Ibid.*, p. 3.

⁵¹ In its competitive sourcing report, OMB did not specify whether the figures in its aggregate workforce profile are FTEs, positions, or some other unit of measurement. Because it is standard practice to use FTEs when discussing competitive sourcing issues and policies, it is likely that OMB's figures are FTEs.

commercial FTEs includes 442,000 identified as commercial, but not available for competition, and 416,000 identified as commercial and available for competition.⁵² OMB's report does not identify the source of these figures, and it does not include an explanation of how commercial functions were sorted into the "available" and "not available" categories. FAIR inventories reportedly were the source of these numbers, and reason codes were used to determine whether a commercial function should be classified as available or not available for competition.⁵³

According to OMB's estimate, the number of commercial FTEs available for competition is 416,000. This figure represents 48% of the total number of commercial FTEs, and it is comparable to the original long-term target for competitive sourcing, 50%, which equated to 425,000 FTEs. While OMB elected to eliminate the 50% long-term goal, it apparently expects agencies to compete 100% of the commercial functions identified as available for competition. In a media interview, the then-Administrator of OFPP stated:

What we're looking for is for an agency to have a plan in place — and a pretty aggressive plan — to compete anything that's open to competition. Look at the green standard on the scorecard, which says we contemplate having a plan in place at every department and agency to compete every activity that is commercial in nature and open to competition. To get to green we want pretty significant plans in place to compete any activity that is commercial in nature. That's about 418,000 [jobs].⁵⁴

The Administrator also reportedly said, "We still expect agencies to compete everything open to competition."⁵⁵ This statement might reflect the possibility that the number of commercial activities available for competition could fluctuate from year to year. Freed from blanket targets, such as the initial goals of 5% and 10% that each agency was expected to meet, agency personnel might, in reviewing their commercial and inherently governmental lists, determine that some functions had been erroneously classified. While it is easy to move functions from an inherently governmental inventory to a FAIR inventory, or to shift an activity on a commercial list from reason code A to reason code B, to do the reverse requires more work.

⁵² U.S. Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*, July 2003, p. 3.

⁵³ Information provided by the U.S. Office of Management and Budget by telephone to the author, Aug. 8 and 18, 2003. Commercial functions listed on FAIR inventories are assigned reason codes. A reason code indicates the status of a function with regard to competitive sourcing. Reason code A indicates a function is not suited for private sector performance. Reason code B indicates that a function is appropriate for private sector performance. All six reason codes are described in U.S. Office of Management and Budget, "Year 2003 Inventories of Commercial and Inherently Governmental Activities," Memorandum M-03-09, Mar. 14, 2003, available at [<http://www.whitehouse.gov/omb/memoranda/index.html>], visited Jan. 5, 2005.

⁵⁴ "No Two Agencies Are Alike': Quotas Unworkable, But Competitive Sourcing Still a Priority, Styles Says," *Federal Times.com*. Aug. 4, 2003.

⁵⁵ David Phinney, "OMB Backs Down. Now What? The Plan to Revise Competitive Sourcing Expectations," *Federal Times.com*, Aug. 4, 2003.

When a function is designated as inherently governmental, or is assigned reason code A, a written justification is required. It is possible that this requirement could serve as a deterrent to the reclassification of certain activities. Written justifications are not required for commercial activities that are assigned reason code B, C, D, E, or F.⁵⁶ The challenge and appeal process could result in the shifting of functions from one list, or reason code, to another. For example, a challenge, and subsequent appeal, filed by the American Federation of Government Employees (AFGE) resulted in the Department of Commerce moving its seafood inspection function from the agency's FAIR inventory to the inherently governmental activities list.⁵⁷ It remains to be seen how OMB and agencies might address differences, if any, that arise between fluctuating agency inventories and OMB's estimate or expectation of the number of commercial FTEs that are available for competition.

OMB's September Report on Competitive Sourcing. In September, OMB released a supplement to its July 2003 report. In the supplemental report, OMB described agency competitive sourcing efforts, explained how agency progress is measured, outlined benefits associated with the 2003 revision to the circular, and explained additional initiatives necessary for achieving success in competitive sourcing.⁵⁸

In the report's section on agency progress, OMB again addressed the issue of competitive sourcing targets, and yellow plans and green plans:

By eliminating government-wide goals, OMB hopes to dispel any misunderstanding or perception that competition should be applied in a one-size-fits-all manner to all agency commercial activities.... Focusing on the plans agencies have developed will reinforce the tailored approach to competition that is key for the successful use of competitive sourcing.

No agency is planning to compete all of its commercial activities. However, an agency will be expected to lay out a reasonable plan (e.g., appropriately sequenced and timed) for competing the activities that, after considered analysis, it has concluded are suitable for competition. This plan will constitute the agency's "green" plan on the management scorecard used to measure agency progress and status on PMA initiatives. Agencies continue to have "yellow" plans that serve as an intermediate step to green....

A few agencies have already achieved yellow status. All positions in the yellow plan need not have been competed in order to earn a yellow status. Nor must an agency have competed all positions in a green plan to receive a green status. In

⁵⁶ U.S. Office of Management and Budget, "Year 2003 Inventories of Commercial and Inherently Governmental Activities."

⁵⁷ Amelia Gruber, "Union Pleased with Wins in 2002 FAIR Act Disputes," *Government Executive*, Daily Briefing, Aug. 4, 2003, available at [<http://www.govexec.com/dailyfed/0803/080403a1.htm>], visited Jan. 6, 2005.

⁵⁸ U.S. Office of Management and Budget, *Competitive Sourcing: Reasoned and Responsible Public-Private Competition, Agency Activities*, Sept. 2003, available at [http://www.whitehouse.gov/omb/procurement/comp_sourc_addendum.pdf], visited Jan. 5, 2005.

addition, there are no predetermined times for moving from red to yellow or yellow to green. Timeframes will be based on an agency's analysis of its mission and workforce mix and other factors.⁵⁹

However, it is still not clear how a yellow competitive sourcing plan differs from a green competitive sourcing plan. Restated, do agencies know, and understand, what they must do to transform a yellow competition plan to a green plan?

OMB's September report included two tables that provided information about the 24 agencies and departments that it tracks. **Table 3** shows how many FTEs in each agency are eligible for public-private competitions. Column headings have been modified slightly as an aid to understanding the information presented therein.

⁵⁹ Ibid., pp. 6-7.

Table 3. OMB Estimates of Commercial Activities FTEs at Agencies and Departments Tracked under the PMA^(a)

Agency or Department	Total FTEs^b	Commercial FTEs	Commercial FTEs Available for Competition	Percentage of Total FTEs That Are Commercial	Percentage of Commercial FTEs That Are Available for Competition
Dept. of Agriculture	98,500	46,500	35,600	36%	77%
Dept. of Commerce	26,500	8,400	4,800	18	57
Dept. of Defense	596,600	410,700	270,600	45	65
Dept. of Education	4,700	3,100	2,900	62	94
Dept. of Energy	15,100	7,800	4,700	31	60
Dept. of Health and Human Services	64,900	31,400	11,200	17	36
Dept. of Housing and Urban Development	9,200	8,000	3,600	39	45
Dept. of the Interior	70,200	33,900	23,000	33	68
Dept. of Justice	132,100	10,600	3,400	3	32
Dept. of Labor	16,400	6,200	2,600	16	42
Dept. of State	10,400	2,300	1,000	10	43
Dept. of Transportation	64,600	38,400	11,900	18	31
Dept. of the Treasury	148,100	27,100	18,400	12	68

Agency or Department	Total FTEs^b	Commercial FTEs	Commercial FTEs Available for Competition	Percentage of Total FTEs That Are Commercial	Percentage of Commercial FTEs That Are Available for Competition
Dept. of Veterans Affairs^c	221,500	190,500	7,600	3	4
Environmental Protection Agency	17,400	600	400	2	67
General Services Administration	14,100	6,300	5,200	37	83
National Aeronautics and Space Administration	19,000	7,400	3,400	18	46
National Science Foundation	1,200	500	200	17	40
Office of Personnel Management	3,000	1,700	600	20	35
Small Business Administration	4,200	3,000	2,900	69	97
Smithsonian Institution	4,500	1,300	0	29	0
Social Security Administration	63,900	11,100	4,000	6	36
U.S. Agency for International Development	2,000	600	300	15	50

Agency or Department	Total FTEs ^b	Commercial FTEs	Commercial FTEs Available for Competition	Percentage of Total FTEs That Are Commercial	Percentage of Commercial FTEs That Are Available for Competition
U.S. Army Corps of Engineers (civil) ^d	27,900	23,300	16,500	59	71
Total	1,636,000	880,700	434,800	27	49

Source: U.S. Office of Management and Budget, *Competitive Sourcing: Reasoned and Responsible Public-Private Competition, Agency Activities*, Sept. 2003, available at [http://www.whitehouse.gov/omb/procurement/comp_sourc_addendum.pdf], visited Jan. 5, 2005, p. 10. The column on the right (“Percentage of Commercial FTEs That Are Available for Competition”) and the row of totals were added by the author.

Notes:

- a. In its report, OMB stated that these figures are estimates based on initial 2002 inventories submitted to OMB. Because some agencies and departments submit separate inventories for their Offices of Inspector General (OIGs), these figures may not include OIG inventories. The Department of Homeland Security is not listed because it did not exist when the 2002 inventories were submitted to OMB. (U.S. Office of Management and Budget, *Competitive Sourcing: Reasoned and Responsible Public-Private Competition, Agency Activities*, p. 10.)
- b. In the September report from OMB, there is no description or definition of what makes up the total FTEs. It is likely that this column includes inherently governmental FTEs and commercial FTEs. A full-time equivalent (FTE) is “[t]he staffing of Federal civilian employee positions, expressed in terms of annual productive work hours (1,776 [hours]) rather than annual available hours that includes non-productive hours (2,080 hours).” (U.S. Office of Management and Budget, Circular No. A-76 (Revised), p. D-5.)
- c. The relatively small number of FTEs identified as commercial and available for competition probably is due to the fact that 38 U.S.C. 8110(a)(5) prohibits the Dept. of Veterans Affairs from using funds from three appropriation accounts (medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses) for public-private competitions. The Dept. of Veterans Affairs General Counsel issued a memorandum on April 28, 2003, affirming this prohibition. (Dept. of Veterans Affairs, General Counsel, *Use of Health-Care Accounts and the Revolving Supply Fund to Conduct Competitive-Sourcing Studies of VHA Activities*, Memorandum VAOPGCADV 7-2003, April 28, 2003.)
- d. The Army Corps of Engineers provides services for both the public (for example, environmental management and restoration) and the military (for example, military engineering and construction). The use of the term “civil” in this table indicates the FTEs are associated with work that the Corps does for the public. See U.S. Army Corps of Engineers at [<http://www.usace.army.mil>], visited Jan. 6, 2005.

The aggregate figures presented by OMB in the September report are slightly different from the numbers shown in the July report. The total number of FTEs was 1,609,000 in the July report; it was 1,636,000 in the September document. The number of inherently governmental FTEs increased from 751,000 to 755,300. However, the largest gain occurred among FTEs performing commercial activities. In July, OMB reported there were 858,000 commercial FTEs, of which 416,000 were available for competition. In September, the corresponding figures were 880,700 and 434,800. No explanation was provided for the discrepancy. However, OMB noted, in both reports, that the figures were estimates. Thus, neither set of figures might be accurate, and possibly the numbers could change again. The 2003 commercial activities inventories, which have not been released to the public yet, could yield figures that differ from what OMB has reported.

The percentage of total FTEs that are commercial ranges from a low of 2% (Environmental Protection Agency) to a high of 69% (Small Business Administration). Twenty agencies identified at least 10% of their FTEs as commercial. Three agencies (Department of Education, Small Business Administration, and U.S. Army Corps of Engineers (Civil)) indicated that at least 50% of their FTEs are performing commercial activities. The percentage for the total number of commercial FTES (880,700) was 27%.

Excluding the Smithsonian Institution, which does not have any commercial activities available for competition, the percentage of commercial FTEs that are available for competition ranges from 4% (Department of Veterans Affairs) to 97% (Small Business Administration). Twelve agencies identified at least 50% of their commercial activities as available for competition. Five additional agencies classified 40% to 49% of their commercial activities as available for competition. The aggregate percentage for this category is 49%, which is similar to the 2001 goal of 50%.

As it did in its July report, OMB described a rigorous process that agencies follow in managing their competitive sourcing efforts, including the classification of functions (as commercial or inherently governmental) and the assignment of reason codes to commercial activities.⁶⁰ If agencies' annual FAIR submissions are modifications of the previous year's submissions, then it is possible that the initial inventories, which were submitted in 1999, are the baseline. If this is the case, did civilian agencies in 1999 have the capability, and a sufficient understanding of FAIR and Circular A-76, to undertake a well-informed, thoughtful, strategic review of their activities and the associated FTEs? Verifying that agency employees, and contractors hired to assist in developing inventories, adhere to the process described by OMB would be difficult. Agencies have not publicized the methodology or procedures they use, including research and analysis, to develop their inventories (or their competition plans).

In its September report, OMB also presented profiles of agency competition plans. The report does not explain whether there are any differences between a

⁶⁰ U.S. Office of Management and Budget, *Competitive Sourcing: Reasoned and Responsible Public-Private Competition, Agency Activities*, Sept. 2003, pp. 2-5.

profile and a plan. A profile includes the number of FTEs in an agency competition plan, examples of commercial activities included in the competition plan, and examples of commercial activities excluded from the competition plan. A competition plan might include more detailed information, such as the number of public-private competitions an agency plans to conduct, the location of competitions, the number of FTEs associated with each competition, and a tentative competition schedule.

Table 4 displays the number of positions listed in each agency's competition plan. It is unclear why one table in the OMB report uses the term "FTEs" while the other table refers to "positions." To avoid misrepresenting OMB's information, the following table uses both terms as OMB used them. Because one position does not necessarily equal one FTE, the calculation of percentages might not be completely accurate, but, at a minimum, the figures in the right column are indicative of the percentage of commercial positions that are included in agency competition plans.

Table 4. Number of Positions in Agency Competition Plans

Agency or Department	Number of Positions in Competition Plan^a	Number of FTEs Available for Competition^b	Percentage of Commercial Positions Included in Competition Plans
Dept. of Agriculture	5,822	35,600	16%
Dept. of Commerce	1,203	4,800	25
Dept. of Defense	67,800	270,600	25
Dept. of Education	220	2,900	8
Dept. of Energy	1,180	4,700	25
Dept. of Health and Human Services	2,510	11,200	22
Dept. of Housing and Urban Development	870	3,600	24
Dept. of the Interior	3,041	23,000	13
Dept. of Justice	432	3,400	13
Dept. of Labor	420	2,600	16
Dept. of State	306	1,000	31
Dept. of Transportation	3,029	11,900	25
Dept. of the Treasury	4,523	18,400	25
Dept. of Veterans Affairs	2,500 ^c	7,600	33
Environmental Protection Agency	215	400	54
General Services Administration	734	5,200	14
National Aeronautics and Space Administration	921	3,400	27

Agency or Department	Number of Positions in Competition Plan ^a	Number of FTEs Available for Competition ^b	Percentage of Commercial Positions Included in Competition Plans
National Science Foundation	Plan under review	200	Not available
Office of Personnel Management	284	600	47
Small Business Administration	Plan under review	2,900	Not available
Smithsonian Institution	0	0	0
Social Security Administration	1,691	4,000	42
U.S. Agency for International Development	Plan under review	300	Not available
U.S. Army Corps of Engineers (civil) ^d	5,711	16,500	35
Total	103,412	434,800	24

Source: U.S. Office of Management and Budget, *Competitive Sourcing: Reasoned and Responsible Public-Private Competition, Agency Activities*, Sept. 2003, available at [http://www.whitehouse.gov/omb/procurement/comp_sourc_addendum.pdf], visited Jan. 5, 2005, pp. 10-14. The column on the right (“Percentage of Available Commercial Positions in Competition Plans”) and the row of totals were computed by the author.

Notes:

- a. In its September report, OMB used the term “FTEs” in one table, “positions” in another. To avoid misrepresenting OMB’s information, this table uses both terms as OMB used them.
- b. A full-time equivalent (FTE) is “[t]he staffing of Federal civilian employee positions, expressed in terms of annual productive work hours (1,776 [hours]) rather than annual available hours that includes non-productive hours (2,080 hours).” (U.S. Office of Management and Budget, *Circular No. A-76 (Revised)*, p. D-5.)
- c. The relatively small number of positions included in the Dept. of Veterans Affairs’ competition plan probably is due to the fact that 38 U.S.C. 8110(a)(5) prohibits the department from using funds from three appropriation accounts (medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses) for public-private competitions. The Dept. of Veterans Affairs General Counsel issued a memorandum on April 28, 2003 that affirmed this prohibition. (Dept. of Veterans Affairs, General Counsel, *Use of Health-Care Accounts and the Revolving Supply Fund to Conduct Competitive-Sourcing Studies of VHA Activities*, Memorandum VAOPGCADV 7-2003, April 28, 2003.)
- d. The Army Corps of Engineers provides services for both the public (for example, environmental management and restoration) and the military (for example, military engineering and construction). The use of the term “civil” in this table indicates the FTEs are associated with work that the Corps does for the public. See U.S. Army Corps of Engineers at [<http://www.usace.army.mil>], visited Jan. 6, 2005.

From among the 21 agencies that have completed competition plans, 16 plan to subject to competition at least 15% of the FTEs that are available for competition. Three additional agencies plan to compete 13% or 14% of their commercial activities. Excluding the Smithsonian Institution, which does not have any positions in its competition plan, the lowest percentage is 8 (Department of Education) and the highest percentage is 54 (Environmental Protection Agency).

The OMB report does not explain whether the number of competitions per agency includes new competitions (not yet started), ongoing competitions, or completed competitions, or a combination thereof. Without a list of competitions for each agency, there is no way to know the size of each competition (in terms of number of FTEs), or the geographic locations and particular units or offices (including type(s) of functions) under consideration for public-private competition. Also missing is any guidance or policy on how often agencies will update their competition plans and whether updates will be instigated by the agency, OMB, or through consultation between the two.

The percentage of available commercial positions in competition plans may seem higher than expected, particularly in light of the elimination of the 15% and 50% targets. However, agencies possibly could have decided, despite the elimination of these goals, not to change their competition plans. As reported in *Government Executive*:

It is ... not clear that OMB's move to scrap broad targets will result in fewer job competitions. It seems to have had little, if any, effect so far. After her [July 24, 2003,] announcement, [Angela] Styles [then OFPP Administrator] went to a meeting of the President's Management Council, composed of the deputy secretaries of each Cabinet department. She told them that OMB was willing to renegotiate their initial competitive sourcing plans, designed when the White House was still prodding agencies to compete 15 percent of their jobs deemed "commercial" under the 1998 Federal Activities Inventory Reform (FAIR) Act. But few agencies took her up on the offer. "I haven't had that many [agencies] come back in to talk," she said. "I think the agencies are pretty comfortable with their plans."⁶¹

Possibly, federal government agencies have not taken advantage of the opportunity to revisit their competition targets and plans.

OMB Guidance on Green Competitive Sourcing Plans. In a memorandum dated December 22, 2003, the Deputy Director for Management, OMB, advised agencies on how to prepare a green competition plan.⁶² Developing and implementing "a long-range competition plan [FY2004-FY2008] is a fundamental standard for success in achieving a green rating" on the competitive

⁶¹ Jason Peckenpaugh, "Weighing In on Job Competitions," *Government Executive*, Oct. 2003, p. 74.

⁶² Clay Johnson III, Deputy Director for Management, U.S. Office of Management and Budget, "Development of 'Green' Plans for Competitive Sourcing," memorandum to the President's Management Council, Dec. 22, 2003, available at [<http://www.whitehouse.gov/omb/procurement/index.html>], visited Jan. 5, 2005.

sourcing scorecard. A rationale offered by OMB for having (and implementing) long-term plans is that the information contained therein will “ensure that competitive sourcing is a carefully and regularly considered option for improving the cost-effectiveness and quality of its [agency] commercial operations.”⁶³ The memorandum does not include guidance on how to prepare a yellow competition plan.

A summary of the components, as required by the memorandum, is as follows:

- a. *General decision making process.* Explain the general process the agency uses to determine which commercial activities are competed.
- b. *Activities to be announced for competition.* Identify the activities that the agency is planning to announce for competition in FY2004 (or other period negotiated with OMB).
- c. *Handling of other reason code “B” activities.* For activities that are not identified in item ... b [above], but have been designated as reason code B on the 2003 FAIR Act inventory, identify management’s plan for taking timely and effective advantage of competition.
- d. *Potential constraints.* Identify the most significant factors (up to three) that limit the agency from giving greater consideration to competitive sourcing than is reflected in its plan. Also identify what the agency is doing to minimize these constraints and when it expects to have minimized the constraints.⁶⁴

Additional, detailed guidance is provided in an attachment to the memorandum. No deadline is provided for submission of initial agency competition plans. Updated plans are to be completed by August 1 of each year, and if any changes have occurred, agency management is expected to explain them. OMB’s instructions do allow for an agency to identify (a) functions and associated FTEs that will not be subjected to competition by the end of FY2008 (the agency must provide a rationale for any activities that are excluded from competition plans) and (b) functions, and associated FTEs, that need further study in order to determine whether they should be subjected to competition by the end of FY2008.⁶⁵

The notion of developing a long-term competition plan that includes all agency functions with reason code B is consistent with OMB’s July 2003 and September 2003 competitive sourcing reports. The criteria for long-term competition plans, as described in the December 22, 2003, memorandum, allows agencies to determine which functions and how many FTEs to compete each year (that is, an agency tailors a plan to its particular needs and circumstances), encourages agencies to compete all commercial functions that carry reason code B, and relies on agencies to develop rationales for carrying out public-private competitions. These were significant features of the reports issued by OMB in 2003. The requirement for all commercial

⁶³ Ibid., p. 1.

⁶⁴ Ibid., pp. 2-3 (italics in original).

⁶⁵ Ibid., Attachment A, p. 2.

activities carrying reason code B to be included on long-term competition plans appears to reinforce the expectation that all of these functions eventually will be subjected to public-private competition.

Conclusion

OMB's approach to the establishment and application of competitive sourcing goals has evolved since the inception of the Administration's competitive sourcing initiative in 2001. Originally, the goals of 5% and 10% applied to each agency. Later, the cumulative goal of 15% was characterized as a government-wide, aggregate target. Meanwhile, Congress passed legislation directing OMB to provide a rationale for competitive sourcing targets. In summer 2003, OMB announced publicly that it had abandoned its numerical goals and that it had begun collaborating with agencies on the development of their competition plans. At that time, OMB also revised the scorecard criteria for competitive sourcing. Additionally, although OMB dropped the long-term goal of 50%, it indicated that it expected agencies to compete all functions identified as commercial and available. Guidance issued by OMB on green competition plans suggests that agencies should plan to compete most, if not all, eligible commercial activities. It remains to be seen how successful various agencies will be in meeting the revised scorecard criteria and in meeting OMB's expectation for competing all eligible functions.

Appendix A

Table 5. Executive Branch Management Scorecard: Competitive Sourcing Ratings

	FY2002			FY2003 ^a				FY2004		
	June 30	Sept. 30	Dec. 31	Mar. 31	June 30	Sept. 30	Dec. 31	Mar. 31	June 30	Sept. 30
Dept. of Agriculture	red	red	red	red	red	yellow	yellow	yellow	yellow	yellow
Dept. of Commerce	red	red	red	red	red	yellow	yellow	yellow	yellow	yellow
Dept. of Defense	red	red	red	red	yellow	yellow	yellow	yellow	green	green
Dept. of Education	red	red	red	red	yellow	yellow	yellow	yellow	yellow	yellow
Dept. of Energy	red	red	red	red	red	yellow	yellow	green	green	green
Dept. of Health and Human Services	red	red	red	red	red	yellow	yellow	green	green	green
Dept. of Homeland Security	red	red	red	red	red	red	yellow	yellow	yellow	yellow
Dept. of Housing and Urban Development	red	red	red	red	red	red	red	red	red	red
Dept. of the Interior	red	red	red	red	red	yellow	yellow	yellow	yellow	yellow
Dept. of Justice	red	red	red	red	red	yellow	yellow	yellow	yellow	yellow
Dept. of Labor	red	red	red	red	red	red	red	red	yellow	yellow
Dept. of State	red	red	red	red	red	red	red	red	red	state
Dept. of Transportation	red	red	red	red	red	yellow	yellow	yellow	green	green

	FY2002			FY2003 ^a				FY2004		
	June 30	Sept. 30	Dec. 31	Mar. 31	June 30	Sept. 30	Dec. 31	Mar. 31	June 30	Sept. 30
Dept. of the Treasury	red	red	red	red	red	red	red	yellow	yellow	yellow
Dept. of Veterans Affairs	red	red	red	red	red	red	red	red	red	red
Army Corps of Engineers	red	red	red	red	red	red	red	red	red	red
General Services Administration	red	red	red	red	red	yellow	yellow	yellow	yellow	green
Environmental Protection Agency	red	red	red	red	red	red	red	red	yellow	yellow
National Aeronautics and Space Administration	red	red	red	red	red	red	yellow	yellow	yellow	yellow
National Science Foundation	red	red	red	red	red	red	red	red	red	red
Office of Management and Budget	red	red	red	red	red	red	red	red	red	red
Office of Personnel Management	red	red	red	red	yellow	yellow	yellow	green	green	green
Small Business Administration	red	red	red	red	red	red	yellow	yellow	yellow	yellow
Smithsonian	red	red	red	red	red	red	red	red	red	red
Social Security Administration	red	red	red	red	red	red	red	red	yellow	yellow
U.S. Agency for International Development	red	red	red	red	red	red	red	red	red	red

Sources: *President's Management Agenda* Scorecards, available at [<http://www.whitehouse.gov/results/agenda/scorecard.html>], visited Jan. 5, 2005.

Note:

a. Comparisons between ratings received in FY2002 and subsequent fiscal years might not be valid since the criteria for green and yellow ratings were revised in 2003.