Ronald Lentz <rlentz@hq.nasa.gov>
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To: David C. Childs A-76comments/OMB/EOP@EOP

cc: See the distribution list at the bottom of this message
Subject: NASA Comments - Proposed revision to OMB Circular A-76

Attached are NASA's comments relative to the proposed revision to Circular A-76. We are incorporating the comments into the body of the email as instructed and included an attached Word document with all the comments.

NASA's General Comments

1. NASA is completely supportive of OMB's proposed revision to Circular A-76. The new version is a terrific improvement over the previous Circular. NASA is especially pleased with the FAR based, best value approach to doing business. The comments that follow are not "show stoppers", but only address various suggested improvements to the document.

2. Suggest that OMB establish a mobile team of A-76 implementation experts who would be available to all agencies to support surge requirements.

3. Suggest that OMB consider changing the timeframe. Suggest wording such as, "agencies shall endeavor to release the RFP within six months of the public announcement, and make the performance decision within twelve months of release of RFP." We are concerned that the present A-76 process takes entirely too long and we do not want to repeat that under the new process. Also, we are concerned that the proposed twelve-month structure would not allow sufficient time to develop, analyze, and negotiate quality proposals in the more complex procurements. A maximum of eighteen months, set out as described above, or just as a total with flexibility as to how the eighteen months are allocated, should be sufficient in almost every case and yield a better result for the taxpayer.

4. The proposed revision to A-76 substantially increases the duties and workload of the contracting officer. Those duties and other recent changes in Federal procurement policy (e.g. restrictions on bundling and credit card use) will drive a need to increase the number of FTE in the 1102 series. OMB public recognition and support of that fact of life will help the agencies to ensure that OMB policies are fully implemented.

5. Currently, acquiring personal services are prohibited for most agencies. That prohibition forces agencies to use government employees to perform activities that are not themselves inherently governmental but closely support inherently governmental activities. If the prohibition on acquiring personal services were relaxed, additional competitive opportunities could possibly emerge. Suggest OMB obtain statutory authority for agencies to award personal services contracts where the cost of the contract is no greater than the cost of

having the work performed by civil servants. At a minimum, a narrower definition of what constitutes personal services would be helpful.

6. The Circular should also address the interplay of the Civil Service laws and merit protection principles as they impact personnel involved in the process. It does not appear to us that the impact of these laws and regulations has been fully taken into account in the draft Circular.

7. Inconsistent treatment of and reference to the Federal Acquisition Regulation (FAR) leaves the reader unsure of the governing rule. Terms-of-art are used in ways different than elsewhere in the FAR and procurement policies. This may cause significant confusion. Draft frequently attempts to paraphrase the FAR, creating the likelihood for further confusion. The draft also confuses the use of Contracting Officer (CO), Source Evaluation Board (SEB) and Source Selection Authority (SSA).

8. The draft is too prescriptive. It also requires OMB review or approval of numerous actions committed by the FAR or by statute to the discretion of the agency or the Contracting Officer (CO). Agencies should be given greater flexibility in how they achieve the objectives and held accountable for the results. OMB is not staffed to handle the volume of actions that could easily result, and that will lead to delays and frustration on both sides of the OMB/agency equation.

9. Attachment A indicates that ISSAs are covered by the Circular. We believe ISSAs should not be included in the A-76 process. ISSAs are not necessarily commercial activities, and use of devices such as ISSAs should be governed by the Economy Act and other applicable statutory authority, not Circular A-76. As an aside, we note the term "ISSA" is not defined in this Circular.

CIRCULAR

1. The cover of the Circular indicates that it is effective upon publication in the Federal Register and applies to all activities where the solicitation is dated on or after 1 Jan 03. However, the Federal Register publication was a notice, not an interim rule. Therefore, it is not clear whether the Circular actually does take effect on 1 Jan. This matter needs to be clarified.

2. The term "4.e official" first used on page 1 is not very descriptive. We recommend it be replaced by a more descriptive title, such as Competitive Sourcing Official.

Attachment A - Inventory Process

D.3. Should agencies have competitive sourcing plans for all FTEs classified as Reason Code B? It is not clear from the language whether all FTEs in Reason Code B must be either competed or directly converted.

E.1 & E.3. - Inherently Governmental activities. Recommend adding the following language from OFPP policy letter 92-1 paragraph 8(d), which according to the Federal Register announcement is being merged into the revised A-76, but the "trace" is now gone:
8(d) "All officials. When they are aware that contractor advice, opinions, recommendation, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal government officials are to insure that they exercise independent judgment and critically examine these products."

E.3.c. - This is particularly confusing because of the way it is written. Please consider using less legal terminology.

E.3.f. - This is somewhat confusing. Does E.3.f. mean that if the activity is already performed by the private sector, even though it is an inherently governmental activity, that it should continue to be performed by the private sector?

F.1.a. - The Inventory Challenge Review Authority shall be an agency official at the same or higher level in the agency than the individual who prepared the inventory. Will agencies have to specify who prepares the inventory in order to show that the Inventory Challenge Review Authority is different than the inventory preparer?

F.1.a - In NASA, the Administrator signed the inventory sent to OMB. On the other hand, the "individual who prepared the inventory" was, arguably, a staff person, although not formally designated as that individual. May the 4.e. official be either the "individual who prepared the inventory" or the Challenge Authority or the Appeal Authority? What organizational relationships are required (or prohibited) among these various authorities?

Attachment B - Public Private Competition

A.1.a Deviations and also C.1.b.(3) Timeframes - There is also a conflict between these two sections, where the first only requires notification to the Deputy Director of OMB, and the latter requires prior approval of the Deputy Director of OMB. Additionally, we cannot find any discussion of the 8 month and 4 month process periods from the graphic at the beginning of Attachment B.

A.2.b.(3), New Requirement, and (4) Expansion. The requirement to use a Standard Competition to justify use of an agency source to perform a new commercial requirement or a significant expansion of an existing activity may tend to limit innovation and efficiency in Government. New requirements and expansions may arise for any number of reasons, and often the most effective way to perform the new requirements (at least initially) is through reallocating existing civil service assets. By precluding the use of civil servants, except as a result of a difficult and time-consuming competition, the proposed Circular seriously restricts a manager's flexibility in adjusting to new requirements. Managers should be empowered to move out with the most effective sourcing option available for new and expanded requirements. If concern about abuse exists, limit reallocation of resources without competition to two years and only if approved by the 4.e. Official.

B.3 Human Resource Advisor (HRA). As described, this paragraph implies that all of the work performed in subparagraphs "a." and "b." is performed by the HRA and is inherently governmental. However, we contend the preponderance of actual work involved in carrying out these duties is commercial and can and must be performed by a number of employees, including commercial civil servant or contractor employees, with the HRA reviewing, certifying and making the final agency decisions in these areas. Recommend that these paragraphs be rewritten to clarify and emphasize that the HRA makes final decisions but the many tasks needed to develop these products may and are expected to be performed by others, including commercial workers.

B.3.a - (d) tasks the Human Resource Advisor (HRA) to make public announcement at the local level and in FedBizOpps and include in the announcements the agency, location, resources being competed and agency

officials responsible to its completion. These responsibilities are more properly those of the Contracting Officer, rather than the HRA.

B.3.a. - (f) tasks the HRA to provide post-employment restrictions to employees. Under regulations (5 CFR 2638.202(b)(4)) promulgated by the Office of Government Ethics pursuant to the Ethics in Government Act, this responsibility is that of the Designated Agency Ethics Official, or his or her designee. This ethics function is not ordinarily delegated to the HRA, who lacks both the training and experience to perform this function. Therefore, we recommend this provision be deleted and that the Attachment be amended to require the DAEO or designee to provide ethics advice to affected employees.

C.1.b.(2) - Removes the agency's discretion to cancel the procurement when, for example, the SOW misstates the agency's true needs. Is that what was intended? Please clarify.

C.1.b.(2) - We recommend that Attachment F include a definition of "Performance Decision". Since this action triggers the clock for the appeal process, we believe there should be a clear and readily locatable definition for this term.

C.1.b.(3) Timeframes. The Circular does not state what the consequences are if an agency fails to complete the competition within the mandated time. While one extension is possible, we would expect that there should be some impact or remedy for not meeting the timeline, and that it should not be that the entire process to that point becomes void. Also, the Circular should indicate whether litigation will toll this time line.

C.2.a.(3) reiterates the 12 month time requirement, and allows a single six month extension if the 4.e official obtains approval from the Deputy Director of Management at OMB. We believe the 12-month requirement may not always be achievable. The "safety valve" provided here also is burdensome, because it requires approval from both a high level official within the agency and approval from OMB. We recommend that the 4.e. official have the authority to grant extensions without having first to obtain permission from OMB. If OMB is not willing to accept this suggestion, then in the alternative, we recommend that if OMB fails to respond in a short period, e.g., 10 working days, that approval is deemed to have been granted.

C.2.a.(4) - The references listed (e.g. B.4.b.(a)) are not correct. There is only a B.4 within Attachment B.

C.2.a.(7) - The 4.e. official approval level to provide GFP is too high.

C.2.a.(7) - The language is ambiguous as it states the "decision to provide...property shall be approved by the 4.e. official" while later suggesting that only the mandatory use of GFP would require 4.e. official approval.

C.2.a.(8) - Does the requirement to state the maximum incentive fee apply to award fee?

C.2.a.(13) - The references listed, C.6.b.(2) and C.6.d.(2), are not correct. There is only a C.6.a within Attachment B.

C.3.a.(1) - Disclosure of the entire Agency Tender after the Performance Decision prejudices the Agency Tender in the event of a reset of the procurement. Moreover, release of the Agency Tender in response to

interested parties in the course of an Administrative Appeal increases the likelihood of administrative appeals.

C.3.a.(1) requires that any part of an Agency Tender be released to interested parties in an administrative appeal after a Performance Decision is made. If the MEO used subcontractors, those subcontractor proposals may well contain proprietary information. This Circular fails to address that matter. We recommend that the Circular be revised to indicate that proprietary information of contractors and subcontractors may not be released to interested parties except under Protective Orders such as is done in GAO protests. If an interested party does not have outside counsel, then the information should not be provided to that interested party.

C.3.a.(3) - Does the requirement "the ATO shall make changes to the Agency Tender only resulting from . . . negotiations with the SSA" mean that each change in cost, staffing or approach from the initial proposal to the Final Proposal Revision (FPR) must be directly traceable to a particular discussion question, or may the ATO formulate an FPR that, in his or her judgment, provides best value to the agency in light of the discussions?

C.3.a.(3) requires the Source Selection Authority (SSA) to conduct negotiations with the ATO. The contracting officer normally carries out such duties. This problem appears repeatedly throughout the Circular. We recommend the Circular provisions be revised to indicate that the SSA will conduct negotiations through the CO, rather than to task the SSA to perform this duty himself.

C.3.a.(4) - How can the MEO be efficient, if it is required to carry forward into the Agency Tender the old ways of doing business exemplified by the old "existing contracts?" The existing contracts may not match the MEO requirements, let alone the PWS requirements. Just as innovative approaches will be encouraged from private sector offerors, so should Agency Tenders be permitted some flexibility to adjust the in-house team's use of contract support. This could involve new, expanded, or restructured MEO subcontracts, and that should be permitted, to some degree, in agency tenders. If no new contracts may be created, may existing contracts be modified to reflect PWS/MEO requirements contingent on the success of the Agency Tender?

C.3.d.(2) - This section appears to conflict with C.3.d.(2).(a). How can the CO decide either to revise the solicitation or implement the Agency Tender, without opening the Tender? The CO may decide, notwithstanding the comments on "no bid" prospective offerors, that the solicitation was adequate. Having accepted the Tender, upon opening it the CO could realize, based on its contents, that the "no bid" offerors were correct. This subsection also does not offer as an alternative to reissue the solicitation, as C.3.d.(2).(a) addresses.

C.3.d.(2)(b) requires the SSA to provide a debriefing to the ATO. The contracting officer normally carries out such duties. We recommend the Circular clarify that the SSA should do this through the CO. The Circular is inconsistent in stating how the SSA performs his or her duties. In some instances it is through the CO, in others it is not. To be consistent, we recommend that the SSA work through the CO and SSEB (where appropriate).

C.4.a.(1)(a) - Evaluators in negotiated procurements do not "require, direct or make specific changes" to proposals. The last sentence should read "The SEB may raise during discussions whether appropriate

resources have been included in the MEO." This accounts for over-staffing or the wrong staffing skills or mix, not just under-staffing.

C.4.a.(1)(a) requires the SSA to evaluate the offers. This duty normally is carried out by the Source Selection Evaluation Board (SSEB). We recommend the Circular clarify that the SSA may do this through the SSEB.

C.4.a.(1)(b) - Fixed price procurements generally do not require cost realism analyses. Verification that an Agency Tender was correct in its mechanical filling out of the SCF should not be classified as a "cost realism" analysis.

C.4.a.(1)(b) requires the SSA to perform a cost realism analysis of the agency tender, public reimbursable tender and the private section bids and proposals. The contracting officer and/or the SSEB normally carries out these duties. We recommend the Circular be clarified to indicate the SSA shall do this through the CO and SSEB.

C.4.a.(2) indicates the Performance Decision is made when the SCF is certified in accordance with paragraph C.4.b. There is no paragraph C.4.b in this Attachment.

C.4.a.(2) The second and third sentences in this sub-section are redundant. Moreover, the Agency Tender is not addressed.

C.4.a.(3) Negotiated Acquisition. This entire section is an example of trying to paraphrase the FAR. That practice is likely to cause confusion and possibly conflict. For instance, if language in one document changes, is there any discipline in place to assure that corresponding changes are made in the other document.

C.4.a.(3)(a)2 Ambiguities. There are two parentheses missing in the first sentence.

C.4.a.(3)(a)3 Deficiencies. Merely correcting all material deficiencies should not necessarily be enough to warrant including the Agency Tender in the competitive range. There is no reason to bring another SSA/SEB into the process to provide a 'second opinion' of the SEB/SSA's decision that a material deficiency has not be corrected.

C.4.(a)3(c) - Cost/Technical Tradeoff (CTTO) Source Selection. The "Integrated Evaluation Process" is a "best value" process that allows the source selection authority to make cost/technical tradeoffs. Under the proposed rules, this process can only used in limited circumstances, unless special approval is obtained from OMB. This process may be the best choice to use in a variety of circumstances, and agencies should have the discretion to use this process whenever they find it to be the best option.

C.4.a.(3)(c)1 Integrated Evaluation Process. Same comment as C.4.a.(3)(a).3.

C.4.a.(3)(c)1 - Integrated Evaluation Process. Suggest that the definition of Integrated Evaluation Process be added to Attachment F.

C.4.a.(3)(c)1 - Integrated Evaluation Process, the term “contracted commercial activity” under criteria (2) is not defined anywhere and is different terminology than that used everywhere else in the Circular. Also, in this subsection, the citation C.4.a.(1)(c) does not exist.

C.4.a.(3)(c)2 Phased Evaluation Process. The language implies that the SEB/SSA engage in technical leveling until the Agency Tender is technically acceptable. Is that the intent?

C.4.a.(3)(c)2.a - Phase One. Wouldn’t everything in this phase except the last condition, i.e., “When the SSA and the ATO determine that the Agency Tender meets the revised performance standards…..”, also be occurring under the Integrated Evaluation Process, C.4.c.1? Why then is it delineated only here?

C.5. - Post Competition Accountability. The concept of overseeing MEOs in essentially the same way as contractors is problemmatic. There should not be two accountability regimes for an agency’s employeesone for MEOs and one for everyone else. This would be counter-productive to morale and unity within the agency’s workforce. Agencies have been working to develop accountability processes in response to the Government Performance and Results Act. Those standard processes should be used to ensure that MEOs, along with other agency-sourced activities, are performing as they should. If those processes are not adequate, they should be improved and applied without regard to an activity’s status as an MEO.

C.5.a. - talks about revising the PWS at the end of each performance period to reflect requirements and "scope changes" made during that performance period. It is not clear what is meant here by the term "scope changes". Ordinarily changes in the scope of a contract are cardinal changes that effectively are new procurements and must be justified as such. Is it the intent of this Circular to permit out of scope changes to the resulting contract or agreement? If so, that would seem to circumvent the intent of the process described by the Circular. Further, if the MEO wins the competition, such changes could force changes to the overall manning and grade structure of the organization and can force changes to position descriptions. It is not clear from this provision how these scope changes square up with the Civil Service rules for personnel within the MEO and outside of it and how they compete for promotions or avoid being RIF'd due to changes to their jobs which render them no longer qualified to hold the position.

C.5.a.(3) and (4) - We recommend Attachment F include a definition of the term "Letter of Obligation".

C.5.a .(4) - (e) What performance records would an agency have when the Letter of Obligation has just been awarded? Also, the citation at the end of this subsection should be C.5.b.2 not C.7.b.2.

C.5.b.(2) - Options are often for more than one year. Are agencies to treat Agency Tenders unequally, and use only one-year options for them?

C.5.c.(2) - Termination. According to this paragraph, should an agency provider fail to perform to the extent that a termination for default is justified, the head of the requiring organization shall issue a notice to terminate and shall recommend that the 4.e. official approve either a Direct Conversion or a Standard Competition. However, no mention is made regarding what the agency does with the affected employees following a decision to terminate. RIF or reassignment are the logical choices. Reassignment is often not possible, and a RIF takes months to complete. It would seem therefore that the effective date of the termination could not precede the effective date of a RIF. Additional guidance here would be helpful.

C.5.c.(3) Failure to Perform. Temporary Remedies. The FAR already provides appropriate remedies for contracted service providers. The language here needs to be harmonized with the FAR or reduced.

C.6.a.(4)(a) - Define “ineligible appeal.”

C.6.a.(4)(e) permits suspension of implementation of the Performance Decision for "30 days" or less. First, the Circular needs to clarify whether this is 30 calendar days or working days. Second, since a decision could take longer than this period, is it the intent of the Circular to require implementation of the Performance Decision even if the Administrative Appeal Authority has not yet decided the case? We believe a Performance Decision should not be implemented until after the appeal has been decided.

D.1 - The reference to "FAR 52.203" should be to FAR 52.207-3.

D.2.a(1) - Move the second sentence to D.2.b(1).

D.2.c.(1) - Define the term "directly affected personnel".

D.2.c - Source Selection Evaluation Board (SSEB). It does not appear that the reference to paragraph C.3.a. is correct.

D.3 - We believe the reference within D.3 to “paragraph D.3 above” is in error. We believe it should read, “paragraph C.3 above.”

Attachment C - Direct Conversion Process

If the business case analysis replaces the streamlined competition then why is this not still a considered a form of competition?

The Reason Codes in Attachment A, D.3 are inconsistent with the Direct Conversion approach. If an agency head decided not to exercise the permissive nature of Direct Conversion for a listed reason, only Reason Code A accommodates that permissiveness. Please clarify.

A.2 No Employee Impact. Given that a successful MEO’s employees are time-limited by the length of performance stated in the Standard Competition’s solicitation, this sounds like they can be direct-converted the second time around (i.e., no impact). Please clarify.

B. Section B states that direct conversion certifications shall indicate that the cost of obtaining the activity from another source is expected to be "fair and reasonable". It seems to us that the cost should be less than the cost of the current activity, vice "fair and reasonable". If the cost will exceed the current cost, it is not economically reasonable to make the conversion. In addition, often realignments occur gradually, when employee duties are redefined in light of evolving agency requirements. Requiring explicit identification of such shifts, public announcements and certifications may not be realistic and could adversely affect agency management flexibility. Using a process of attrition and then backfilling with contractor support will be very hard to do if the process mandated by the draft Circular must be followed in such situations.

B. - The 4.e. official approval level of the Direct Conversion Certification again is too high for many of the criteria, but especially when the criterion authorizing the conversion is the size of the activity being 10 or fewer employees.

D.1.e requires that the Business Case Analysis be completed in 15 working days. We believe that standard is overly optimistic. Just the process of finding and analyzing four comparable fixed-price contracts easily could take longer than fifteen working days. A more reasonable time standard needs to be applied to this process.

D.2.a - Greater clarity is needed in paragraph D.2.a. where it states that in the business case analysis for Direct Conversion, an MEO is not created, but an Agency Tender is developed in accordance with Attachment B. The process flow attachment marked "Attachment B" was not helpful in understanding this, and the lengthy guidance following the chart describes developing an MEO. Please clarify.

D.2.b - Few of the contracts suitable for comparison will be fixed price. As they are “comparable” and not precisely identical, comparing to the lowest-priced contract is unreasonable. Given four “comparable” contracts, the average of the range would be a more appropriate basis for comparison.

E.1 - Section E.1 requires appointment of competition officials, announcements, development of criteria, and publication at the local level and in FedBizOpps of any direct conversion, regardless of size or impact upon employees. This requirement may adversely affect management flexibility.

E.2.b and E.2.c - The references to paragraph C.6 of Attachment B are not correct. They should be to paragraph C.5.

F - Personnel Considerations. This paragraph needs to address the process and rules for providing a right of first refusal to another federal agency. Questions that need resolving include: Do the provisions of 5 CFR Part 330 apply? If not, what rules do apply? Do employees affected by the decision compete equally with other Part 330 eligibles? Do employees still have a right of first refusal for positions outside of the commuting area? If so, what placement rules apply to those situations? Does the right of first refusal apply when the affected employees are in the Excepted Service and the vendor agency positions are in the Competitive Service? If so, what rules and authority is used to appoint those employees?

Attachment D - Commercial Interservice Support Agreements (ISSA)

We believe ISSAs should not be included in the A-76 process. The Economy Act and other applicable statutory authority, not Circular A-76, should govern the use of devices such as ISSAs. We believe this Attachment should be removed from the Circular.

A. Applicability
The listing of ISSAs not subject to competition should include those where the work is performed by contractors (private sector). The FAR already has requirements pertaining to ISSAs. They include that the submission of a D&F stating that the use of an ISSA is in the best interest of the Government, and that the services cannot be obtained as conveniently or economically by contracting directly with a private source. In

addition, the servicing agency is required to comply with the FAR Part 6 competition requirements if a contract is to be awarded. The listing of ISSAs not subject to competition should also include those that are not for recurring services. As currently written, if an ISSA is for two years and meets the other criteria, it would need to be competed. Conducting competitions requires the use of limited resources. Only requirements of a recurring nature should be required to use those limited resources. We recommend that recurring be defined to be those exceeding five years.

B.4. Commercial ISSA Competition Plan
Requires a list of "**all"** existing commercial ISSAs be submitted no later than June 30 of each year. It is assumed, but not entirely clear, that the "all" refers to only those commercial ISSAs meeting the Section A. applicability criteria. In addition, the requirement for a competition plan should include only those ISSAs that will exceed five years in length (the section B.3. requirement). There is no purpose in including agreements that merely exceed $1 million annually if they only will have a period of performance of one or two years but will not go beyond that. The requirement, as presently written, may result in having a lengthy list of ISSAs for which data is to be collected and a competition plan presented although those ISSAs may never have to be competed. Compliance with the draft requirement will entail using limited resources that could be better utilized.

C.2.(c) and D - If reimbursable public agencies are authorized to compete in any competitions, it seems prudent to state in all competitive solicitations that any such agency shall submit a tender in accordance with Attachment E and that the selection agency shall consider that price in the competition, even though a lower reimbursable rate may be paid by the selection agency. To require agencies to amend solicitations each time a public reimbursable source competes is too time consuming.

D. Agency Solicitations
It is unclear why solicitations cannot be issued to already contain the language identified here instead of having to amend the solicitation after a provider agency responds.

E. Personnel Considerations. This paragraph needs to address the process and rules for providing a right of first refusal to another federal agency. Questions that need resolving include: Do the provisions of 5 CFR Part 330 apply? If not, what rules do apply? Do employees affected by the decision compete equally with other Part 330 eligibles? Do employees still have a right of first refusal for positions outside of the commuting area? If so, what placement rules apply to those situations? Does the right of first refusal apply when the affected employees are in the Excepted Service and the vendor agency positions are in the Competitive Service? If so, what rules and authority is used to appoint those employees?

G. Relationship to the Budget - We understand the requirement to identify the dollar savings from competition. However, this section, as drafted, leads one to believe that there are always dollar savings when that may not be the case. If a best value approach is used, other benefits may be obtained that are considered to outweigh the additional costs. Consequently, there may be additional costs instead of cost savings.

Attachment E - Calculating Public-Private Competition Costs

A.9 - There must be a mechanism to recognize the cost of conducting a public-private competition. When the Government wins, the MEO must compete again in 5 years and the cost of the competitions every 5 years

may more than offset any savings over the same period of time. A business case is incomplete unless the cost of performing the competition is considered. While we would agree that the cost of conducting the competition should not be a factor in determining the winner in a competition, it should be considered in developing a business case relative to recompeting at the end of the performance period.

A.10 requires the SSA to perform the cost realism analyses. We believe that the CO more properly performs that function.

B.1.b.(1), fourth line - Should "ertime" be "overtime"?

B.1.l, addresses use of volunteers, inmate labor and borrowed military manpower, and says that these sources may be included only if the solicitations states such labor is available to all prospective offerors. As a practical matter, these types of labor rarely will be available for use by all prospective commercial offerors. This provision prevents an agency from factoring in one of the advantages accruing to it by virtue of its status as a governmental entity, and is not offset by similar rules that would prohibit commercial offerors from bidding based on advantages that accrue to commercial entities, such as accelerated depreciation. Accordingly, we recommend this provision be revised to delete the requirement that the solicitation state such labor is available to all prospective offerors as a "common cost" labor source.

B.3.g.(2) - New MEO Subcontracts. The preclusion of new MEO subcontracts is too rigid. Just as innovative approaches will be encouraged from private sector offerors, so should Agency Tenders be permitted some flexibility to adjust the in-house team's use of contract support. This could involve new, expanded, or restructured MEO subcontracts, and that should be permitted, to some degree, in agency tenders. We recommend that new or restructured MEO subcontract approaches be permitted to the extent that a direct conversion would be permissible. The option permitted in this draft Circular (i.e., excluding the work from the solicitation in order to perform a direct conversion) is less desirable, because (a) that would fragment accountability for the work and (b) the approach upon which the direct conversion is based may not be consistent with the winning bidder's approach to doing the rest of the work.

B.3.h.(2) and C.1.b.(4) mandate that if an Agency is using an award fee contract, that 65 percent of the total award fee pool be included when calculating contract costs. Historically this is a very low percentage. A number such as 85 or 90 percent of the award fee pool would be more realistic.

Attachment F - Glossary of Acronyms and Definition of Terms

Page F-3 - The Definition of ISSA is not under "I", the logical place, but is found under "Commercial Inter-Service Support Agreement".

Page F-4 - Suggest that the definition for Contracting Officer be changed to mirror that of the FAR, so that the agencies have the latitude to follow Agency-specific regulations. For example, the CO does not ordinarily select the Source Selection Board at NASA.

Page F-4 - definition of "Contracting Officer" - In the second line, the word "Evaluation" needs to be added between "Selection" and "Board".

Page F-4 - Suggest adding of the definition of Source Selection Authority (SSA

Page F-8 - The definition for **Direct Research and Development**, appearing on page F-8, is located in the wrong place. It should instead be located between **Direct Patient Care** and **Directly Affected Civilian Employees or Military Personnel**.

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Message Copied To:

"Sateriale, Ken" <ksateria@hq.nasa.gov>

"LeCren, Joseph" <jlecren@hq.nasa.gov>

Deborah ONeill <doneill@hq.nasa.gov>

"Luedke, Tom" <tluedtke@hq.nasa.gov>

"Thompson, Scott" <sthomps1@hq.nasa.gov>

cduff <cduff@mail.hq.nasa.gov>

cpace@hq.nasa.gov