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To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: Comments of the AFL-CIO re: Proposed Revision to Office of Management and Budget Circular A-76

On behalf of the AFL-CIO, I am submitting the following comments (pasted below and attached as a separate document) to the Proposed Revision to the Office of Management and Budget Circular A-76, noticed in the Federal Register at 67 FR 69769 (November 19, 2002). The identifying information specifically requested in the Federal Register notice is as follows:

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Our comments follow:

December 19, 2002

VIA FACSIMILE and electronically

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street NW
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Room 9013
Washington, DC 20503
A-76comments@omb.eop.gov

Re: Comments by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) to Proposed Revision to Office of Management and Budget Circular No. A-76

Dear Mr. Childs:

On behalf of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), a membership organization of 13 million workers, I am submitting these comments to the proposed revisions to OMB Circular A-76. Proposed Revision to Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities," 67 FR 69769-69774 (November 19, 2002). According to OMB, the circular is being revised to "expand the use of public-private competitions to all activities performed in-house and through commercial inter-service support agreements" and to "incorporate principles of the Federal Acquisition Regulation (FAR) into the competitive sourcing process ..." (67 FR 69770). As many as 850,000 FTE positions - nearly half of the federal work force - may be affected by the revisions to OMB Circular No. A-76.

Several affiliated unions of the AFL-CIO that represent federal employees - the American Federation of Government Employees (AFGE), the American Federation of State, County and Municipal Employees (AFSMCE) and the International Federation of Professional and Technical Engineers (IFPTE) - have submitted comments in response to the notice of proposed revisions. We share the concerns of these unions that together represent hundreds of thousands of federal workers, specifically that:

* The revisions create a presumption that all government activities are "commercial" unless agencies prove otherwise, thus turning on its head the presumption that ought to apply when determining the nature of federal activities;

* The 12-month time period prescribed for competitions is unrealistic and unfair, especially for federal employees, who are not regularly engaged in the business of competing for government contracts;

* Reporting and other requirements imposed on federal employees which presume that allowing federal employees to continue performing federal government work is inherently inappropriate, regardless of whether their work is actually better, more cost-effective, or subject to stricter cost controls and monitoring than private sector work;

* The revisions may bias the process away from competition and towards converting public work to private contractors;

* The revisions omit any mechanism or authorization for federal employee unions to perform necessary representation of their members in the competition process; and

* The "best value" standard for selection of contractors, while appealing in theory, is subjective and open to abuse.

No one questions the importance of managing and delivering government services in a cost-effective and efficient manner that will protect and promote the interests of taxpayers. The proposed revisions to OMB Circular A-76, however, display a gross misunderstanding of the special role of public employees in performing governmental activities and the corresponding risks and costs of public-private competition, with the associated increase in outsourcing. As such, instead of maximizing value for taxpayers, the regime contemplated by the revised circular may well end up costing taxpayers more in the long run. We elaborate on these concerns below.

The proposed revision to OMB Circular A-76 ignores the reasons for and value of public employee performance of federal activities. Under the proposed revision to OMB Circular A-76, virtually all federal government "commercial" activities - i.e., all that are not "inherently governmental" - would be subject to outsourcing, either through public-private competition or through direct conversion. Although the language of the proposed revisions does not express an explicit preference for private sector performance of federal commercial activities, in our view that preference is implicit in OMB's Federal Register notice in the Federal Register, the revised Circular language, and the Administration's earlier announcements of numeric goals for competitive sourcing.

According to the notice, the proposed revisions will "significantly expand the use of public-private competition" by, among other things, eliminating existing exceptions that grandfather in public sector performance of commercial activities. The revised Circular directs agencies to "presume [that] all activities are commercial in nature unless justified as inherently governmental ..." Eliminating existing exemptions and creating a presumption that all federal activities are commercial unless agencies prove otherwise substantially increases the universe of work open to competition and will result in more outsourcing. Indeed, even before this notice, the Administration had

made clear its intention to open as many as 425,000 federal sector jobs to competition within the next few years. Thus, there is little reason to doubt that the ultimate objective and outcome of the revisions to OMB Circular A-76 will be to outsource significantly more activities now performed by federal employees.

In our view, outsourcing of public sector work should generally be a last resort taken only after exploring and exhausting other strategies to increase efficiencies and/or minimize costs. After abuses too infamous to ignore, the nation as a matter of law and policy rejected a "spoils system" allowing new presidents to replace their predecessors' workforces with political supporters and adopted, instead, a civil service system to ensure that the American people would be served by men and women who have devoted their careers to public service. Public employees bring experience, continuity of service and institutional memory to their work - whether inherently governmental or commercial - that cannot always be readily quantified but that nevertheless plays an important role in protecting and promoting taxpayers' interests. Moreover, unlike private contractors, public employees are not motivated by a profit-maximizing objective, nor are they subject to loss of work, i.e., cancellation of contracts, if they fall out of favor with an Administration or a contracting agency. For these reasons, public employees bring independence to the performance of their duties that private contractors simply do not have. Maintaining independence of performance is the best way to ensure that the public interest is served and that taxpayers' dollars are well spent. By opening up substantially more public sector activities to competition and tilting the playing field against continued public employee performance of federal work, the proposed revisions to OMB Circular A-76 will ultimately dilute rather than promote taxpayers' interest.

The proposed revision to OMB Circular A-76 fails to take into account or address documented shortcomings of privatization, while it imposes significant restrictions and requirements on the public sector. The proposed revision implicitly contemplates that outsourcing of public activities almost invariably leads to cost-savings and greater efficiencies. The actual experience, however, is often to the contrary, with huge cost over-runs, inadequate and shoddy performance, or fraud and abuse the real price of privatization. Examples reported by the American Federation of State, County and Municipal Employees (AFSCME) include:

* An independent investigative agency established by the New Jersey legislature concluded earlier this year that the state's privately run vehicle inspections program had cost taxpayers \$247 million more than a state-run program.

* In 2000, persistent complaints of substandard performance prompted the City of Tarpon Spring, FL, to decide against renewing a sanitation contract with Waste Management Services when it was up for reconsideration.

* The Wisconsin Legislative Audit Bureau reported in the summer of 2000 that Maximus, the company hired by Wisconsin to operate the Milwaukee County welfare program, had questionable expenditures of more than \$700,000 (including charges for business expenditures that were apparently designed to secure similar contracts from other states). Maximus also spent more than \$1 million of taxpayers' dollars on advertising that was unrelated to its role of providing assistance and support to low income welfare recipients.

Similarly, noted privatization expert Elliot Sclar concluded that the City of Albany, NY had overspent by an estimated 20 percent (exclusive of costs for contract auditing and supervision) in privatizing its vehicle maintenance program. And Massachusetts, which had privatized

state highway maintenance, lost an estimated 9 percent to 27.5 percent.

Examples such as the foregoing are regularly and widely reported. Coupled with the expedited, streamlined process prescribed by the proposed revisions to the Circular, we believe it is inevitable that the new rules will result in more, not fewer such problems when substantially more federal activities are subject to competition and outsourcing. Yet the proposed revisions to OMB Circular A-76 neither mention such examples of failed privatization experiments nor otherwise evidence any concern about them; nor do they provide any significant new measures to enhance oversight and accountability of private contractors.

On the other hand, the notice and revised Circular are at pains to add protections against conflicts of interests within the public sector and to prescribe stepped up accountability requirements for public employees when they bid on and win work in public-private competitions. OMB justifies this difference in treatment in part on the assumption that there is a "general sense that public-private competitions are unfair" to the private sector, which "serves to discourage participation in public-private competitions and weaken taxpayer confidence in the overall process" (67 FR 69771). But, aside from complaints by contractors, there is scant evidence of these perceptions, nor would such perceptions justify differences in treatment between potential public and private bidders, especially given the record of private contractors' failures and malfeasance.

Conclusion

For the reasons set out above and described in the comments filed by AFGE, AFSCME and IFPTE, we believe that the proposed revisions to OMB Circular A-76 will not improve performance or yield reliable cost-savings or increased efficiencies. We recommend that OMB defer implementation of the proposed revisions to the Circular until there has been further opportunity for discussion and consultation, including consultation with federal employees and their unions, will yield a better directive that more thoughtfully and comprehensively recognizes and advances all the interests at stake.

On behalf of the AFL-CIO, I appreciate the opportunity to address these concerns regarding the proposed revisions to OMB Circular A-76.

Sincerely,

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