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To: David C. Childs A-76comments/OMB/EOP@EOP
cc: boyd.rutherford@gsa.gov
Subject: GSA's Comments on the Revisions to Circular A-76

Attached are GSA's comments on the revisions to OMB Circular A-76. As instructed, we have also included the full body of our comments in the text of the electronic message and as an attachment. We will also follow this message up with a fax copy for your convenience. Should you need any further information in this matter, please contact Paul Boyle at (202) 501-0324 or Boyd Rutherford at (202) 501-1021.

Thank you for accepting our comments,

Paul

(See attached file: A-76-Changes-All-12-19-02.doc)

December 19, 2002

Angela B. Styles
Administrator, Office of Federal Procurement Policy
Office of Management and Budget (OMB)
New Executive Office Building
725 17th Street, NW
Washington, DC 20503

Re: Transmittal of the General Services Administration's comments on the Draft Revisions to OMB Circular A-76

Dear Ms. Styles:

Thank you for the opportunity to comment on the proposed revisions to the A-76 Circular. Attached are the edited comments from GSA's Services and Staff Offices. I hope you find our comments useful. I look forward to meeting with you in January to discuss GSA's Competitive Sourcing plans and activities.

GSA is continuously striving to improve the performance of our businesses. To wit, GSA has vigorously taken advantage of technologies and other opportunities to reduce our FTEs from 39,000 in 1982 to the current 14,000 FTE. Our commitment to continuous improvement efforts is further demonstrated by actions such as depot closures, development of a performance management system, our financial programs, which fully allocate costs to our end products, and our intern programs that develop future human capital. These specific actions are consistent with the President's management agenda, which focuses on providing better solutions for customers, more financial accountability for our managers, and the development of human capital for the future. GSA is concerned that an overly restrictive circular A-76 in conjunction with current targets and timelines for conducting studies could adversely affect our ability to maintain our level of productivity in other Presidential Management

objectives such as Human Capital initiatives.

Attachment D dealing with the issue of Inter-Service Support Agreements (ISSA's) is the section where GSA has its most concern. As you may know, GSA's workforce is comprised almost entirely of revolving fund and other reimbursable activity associates (approx.13,000 of our 14,000 employees), and is in fact in the business of supporting other Federal agencies. The Circular appears unclear as to how GSA programs will be treated under the ISSA provisions of Attachment D. Accordingly, GSA requests additional time to research the impact of this issue and discuss alternatives with your office. GSA suggests you delay the implementation of this portion of the Circular.

Again, I would like to thank you for the opportunity to participate in the development of this critical policy. GSA has sorted our comments into separate sections in conjunction with the revised Circular. Please feel free to contact me if there is any further information that I can provide.

Sincerely,

Boyd K. Rutherford
Associate Administrator, Office of Performance Improvement (R)

Attachment

GENERAL COMMENTS

GC-1 In order to perform a thorough review and analysis of the impact of the proposed revisions, GSA requests an additional 30 days for comment. Since Agencies were given comparatively little time to review and comment on the revised Circular an additional 30-day period for comment would allow more thorough review and analysis of the impact of these revisions. In no case is this more appropriate than in the cost comparison process, where different funding mechanisms can impact the use of standard cost factors in the cost comparison.

GC-2 The effective date of January 1, 2003 is likely to delay previously approved and in-process direct conversions and competitions. It does not provide sufficient time for Contracting Officers and other involved parties to obtain necessary training to keep 'in-process' actions on track. This effective date could delay these actions until the agencies can determine the revisions' impact on in-process proceedings close to solicitation release. Additionally, realignment of resources and assigning new roles and responsibilities will further delay these actions. These delays could significantly and negatively impact agencies' current competitive sourcing plans and the goals that have been set. We have two suggestions in order to facilitate the transfer from the old circular to the new revised one. These would allow agencies to use their resources more effectively to implement the new revisions rather than spending resources analyzing the impact on actions expected to be released in the near future.

a. Delayed implementation of the revisions for at least 90 days would give agencies a better opportunity to understand and apply the revisions, and perhaps avoid mistakes and protests to A-76 competitions. The delay would allow the acquisition staffs to be trained on the new procedures as well as allowing contractors who provide A-76 support to receive training

and update their publications.

b. This Circular should apply to all Direct Conversions and Standard Competitions where the announcement date is on or after January 1, 2003. GSA has invested significant time and resources in on-going studies. It would not be efficient use of resources to delay or expend additional resources to meet the requirements of the new circular.

GC-3 Paragraph 4.b. of the revised Circular creates a presumption that all activities are presumed to be commercial unless justified as inherently governmental. The activities of Federal agencies are authorities or mandated by statute because the Congress and the President have determined that there is a need for the government to perform them. Funding and staffing levels for the function are likewise authorized by statute. The authorizing legislation typically does not indicate whether a function is deemed commercial or inherently governmental, and agency heads are given the discretion to determine how best to perform the function. Creating a presumption that these activities are commercial seems inconsistent with the legislative mandate. Given the presumption that these positions are commercial, many of the employees in entry-level positions in a competitive sourcing environment, would be the very people who would be in jeopardy in a standard competition.

GC-4 We note that the proposed Circular appears to be silent as to providing employees a right to challenge the appeal decision. Currently, employees may not challenge the decision to GAO or the Federal Courts. Given the controversial nature of that issue, we recommend that the proposed circular address the issue in some fashion.

GC-5 We found the Circular too prescriptive and inflexible. We recommend that it be recast more to offer guidance and direction and less dictatorial. While Agency heads and 4.e. officials should be held accountable for results, they should be given flexibility to deal with unusual and complex situations. For best results, agencies should be told "what" to do but given flexibility in determining "how" to do it.

GC-6 The document identifies numerous situations where either approval from or notification to OMB is required. The OMB role in the internal agency A-76 process should be totally eliminated. The proposed role for OMB to approve everyday actions from schedule extensions to requests for technical services from local governments is unwarranted and counterproductive. OMB needs to be results oriented and allow agencies to succeed or to hold them accountable. Additionally, OMB involvement will create delays, increase costs and result in OMB accountability for agencies' actions. Federal agencies are already providing extensive updates on a quarterly basis as part of the scorecard process.

GC-7 Implementation will require an extensive amount of in-house resources. Our resources have been reduced and reorganized significantly in virtually all disciplines, as GSA has transformed from a 39,000 FTE agency in 1982 to our current level of 14,000 FTE through various forms of competition and direct conversion. The draft identifies the positions specific for each competition (i.e. ATO, HRA, SSA, AAA, CO). However, there will also be a myriad of additional resources required (i.e. PWS teams, MEO teams, Inventory Development and Analysis). Agency management should be given flexibility to meet its competitive sourcing goals in the manner suited to their organization.

GC-8 OMB should estimate the costs of their proposal and publish an economic impact analysis in accordance with Federal regulations. Considering the new organizations that will have to be established throughout the government, the detailed processes and reviews that OMB is mandating, and the need for continuous competitions, these added costs should be weighed against the perceived benefits of the new rules.

GC-9 It is recommended that the entire Attachment D be removed from the Circular. Agencies will have a difficult enough time complying with the requirements to competitively source internal operations, much less those that are already performed by outside sources. In addition, public reimbursable sources fall under the A-76 requirements themselves and are subject to competitive sourcing processes internally. It should be assumed that agency management decisions to outsource functions are sound, even if the function is outsourced to a public reimbursable activity and therefore they do not require an additional level of oversight through this process. Customer organizations are usually appropriated activities under considerable pressure to reduce costs and can ill afford to use inefficient methods of supply. If reimbursable activities do not meet their needs, regardless of source, customers will go elsewhere to find those services.

GC-10 It is our recommendation that all of Attachment D be removed from the draft Circular. At a minimum, Attachment D should clearly exempt statutorily required programs from the definition. If Attachment D remains, GSA recommends that it clearly distinguish between the provision of services or support from another agency when the performing agency is authorized ? but not required ? to perform that service or support by the Economy Act or other authority, and situations where an agency is seeking services or support from another agency when the servicing agency is specifically mandated or directed by statute to perform the service or support. In the latter case, customer agencies should not be required to conduct potentially costly and lengthy competitions. Since those GSA reimbursable services are specifically authorized by statute, we construe these GSA programs and services as exempt from ISSA requirements.

GC-11 We believe that if more than some defined percentage of the annual outlays in a given function is already expended in the private sector, that the function, although commercial in nature, be exempted from the provisions of the Circular. In such cases, the Government requires a minimum core capability of in-house personnel to ensure that it has the necessary capabilities to perform its mission. When more than three-fourths of annual outlays are expended with the private sector, it is our belief that additional contracting places a strain on the capability of the Government enterprise to perform its core function and places an undue risk to the Government's ability to perform its legislatively mandated functions.

GC-12 Some questions remain concerning the applicability of the FAR to the A-76 process. As noted, OMB has proposed new procedures by which to conduct cost comparisons, referred to as "Standard Competitions." The Standard Competition procedures are intended to inject much of the existing Federal Acquisition Regulation competition procedures into the process. Generally, this is a good thing. Agencies are intimately familiar with the FAR, and this familiarity should make the process easier and more understandable. However, as a preliminary comment, we believe that the process is still very complicated. It is not clear whether OMB intends to change the specific roles contracting

officers have vis a vis source selection authorities in negotiated procurements. OMB proposes that SSA do certain activities (such as evaluation and negotiation) that are reserved to the discretion of the contracting officer under the FAR. For example, there is much judgment and discretion vested in the contracting officer under the FAR. Under the Circular, much of this discretion and judgment has been curtailed. We suggest that the FAR provisions be applicable with respect to the discretion of the contracting officer.

GC-13 The Circular is silent on the government's role in stimulating small, minority and disadvantaged businesses and other socio-economic policies. There is no recognition that agencies must deal with or reconcile the provisions of the A-76 Circular and legislative mandates (e.g. small businesses and 8A firms) which provide these organizations with special considerations during the procurement process. Small business and 8A firms will have difficulty competing, affecting our ability to meet small business utilization targets. Unless more clarification is provided, some may view the circular as basis for moving away from our traditional role and responsibilities in supporting these segments of the private sector community.

GC-14 Rename 4.e. Official ? Designated Agency Competition Official (DACO). The rationale for this is that it would increase citizen, contractor, and agency understanding of the responsibilities and importance of the named official.

COMMENTS TO THE
A-76 CIRCULAR ITSELF

CI-1 Para. 4.b., Page 1. Change to:

Identify all activities as commercial or inherently governmental in accordance with Attachment A and the FAIR Act and justify inherently governmental activities.

Rationale: There should be no presumption that all activities are commercial in nature unless justified as inherently governmental. The activities of Federal agencies are authorized or mandated by statute because the Congress and President have determined that there is a need for the government to perform them. Creating a presumption that these activities are commercial is inconsistent with the legislative mandate because Congress created federal agencies to fill a void that was not being met by the private sector. The assumption that agencies are commercial until proven governmental is contradictory to the philosophy establishing the function in the first place.

CI-2 Para. 7, Page 2. Change to:

This Circular is effective upon publication in the Federal Register and shall apply to all Direct Conversions and Standard Competitions where the announcement date is on or after the publication date, except that agencies that may use either this Circular or the guidance being cancelled through September 30, 2003, in order to provide a smooth transition and avoid delays and additional costs.

Rationale: The effective date of January 1, 2003 is unrealistic and will delay in-process direct conversions and competitions. It does not provide sufficient time for Contracting Officers and

other involved parties to obtain necessary training to keep 'in-process' actions on track. This effective date will delay these actions until the agencies can determine the revisions' impact on in-process actions close to solicitation release. Additionally, realignment of resources and assigning new roles and responsibilities will further delay these actions. These delays will significantly and negatively impact agencies current competitive sourcing plans and the goals that have been set. A more realistic implementation date tied to the announcement date, rather than the solicitation date, will help avoid mistakes and protests to A-76 competitions. GSA has invested significant time and resources in on-going studies and does not want to delay efforts and/or expend additional resources to meet the requirements of the new circular. This would also allow contractors who provide A-76 support to receive training and update their publications.

ATTACHMENT A INVENTORY PROCESS

A-1 Page A-3 Reason Code Chart
GSA recommends: Insertion of an additional reason Code G - "Agency has expended 75% or more of the function to the private sector."

Rationale: Under the proposed Circular, there is no methodology or process for consideration of what has already been contracted out by Federal agencies. GSA recommends that there should be an additional Reason Code that indicates that if more than 75% of the annual outlays in a given function are already expended with the private sector, the function shall not be considered appropriate for outsourcing. In such cases, the Government needs a minimum core capability of in-house personnel to ensure that it has the necessary capabilities to perform its mission.

A-2 Page A-3, section E.1.d - GSA recommends: Add "or for the risk management responsibilities involved with the construction or operation of Federal property."

Rationale: Agencies' policies for environmental, fire and safety, construction standards, historical preservation and similar issues can be inherently governmental because failure can result in litigation, claims, adverse media attention and other liability.

ATTACHMENT B PUBLIC-PRIVATE COMPETITION

B-1 Page B-1. Standard Competition. Sealed Bidding appears to be an inappropriate type of acquisition for this process. The Government's goal is to outsource commercial activities under a competitive enterprise system, to maximize business efficiencies and give American taxpayers the greatest value for their tax dollars. To achieve this end, providers should be able to propose best business practices and innovative technologies. If the Government is going to restructure itself through A-76, all acquisitions actions should be greatest value and

performance-based.

B-2 Paragraph A.1.a. - Deviations . Agency heads should be held accountable for results and outcomes and OMB should not have to be incorporated into this process. The requirement that OMB be notified of any deviations creates a process that delays the start of competitions and is counterproductive to the accomplishment of the result and outcome

B-3 Paragraph A.1.b. - Reorganization. Reorganization should be permitted for the purpose of meeting an MEO that the agency would live with. If what is being discussed is solely re-labeling positions to avoid them being included in the inventory, then it should be addressed as such.

B-4 Paragraph A.2 b.(4) ? Expansion. This section defines "expansion" as the "modernization, replacement, upgrade or increased workload of an existing agency performed commercial activity that increases operating costs of the activity by 30 percent or more". In these situations the agency is to justify performance by conducting a Standard Competition. It is suggested that language be included which exempts performance of a Standard competition if the increased workload is due to national security and will be in place only as long as the national security situation exists.

B-5 Paragraph B.3.a. - Responsibilities of the HRA should not include the following: (c) inform the incumbent service providers of the competition; (d) make public announcements at the local level and in FedBizOps... and (h) working in conjunction with the CO determine compliance with the Right-of-First-Refusal

Item (c) should be performed by the head of the organization undergoing the competition and item (d) should be performed by the CO. With regard to item (h) there seems to be a conflict of interest with the HR representative acting on the MEO team and determining right-of-first-refusal

B-6 Paragraph B.4. - Source Selection Authority (SSA). Can the SSA be the contracting officer since it has the same description?

B-7 Paragraph C.1.a. - Preliminary Planning. Will this planning, including its "grouping of activities," require consideration of providing maximum opportunities for small business participation? That is, will agencies, in determining the "grouping of activities" need to be concerned with contract bundling issues as outlined in the new report released by OFPP in October? If so, OMB should note that in this paragraph.

Further, an agency should have the latitude to group activities in a way that ensures that its customers' needs are met. In some cases this may require grouping activities somewhat differently from how the private sector traditionally provides them.

B-8 Paragraph C.1.b.(3) - Timeframes. As discussed in our general comments, 12 months is an unrealistic timeframe for virtually any A-76 study. An organization going through these studies must use existing resources or contract out for resources to develop the PWS/QASP as well as the MEO and continue to manage the day-to-day operations of the organization they are responsible for. In addition, organizations must go through a training and learning curve as it works through the process where private industry maintains full time staffs to do this type of work. Further, the lack of streamlining of processes and the failure to emphasize

Best Value acquisition will lock these A-76 competitions into inflexible and outdated processes. Historically, a full cost comparison takes between 18 and 36 months to complete. Because the new Circular does not streamline the process significantly, the 12 month time limitation seems impractical. 24 months is a more reasonable limitation. If the 24 month time period is not acceptable to OMB, at a minimum the 12 month requirement should signify the bidding deadline rather than the decision date.

B-9 Paragraph C.1.b.(8) Personnel Considerations. Suggest that other applicable CFR references be cited, e.g. CTAP. ICTAP, Reemployment, etc.

B-10 Paragraph C.2. The Solicitation and Quality Assurance Surveillance Plan (QASP). This section implies the use of performance-based statements of work, yet the term is not used. Are performance-based statements of work to be used?

B-11 Paragraph C 3.a (4) ? Most Efficient Organization. While the difficulties and fairness of creating new contracts for inclusion in a MEO are obvious, consideration should be given to allowing the restructuring of existing contracts where pricing can be accurately determined. This would allow support contracts to better reflect the benefits of a MEO.

B-12 Paragraph C.3.a.(9)d. No Responses to Solicitation. I do not believe an SSA will choose to re-solicit rather than implement agency tender. Reasons for no response should be determined, and should be subject to recompetition at a period one year later with changes made as appropriate.

B-13 Paragraph C.3.d.(2)(a) Revise Solicitation. A solicitation should not be reissued if the Government is the only bidder. If the solicitation is restrictive, vague, or confusing, those issues should be resolved by amendment when potential offerors and interested parties submit questions during the solicitation phase. Otherwise, the MEO should move straight to implementation, since the Government provided a good-faith tender with the belief that there would be competition.

B-14 Paragraph C.4.a -The Source Selection Process. There is a blurring of the roles of the SSA and CO in this section (and no role identified for the SSEB). In fact, to read this section, one would suppose that the SSA has taken on much of the CO's and SSEB's responsibilities, from negotiations with offerors, notifying offerors that they were removed from the competitive range, conducting cost/price realism analysis, and even being responsible for debriefings. Is this intended? These roles are clearly established in the current source selection process and needn't be delineated here unless they are specifically different (as in the case of the SSA communication with the ATO through the CO) or it will lead to confusion. Examples follow:

B-15 See Phase Two under Phased Evaluation Process. This section states the SSA formally requests cost proposals from all offerors and tenders. Also states SSA notifies private sector offerors or public reimbursable tenders that they were removed from competitive range in Phase One (see FAR 15.503(a) that states this is a CO responsibility).

B-16 See 'The Performance Decision' under Phased Evaluation Process. Here it states SSA shall provide all private sector offerors, public reimbursable tenders, the ATO, and directly affected agency civilian employees (and their representatives) a debriefing in accordance with FAR 15.503. But see FAR 15.505 and

15.506. While others are generally involved in debriefings, Part 15 says CO chairs. States SSA conducts negotiations/discussions with offerors (normally, SSA does not conduct...)

B-17 Paragraph C.4.a(3)(c) - Cost/Technical Tradeoff (CTTO) Source Selection. Last sentence states that "For purposes of the Standard Competition process, the SSA's rationale for tradeoffs required by FAR 15.406 shall be included in the decision documentation. This is an incorrect FAR reference. FAR 15.406 is about documentation for pre-negotiation objectives, cost and pricing data, and negotiations, not the rationale for tradeoffs. This section should instead reference FAR 15.308.

B-18 Suggest that Attachment B not rephrase, reiterate, or otherwise reword FAR Part 15 except where the process is specifically different and then identify how it is different in Part 15. For instance, if OMB really intended for SSA's to notify offerors when they have been removed from the competitive range, suggest stating "...while Part 15.503(a) states that the CO notifies offerors that they were removed from the competitive range, A-76 makes this the responsibility of the SSA."

B-19 Paragraph C.4.a.(2) Sealed Bid Acquisition. In a sealed bid acquisition, the CO is required to enter the apparent lowest priced private sector bid on Line 7 of the SCF. The Agency Tender offer is then compared to this bid. We are concerned that the average of the private sector bid costs are not used as a point of comparison since this is not a situation where there can be a cost/technical tradeoff evaluation. The lowest private sector bid may not represent the best value to the government since the lowest cost may not provide the quality service that is being sought. An average of those bids may represent a fairer picture of the actual costs and value and would be a better indicator of a comparison with the Agency Tender offer

B-20 Paragraph C.4 (c) 1.The Integrated Evaluation Process seems to be weighted against the ATO.

B-21 Paragraph D.1 - Right of first refusal. Why does the HRA and not the winning contractor make qualification determinations. If the HRA is to do this, what criteria is applied. One can question the real benefit of right of first refusal as there is nothing that precludes immediate termination of the employee once hired by a contractor.

B-22 Paragraph D 2.a (2). Right of First Refusal. In cases where a function or activity is converted to contract through competition, the circular should allow agencies to give special consideration to employees who gave up their "right of first refusal" to participate "personally and substantially" in the standard competition process. Perhaps, up to one year of severance pay would be appropriate. This measure would provide an incentive for technically qualified personnel to participate in the development of the Performance Work Statement (PWS) and the Agency Tender as well as serve on the Source Selection Evaluation Board. Given the size of the standard competitions envisioned by agencies and the many roles to be filled, having technically qualified associates willing to be "personally and substantially" involved in the process is critical to ensure a successful outcome. We do not anticipate forcing someone to participate if his/her participation would result in forfeiting his/her "right of first refusal".

B-23 Paragraph D. 2.c. - Source Selection Evaluation Board (SSEB).

Last sentence states that "The SSEB shall comply with the source selection requirements in paragraph C.3.a." However, paragraph C.3.a. is "Agency Tender" not source selection. Perhaps OMB meant paragraph C.4.a which is "The Source Selection Process and Performance Decision." However, there is no mention of the SSEB or its role anywhere in this section

B-24 Compliance Matrix. To decrease the complexity of performing source selections in Standard Competitions, the CO may include a cross-reference compliance matrix in Section L of the solicitation. An example is provided below. A matrix shall clearly identify proposal reference information as it relates to the PWS, contract line items (CLIN), Sections' L and M, Proposal Volume and Section, and Contract Data Requirements List (CDRL) references. This matrix should be modified to account for proposed performance standards that differ from the requirements in a solicitation when CTTO source selections are used (see paragraph C.4.a.(3)(b) below):

B-25 The use of Section L and Section M presumes use of FAR 15 acquisition procedures. Is the intent to force A-76 competitions for presumably commercial services into a non-commercial acquisition FAR15 format, or may FAR 12 be used (thus eliminating the uniform contract format)?

B-26 An MEO may be comprised of either (1) Federal employees or (2) a mix of Federal employees and existing contracts (referred to as MEO subcontracts in this Circular). New contracts shall not be created as part of MEO development. Comment: If an MEO is truly going to be the "most efficient" it should be allowed to re-compete or renegotiate existing contracts to maximize its competitive position as part of the MEO development. This runs counter to the Circular's ideal of full and open competition by forcing an artificial barrier to providing (potentially) the best solution.

B-27 Reference: Attachment B, Section 4, A.(3).(c). "tradeoffs required by FAR 15.406 shall be included in the decision documentation". Comment: Replace FAR 15.406 with 15.308.

B-28 The Performance Decision. To certify the Performance Decision, the ATO, SSA, and CO shall sign the SCF. The SSA shall provide all private sector offerors, public reimbursable tenders, the ATO, and directly affected agency civilian employees (and their representatives) a debriefing in accordance with FAR 15.503. The agency shall announce the Performance Decision. The CO shall provide the SCF and the Agency Tender to interested parties to commence the Administrative Appeal Process. This section should the reference here be 15.505 and 15.506 instead of 15.503?

B-29 Participation of Directly Affected Employees and Representatives of Employees. Directly affected employees and their representatives may participate in the Standard Competition process in accordance with paragraph D.3. above. Comment: This paragraph appears to reference itself.

B-30 Page B-6, paragraph C.2.a (7) Government Furnished Property: Delete requirement for 4.e official to justify in writing the determination to provide government furnished property and reassign the responsibility to the head of the requiring activity. The availability of government furnished property is a common contracting practice, and the 4.e official does not need to be in a routine approval process.

B-31 Page B-13, paragraph C.4.a.(3).(c).1. (3) Integrated Evaluation Process: Delete requirement for 4.e official to obtain written approval from OMB before using this process for any other commercial activities outside those defined in subparagraphs (1) and (2) of this section. Best value competitions are an integral part of the FAR acquisition process and their use should not be restricted.

B-32 Page B-14, paragraph C.4.a.(3).(c).2 Phased Evaluation Process : Add some language regarding what happens when the Agency Tender has initial deficiencies.

B-33 Page B-15, paragraph C.5.a.(2) Public Reimbursable Source: Replace "4.a" with "4.e".

B-34 Page B-18, paragraph C.6.a.(4).(d) Single Administrative Appeal Process Decision Document: In cases where an optional comment period is exercised per paragraph C.6.a.(4).(b), is the start date for the 30/45 day timeframe in this section the original appeal receipt date or the end of the optional comment period? Clarification is needed to avoid confusion.

B-35 Section C.2.a.(12)Remove "not" in "The costs associated with security clearances shall not be included on the SCF for an agency tender, private sector offer, or public reimbursable tender" Rationale: The elimination of the cost of security clearances from an agency's costs will not be an adequate reflection of the costs of the potential offerors.

B-36 Section C.4.a.(2) Sealed Bid Acquisition. On the due date for receipt of offers (COMMENT: CHANGE THE WORD "OFFERS" TO "BIDS.")

B-37 Section C.4.a.(3).(a) Exchanges with Offerors or Tenders During Negotiated Acquisitions On (SUGGEST INSERTING HERE: "OR AFTER") the due date for receipt of offers and tenders stated in the solicitation,

B-38 Section C.4.(c) Cost/Technical Tradeoff (CTTO) Source Selection. (COMMENT ? IN THIS SECTION I RECOMMEND INCLUDING A NOTE THAT THE TERMS "COST" AND "PRICE" ARE BEING USED INTERCHANGEABLY. APPEARS TO BE STRICTER THAN THE FAR REQUIREMENT AT 15.308 SOURCE SELECTION DECISION, WHICH STATES, IN PART, "Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs the to the decision." THIS REQUIREMENT WOULD THEREFORE APPEAR TO BE INCONSISTENT WITH THE FEDERAL REGISTER NOTICE FOR THIS DRAFT A76 CIRCULAR WHICH STATES THAT, "Greater application of FAR-type principles and practices throughout the Circular is intended to bring public-private competitions closer to mainstream source selection and reduce confusion that may currently make it more difficult for parties to compete." for a Performance Decision based on other than lowest cost. The SCF, combined with the Source Selection Decision Document, is the Performance Decision document. The Performance Decision is made when the SCF is certified in accordance with paragraph C.4.a. (3)

ATTACHMENT C
DIRECT CONVERSION PROCESS

C-1 Direct Conversion/Business Case Analysis:

We suggest that the Business Case Analysis provided in Attachment C be moved. Making it part of the Direct Conversion process

implies that the function will be converted to commercial performance. It is also unrealistic to state that an agency could ever convert from a private source to an agency source using this process. Agencies will not have the staff or resources sufficient to form an MEO to perform this requirement, especially if this function had previously been subjected to the commercial sourcing process. Employees would either have been subjected to a RIF or transferred to other duties within the agency.

C-2 Section A: Preferred procurement source. An activity of any size may be converted to any source with any procurement preference, such as but not limited to small business, and HUBZONE, at a fair market price even if it results in adverse employee actions. Rationale: This gives Federal agencies the option to find and quickly use appropriate businesses that can provide best value to the taxpayers and benefit the Administrations social initiative at the same time.

C-3 In C2a (4), page B-6, OMB proposes four specific methods for a Standard Competition. Under Part 15 of the FAR, however, contracting officers have discretion to conduct a continuum of source selection methods, suited to the particular circumstances. It is not clear whether the Contracting Officers would have such discretion under the proposed circular, but we recommend that they do. In C4 a (3)(a) 3 (p. B-12), OMB proposes that in the event that the ATO and the SSA cannot broker their own differences during negotiations, that the 4e official appoint a mediator to resolve the differences. This is an innovative solution, but we question its practicality, and also, question its feasibility given the rigid timelines that are proposed. In C4a (3)(c) 1 (p. B-13), the definition of this process is not clear at all. In C6a (4)(e), we recommend that "valid appeal" be changed to "eligible appeal."

C-4 Page C-3, Paragraph D.1 e. - The time frame should for a Business Case Analysis be extended to 60 days. This would be consistent with the Department of Interior Express Review Process. Once agencies collect a library of comparable contracts the 15-day goal may be possible, but as agencies begin implementing this process significant start-up time will be required to gather the comparable contracts. Defining the workload, and finding four comparable contract vehicles is unrealistic within a fifteen-day timeframe. While an agency may want to use a direct conversion to avoid the time consuming and costly standard competition, making this decision in a 15 day time frame using an abbreviated process may not result in the best solution for the agency or its employees.

C-5 Page C-3, Section D.2.b - The language of this section should be expanded to allow agencies to use a variety of contract types when developing the business case analysis. The function or work should dictate the appropriate contract type, not a simple mandate in the circular. It is assumed that existing contract pricing can be "scaled" (e.g., requirements adjusted to be consistent with existing in-house requirements) to fit the local requirement and pay scales.

C-6 Page C-3 , Paragraph D.1.c. - The activity has no more than \$5,000. The amount appears too small to ban this approach if it otherwise is in the best interests of the taxpayers. Recommend an increase to \$25,000.

ATTACHMENT D
COMMERCIAL INTERSERVICE SUPPORT AGREEMENTS

(ISSA)

D-1 Additionally, public reimbursable sources do not have the resources or infrastructure necessary to respond to contractual offers as specified in Attachment E. The requirement to compete all ISSA's could also inhibit cross-agency cooperation needed for key initiatives, such as security programs and e-government initiatives. Duplicative ISSA studies and bids will drive up the cost to the Government for the provision of these services considerably.

D-2 Congress established GSA and required that the agency conduct governmentwide procurements such as FTS-2000 and its successor contracts in order to create economies of scale for efficient and economic functioning of the government. If the established business relationships GSA has with its customers are interpreted to be ISSA's, the impact on GSA and its customer agencies could be overwhelming. Programs such as GSA's Supply Distribution Facilities, Fleet Management Program and FTS 2000 could be severely impacted. If individual customers compete their portion of contracts such as FTS 2000, GSA will lose the leveraged buying power and associated discounts resulting from aggregated purchases- the purpose for which GSA was created

D-3 If the ISSA provisions are included in the final draft of the Circular, at a minimum the ISSA threshold should be increased from \$1 million to \$5 million (the dollar threshold for simplified acquisitions under the DoD pilot program) or \$10 million. Smaller studies tend to be more expensive on a per FTE basis, and research has shown that smaller studies produce lower savings. Increasing the threshold to \$5 or \$10 million improves the cost benefit relationship associated with the program. The Circular is also unclear as to the basis for determining the threshold. We assume the threshold applies to revenue received from a localized function performed by a public reimbursable source.

D-4 OMB has stated publicly that Intra-Service Support Agreements are also subject to competition under the Circular. It is requested that clarification be provided on this issue to the effect that Attachment D only apply to inter-agency ISSA's. If components of an agency are performing commercial functions for other components of the same agency, those activities would logically be included in the Agency's FAIR Act inventory and studied consistent with the Agency's Commercial Sourcing strategy and targets.

D-5 As a point of clarification, GSA has considered whether or not GSA's agreements with delegated agencies is applicable to Attachment D (ISSA's) and concluded that there are significant differences between an operational delegation agreement and an ISSA. The former is transfer of function. As such, the funds to support each delegation flow from Congress through the delegated agency's budget and appropriation

process. Furthermore, the delegation agreements do not generate any revenue or funding for GSA. Therefore, it is GSA's conclusion that the provisions in the draft circular governing ISSA's do not apply to GSA's delegation program.

D-6 Section B.1. Timeframe. It is recommended that the language be enhanced to state that Customer agencies shall compete all applicable existing Commercial ISSA's within five years of the effective date of this Circular "or within 10 years if approved by the 4.e. official." The 5-year requirement is incompatible with the e-Gov initiatives for common systems such as payroll and accounting systems.

D-7 Section B.3. Commercial ISSA Renewal Constraint. In regard to this section, an exception should be incorporated into the language for a competition waiver of certain ISSA's. Customer agencies that provide sufficient cost and pricing data with the renewal of ISSA's should not have to recompetete if they justify that the current contract price is feasible or in the best interest of the Government. Cost and Pricing Data, as found in the FAR, Subpart 15.403, states that an exemption from cost and pricing data is appropriate if competition has proven:

If two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement.

There is no finding that the price of the otherwise successful offerors is unreasonable.

Based on the offer received, the contracting officer can reasonably conclude that "the price can be determined to be fair and reasonable without submissions of cost or pricing data."

The market has determined that the price is fair and reasonable based on market data.

Therefore, when appropriate, previously negotiated renewal options under the initial ISSA should be exercised when renewing ISSA's as opposed to recompeteting favorable renewal rates. ISSA's are internal government contracts that should have multiple renewal options, especially as it applies to the smaller external agencies with little or no resources for administering contracts.

It is further recommended that the language of this Section be eliminated and replaced with the following: "Customer agencies shall not renew or issue new Commercial ISSA's prior to compliance with this Competition requirement." The rationale for this change is that arbitrary termination of existing agreements under any timeframe does not consider the impact on the taxpayers or the mission of the customer agency. This is a process role for OMB which should be outcome oriented.

D-8 Section B.4. Commercial ISSA Competition Plan. If the ISSA provisions are to remain in the Circular, it is recommended that the requirement to submit an Annual Agency ISSA Competition Plan by June 30 of each year be changed to a requirement, which is due every three years starting in 2003. The present requirement is administratively burdensome. This burden could be substantially reduced by requiring the plan every three years instead of each year.

D-9 Section 1. If the ISSA provisions are to remain in the Circular, the language should be clarified to permit all "qualified" public reimbursable sources (agency vendors) to participate and provide tenders. The reason for the use of the word "qualified" is that not all public reimbursable sources are commercial ISSA's.

D-10 Section H.1.a Specialized and Technical Services A provision should be made for agencies that are specifically directed to provide support to State or local governments by law. Agencies may have specific legislative authority and processes to support the District of Columbia or state or local governments in general that should not be impacted by these requirements:

D-11 Section H.1.b.(1). The requirement for specific approval, in writing, by OMB, should be eliminated. This is a process role that OMB should not be involved in. An alternative would be for the 4.e. official or agency head to provide the approval.

D-12 Section H.1.d. This Section should be eliminated. This is a process role that should not be prescribed by OMB but should remain at the discretion of Federal agencies.

D-13 Section H.4. An additional Section entitled "Exceptions" is recommended with wording to the effect that any service, assistance, or support that is provided in accordance with specific legislation or the declaration of a national or local emergency is not subject to the requirements of this provision. The rationale for this inclusion is that the Federal government must meet its Congressional mandates and must respond quickly and decisively to handle emergencies without such process restraints and the delays they will cause.

ATTACHMENT E CALCULATING PUBLIC-PRIVATE COMPETITION COSTS

E-1 Page E-1, Public Private Competition Cost requirements. GSA found the costing requirements of Attachment E to be complicated and confusing. We would recommend that agencies be given additional time to review and comment on these provisions.

E-2 Page E1, Section A.4. Minimum Conversion Differential. The last sentence should be deleted to fulfill the intent of the minimum conversion differential. The idea is to avoid the cost and risk associated with the change for a marginal benefit. This should apply to all non-incumbents regardless of their status.

E-3 Page E-1, Paragraph 4.e. ? Better definition of the 4.e. official is necessary to insure consistency across agency lines.

E-4 Page E-2, Section A.9 of the circular states that the costs of conducting a Standard Competition should not be calculated. GSA disagrees. The costs of conducting a study are considerable in both man-hours and dollars. It is possible that the costs of the competition will exceed the cost savings to be gained from the competition. These costs should be accounted for.

E-5 Page E-4, Section B.1.b.(2) of the Circular requires indirect labor costs to include the labor of individuals who are responsible for oversight and compliance actions implicitly required by the MEO in order to comply with the solicitation (e.g. supervision, human resources, comptroller, general counsel, etc.). Under the current circular, most of these costs were considered part of the 12% Overhead Factor applied to the Government's in-house bid which is still a requirement of the Revised draft. The work performed by these areas cannot be directly linked to a specific external deliverable required in the PWS and is already included in the 12% Overhead Factor for

this reason. Any costs associated to these areas and added to Line 1 of the SCF are probably a duplication of costs. However, if labor from any of these areas can be linked directly to a procedure used by the Agency Tender in fulfilling the requirements of the PWS, it is not "indirect labor", but is "direct labor" since it can be directly linked to the deliverable. This section should be reviewed and revised. Personnel costs for labor that is not dedicated to the MEO but clearly have responsibilities to the MEO are considered "indirect labor." Indirect labor and overhead appear to have the same definitions. As a result, indirect costs appear to be double counted. Please clarify the definitions or delete one of these items.

E-6 The Circular requires an agency to re compete the requirements every 4 or 5 years, as stipulated in the SCF. We are concerned that the frequent studying of any organization with the possibility of employees being displaced is extremely disruptive and expensive. The government may no

longer be able to attract the best and the brightest for full-time positions because they will have to be concerned about the artificial process of competition as mandated by A-76 every 4 or 5 years rather than in producing the best work process for conducting the government's business. The A-76 process, with the constant recompetitions, will interfere with the agency's ability to perform the agency's mission. GSA recommends an extended period (10-15 years) for recompetition of the in-house proposal win the bid.

E-7 Page E-12, Section C.1.d.- The cost of performance bonds should be included as part of the price of the private sector offer. This is merely insurance against non-performance if a contractor defaults on a contract. While the MEO is required to comply with a resulting contract, the risks of non-performance are not the same. For example, if it is determined that a contractor does not perform in accordance with the contract and is defaulted, there may be significant costs associated with such non-performance for which the contractor is responsible. Often such contractors file for bankruptcy or have other financial problems that leave them unable to pay the Government for their liabilities. A performance bond can cover some or all of the outstanding balance. Such problems are not relevant when a public sector offeror wins the competition. Therefore, performance bonds should be included as part of the private sector offeror's price.

E-8 Page E-14, Section 6.b Gain on Assets - If the private sector or public reimbursable performance gets the benefit of gains on assets, they should also bear the costs associated with loss on assets. Recommend the language be changed to allow positive numbers to be entered when a loss will be incurred. These asset sales would not necessarily occur without the requirement for competitive sourcing. Therefore, losses on assets should be included as a one-time conversion cost.

E-9 The Adjusted Cost of Private Sector or Public Reimbursable Performance

a. Contract Administration Costs - The "Contract Administration and Grades" matrix (page E-13) provides for GS-6 through GS-12 associates to perform A-76 contract administration activities. However, for large, complex

standard competitions, we believe that at least one (and in some cases, more than one) GS-13 Contract Specialist will be needed to manage the contract administration activities.

b. Additional Costs - Procurement Preference Programs: The Circular is silent on the government's role in stimulating small, minority and disadvantaged businesses. Section E (Calculating Competition Costs, page E-13) mentions the inclusion of a 4% fee in the SCF when the National Institute for the Severely Handicapped (NISH) or the National Institute of the Blind (NIB) participate in a competition. However, there is no guidance on how

agencies are to deal with or reconcile the provisions of the A-76

Circular and legislative mandates (e.g. small businesses and 8A firms) which provide these organizations with special considerations during the procurement process.

This is of particular concern because most, if not all of these standard A-76 competitions will be large and complex. Small business and 8A firms will have difficulty competing, affecting our ability to meet small business utilization targets. Unless more clarification is provided, some may view the circular as basis for moving away from our traditional role and responsibilities in supporting these segments of the private sector community.

E-10 The Draft Circular makes reference to the NIB as the National Institute for the Blind. The correct title of this organization is the National Institute of the Blind - an important distinction to people who are blind.

E-11 Attachment E, Section B.1.b.(1) ? Change "vertime" to "Overtime"

E-12 Reference: Attachment E, Section B.1.k. Change "Excludes" to "Exclude"