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cc:
Subject: Government-wide Competitive Sourcing Working Group Comments

- Gov't-wide critial comments - Rev 1.doc

Government-Wide Competitive Sourcing Working Group **Comments to New A-76 Circular**

The following tables contain the comments from the Government-wide Competitive Sourcing Working Group on the proposed new A-76 Circular. The Working Group met with Messrs. Jack Kalavintinos and David Childs to discuss the changes on November 26, 2002. After the November meeting, agencies individually prepared comments for the Working Group. On December 10, 2002, the Working Group met to discuss the comments and develop a consensus of Government-wide comments. The comments in red with a priority ranking are the consensus comments generated from the December meeting. The other comments were received and compiled prior to the December meeting. The Working Group agreed to submit all of the comments contained in this document. As you will see in the document, we identified and prioritized our top issues/comments for each attachment of the Circular.

Positive/Improvements of new Circular	Explanation
FAR-based process	
Accountability	
Single document	
Straight answers/guidance from OMB	
Same set of eyes evaluating all offers	
Broad management involvement/tool	
Inherently governmental definition improved	Not all agencies agree with this statement.
Covered all bases/more comprehensive	
More readable, better organized, concise	

Circular – General Comments	
Priority/Section	Comment
Critical Government-wide Comments	
1.	1. Agencies not covered by FAR (see last comment in this section)
2.	2. OMB should monitor rather than mandate
3.	3. Unrealistic time frames for all processes
4.	4. Significant administrative burden throughout the process (i.e. phased-in implementation of ISSA, OMB identification of resources-funding,
Additional	Circular lacks internal consistency
Additional	Confusion in FAR application
Additional	Diagram is out of sequence with the FAR process
Additional	Use FAR terms and definitions
Additional	Transition to new Circular – use the announcement in lieu of solicitation issue date for the application of the new Circular.
Other Comments	
	Revision is too prescriptive in nature. Too many "shalls" and musts not enough "mays" and "shoulds." A policy document should not try to account for every possibility where an agency may try to avoid the process. OFPP should monitor and intervene were necessary. Agency 4.e official or their designee should be held accountable. Have agencies go to the Deputy Director of Management of OMB is not going to have a positive impact on the process. See ISSA for further comments.
	Document lacks internal consistency. Directions are in the Glossary under definitions and definitions are in the directive/policy parts of the document.

Circular – General Comments	
Priority/Section	Comment
	Example: There is no definition for Standard Competition. CO is defined differently in the Glossary than in Attachment B. Bookmarks need to be created. The attachment should provide the guidance.
	Document format is not consistent and confusing. Same format should be used for at least Attachment B and C.
	If you are going to follow the FAR then site the FAR Part and only include in the directive/policy the exceptions for the A-76 process.
	Unrealistic timeframe for all processes, but especially the Standard Competition.
4.d	Requires compliance with FAR. Some agencies such as Transportation Security Agency (TSA), Mint and Federal Aviation Administration (FAA), and Energy do not follow FAR. Recommend: "Comply with the Federal Acquisition Regulation (FAR) or, if non-FAR based agency, agency acquisition regulations…"

Attachment A – Inventory Process Comments	
Priority/Section	Comment
Critical Government-wide Comments	
1.	1. Why do a non-FAIR Act inventory? No benefit and a significant administrative workload
2.	2. Allow for more than one challenge official. Allow for delegation of challenge duties. (See F.1)
3.	3. Not specifically identify the release of Reason Code A and Inherently Governmental justifications with inventory. Information is otherwise obtainable through normal FOIA process. (See D.3)
Additional	In Paragraph D.1, insert "separable " before recurring in the second sentence of the paragraph.
Other Comments	
	How will agencies classify those employees in an MEO where their jobs are competed every 3 to 5 years? They could not be considered in a permanent status.
B.1	Requires agencies to inventory commercial positions not subject to the FAIR Act. This is a considerable burden whose cost would exceed the benefit envisioned. We believe the focus should be on complying with the FAIR Act, so agencies should not be required to conduct an additional inventory of positions that, by definition, are not subject to the primary focus of this Circular, namely, implementing the FAIR Act. We are concerned that resources will be diverted to the non-FAIR inventory that could better be spent on compliance with this Circular.
B.1	Change to "submit the following electronically to OMB.." This would allow for a web based submission in the future vs. email.
C.1.b	The revised Circular exempts foreign nationals, but it should also exempt Foreign Service Officers stationed overseas, as agreed to in June of this year between the Department of State and OMB.
D.3	Delete making the Reason Code A justification available to the public on request. Unless you are giving the public the authority to challenge the reason codes as part of the inventory review, this will just create a paper exercise.
D.3	Make Reason Codes map back to old A-76 Circular (See table under D.3).
F.1	Allow for more than one Challenge Review Official but only one Challenge Appeal Official. Criteria for appointment can remain as stated.

	Attachment B – Public-Private Competition Comments
Priority/Section	Comment
1.	Process – Make past performance evaluation consistent with FAR procedures. Allow past performance evaluation for all processes in Circular. (See 2.a (13) and 5.b (2)) .
2.	Allow Agency flexibilities in assigning responsibilities in lieu of Circular mandated responsibilities

	Attachment B – Public-Private Competition Comments
Priority/Section	Comment
	• SSA/CO responsibilities conflict with typical FAR process • SSA responsibilities • HRA roles and responsibilities (FBO announcement, rights of first refusal) • Stress multi-function
3.	Firewall and conflict of interest issues • Address COI in Circular and not in an Attachment.
4.	Allow ATO subcontract flexibility • permit new contracts • Allow ATO teaming with private industry
Additional	Make study timeframes guidance in lieu of mandate
Additional	How does architect & engineering (Brooks Act) procurement fit into this Circular?
Other Comments	
	Eliminate timeframes until agencies have some experience with the new circular and process. • If timeframes are imposed frame them as goals to allow flexibility to tailor competition strategies to the specific requirement and vary the solicitation and award periods. • OMB should receive periodic reports on progress in meeting commitments, but should not be involved in determining the time it will take agencies to evaluate offers and make a selection.
	The type of Acquisition process is decided at the time the solicitation is issued. The Standard Competition Chart on B1 needs to be revised to reflect this. For non-procurement individuals, the chart could be understood to have the Type of acquisition decided at the time of Source Selection.
	8 months for issue of the solicitation is reasonable, but the 4 month source selection progress is unacceptable. Especially where technical evaluations are involved. There are any number of things, like a protest, that can occur during the Technical/ discussion phase that would require the process to go beyond 4 months. This process should be monitored by the 4.e official or their designee and progress reports provided at key stages. If a technical phase goes beyond the 4 months a revised schedule should be provided OFPP by the 4.e official (non-designated).
	Role of SSA is grossly misstated though out this document. SSA does not negotiate, SSA does not approve Agency Tender cost estimate offeror. In some cases SSEB should be substituted for SSA and CO at other times.
	Approval of the Agency Tender cost estimate should be by CFO/Comptroller/ Finance. CFO should have a role in MEO just as HR does. Only the CFO and approve financial aspects. This would also mean that the "budget shop" would certify that funds would be available as proposed. Approval of funds is not the function of the CO or the SSA.
	What is the difference between LPTA and Phased?
	Need to reference FAR and follow it. Exceptions should be few and clearly described.
	The revised Circular establishes rigid timelines for completion of the standard competition process and direct OMB oversight and involvement in any extensions. We believe this will be counter-productive. Each competition is unique, and circumstances may dictate alternative time frames, due to delays arising beyond agency control during the competition process. No other type of acquisition has such inflexible timelines. By insisting on arbitrary milestones, Attachment B of the revised Circular may have the unintended effect of discouraging agencies from conducting competitions, especially where experience has shown that delays occur through no fault of the agency. For example, an agency that needs 9 months to gather its requirements and issue a solicitation, but can award a contract in 3-1/2 months instead of 4, the "4.e. official" must make approve this 2-week extension beyond the required 12-month period when the competition begins and notify the OMB Deputy Director for Management. Likewise, we

	Attachment B – Public-Private Competition Comments
Priority/Section	Comment
	do not believe that a 15 working day period is sufficient for completion of a Business Case Analysis for a direct conversion (Attachment C, paragraph D.1.e). We question whether such a system makes the best business sense for promoting the goals of competitive sourcing.
	The revised Circular establishes a complex web of responsibilities for independent officials involved in the competitive sourcing process. We believe it may be difficult for non-DOD agencies to implement such a system. In addition, paragraph C.1.b(1) requires that the "4.e. official" conduct annual performance appraisals for the ATO, CO, HRA, SSA, and AAA. In most cases, those officials will not be direct reports of the "4.e. official," thereby creating an untenable situation in terms of personnel management. For example, the "4.e. official" would have to write a performance appraisal on the Contracting Officer, who may be a GS-12 or GS-13 employee located several organizational layers below the "4.e. official." Typically, the "4.e. official" will be a political appointee, so the revised Circular creates an environment in which a political appointee would write a performance appraisal on a career civil servant who may be three or four supervisory layers beneath the "4.e. official." Given the existing issues with workforce morale, we believe there will be a distinct reluctance by most parties to participate in any competitive sourcing solicitation due to this level of management. In addition, the right of first refusal has been considerably limited in the revised Circular (Attachment B, paragraph D.2).
	General: Time frame is too short for the Civilian Agencies who are still first time through the process.
A.1.a	Provides for the 4e official to issue a revised date with notice to OMB. C.1.b(3) states that the 4e official can grant one six month extension with approval from OMB. Is this in addition to the already established revised date?
A.2.b.(4)	If I read this correctly, if a commercial activity expands its operating cost by 30% or more than a standard competition will be required, even if this activity is not currently an activity that has been competed or is one that is currently being considered for competition. Does this mean that if you want to upgrade a major system in, which the cost exceeds 30% of the current operating cost, then we must perform a standard competition or was the intent not to allow expansion of an activity that has already underwent an A-76 competition without performing another competition? Why are expansions restricted to standard competitions? It would be more cost effective to perform a direct conversion on a segregable expansion of less then 10 employees then a standard competition.
B.3	The requirement to make a public announcement in FedBizOps should be a requirement of the CO and not the HRA.
C.1.b.(13)	Need to include the following items as not applicable: bonds, liability insurance, and service contract act and Davis Bacon wage determinations. Also the references to C.6.b.(2) and C.6.d.(2) do not exist.
C.1.b.(3)	This paragraph seems to conflict with paragraph A.1.a. This paragraph states "A Standard Competition **shall not** exceed 12 months from public announcement (start date) to Performance Decision (end date), **unless a deviation** is granted." Paragraph A.1.a states "Agencies **shall not deviate** from the Standard Competition procedures or **timeframes** required. At competition announcement (start date), the 4.e. official (without delegation) may waive the timeframes required to complete a competition, if the competition is particularly complex, and issue a revised completion date, **with notification** to the Deputy Director for Management, OMB." If the 4.e. official determines that the a particular competition is complex and more then 12 months is needed for completion is a deviation or a notification to OMB required?
C.2 and C.4.a.(3)(c)2a	It is unclear whether a Statement of Objectives (SOO) approach can be used in lieu of a performance work statement (PWS). The biggest trend in recent years concerning performance-base contracting is to use the more streamlined SOO approach when it is impractical to develop a PWS or when the agency wishes to focus more on solutions and outcomes rather than how the work is done. The Circular does not mention the SOO technique, so we are unsure whether it is permissible. We believe the SOO approach should be encouraged, as it would provide yet another means of advancing competitive sourcing, and we note that "decreasing the complexity of performing source selections" is a goal stated elsewhere in the Circular (Attachment B, paragraph C.2.a(11)).
C.2. a (2)	The Circular now provides for multiple notifications to the Deputy Director at OMB of process delays. Shouldn't these delays be identified during normal OMB reviews of the Competitive Sourcing process?
C.2.a (11)	Eliminate compliance matrix.

	Attachment B – Public-Private Competition Comments
Priority/Section	Comment
C.2.a.(11)	**Change:** "A matrix shall clearly identify proposal reference information as it relates to the PWS, contract line items (CLIN), Sections L and M, Proposal Volume and Section, and Contract Data Requirements List (CDRL) references. This matrix should be modified to account for proposed performance standards that differ from the requirements in a solicitation when CTTO source selections are used." **Remark:** This change is not found in Attachment E of the Draft Circular covering costing, but it applies to a cross matrix requirement that deals with costing procedures and contract fulfillment. Thus, the In-House bid must be developed in accordance with the solicitation requirements, i.e., CLIN structure. So in addition to developing a bid on the Standard Competition Form (SCF) for costing purposes, you must also develop a bid that maps back to the CLIN Matrix requirement referenced above.
C.3.a.(4) and C.3.c.	The last sentence of paragraph C.3.a(4) does not make sense. C.3.c. states "Public reimbursable tenders respond to the solicitation in accordance with **Attachment C** and prepares tenders in accordance with paragraph C.3.a. Attachment C is Direct Conversions, so a public tender is not required.
C.3.d	This section is very confusing because it talks about non-responsive and non-responsible, but it is impossible for public reimbursable to be non-responsible. I think this section should be broken down to talk about these issues separately.
C.3.d(2)	"**(a)** revise solicitation or **(2)** implement the Agency Tender." Need to be consistent when numbering.
C.3.d.(2)(a)	The paragraph states "Before revising or reissuing the solicitation, the CO shall the return **the sealed Agency Tender** to the ATO." C.4.a.(1)(a) states "The SSA shall evaluate all offers concurrently." These two statements would be conflicting if this is a revision after a determination of non-responsiveness by the private sector offers.
C.3.d.(3)(b)	This paragraph references paragraph C.5.b.(1)(a) and (b), these paragraphs do not exist.
C.4.a(2)	This paragraph references paragraph C.4.b this paragraph does not exist. It appears that C.4.a.(2)(c) may be misnumbered and this is the actual reference.
C.4.a(3)(a)	This paragraph states "Exchanges between the SSA and the ATO, officials responsible for public reimbursement tenders or **other offerors after receipt of proposals** may include (1) clarifications, where offerors clarify certain aspects of proposals or resolve minor or clerical errors where …(3) discussions, which are undertaken after establishment of a competitive range…" and then goes on to state FAR 15.306 procedures shall apply. 15.306 states the CO is responsible for negotiations.
C.4.a(3)(b)	This paragraph references paragraph C.4.b, See same comment above this paragraph not existing.
C.4.a(3)(c)1	This paragraph references paragraph C.4.a(1)(c), this paragraph does not exist. It appears that C.4.a.(3)(a) is the correct reference.
C.4.a.(1)(b)	This section states the SSA shall perform Cost/Price Realism. This should be a joint effort between the SSA and the CO. If the CO is responsible for awarding a resultant contract if the private sector offer is determined to be the most cost effective, then they must be involved in this process.
C.4.a.(3)(a)2.	This paragraph does not make sense.
C.4.a.(3)(c)1	This paragraph again states the SSA will negotiate. FAR 15.306 states the CO is responsible for negotiations.
C.4.a.(3)(c)1.b.	This paragraph references C.4.a(3), this reference is for the same general paragraph that the reference appears in. Need to be more specific.
C.4.a.(3)(c)2	This paragraph implies that the Agency Tender must always be determined technically acceptable. What if it is so technically deficient as to preclude a determination of acceptability?
C.4.a.(3)(c)2.a.	This paragraph states "In consultation with the requiring organization, the SSA shall determine whether any of the proposed performance standards are necessary and within the agency's current budget limitations." Shouldn't this be limited to someone outside the PWS team to avoid conflict of interest? Also, how do you determine if the standard is within the agency's current budget when all you will have is a discrete cost or price difference for that performance standard?
C.4.a.(3)(c)2.b.	This paragraph states "If the solicitation is amended as a result of Phase One, the SSA shall request the ATO who bid the requirements of the solicitation to submit an update to the Agency Tender to meet the revised solicitation (see paragraph C.3.a.(3) above)." C.3.a.(3)(c)2.a. states requires the Agency Tender to meets the revised performance standards of the amended solicitation before proceeding to Phase Two, so why would

	Attachment B – Public-Private Competition Comments
Priority/Section	Comment
	this statement be in Phase Two?
C.5 a	Head of Requiring Org isn't defined.
C.5.a.(2)	The 4.a. official should be changed to read 4.e. official.
C.5.a.(2):	Head of Requiring Org doesn't issue ISSA. Just say "the customer will issue an ISSA. Also change 4.a official to 4e official.
C.5.a.(4)	This paragraph references paragraphs C.7.(a) above and C.7.b.(2) below, however there is no paragraph C.7.
C.5.b.(2)	This paragraph states "For future Standard Competitions, the CO shall include agency past performance criteria in the solicitation requirement." OMB has directed agencies to use electronic means for collections of past performance. Under the NIH system the "contractor" must have a DUNS and Taxpayer Identification Number (TIN). This will require the ATO of obtain a DUNS and TIN for that "agency tender."
C.5.b.(2)	Uses terms "head of requiring activity" and "head of requiring org". Neither term is defined.
D.1	Having the HRA define whether or not an government worker is qualified is a new requirement. It will place the government in the position of taking on performance responsibility. Delete.
D.1.	FAR reference 52.203 is incorrect and should read 52.207-3.
D.2	The whole issue of Conflict of Interest and who hits who should be part of the A-76 Circular and not defined under Standard Competition.
D.2.a.(1)	Last sentence "Members of the MEO Team shall not be member of the SSEB." This sentence should appear under D.2.b.(1) as it pertains to the MEO Team and not the PWS Team.
D.2.c	This says the SSA appoints the SEB (should be SSEB). Attachment F says the CO appoints the SSEB. Also, the reference C.3.a is incorrect and should read C.4.a.
D.3	This paragraph references D.3 above, however this is paragraph D.3
D.3	Circular argument. Refers to "D3 above" which doesn't exist.

Attachment C – Direct Conversion Process Comments	
Priority/ Section	Comment
1.	1. Under the BCA, allow the average of the 4 contracts identified in lieu of the lowest price.
2.	2. Do not call BCA direct conversion or associate it with a direct conversion process. Make a separate attachment.
3.	3. Allow use of Federal Supply Schedules for the BCA process.
Additional	Timeframes for BCA too short.
Other Comments	
	Why isn't the Business Case Review Process given a separate Attachment?
	This attachment eliminates the preferential procurement exception that allows direct conversions using 8(a) contracts in the current Circular. We believe this exception should be retained.
A	Clarify that this process can also be used to justify retention of a function.
D	It seems to send the wrong message to call what was previously the Streamlined Process a Direct Conversion since it seems to imply a predetermined outcome. We are not converting anything if the government wins.
D.1.e	15 days to conduct a business case analysis is definitely not enough time.
D.1.e.	Fifteen days to complete a Business Case Analysis is unreasonable.
D.2.a.	The first and second sentences are inconsistent. The first sentence states "(2) develop an Agency Tender in accordance with Attachment B" and the second

	sentence states "The ATO shall not develop an MEO." It would be clearer if these sentences were consolidated and stated that the ATO should provide an agency cost estimate only based upon the current organization, costs, performance and structure.
D.2.b	Amend to allow comparison with existing labor hour or time and material contracts as well as firm fixed price.
D.2.b	Also when selecting four contracts and reasonably grouping them I think the selection decision should be based on comparing the government price to the average of the four contracts rather than the lowest.
D.2.b	The direct conversion approach using a Business Case Analysis only permits comparison to existing fixed price contracts. Many of the contracts that are normally used for comparison are labor-hour or time-and-materials contracts on GSA schedule. We believe that insisting on comparison only with fixed price contracts will effectively eliminate direct conversion based on Business Case Analysis as an option for agencies to use in promoting competitive sourcing.
D.2.b	Use an average rather than the lowest bid. Since this is a "desktop" competition, you may not have the exact comparison. Using an average will even things out.
D.2.b.	This paragraph stipulates that a Business Case Analysis can only be performed if four comparable, existing, fixed price contracts are identified. Why can't labor hour contracts be used for this comparison? Do GSA's Federal Supply Schedule contracts qualify?
E.2.a	This paragraph requires a performance work statement to be prepared for a direct conversion, yet this subject is not discussed in the Business Case Analysis section (paragraph D), so it is unclear how this should occur and whether there are any time limits, in light of the 15-day rule in D.1.e.
E.2.c.	This paragraph references paragraph C.6 which is incorrect and should read C.5
F.	This paragraph references paragraph D.2 which is incorrect and should read D.1

Attachment D – Inter-Service Support Agreements (ISSA) Comments	
Priority/ Section	Comment
1.	Change definition of ISSA to exclude intra-agency agreements. Current definition limits Agencies ability to manage.
2.	Application is overly broad. Eliminate the administrative burden of the ISSA requirements • Allow Agency exemption (4.e Official) from competition • Longer phase in period for this requirement – Agencies to focus first on competitive sourcing studies before embarking on competing ISSAs. • Raise dollar threshold for competition to $10 million. • Significant resource drain to gather listing by June 30, 2003
3.	Allow the reimbursable organization to become a preferred provider or source • Similar to GWAC status • Use of Economy Act determinations in order to fully utilize existing contracts before Circular applies.
4.	Allow for full cost accounting if ISSA organization has capacity to identify the full costs.
	Other Comments
	INTRA agency agreements should not be subject to A-76. This subverts the authority of the Secretary to direct work within his own agency.
	I see no problem with Agencies being required to provide a list, approximate dollar value and approximate number of FTE of all INTER Governmental ISSAs. Agency should prepare a competition plan for ones the agency feels are appropriate to compete. If OMB disagrees with the ones not being competed, that should be a subject for negotiations.
	This process has not been vented and all the potential implications reviewed. ISSAs are not a standard process in every agency.
	Work Load challenges • Where are all these people going to come from? • Where is the training in proposal preparations going to come from?

Attachment D – Inter-Service Support Agreements (ISSA) Comments	
Priority/ Section	Comment
	• Where is the Contract Administration staff coming from? • Where are these HR experts? No one HR person is versed in all the aspects of Employee impact.
	The ISSA definition should apply only to intra-agency agreements and not to inter-agency agreements.
A	This paragraph imposes strict controls and significant administrative burdens on customer agencies that use interagency agreements (using the DOD term "inter-service support agreements"). We are concerned that such action will inhibit cross-agency coordination in support of key initiatives (such as security programs) and promote "stovepipe" approaches. In many cases, other agencies are doing us a favor to do work for us, and may not even charge a fee. We believe the benefits of interagency agreements outweigh the cost of the restrictions that would be imposed by the revised Circular, so we recommend that these restrictions be lifted. As a minimum, the dollar threshold should be raised to $5 million (to coincide with the test program for commercial item acquisition) and clarified (the term "revenue generated by the reimbursable rate" is used, which implies that only agreements that involve $1 million in service fees, rather than $1 million in service provided, are affected).
B.1	Rather than adding the requirement to produce a management plan to compete all ISSAs within 5 years, encourage civilian agencies to complete their commitments to reach the 15% OMB goal by September 30, 2003, and to develop their management plans for reaching the President's goal of competing or converting 50% of their commercial. At a later date the ISSA requirements could be added.
B.3	Why not have the 4e official submit the report on why competition isn't feasible rather than the head of the customer agency, an undefined term.
B.4	Just list the ISSA value. You may not know how many FTEs are performing.
D	Rather than have to amend the solicitation later why not just provide for the public reimbursable source to also submit a tender if they choose to do so.

Attachment E – Calculating Public-Private Competition Costs Comments	
Priority/ Section	Comment
1.	1. Implies that all processes require SCF—not required for integrated
2.	2. This Attachment is confusing
3.	3. Cost realism. How is it accomplished and who performs?
Other Comments	
	The Circular is unclear as to its application to architect-engineering services. Following the new cost-technical tradeoff approach (integrated) may not be in full compliance with the Brooks Act. If A/E services are considered subject to competitive sourcing, then the Circular should describe how to comply with FAR Part 36 in addition to FAR Part 15.
A.1.	**Change:** The 4.e Official may permit the performance period in a Standard Competition to be increased beyond 5 years, however, the performance period must be approved by the 4.e. Official in advance of the issuance of the solicitation, and the approval must be in writing. Also, each performance period must be priced separately. **Remark:** This same paragraph in the Draft Circular then states "the recompetition requirements of this Circular shall also be determined by the number of years included in the SCF (Standard Competition Form)." Also, the SCF only provides for four performance periods. Question: Since the SCF does not appear to go beyond four years, what good is it for the 4.e. Official to approve a longer performance period if recompetition must occur at a minimum of every four years per the SCF, not every five year or greater? Additional Concern: Frequent studying of any organization with the possibility of employees being displaced is extremely disruptive and expensive. Organizational budgets would need to be increased to conduct the continuum of solicitations and to prepare Agency Tender proposals. On the second round of competition, assuming the Agency Tender proposal won initially, the Agency Tenders process and proposal would be known by the world and it is less likely that they would be successful during the next round of competition. Also, consider the likelihood that the Government is going to fund studies or to be interested, capable, or permit bringing back in-house previously contracted out work. Also,

Attachment E – Calculating Public-Private Competition Costs Comments	
Priority/ Section	Comment
	the contracting offices that recently regionalized and downsized will now have to ramp up their workforce to handle these recompetitions. While this change would provide job security for Contracting Officers, it would cause chaos among the Agency Tender's workforce and make it near impossible to recruit and hire for full-time positions in the future due to the lack of job security and the cost of adverse personnel actions that would become routine and require increased budgeting for every recompetition. The option to restudy or compete this work has always been a matter of choice, but now it is being mandated and may prove to be a bad decision.
A.10	**Change:** "The SSA shall perform Cost Realism of the Public Reimbursable Tender to validate compliance with this Circular and shall then also sign the SCF." **Remark:** Previously, an Independent Review Officer (IRO) that was not connected or impacted by the final result of the solicitation performed this requirement. If the SSA (source Selection Authority) has responsibility to perform this requirement, it is likely that this high of a ranking official will not perform the work by her/himself, but will contract the work out to an external consulting agency or use other non-impacted internal resources to perform this review and make recommendations with the SSA making the final decision and then signing the approved solicitation. If the SSA is making a decision about the "Cost Realism of the Public Reimbursable Tender to validate compliance" and then later makes the final decision as to whom the solicitation award will be given, this may be perceived as a conflict of interest. Also, there is the question of who will fund this review requirement.
A.10	This paragraph has two statements about the SSA responsibilities and certification on the SCF. These should be consolidated into one statement. This paragraph also has two statements that talk about the agencies cost estimate (one states agencies cost estimate and the other public reimbursement tender). There is no mention of the CO's signature or the AAA's signature; however the SCF has a signature block for both. What purpose do these signatures have since there is no certification or reason why these two individuals are signing this form?
A.3	**Change:** "Common costs (wash costs) shall be identified in the solicitation and Agency Tender." **Remark:** This change is probably a good change because it removes problems of the past where protest would be made that the private sector was unaware that certain cost were "wash costs" and that their proposal included these costs. However, it does place a new requirement in writing the PWS that will increase the time required to identify and then write these items in to the PWS.
A.3	There appears to be an inconsistency in the first and second sentences. The first sentence states "Costs that are the same for agency, private sector or public reimbursable sources are **not** calculated in the Standard Competition" and then in the second sentence it states "Common costs (wash costs) **shall be** identified in the solicitation and **Agency Tender**." Why would you identify these in the Agency Tender?
A.5.	**Change:** Dealing with Inflation – "In preparing agency cost estimates, agencies shall include all known or anticipated increases incurred before the end of the first performance period for each cost element, prorated as appropriate." **Remark:** In the past, OMB provided in a Memorandum these inflationary factors. This may cause some concern if and when the OMB provided inflationary factors differ from known or anticipated hourly pay rate increases or the number of years in the performance period is increased by the 4.e. Official beyond the provided OMB factors.
A.6	**Change:** "If the solicitation includes a separate contract line (CLIN) item for a phase-in period, the first performance period of the Standard Competition is the phase-in period and shall be calculated accordingly." **Remark:** It is a good idea to attach these costs to a CLIN, but determining what is considered "phase-in cost" and being consistent across all offerors may prove difficult. In the past, the Government was to develop two Transition Plans from the existing operations as part of the Government's Management Plan. One of the Transition Plans was to express the processes that would be required to transition to the Government's new MEO and the other Transition Plan was to show the same to transition to another source provider. Both of these Plans would include Phase-in requirements and their associated cost to be added to the perspective offerors bid proposal. Both of these Transition Plans were to express cost associated with each scenario that was not deemed "wash cost." The Independent Reviewing Official (IRO) would review these Transition Plans for fairness and reasonableness and if they were not determined to be fair and reasonable costs then reviewed these costs, recorded written recommendation to change these cost would have been provided. See Change 5 below for additional information regarding the SSA having IRO responsibilities.

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A.6	**Change:** "The private sector or public reimbursable price shall exclude any required phase-out costs from in the Line 7 of the SCF." **Remark:** This is also a good idea since these costs are the cost of doing business and not the desire of the offeror.
A.9	We believe the costs of conducting a Standard Competition should be calculated (and paragraph A.9 deleted). Otherwise, it is entirely possible that the cost of competition may exceed any savings to be obtained from the competition. There must be some way to account for the significant costs incurred by agencies in implementing competitive sourcing, if it is to make the most business sense.
B.1.a.	**Change:** Line 1 of the SCF must include labor cost for "quality control" as a cost to the MEO in direct labor. **Remark**: It is assumed that this change is a result of some Quality Control programs being expensed by the private sector and not by the Government's In-house proposal. It should have always been a requirement and practiced if the Solicitation required it of the service provider. However, we need to make sure that this is a correct assumption and not a requirement to include any Quality Assurance Evaluator cost that would also need to be expended to the Private Sector or ISSA proposals.
B.1.b.(2)	**Change:** "Indirect labor also includes the labor of individuals who are responsible for oversight and compliance actions implicitly required by the MEO in order to comply with the solicitation (e.g., supervision, human resources, comptroller, general counsel, environmental, Occupational Safety and Health Administration (OSHA) Act compliance management)." **Remark:** Previously, the "human resources, comptroller, general counsel, environmental, Occupational Safety and Health Administration (OSHA) Act compliance management" costs were considered part of the 12% Overhead Factor applied to the Government's in-house bid, which is still a requirement of the New Draft OMB Circular A-76. Indirect labor was always a requirement to be added to the Government's bid proposal, but it did not include these new areas. The work performed by these areas can not be directly linked to a specific external deliverable required in the PWS and is already included in the 12% Overhead Factor for this reason. Therefore, any costs associated to these areas and added to Line 1 of the SCF may be a duplication of costs. However, if labor from any of these area can be linked directly to a procedure used by the Agency Tender in fulfilling the requirements of the PWS, it is not "indirect labor," but rather it is considered "direct labor" by virtue that it can be directly linked to the deliverable or PWS requirement. The "supervision" referred to in this list of indirect labor is proper and it refers to supervision of supervisors in the MEO (Most Efficient Organization) that supervise all other employees of the MEO. This part has always been costed to the Government's proposal.
B.1.d.	**Change:** "For personnel developmental position(s), the HRA shall determine the length of time for each grade in a developmental series." **Remark:** The practice of using developmental series is not used enough in developing the MEO or under circumstances of the Government Agency experiencing a Reduction-in-Force (RIF), which is where you might see "developmental" or "intern/career growth ladders" in an organization. However, I have to admit that it should only be used when we know there will be time to qualify or develop and employee to perform in a specific position since the Agency Tender won't really know how Reduction-in-Force changes will impact the final manning of an organization and full need for a manned position to be fully qualified to perform satisfactory or competency level. Also, the ability to use this type of position in determining and submitting a bid proposal, must be decided upon prior to issuance of the solicitation so that the private sector and ISSA competitors may exercise their option to use this type of opportunity in their bid proposals. If the solicitation does not advise potential offerors that this type position classification is common practice and acceptable, they may have grounds for appeal and protest on the grounds that this was not disclosed to them and that if they had known this manning practice was acceptable their bid proposals would have been lower. This is because under most contracted services the service provider is expected to show up on day one of the contract start date and perform at a minimal level (including having employees with a specified skill level).
B.1.e.(1)(a)	**Change:** "The standard retirement cost factor represents the Federal Government's complete share of the weighted CSRS/FERS retirement cost to the Government, based upon the full dynamic normal cost of the retirement systems; the normal cost of accruing retiree health benefits based on average participation rates; Social Security, and Thrift Savings Plan (TSP) contributions. The current rate is 24.0 percent of base payroll for all agencies (18.9 percent pension plus 5.1 percent for retiree health). The revised retirement cost factors for special class employees are 33.0 percent for air traffic controllers (27.9 percent pension plus 5.1 percent for retiree health) and 38.2 percent for law enforcement and fire protection employees (33.1 percent pension plus 5.1 percent for retiree health).

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	Remark: The Draft Circular now provides a breakout of percentage rates that will be used for addressing the Standard Retirement Cost Factor that specifically calls out Air Traffic Controller positions along with Law Enforcement and Fire Protection employees. These rates are different than those for other Government Employees. I bring this out not because the rates are different, but only because of DOT's classifying Air Traffic Controllers as Commercial with a Reason Code "A," and that we understood there would not be a push in the future for DOT to compete the these positions if we changed them from Inherently Governmental.
B.1.e.(1)(c)	**Change:** "The cost factor to be used for Federal employee miscellaneous fringe benefits (workmen's compensation, bonuses and awards, and unemployment programs) is 1.7 percent. Based on the OPM civilian award policy, there are two general categories for civilian employee awards. Category one is for special acts (e.g., cash awards, bonuses) that are over and above a civilian employee's expected annual performance and category two is for awards that are based on a civilian employee's annual performance rating (e.g., cash awards, bonuses, Quality Step Increases). Category two civilian employee awards (that are based on civilian employee annual performance ratings) are included in the 1.7% miscellaneous fringe benefit factor. Category one civilian employee awards (that are considered special acts awards) **are not** included in the 1.7% miscellaneous fringe benefit factor and shall be included in Other Pay." **Remark:** Although the cash awards and bonus awards are explained more fully in the Draft OMB Circular A-76, there should still be caution exercised with Category 1 awards and bonuses, which are not part of the standard 1.7% fringe benefit added in the IHCE and must be included in the Other Pay category. Even with the clearer explanation, category 1 bonuses are still very subjective and I would anticipate that OMB will force a value or percentage be applied in the future.
B.1.e.(3)	**Change:** "Seasonal employees work on an annually recurring basis for less than 12 months (1,776 hours) each year." **Remark:** The new requirement for seasonal employee to use 1,776 productive hours per year should not create a problem and should have always been the value used. Thus using the 1,776 productive hours per year does not concern me as a denominator in determining the total whole manpower requirements to support the MEO, as long as the appropriate number of man-hours to accomplish the required tasking of a seasonal hires workload has been accurately accounted for during work measurement.
B.1.l.	**Change:** "Agencies shall only include these labor sources in an Agency Tender if a solicitation states the labor is available to all prospective offerors and tenders as a "common cost" labor source and that their use is not required. Since these labor sources are a "common cost", the ATO shall not include this labor as a competitive cost in the Agency Cost Estimate." **Remark:** Due to some problems in this past year regarding the use of volunteer, inmate, or other free or inexpensive labor, this draft now requires the specific nature and extent of such labor usage in the solicitation up front to consider it available at these same levels for all interested parties that submit proposals and these labor sources would be considered available to all bidding parties in their proposal and thus considered to be a wash cost. The problem with this scenario is that there is no guarantee that the past working arrangements will be acceptable to all labor force parties and then it is uncertain what liabilities will then fall upon the Government if previously used and anticipated labor sources are no longer available or willing to work along side the private sector whom may change the procedures and general way of conducting business that upsets the previous workforce. This is real and it happens, with a potential end result of the Government having to pay more for services that were previously not paid for or received at a greatly reduced rate. Then there are always liability issues related to poor performance and holding the private sector accountable. **Note 1:** Not necessarily a costing change, but a large impact is that ISSAs are now going to undergo A-76 competition, as long as they are over $1M annually or don't meet other considered criteria. **Note 2:** Only one mention of WinCOMPARE in the draft circular, where it states in a table that WinCOMPARE2 automatically calculates the distribution of contract administration for MEO staffing of 451 FTEs and above. By the fact that WinCOMPARE2 was mentioned in the draft circular, I initially thought that WinCOMPARE2 must be used. I am not certain of this now because of comments made above about Change 1 and Change 10. Sounds like another big contract for the developers of WinCOMPARE2 (a real gravy-train for MEVATEC).

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	Note 3: The Draft OMB Circular A-76 assumes that all organizations "the Agency Tender" fall under the requirements of the FAR, which is not the case, as we know. Thus, when they do not come under the FAR, what procedures will be used since the Circular has now been attempted to align itself with the FAR regarding contracting procedure, especially as it relates to the costing procedures and used terminology. ~~**Note 4:** There are many references to the FAR and its various paragraphs of which I am not very familiar with or have a copy of that the Contracting Office should remark on regarding these costing procedures~~.
B.3.g.	**Change:** "Surge workload, overtime and other types of nonrecurring workload may be included as an MEO subcontract cost, if it is purchased using either a Government purchase card [e.g., International Merchant Purchase Authorization Card (IMPAC)] or a task order contract or other appropriate contract type. The cost of services purchased using a Government purchase card shall be recorded as a subcontract on Line 3 to account for the Federal income tax. Escalate costs for each performance period, as appropriate. Task order contract costs shall also be adjusted (downward) to offset for potential Federal income tax revenue to the Government." **Remark:** The IMPAC purchases are to be recorded on Line 3 as MEO subcontract costs, to account for the Federal income tax. There should be no negative impact of DOT as a result of this change.
B.3.h.(2)	**Change:** "When an award fee is established in the solicitation as a potential reward for performance to the selected provider resulting from competition including the Agency Tender, the MEO has the potential to earn the award fee stated in the solicitation. Agencies shall state the maximum award fee in the solicitation and the Agency Cost Estimate shall include 65% of the total award fee amount on Line 3, Other Specifically Attributable Cost, Other Costs." **Remark:** The Government's MEO can now win an award fee just like the private sector, but the MEO must include 65% of the award fee stated in the solicitation on Line 3. This has long been considered a benefit to the private sector that the Government did not enjoy.
C.3.	The paragraph numbering is wrong in the Draft and it should be Paragraph C.2. **Change:** "Agencies shall calculate contract administration costs to be entered on Line 8, in accordance with the following table based on the MEO staffing in Line 1. This Line reflects a full range on contractual administration requirements, excluding inspections related to the QASP, which are common costs to all offerors." **Remark:** There has always been a table to reflect the number of Administrative Contract support that <u>may be</u> costed (not <u>must be</u> costed) to the private sector proposal. However, now it appears to be a mandate instead of a guide as it was to be used in the past and then a written justification had to be provided in the past to ensure the Government was not just padding the proposal cost of the private sector. These cost were added to the private sector's bid proposal because the Contracting Officer (CO) would be required to perform certain administrative duties associated with a contract that would not need to be performed if the work remained in-house. These cost were to cover time for CO and COTR personnel to monitored the contractor and perform certain administrative duties. It did not include Quality Assurance Evaluators because they also performed their duties when the Government's MEO won in competition. Also, now the Draft Circular stipulates the grade of the CO or COTR that will be used as well as the number of FTE's to be costed. The problem with dictating the pay grade of these positions is that pay grades are greatly impacted by locality. I agree that this should not be the case, but we all know that it is true. Additionally, I am sure that the private sector will cry foul ball because of the direction this Draft Circular is going by considering the Agency Tender and Public Reimbursable (also known as ISSA) as equals with the private sector without prejudice. Thus, some cost even if it is not the same will be encountered by the contracting office, all of which may not be considered wash cost or cost that are incurred before and after the contract period has finished and a new competition is considered, which should never be costed. ~~Our Contracting Office may have more to say on this subject.~~
C.4.b.	The paragraph numbering is wrong in the Draft and it should be Paragraph C.3.b. **Change:** "When a Javits-Wagner-O'Day participating nonprofit agency (as defined by FAR Part 8 such as the National Institute for the Blind or NISH, participates in a Competition, the SCF shall include the 4% fee paid to the Committee for Purchase from People Who Are Blind or NISH. This is required to determine the total cost of contract performance to the Government for Competition purposes with the agency cost estimate. The SSA shall determine if the 4% is included in the contract price, and if so, this contract price is entered on Line 7 of the SCF. If the 4% is excluded from the contract price, then the

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	fee shall be entered separately on Line 9 of the SCF." **Remark:** The paragraph added on nonprofit agency fees – adds 4% to nonprofit bid in Line 7 or Line 9. I am uncertain as to why this was done other than to say it may level the playing field when competing against organizations such as NISH. I am also uncertain how OMB came up with the 4% adjustment figure to add to the nonprofit bid on Line 7 or Line 9, or what total impact of this will have during most competitions. I assume that the 4% figure was calculated based upon some margin or advantage that the non-profit organizations have over other potential offerors.
C.4.c.	The paragraph numbering is wrong in the Draft and it should be Paragraph C.3.c. **Change:** "When an Indian Tribe competes against the Agency Tender or is a subcontractor to the competing private sector offer and the Indian Incentive Program described in FAR Part 26 is authorized, the SSA shall include the 5% incentive fee allowed by the program on Line 9 of the SCF." **Remark:** Language added on Indian tribe fees – adds 5% incentive fee to the Indian tribe bid. I do not know what the full impact that it will have accept for when the Indian tribes are competing solely against the Agency Tender or if a portion of the private sector's proposal includes Indian tribe support that requires this 5% incentive fee be added to their bid on Line 9, should provide an advantage to the Agency Tender in competition. I assume that someone convinced OMB that this will provide a more even playing field or it was drive by the requirement in the FAR Part 26.
C.5.a**.**	The paragraph numbering is wrong in the Draft and it should be Paragraph C.4.a.) **Change:** " The SSA evaluates these costs during Cost Realism, approves them, and enters them on Line 10 of the SCF." **Remark:** The fact that the SSA is making this adjustment to me instead of an IRO appears to be a conflict of interest.
C.5.b. and c.	The paragraph numbering is wrong in the Draft and it should be Paragraphs C.4.b. and c. **Change:** Line 10, one-time conversion costs – with the exception of severance pay, all other one-time conversion costs will be calculated as 1% of Line 1 – no additional costs for security clearances, environmental baselines, etc. **Remark:** I am unaware of how OMB derived the 1% value of Line 1 for one-time conversion costs? I can only assume that by them not adding additional costs for security clearances, environmental baselines, etc., they believe these would be wash items, but that would not necessarily be the truth.
D.2.a.	**Change:** "The conversion differential represents the minimum level of savings that must exist in order to warrant a conversion. It is calculated as an advantage provided to the incumbent source (i.e., agency, private sector or public reimbursable). Since agency performance of new requirements and expansions of existing commercial activities are justified based upon Standard Competitions agencies shall consider private sector sources as the incumbent method of performance for any new requirements and expansions of existing commercial activities." **Remark:** This change is not appropriate and no cost differential should be applied to new requirements, but they should be competed equally to all offerors based upon cost reasonable and best value. It is uncertain what is meant by "expansions" unless it is a synonym for "new requirement" in which case the previous remark applies. However, if the word "expansions" refers to an increased workload volume, then this work should be competed for in accordance with the requirements of Attachment E, Paragraph D.2.b. when the workload volume increase equals or is greater than 30%. Again, this will advantage the incumbent because "the conversion differential represents the minimum level of savings that must exist in order to warrant a conversion" and it does not make since to have two providers of the same product or service.

Attachment F – Glossary of Acronyms and Definitions of Terms Comments	
Section/Priority	Comment
1.	1. Allow Agency flexibility to identify competition officials as inherently governmental or not.
2.	2. Change the commercial inter-service support agreement definition to exclude intra-agency transactions. Be consistent with other regulations and terms (i.e. ISSA).
3.	3. Does not define all terms in Circular and should be definitions in lieu of directional.

	• Be consistent with FAR terms and definitions • Not defined—Head of Requiring Activity, Head of Organization, Source Selection Authority, technical proposal
Additional	Do not need IT definition as it is the same as FAR
Additional	If different from FAR, define procurement sensitive information
Other Comments	
	At various points (such as paragraph B.3.a of Attachment B and E.1 of Attachment C), the revised Circular requires "public announcements at the local level" but does not define this term. We would appreciate an expansion of the definition of "public announcement" in Attachment F.
B.	Definition for "Agency Tender" **Change:** The in-house offer is now referred to as the Agency Tender (AT). **Remark:** The purpose for this change is so that under contract law and provisions, the Government employees and/or agency may have equal rights to appeal and protest a decision.
B.	Definition for "Standard Competition Form" **Change:** The previously used Cost Comparison Form (CCF) with changes is now referred to as the Standard Competition Form (SCF). **Remark:** The SCF illustrated in the Draft OMB Circular A-76 to be completed in the competition process is not the same as the CCF form produced by winCOMPARE2. This is important because the Circular states in Paragraph C.3. (which is a typo and should read Paragraph C.2.) deals with Contract Administration Costs for Line 8 of the SCF, provides a matrix to determine the number of FTE's for contract administration support and the pay grades that will be used for costing purposes. This matrix also states that the Win.COMPARE2 software tool will perform this calculation for an FTE count of 451 or higher. Thus, it is assumed that winCOMPARE2 must be used in this cost process, and if this assumption is correct, the SCF as illustrated, will be impossible due to the fact that Win.COMPARE2 and the SCF are not in agreement with each other, and when you add the additional new requirement to produce a bid by CLIN structure, things really become confusing. See Changes 3 and 8 for related information.