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To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Retailed Comments--this time with the attachment

----- Original Message -----

From: [george](#)
To: A-76comments@omb.eop.gov
Cc: [Gupton](#) ; [Liz Gupton](#)
Sent: Wednesday, December 18, 2002 3:13 AM
Subject: Comments to the proposed revisions of the A-76 process

December 18, 2002

The following comments are submitted by Elizabeth Gupton, President of Local 60, National Federation of Federal Employees, affiliate of the International Association of Machinists and Aerospace Workers, AFL/CIO. Replies to these comments may be made electronically to my home e-mail address (oldschool@blackfoot.net), or mailed to my home address: 100 River Street, P.O.Box 870, Superior, MT 59872; cell ph. # 406/240-9395. (w) 406/822-3920. These comments represent the views of Local 60 members, and are not to be misconstrued as an official agency statement:

First and foremost, the comment period for the proposed revisions to the A-76 process must be extended at least 90 days. This would allow time for government employees and the public to learn more about the consequences and impacts of such revisions. We believe that the revisions are specifically tilted toward favoring privatization of government jobs, and we do not believe that such privatization efforts are necessarily in the best interest of United States citizens. We have observed both successful and disastrous results from outsourcing government jobs, and to skew the process so that privatization is the favored outcome is an injustice to all citizens. The process must be fair and reasonable.

- The strict deadline revision: The circular will contain time limits for A-76 competitions and outline consequences for agencies that fail to meet them. The limit for most competitions will be 12 months. OMB will closely monitor Agencies that fall behind in their competitions, and if in-house employees fail to meet the deadline, their jobs could be directly outsourced to the private sector.

Local 60 comment: There are numerous factors involved in conducting A-76 studies, and to set an arbitrary deadline to study complex processes is extremely limiting and would likely lead to erroneous conclusions. Speed, not accuracy, would become the primary goal in completion of the study. A-76 studies tend to simplify functions in a mechanistic, assembly line manner.

Dynamic, complex organizations do not produce exact widgets (as in manufacturing where time and motion studies improve efficiency) and therefore must be studied carefully to understand their multi-faceted functions. With such an important task as determining the greatest value of a public service to the U.S. taxpayers, time should not be the limiting factor. (Additionally, the proposed new rules--particularly changes that compress the competitions to one year or less--could overwhelm procurement officials.)

We oppose implementing this revision.

- ❑ The binding performance agreement revision: Teams of federal employees that win job competitions will be required to sign binding performance agreements and will be subject to future competition after their agreements expire.

Local 60 comment: If the intent is to create an atmosphere in which government employees feel neither valued nor trusted to work efficiently, this revision will succeed. Good employee morale is necessary for continuity and high performance. Very few businesses treat their employees in such a manner--why should the government? The proposed rules would prompt many employees doing so-called 'commercial work' to leave their jobs rather than stay on amid the uncertainty of enduring numerous competitions.

We oppose implementing this revision.

- ❑ OMB's new "best value" competition: The "best value" competition process allows non-cost factors such as technical performance and reputation to be considered in procurement decisions. The in-house team could be eliminated before the final round of competition, a break from the current process. OMB will test the best value process on federal information technology jobs.

Local 60 comment: This proposed rule change would introduce a process allowing commercial companies to compete for jobs that are currently being performed by government employees at a significant cost savings over the private sector. It's fairly obvious how this revision would work: If the contractor could not compete on the lowest-cost standard, then the preferred method of study would be "best value". This competition would be skewed in favor of contractors who would convince managers they were better able to apply new technology and innovation in their bid proposals--for which a higher cost would be necessary. For government employees this would be a "no win" scenario either way. The obvious goal here is to privatize without regard for what is best for the American public. (Why shouldn't government employees be allowed to choose the "best value" standard in convincing the Administration that cost isn't everything when it comes to providing a service to the public?)

We oppose implementing this revision.

- ❑ OMB's revision of definition and reversal of defending "inherently governmental" versus "commercial": OMB overhauled the circular in response to the findings of the Commercial Activities Panel that urged widespread changes to federal outsourcing policy in its April report.

Local 60 comment: OMB made changes to the A-76 circular that the panel did not call for, including rewriting the definition of "inherently governmental" work. Inherently governmental jobs are "an activity so intimately related to the public interest as to mandate performance by government personnel." One of the most significant features of the proposed rule changes is its reversal of the premise that all federal jobs are presumed to be inherently governmental unless they can be justified as being commercial. According to the proposed changes, this presumption would change so that "all activities are commercial in nature unless an activity is justified as inherently governmental."

This change would address complaints by contractors and Bush administration officials that agency managers are not labeling enough of their jobs as commercial, even though they could be done by companies. The likely impact of the proposed change would be to significantly expand the pool of work now done by federal employees to be deemed commercial, and thus subject those jobs to competition by contractors.

We oppose implementing this revision.

- Funding necessary to be competitive: The sheer magnitude and cost of A-76 studies have not been addressed adequately. Comptroller General David Walker, head of the General Accounting Office, is reviewing the proposed rule changes and believes they would create the need for more financial and technical assistance. "From a practical standpoint, there's no way in the world you can conduct all these studies without more resources," he has said. (At the Nov. 14 release of the draft revisions, administration officials offered no specifics for what additional funding, if any, agencies would need or receive for additional staffing or training to carry out the rules other than to say that each agency must examine its priorities.) One federal official, who asked not to be named, said the lack of funding earmarked for hiring and training weakens the chances the new rules will be followed. "Sure, [contracting officers] will give lip service to the rules, but they won't be able to apply them because they're already swamped," the official said.

Local 60 comment: We believe additional funding and training must be provided to federal employees involved in A-76 studies. Otherwise, the in-house studies will be doomed to fail.

- Right to appeal a contract award before the GAO: Walker, who chaired the Commercial Activities Panel, said it was important to give federal workers the right to appeal a contract award before the GAO. Although appeal rights for federal employees are not spelled out in the proposed rule changes, Walker said his understanding is that OMB intends to permit federal teams to appeal adverse decisions before the GAO. "It needs to be expressed" in the rules, Walker said. "It makes sense to level the playing field."

Local 60 comments: Appeal rights for federal employees must be spelled out in the proposed rule changes, to state that federal teams may appeal adverse decisions before the GAO.

- The Commercial Activities Panel's recommendations: Walker has questioned why some of the panel's recommendations were not included in the administration's proposed rule

changes. The proposed changes, he has said, focus only on outsourcing and do not include the panel's recommendations to: promote more public-private partnerships, permit federal workers to bid on new federal contracts, and promote the use of a reorganization model for agencies called the high-performance organization. "The high-performance organization is a way a function that's never going to be competed can be made more efficient," Walker said.

Local 60 comments: We believe the Commercial Activities Panel's recommendations should be implemented to promote more public-private partnerships, permit federal workers to bid on new federal contracts, and promote the use of a reorganization model for agencies called the high-performance organization.

More specifically, Local 60 would like to add these comments about the impact of outsourcing on the effectiveness of the Forest Service:

By moving away from ground-based, long-term, dedicated employees to a mixed-purpose workforce with revolving contractors, we believe the valued tradition and heritage aspects of the FS will be further eroded. The downsizing and early retirements of the '90s have already depleted our ranks. These developments, as well as all the political, regulatory, legal, and fiscal wrangling of late have tested our morale and sense of mission.

Institutional knowledge and nuances of the FS culture contribute to the quality of work in the resources and the communities we serve. It is inconceivable that contractors could assimilate all the technical and organizational information, quirks, and idiosyncrasies efficiently--without a considerable lag time on the learning curve. People who grew up in the system, learned in the trenches and from mentors, and have been immersed in the organization have learned over time the ways in which our agency functions. It would be very challenging to impart this understanding of evolving policies, regulations, manual directions, handbooks, operating procedures, and all the other systems to a contractor--who may lose interest (for more profitable endeavors) very quickly. A general lack of knowledge about civics, branches of government, separation of powers, appropriations, and regulations would further compound the challenge. Even our most involved partners, cooperators, permittees, commentors, and appellants struggle to keep abreast of the ever-changing resource guidance that we work with daily.

The Forest Service is a big family of sorts with intangible qualities that have developed from long-term relationships of people to each other and to their entrusted resources and communities. To some extent, common backgrounds and experiences and a shared sense of proud organizational history have built a camaraderie that couldn't be maintained or acquired by frequently rotating in new contractors. Spouses and families are involved in this culture, especially in more remote and rural areas where most employees got started and where many choose to stay for the quality of work-life and other amenities. Fighting fire, repairing flood damage, finding lost hunters have also strengthened our sense of belonging, mission, and commitment felt by most employees. These qualities may be most pronounced at the field level, but are an underpinning of all the tiers of the organization.

Therefore, seasoned Forest Service employees are not interchangeable with ephemeral contractors who may qualify on paper. This would follow for many other agencies and, no doubt,

for many private companies and other institutions with a lot of history. Requirements on paper can never do justice to the depth of knowledge needed of nor the intricacies involved with managing these diverse public resources. Already, employees devote considerable personal time and energy to see that the interests of the public, the resources, and the affected communities are protected. Exactly how can such benefits be measured in the equation of "low cost" and "best value" computations?

Thank you for the opportunity to comment--please submit our comments for public record in the Federal Register.