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To: David C. Childs A-76comments/OMB/EOP@EOP
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Subject: Comments to Proposed revision to OMB Circular No. A-76, "Performance of Commercial Activities"

Mr. Childs,

As requested by posting of the Federal Register: November 19, 2002 (Volume 67, Number 223), Notice of Proposed Revision to above subject line, on behalf of the collective body of the National Coalition for Public Service (NCEPS), the below comments are submitted for review and comment.

Blacks In Government, Inc. (BIG), Federal Asian Pacific American Council (FAPAC), Federally Employed Women (FEW), and National IMAGE.

***** Full Body Comments *****

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
New Executive Office Building
Room 9013
Washington, DC 20503

Date: December 19, 2002

Subject: Comments to Federal Register: November 19, 2002
(Volume 67, Number 223) Notice - Proposed Revision to Office
of
Management and Budget Circular No. A-76, "Performance of
Commercial Activities"

Commentary of, for and by: Blacks In Government, Inc. (BIG),
Federal Asian Pacific American Council, Inc. (FAPAC),
Federally Employed Women, Inc. (FEW), and
National IMAGE

Collective Designation as: The National Coalition for Equity in
Public Service (NCEPS)

PREFACE

In regards to the total privatization/outsourcing initiatives being sponsored by the current administration and invoked by the previous administration, the collective commentators in this transmittal are formally going on record to state their dissatisfaction with the notion and idea that all activities performed by public servants are presumed commercial in nature unless proven otherwise through the normative process of competition. That is, guilty by association for believing in values of public service, public trust and stewardship in performance of duties.

The founding fathers and subsequent Congressional leaders felt there was a need for Federal employees to work independent of the political process and enacted the Hatch Act. Contractors would not be subject to the restrictions of the Hatch Act, and there is a much stronger potential for conflicts of interest. Additionally, the Federal government has had great difficulty in attracting young people. The potential for constant outsourcing studies is likely to add to that difficulty, unless of course, this method of public-private competition is laying the proven-grounds for future entrepreneurs with inside tracks to lucrative contracts in the bid process to perform a commercial activity for the government (the future will tell).

As stated by the Equal Employment Opportunity Commission, the hallmark of fairness is a neutral decision maker with the power to prevail over the process. When defining an "inherently governmental function," let's ensure a neutral decision maker is reviewing the process. And, when referring to a 4.e.official let's not forget the 4.a.office holder.

Speaking on behalf of the roughly 850,000 racial minorities and women employed within the federal government, and witnessing continued lawsuits of discriminatory behavior on behalf of private sector firms and companies and personnel, for the American people to receive maximum value for their federal tax dollars, they must be confident that these discriminatory practices do not become prevalent within the federal sector based on the influx of private sector contractor personnel.

Thus, with the current rate of certified federal sector discrimination claims and class-action suits costing the common taxpayer millions of dollars in settlement claims, what fail-safe accountability metrics will be activated to ensure these known practices are not compounded by changing the face of "government-owned and government-operated" to "contractor-owned and contractor-operated?"

The listed reasons for the proposed revisions to Circular A-76 are to:

- 1) Improve and expand the use of competition in public-private sourcing decisions,
- 2) Better ensure fairness, integrity, and transparency in the decision-making process, and,
- 3) Strengthen accountability for achieving results.

Streamlining processes and procedures with built-in inherently discriminatory practices negates the efforts of the policy-makers when money-saved is money-spent to satisfy derogatory and discriminatory behavior that taxpayers pay unbeknownst to them.

QUESTION

Who is defining the nature, character and business of government and the costs associated with such?

CONCERNS

- 1) NCEPS' primary concern is that women and minorities are likely to be disproportionately affected by the Bush Administration's campaign pledge and goal to let private companies bid on half of all "so-called" commercial jobs in government. Women and minorities are more likely to be in the administrative and support services positions that would be considered commercial.
- 2) A significant number of NCEPS members are employed by the Department of Defense, and their positions are already under study for

outsourcing under the Bush Administration's mandate to compete out thousands of civilian jobs. Entire segments and memberships of NCEPS participating organizations are currently under study with all of their jobs at risk, such as with FEW's membership at Fort Polk, Louisiana.

3) NCEPS supports making the A-76 process shorter and requiring the standard competition to be completed within one year. NCEPS supports granting waivers for more complex studies. The whole process is complex and very emotional for employees whose jobs are on the line, so a shortened process should result in bringing closure sooner and allowing the necessary work to continue.

4) NCEPS believes that "in-house" employees and unions should have the same protest rights that contractors have. A provision in the new circular could give the official representative of in-house employees known as the Agency Tender Official (ATO) the legal basis to file GAO bid protests on behalf of the employees. The new circular makes the ATO a "directly interested party," a legal classification that could allow them to file protests. However, it is up to GAO whether to accept the protest. NCEPS feels that the circular should go further in making it clear that the ATO can file protests on behalf of Federal employees.

5) One aspect of the circular has not received a lot of media attention. The circular opens all inter-agency support agreements to competition from the private sector. This could have a significant impact on Federal employees performing the service that would be contracted out as well as mandating significant changes to the Federal Acquisition Regulations. The government already has serious issues with management of contracts, and this is likely to be exacerbated by even an greater number of contracts to manage.

6) NCEPS recognizes the need for an effective and efficient Federal government, but asks OMB to be sensitive to the fact that there is a real person behind every number. Angela Styles made the statement that the A-76 push was not meant as a message that current Federal employees are not valued. However, we collectively believe that the administration could do a better job of communicating this message, as many employees feel demoralized and threatened by the continual outsourcing efforts and the publicity surrounding the fact that 850,000 Federal jobs have been identified as commercial in nature. There seems to be little recognition for a job well done for Federal employees except in extraordinary circumstances such as in the aftermath of September 11th.

7) Ms. Styles states that the intent of the circular is to put the infrastructure in place so that the A-76 studies and public-private competitions might be completed in a more efficient and effective manner - not to outsource 850,000 jobs. Again, OMB could do a better job of communicating that message. We again believe, that most Federal employees are "receiving" a very different message from the Bush Administration.
*****End Full Body
Comments*****

- C.DTF

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