



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT POLICY

January 4, 2006

The Honorable Philip W. Grone  
Deputy Under Secretary of Defense  
(Installations and Environment)  
3000 Defense Pentagon  
Washington, DC 20301-3000

Dear Mr. Grone:

Thank you for your letter of August 25, 2005 discussing the competitive sourcing of distribution operations, installation services, and warehousing by the Defense Logistics Agency (DLA). You seek a deviation from limitations on performance periods set forth in paragraph D.3.a(7) in Attachment B of Office of Management and Budget (OMB) Circular A-76. Paragraph D.3.a(7) generally envisions performance periods that do not exceed five years. This letter confirms conversations with your staff explaining that a deviation is not required to use performance periods that exceed five years.

Section 647(c) of the Transportation, Treasury, and Independent Agencies Appropriations Act (Division F of the Consolidated Appropriations Act, FY 2004, P.L. 108-199) states that regulations, directives, or policies, including Circular A-76, may not require the head of an executive agency to automatically limit to five years or less the performance period in a letter of obligation or other agreement with federal employees to provide commercial activities for the agency. As a result of section 647(c), the limitation on performance periods in paragraph D.3.a(7) of Attachment B does not apply. The effect of section 647(c) is explained in OMB Memorandum M-04-12, "Performance Periods in Public-Private Competitions." A copy of this memorandum is enclosed.

Accordingly, a deviation from the Circular's provisions is not required in order for DLA to solicit offers that may result in letters of obligation or contracts with performance periods longer than five years. However, as explained in Memorandum M-04-12, OMB expects DOD to incorporate appropriate performance periods in the resulting letters of obligation or contracts, considering the nature and risk associated with the services to be provided. If awards are made to contractors, the performance period must comport with otherwise applicable laws.

Sincerely,

Robert A. Burton  
Associate Administrator

Enclosure



DEPUTY DIRECTOR  
FOR MANAGEMENT

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 30, 2004

M-04-12

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Clay Johnson III   
Deputy Director for Management

SUBJECT: Performance Periods in Public-Private Competitions

The purpose of this memorandum is to inform you of a new law affecting performance periods established in connection with public-private competitions and its effect on Office of Management and Budget (OMB) Circular A-76. Section 647(c) of the Transportation, Treasury, and Independent Agencies Appropriations Act (Division F of the Consolidated Appropriations Act, FY 2004, P.L. 108-199) states that regulations, directives, or policies, including Circular A-76, may not require the head of an executive agency to automatically limit to five years or less the performance period in a letter of obligation or other agreement with federal employees to provide commercial activities for the agency.

Circular A-76, as revised, generally limits the length of performance periods to five years. See Paragraph D.3.a.(7) of Attachment B. This limitation shall no longer apply. However, agencies must continue to incorporate performance periods in their contracts and letters of obligation. In determining an appropriate performance period, agencies should consider the nature and risk associated with the services to be provided.

Section 647(c) applies to all competitions that are publicly announced on or after January 23, 2004 as well as to any in-progress competitions for which a performance decision has not been publicly announced as of January 23rd. OMB intends to publish a notice in the *Federal Register* formally amending the Circular to reflect the new law.

Agencies should review affected competitions in light of this change. No agency action is required on an in-progress competition, except where the agency decides to modify the performance period. If an agency modifies the performance period on an in-progress competition, the modification must be publicly announced.

Thank you for your attention to this matter. Questions regarding this memorandum may be referred to Mathew Blum of OMB's Office of Federal Procurement Policy at (202) 395-4953.