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Subject: IFPTE Local 29 Comments on Circular A-76

I have reviewed the draft version of Circular A-76 in detail. I have attached two files. One is a set of editorial comments, correcting grammar, typos, references, and the like.

The second file is more substantive comments, with specific recommendations as to changes that should be made to the draft document prior to release. It is my position that failure to implement these decisions will result in a flawed document that would not be in the best interest of the public to release.

I represent a labor union of federal employees with 85 members, and representing approximately 1700 engineers, scientists and technicians at the Goddard Space Flight Center.

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Comments on Circular A-76
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I have reviewed the Circular No, A-76 (Revised) Draft of November 14, 2002. I noted a small number of typographical errors, which I will address in a separate document. My substantive comments will be in this document.

I am concerned with a statement in 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." It is my understanding that 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 who 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, this is simpler and less

bureaucratic than having to go through the red tape of holding competitions and then working through a maze of contractors and sub-contractors and consultants. It represents an ideological point of view not likely to persist past the current administration. In short, **Recommendation:** that this statement be modified to recognize reality, as follows, “For the American people to receive maximum value for their tax dollars, **a portion of** commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular.”

Attachment B, section C.3.a(4). There is a prohibition on use of a new contract to support MEO performance of an activity: “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. I recommend removal of this restriction. 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? – because 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, **Recommendation:** that either the prohibition on new support contracts as part of an Agency Tender be removed, or a rationale for this prohibition be added.

Attachment B, Section D.3, Participation of Directly Affected Employees and Representatives of Employees. There is an error in the reference for this section, although it seems obvious that the reference should be to D.2 (rather than to D.3, which is a self-reference). The permitted role of representatives of employees, such as labor union personnel, is not clear. There is a prohibition from service on the SSEB in D.2.c.1, but no other statements of when union representatives would be allowed to participate, and in what manner. **Recommendation:** Provide further explanation of the allowed participation of representatives of employees.

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.” I am concerned that 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. **Recommendation:** add an escape clause or exception procedure for this prohibition.

Attachment E, Item 9, “**Cost of Competition.** The cost of conducting a Standard Competition shall not be calculated.” This is an OUTRAGE! The AUDACITY of including a COVER-UP of the true COST of this policy right there in the policy 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 the congress and administrations can make informed decisions. While we are on the subject of the cost of competitions, where does the funding come from to pay all these people that have to administer the competitions? What about their training costs? The answer is probably that it is agency overhead. Since general overhead numbers are used, there is probably little competitive disadvantage in having overhead costs for competitions. However, the public, the agencies, congress and the administration still deserve to know the costs of these competitions. **Recommendation:** that this item be modified to read as follows, “The cost of conducting Standard Competitions shall be calculated, and reported to Congress.”

Announcement of Opportunity Competitions: There another way of providing competition between government workers and private/academic sources. At the NASA Goddard Space Flight Center, we have scientists, engineers and support personnel working on in-house projects (and supporting out-of-house projects) for which they had to compete with universities and private industry to get the work. NASA HQ provides funds, and holds a competition initiated by an announcement of opportunity (AO) or similar process. The competition is open to anyone who cares to propose. Unlike a standard competition, staffing decisions are not made after each competition, but rather are based on the net result of several such competitions. In the last GSFC Competitive Sourcing Plan (which, as part of the NASA Interim Competitive Sourcing Plan, was accepted by OMB), GSFC management has taken credit for a large number of FTE’s as being exposed to competition by being funded in this way. Circular A-76 states that it is the only acceptable way for exposing FTE’s to competition. Modifying the AO process to comply with the proposed

revision to Circular A-76 may have negative impacts to the scientific outcome of AO's. **Recommendation:** Add language to Circular A-76 recognizing the validity of the AO and similar methods of competing between agency and private sector performance of work. Do not make any change to the AO and other similar competition methods. Modify Attachment A, Section D.3, to include on the list of Reason Codes for Agency Performance a new Reason Code to cover such other types of competitions.

FTE Limits: Currently, Federal agencies tend 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 limitations. 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. **Recommendation:** Explicitly state that agency head-count limits will rise and fall due to direct conversion and standard competition outcomes, or state some alternate policy on this matter.

Attachment E, B.3.f, Travel. The proposed revision states, "The agency shall include the projected cost of travel the MEO is expected to be expended unless the solicitation includes a ceiling cost for travel reimbursement or states that travel is government furnished. If the solicitation includes a ceiling cost for travel, the Agency shall enter this amount on SCF Line 3." It is my experience that NASA government personnel can often travel more cheaply than contractors due to the ability to obtain reduced airfares. The Agency tender should be able to estimate realistic travel costs, rather than artificially inflate their costs in this manner. **Recommendation:** replace the quoted text above with, "The agency shall include the projected cost of travel for the MEO."

Attachment E, C.7: Federal Income Tax Adjustment. 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.

Editorial comments on A-76

Page	Para	Was:	Is / comment
B-7	C.2.a (13)	MEO has been implemented in accordance with paragraph C.6.b (2) or a previous competition, (except as provided in paragraphs C.6.b(2) and C.6.d (2) below).	The referenced paragraphs do not exist. Not obvious what correct references would be.
B-9	C.3.a (4)	Once announced, the Agency tender shall not include a new agency contract or ISSA that results from in the conversion of agency performed work as a part of the MEO or Agency Tender.	Poor grammar. Difficult to determine the intent of this sentence, or how to correct it.
B-10	C.3.d(2)(b)	The SSA shall document the reasons for not entering a price on Line 7 and attach the SCF the documentation....	The SSA shall document the reasons for not entering a price on Line 7 and attach to the SCF the documentation....
B-12	C.4.a.3.a.2	Through clarifications (see FAR 15.306(a) or communications, negotiations and discussions (see FAR 15.306(a) and depending.....	Through clarifications (see FAR 15.306(a)) or communications, negotiations and discussions (see FAR 15.306(a)) and depending..... [add two right parens]

B-12	C.4.a.3.b	...to resolve the disagreement	...to resolve the disagreement. [add period]
B-13	C.4.a.3.c.1	... the CO shall enter on Line 8 of the SCF each contract price....	... the CO shall enter on Line 7 of the SCF each contract price.... [change Line 8 to Line 7]
B-13	C.4.a.3.c.1.b	...signing and documenting on Line 19 of the SCF the following:	...signing and documenting on Line 20 of the SCF the following:
B-14	C.4.a.3.c.2	The Agency Tender shall be among the group of private sector offers and public reimbursable tenders considered in Phase Two.	The Agency Tender shall be among the group of offers and tenders considered in Phase Two. [delete extraneous text]
B-15	C.4.a.3.c.2.b	...then enter lowest contract price or public reimbursable cost on Line 8 of the SCF.	...then enter lowest contract price or public reimbursable cost on Line 7 of the SCF. [change Line 8 to Line 7]
B-15	C.5.a.2	...with a copy to the 4.a official.	...with a copy to the 4.e official.
B-17	C.6.a.1	...questions regarding a private a sector offeror's....	...questions regarding a private sector offeror's....
B-19	D.1 & D.2.a.1	...in the solicitation: & ...members of the SSEB	[Add periods to the ends of sentences.]
B-20	D.3	...in accordance with paragraph D.3 above.	[change to D.2, perhaps? This reference is in D.3]
C-4	C, D.2.b	...requirements of this Circular);	...requirements of this circular; [delete right parens]
E-1	A.4	...private sector and public reimbursable sources]	...private sector and public reimbursable sources.
E-4	B.1.b.1	...such as uniform allowances and ertime and other local...	...such as uniform allowances and overtime and other local...
E-10	B.3.g	...cost of the contract to be entered o SCF Line 3...	...cost of the contract to be entered on SCF Line 3...
E-11	B.5.b	... phase-in period, these costs may be entered on Lines 1 through 5 may be used to document these costs.	...phase-in period, Lines 1 through 5 may be used to document these costs.
E-12	C.3	This Line reflects a full range on contractual...	This Line reflects a full range of contractual...
E-15	D.2.b.2	...Line 13 (total, contract/ISSA cost)	...Line 13 (total contract/ISSA cost)

GESTA, IFPTE Local 29
December 17, 2002