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To Whom It May Concern:

Attached are comments from the national office of the International Federation of Professional & Technical Engineers (IFPTE), AFL-CIO, in response to the OMB Circular A-76 revisions published in the November 19th Federal Register.

Should you have any questions, please contact me directly at (301)565-9016.

Sincerely,

Matt Biggs

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INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO

OMB Circular A-76

IFPTE Response to Proposed Revisions to OMB Circular A-76

December 19, 2002

This information is to provide comments from the International Federation of Professional & Technical Engineers (IFPTE), AFL-CIO, representing upwards of 40,000 federal sector workers, in response to the stated revisions to OMB Circular A-76 which were published in the Federal Register on November 19, 2002.

Since OMB has proposed such radical changes to the public-private competition definitions and processes in the draft OMB Circular A-76, then our issues with the A-76 process, as they relate to the proposed revisions being promoted by OMB, are varied and wide in scope. While the restricted time constraints imposed by OMB in limiting public responses to the draft A-76 revision, within a 30-day window, will prevent IFPTE from targeting all aspects of the Circular, we shall highlight a number of significant areas of concern.

First, it is important to point out that the current A-76 process has several flaws of its own. These flaws include, but are not limited to, the following areas. Little to no accountability in the contracting out process; absence of standing for unions to appeal contractor awards; a lack of resources with regard to government oversight of contractors; and, most importantly, the absence of true savings to the taxpayer are among the flaws in the current process.

While IFPTE was hopeful that changes to this already questionable program would directly address those issues, the proposal of November 19th , 2002, put forth by OMB, only served to exacerbate those inequities. Simply stated, the proposed outsourcing policy put forth by OMB is inefficient at best. Meanwhile, thousands of dedicated civil servants who have made a career of serving their country will be shown the door as a result of this new policy.

Many of the recommendations included in the A-76 policy are eerily similar to those proposed within the Commercial Activities Panel (CAP) Best Value report released earlier this year. These recommendations, by the way, which were the product of a Panel which was disproportionately comprised of individuals who were sympathetic to the business community. Not surprisingly, both of these documents, the CAP 'Best Value' report, and the subsequent A-76 revisions submitted by OMB, are indicative of an outsourcing policy created to serve the specific interests of contractors.

At the heart of the OMB revisions is a CAP recommendation that the current A-76 process be abolished, and replaced with the combination of an integrated competition process, the Federal Acquisition Regulations (FAR), along with selected elements of the Circular A-76 process. OMB adopted these recommendations, virtually in whole form, despite the fact that this very same FAR 'cost, technical trade-off' approach even failed to pass muster in 1998 with the pro-contractor Clinton Administration. At that time, OMB officials stated that FAR was "not developed with public-private competitions in mind." So, even before evaluating the flaws of OMB's A-76 revisions, it is important to point out the very premise by which OMB is basing its new policy on, is flawed.

That being said, OMB has chosen to use the contractor-drafted CAP recommendations as the underlying document in support of a new federal outsourcing policy. The major flaws included in the OMB revisions, along with the heavy pro-contractor bias is demonstrated by, but not limited to, the following key points.

1. The reversed presumption about governmental functions – that is, that all government functions are commercial in nature unless they can be justified as inherently governmental.
2. The removal and abolishment of the definition and application for government functions of Core Capability.
3. The requirement that, absent specific waiver, all competitions shall be limited to one year for completion.
4. The lack of funding and provision for adequate training and support resources for agencies and contracting officers to conduct the abbreviated competitions.
5. The built-in penalty for failure to complete a competition within a 12-month period, as automatic forfeiture of federal employees' jobs to be handed over to contractors without a means of appeal for affected employees and their representatives.
6. The absence of funding, authorization, and identification of methods for Union representatives to perform necessary representation in the competition process, and to have standing and resources to challenge competition results.
7. The lack of credible processes for review, oversight, and accountability of contractor/subcontractor numbers and enforcement of performance to established standards.
8. The policy which requires that contracts be awarded based on best value (not just low cost).

Based on the fact that OMB intends to limit A-76 Studies, from start to finish, to just one year helps to explain IFPTE's concerns that such a policy would allow for a system that would undercut and sabotage the true intent of public/private competitions. Hence, absent careful comparison procedures, federal contracting officers are in effect, systematically encouraged to accept a contractor proposal that looks good, but in actuality, could result in poor performance, cost overruns, or both.

Once a contract is awarded under these unfair time constraints, there is no enforcement mechanism in place to provide the necessary oversight needed to ensure that the service is being adequately provided. Simply stated, the OMB proposal fails to address the issues of 'accountability' and 'oversight' of government contractors.

Meanwhile, if government workers (by some stroke of good fortune), are able to win a competition under this unfair guideline, they will be periodically required to re-compete for their jobs, every three to five years. The obvious question here is, if the true intention is to provide quality government services at the best price, then why is it that contractors are handed contracts with absolutely no oversight or accountability, but government workers are consistently scrutinized? Because there are no provisions within the OMB policy that would allow displaced federal employees to re-compete for jobs, the government will lose what is left of their infrastructure. Yet, OMB's recommendations do nothing to address this glaring flaw.

Once an agency privatizes a function, that function once performed by the government is gone. The government becomes exclusively at the mercy of that contractor, and has no choice but to pay what the contractor demands for future work. And, as unlikely as it would be under this policy, if one were to even suppose that the infrastructure did exist to allow for work to return to the government, there is no ability, under the OMB policy, to 'contract in' work back to the federal sector. If the true intent of this policy is to achieve lower costs and not simply to reward business with taxpayer dollars, then why not, at the least, allow work to return to the federal sector when it is cost-effective to do so? It certainly is difficult to see the rationale behind this.

On a broader policy objective related to A-76, which, not surprisingly, was not remedied through the OMB recommendations, there is no ability for unions to protest A-76 contracting-out decisions. In light of the new proposals, this becomes even more important when it comes to bringing credibility to the process and should be included in OMB's directive.

Currently, courts and the GAO have denied federal employee unions standing to protest A-76 contracting-out decisions. It is this policy which should be changed, as it allows contractors to receive contracts based on projected "savings" that have not been subject to challenge by an employee union protest. It is a well-known contractor practice that the contractors, as they currently do, can simply develop a bid which incorporates projected savings in order to win contracts, and subsequent to contract award, those savings are never realized, and often there are “unanticipated” cost overruns.

The process by which the administration is forcing this policy upon the federal workforce also must be examined.

In an FY 2002 appropriations measure, Congress legislated that the president appoint a panel to study and report recommendations to change the A-76 process, resulting of course in the aforementioned CAP Best Value report. Aside from the fact that the panel itself was stacked with those who would benefit handsomely from lucrative government contracts (with the notable exception of two union leaders whose objections to the report were basically ignored), IFPTE has serious concerns with respect to the fact that the administration is bypassing congressional approval, or even scrutiny for that matter, in implementing the CAP recommendations.

IFPTE's concerns with regard to this process were raised with OMB officials during a meeting on December 4th, 2002, in which OMB Procurement Administrator Angela Styles completely discounted the issue, indicating that since congressional hearings had been held last year on the 'best value' report, then that was congressional scrutiny enough. OMB has stated that the agency intends to quickly implement its draft revision, and it has no plan to submit the A-76 overhaul revisions for congressional review.

IFPTE strenuously objects to OMB's willingness to unilaterally implement this policy and urges the administration to seek congressional approval before moving forward. The hearings last year gave no indication that the Best Value report would be solely enacted by the executive branch.

Furthermore, even if one were to buy the administration's argument that OMB took the proposal to Congress (nothing, by the way, was ever voted on – just hearings), it was the 107th Congress, and this policy is to be implemented during the 108th Congress. That was then, this is now, and the 108th Congress has seen nothing, scrutinized nothing, and approved nothing. If OMB's A-76 revisions provide a 'level playing field' when it comes to outsourcing (as the administration would lead you to believe), then why not subject the policy to congressional scrutiny and approval?

The draft Circular reveals its pro-business bias in its opening statement, which immediately radicalizes the definition all of federal government functions – from being defined as presumed inherently governmental, to being defined as presumed commercial in nature. "Agencies shall presume all activities are commercial in nature unless justified as inherently governmental", states the draft Circular. Inherently governmental is an "activity that is so intimately related to the public interest as to mandate performance by government personnel". It is clear that by first stating that ALL work is commercial, followed by a definition that includes such precise language as 'so intimately related', OMB's goal is to make virtually all of the federal workforce subject to this unfair outsourcing practice. Not only does this presumption clearly contradict OMB's assertion that the new outsourcing policy will provide a 'level playing field' in contracting-out practices, but it is also reflective of the overwhelming influence that private business interests had in drafting the CAP Best Value report.

Below are additional comments IFPTE submits for review:

Section 4., Policy, "For the American people to receive maximum value for their tax dollars, all commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular." Currently, government agencies are allowed to exempt or except selected commercial activities from competition. This statement implies that not 99%, but 100% (i.e., "all") FTE's should be subject to either standard competitions or direct conversion. This violates such generally understood principles as the law of diminishing returns. It also fails to recognize the value of work performed by civil servants that are not subject to the corrupting forces of corporate greed and unscrupulous business practices. It ignores the fact that if a government agency does work through its own employees, the agency is avoiding time delays and costs related to holding competitions and then working through a maze of contractors and

sub-contractors and consultants. It represents an ideological point of view not present in past administrations and not likely to persist past the current administration. This statement should be modified to recognize reality, as follows, "For the American people to receive maximum value for their tax dollars, **an adequate portion of** commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular."

The prohibition on use of a new sub-contract to support MEO performance of an activity (Attachment B, section C.3.a(4)), "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". This appears to put an unfair disadvantage on the agency performance of work. Removal of this restriction is recommended. If the restriction remains, there should be a statement of the rationale behind this restriction. Is it a deliberate decision to provide a competitive advantage to private prime contractors? Does it have to do with the uncertainties of relying on contracts that have not been made yet? – If that is the case, the same restriction should apply to commercial bidders (probably a completely unacceptable restriction – so why apply it to agencies?). In summary, either the prohibition on new support contracts as part of an Agency Tender should be removed, or a rationale for this prohibition is added.

Attachment D, section 2, "Prohibition. A Federal agency shall not perform a commercial activity for a private sector source providing a commercial activity to a state or local government." This would not allow use by state or local governments of Landsat data if there is a private company that provides intermediate data processing services. What if the Federal agency provides commercial services which won an A-76 competition? What if the Federal agency provides commercial services, which are not available from the commercial sector? Some provision for exceptions to this statement are needed to rationalize this document with current reality. Including an escape clause or exception procedure for this prohibition is necessary.

Attachment E, Item 9, "Cost of Competition. The cost of conducting a Standard Competition shall not be calculated." Needless to say, this clause is reflective of the true intention of the goal's of this overall policy --

to a HIDE the true COST of this policy! It exposes the biased, ideological thinking behind this revision! A more appropriate requirement would be to compute, track and publish the cost of conducting all standard competitions so that the public can comment on whether the policy is working, and congress and administrations can make informed decisions. This item clearly needs to be modified to read as follows, "The cost of conducting Standard Competitions shall be calculated, and reported to Congress."

General: Currently, Federal agencies tent to have a FTE limit, which they have to manage. What happens to the head-count limit as direct conversions and standard competitions take place? Is this addressed elsewhere in government procedure documents, or does it need to be addressed in Circular A-76? If any provision is made for reductions in FTE limits due to direct conversion or standard competition, there must be a related provision for the raising of FTE limits if there is a conversion of work to performance by an agency, or an agency wins a standard competition. Otherwise, we face the absurd situation in which the agency wins a competition, but is then told it cannot exercise its staffing plan due to agency head-count limitation. Companies certainly don't have these limitations. In fact, the revised A-76 calls into question the entire concept of FTE limits for Federal agencies. Instead, explicitly state that agency head-count limits will rise and fall due to direct conversion and standard competition outcomes, or state some alternative policy on this matter.

Attachment E, C-7: We object to the competitive advantage given to the private sector companies via the Federal income tax adjustment. Also, it is not clear why this applies to public reimbursable performance – are they not also tax exempt? Recommendation: Delete all of E. C-7, and the corresponding line item on the SCF.

Track Costs: Currently, agencies are assuming that promised savings from contractors are actually realized. According to reports done by the General Accounting Office (GAO), however, costs have been shown to increase over the course of contracts, and agencies do not have systems in place to track costs. OMB's A-76 recommendations do nothing to fix this. Recommendation is to require agencies to track costs and savings from contracting-out.

Abolish Arbitrary Personnel Ceilings: Currently, agencies manage their Federal employees by arbitrary personnel ceilings. Even when agencies

have work, as well as funds to pay for that work, they still contract it out – often at higher costs – because they can't hire the necessary Federal workers. OMB's outsourcing directive only encourages this practice. Recommendation is to allow agencies to hire additional Federal employees if they could perform the work more efficiently.

Contracting In: Recommendation is to require agencies to subject work done by contractors to the same level of public-private competition as work performed by Federal employees.

Wages & Benefits: Contracting-out in the private sector is used to undercut employees on their wages and benefits. Furthermore, government contractors are well known for running 'job shops' in which they hire foreign guestworkers, instead of qualified American workers, to work for lower wages. OMB's revisions don't even acknowledge these practices. In fact, the new outsourcing policy will only encourage these practices. Recommendation is to require the Office of Personnel Management and the Department of Labor to compare the wages and benefits of Federal employees and the overwhelming abuse of current guest-worker programs and then report back to Congress.