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Subject: Comments on A-76 Revisions from the US Department of Labor

Attached to this email are the comments from the U.S. Department of Labor. If you have any questions, you may contact me at the following address, telephone number, or email address.

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Department of Labor Comments on proposed revisions to OMB Circular A-76

The Department of Labor offers the following comments for consideration by the Office of Management and Budget's (OMB) proposed revisions to Circular A-76 and attachments, published in the Federal Register on November 19. We thank OMB for the opportunity to provide these comments.

General Comments

The Revision is in need of general editing for style, grammar, and punctuation. It would be helpful if another draft could be issued for comment prior to final issuance of the Revision, as in many instances the drafting deficiencies cause difficulty in determining the substance intended. For example, Attachment E contains drafting problems such that we are unable to determine whether the methods described for calculating costs are fundamentally fair. Also, we are not certain that the draft distributed was the most current version at the time of distribution. Some pages are marked "Draft of November 14, 2002," while other pages are marked "Draft of November 13, 2002." The Revision also needs a spell check (p. D-2: "venders;" p. E-4: "ertime;" p. F-1: "Accronynms").

We recommend more clarification on when and how MEOs may or should enter competitions for new work or existing activities performed by the private sector. Without further clarity on this issue, we are concerned that all conversions from the public sector to the private sector have the potential to permanently lose the public sector as a competitor, while the reverse does not hold true. This situation may be particularly relevant in "best value" procurements, in which much public sector expertise and institutional knowledge is lost permanently the first time the MEO loses the competition. A private source non-selection in favor of an MEO will come up for competition again, and private sources again may compete. However, given the Revision's stated policy that the private sector should provide commercial services, without further OMB clarification, an MEO non-selection in favor of a private source likely never again would come up for competition against an MEO.

Right-of-first-refusal provisions notwithstanding (p. B-19), we believe that ethical clarifications should be issued, with FAR Council coordination as appropriate, regarding contacts between federal employees and private sector concerns in areas in which competitions are to occur and are occurring. Many federal employees have worked with other private organizations, in their areas of expertise, in a grant or contract procurement context. Whether or not these organizations are competing in the impending or ongoing procurement, and regardless of the dates of prior federal employee involvement with the organizations, allowing greater latitude for recruiting and job-seeking communications during this time, within limits, may be appropriate and may reduce agency RIFs. In addition, disqualifying all personnel who are personally and substantially involved in an ongoing procurement from accepting employment from any competitor will reduce the possibility that the best agency personnel will be obtained for the procurements, unless agencies are permitted to classify all such positions as "inherently governmental" (or, at least, not subject to competition).

We assume that OMB is coordinating with the FAR Council so that necessary revisions to FAR Part 7 (subparts 7.3 and 7.5, particularly) may be issued as contemporaneously as possible with the Revision.

The Revision refers several times to "Section L" and "Section M" (pp. B-7, B-8, F-3, F-8). Clarify that these are references to the Uniform Contract Format, as set forth in FAR Parts 14 and 15.

There are several inaccuracies in paragraph referencing; the entire document should be re-checked. For instance, p. B-6 references Sealed Bids in paragraph "B.4.a. (2) of this Attachment" and Negotiated Procurement using LPTA in paragraph "B.4.b.(a) of this Attachment." So far as we can determine, paragraph B of Attachment B is entitled "Designations and Responsibilities" and has no "4.a" or "4.b" subparagraphs. Paragraph C, on the other hand, does address Sealed Bids and Negotiated Procurements.

In addition to paragraph referencing, numerous other cross-referencing errors exist. (For instance, p. B-15 provides that the "contract price or public reimbursable cost" should be entered on "Line 8 of the SCF," when it should be "Line 7;" p. F-4 provides that Competition Waivers are prepared in accordance with Attachment D, when actually they are discussed in Attachment C, etc.) All cross-references should be re-checked.

The paragraph numbering system throughout is inconsistent. For example, sections 3.d (1) and (2) on p. B-10 each contain an internally inconsistent numbering system (1, b, 2, 3). Numbering and lettering also is different among paragraphs; see, for instance, p. B-8, in which section 3.a. (2) contains numbers and section 3.a. (3) contains letters.

We have provided more specific comments below, organized in the order in which they appear in the proposed revisions.

Circular A-76	
Section	Comments
4.b.	A presumption that "all activities are commercial in nature unless an activity is justified as inherently governmental" is inconsistent with the FAIR Act. Section 2(a) of the FAIR Act provides that the determination of what is a commercial function lies "in the judgment of the head of the executive agency." Section 5(2) of the FAIR Act sets forth criteria to assist agency heads in making those judgments. A presumption that a function is commercial shifts the burden to the agency heads to prove to OMB that the activity is inherently governmental. That is, the agency must show, to some unspecified degree greater than a 50% certainty, that the activity is inherently governmental. Such a scenario, with OMB ultimately determining whether the agency-advocate has met its burden of proof, is inconsistent with the FAIR Act's specific instructions that agency heads are to make these decisions. Furthermore, as a matter of policy, it appears more dangerous for an inherently governmental function to be contracted out than for a commercial function to be performed in-house. Ascribing a presumption of commerciality to all functions is more likely to result in inappropriate outsourcing than

	inappropriate in-house performance. We recommend that the presumption in favor of commerciality be removed from the Revision. In addition, the exercise of disproving this proposition will be very time-consuming, with resources expended on attempting to disprove a negative rather than making a purely objective call on the nature of the duties performed.
4.e.	Agency heads, not a central 4.e. official, should determine whether functions should or should not be competed. Assistant Secretaries make final decisions about the operations of complex federal agencies, have in-depth knowledge of their programs' day-to-day work requirements, and are in the best position to decide if functions should be competitively sourced.

Attachment A – Inventory Process	
Section	Comments
C.4	The Annual Inventory Summary report form (p. A-2), and instructions above the form (paragraph C.4.) are confusing. If agencies are to insert FTE figures in each box, clarification is needed. For instance, perhaps the title could be *Annual FTE Inventory Summary*, or perhaps the C.4. Instructions could be modified to read " . . . format to identify aggregate FTE data. The total FTE of the three agency inventories. . "
D.2	The Revision provides that the 4.e. official may exempt certain commercial activities from competition. However, in the case of a class of activities to which DOL's 2001 Commercial Activities Inventory refers as "core capability," we urge that a class exemption be set forth in the Revision. The rationale behind the requirement that government personnel perform inherently governmental functions applies equally to commercial, essential support functions that, if disrupted or unavailable, would paralyze portions of the government. We believe this class of activities could be identified and described with sufficient specificity to provide meaningful guidance. If all 4.e. officials should be exempting all essential support functions, no reason exists to assign these functions a presumption of competition. The alternative (case-by-case, agency-by-agency determinations on each essential support function) likely will result in varying determinations, increasing the government's vulnerability, and needlessly will divert the time and energy of the 4.e. official from other A-76 work.
D.3	Although the Revision envisions ultimate competition of all commercial functions, the Revision contains no numerical goals or timelines. We urge that any timelines set be flexible and non-punitive, as DOL and other agencies need time to develop infrastructure and competence for conducting competitions more quickly and on a larger scale.
D.3	The Inventory instructions should include a reason code that corresponds to the commercial "core capability" designation in the current A-76 Circular that does not require a written determination of the 4.e. official. This would acknowledge that there are commercial activities that need to be performed by government employees to maintain a qualified pool of applicants for inherently governmental positions or a skill that is unique to the government
D.3	Eliminate the requirement that agencies must make Reason Code A justifications available to the public on request. Unless the public has the authority to challenge the reason codes as part of the inventory review, this is an unnecessary paper exercise.
E.	It would be helpful if the Revision contained a list of examples of commercial and

	inherently governmental activities similar to that attached to the current A-76. Without clarifying examples, the definitions in the Revision are very ambiguous and will be even more difficult to apply than under the current policy.
E.1	The definition of inherently governmental functions should be revised to include preparing sensitive National Economic Indicators as defined in OMB Statistical Directive Number Three.
E.1.b.	The term "official government public communications" should be included in section E.1.b as follows— b. Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, **official government public communications**, or otherwise
F.1	Allow agencies to have more than one Inventory Challenge Review Authority official. Given the tight time limits in responding to appeals, an official at each sub-agency may be necessary

Attachment B – Public-Private Competition	
Section	Comments
A.	The intent to complete the process more quickly and to hold the government and the private sector to the exact same process for competition seems to place the government at a disadvantage until all components of the government subject to competition are more familiar with this process and the requirements. The goal of making the competition equal and avoiding the appearance of impropriety is an admirable one. The reality is that the private sector has much greater expertise in competing as required under A-76, and the revised procedures actually appear to be inequitable for federal workers rather than leveling the playing field.
B.	The revised Circular assigns responsibilities to specific officials involved in the competitive sourcing process. For many agencies, particularly, smaller agencies, it will be more difficult to find people to fill the various positions with the necessary level of expertise to properly respond to the competition and still maintain day-to-day operations as expected. This concern existed prior to the proposed revisions, however, will be even more challenging under the new proposed guidelines and restrictions. Additionally, it will be difficult for the 4.e. official to be responsible for the performance evaluations of all these officials. They are likely to be decentralized and several levels below the 4.e. official. Additionally, it is not helpful to describe position responsibilities as "to comply with both the FAR and this Circular," without more (see "Source Selection Authority," p. B-4). This type of instruction occurs numerous places throughout the Revision. Agencies already are aware of their duties under duly promulgated laws, regulations, and guidance. Rather, the Revision should focus on actual explanations of job responsibilities.
C.	Timeframes should be goals rather than requirements. A standard competition will take longer than twelve months, particularly for civilian agencies that are new to the process, have no infrastructure, or are small and do not have the staff necessary to fulfill all the roles required. (Therefore, they may need to rely on contractors for much of the

Attachment B – Public-Private Competition	
Section	Comments
	process.) The circumstances under which the 12-month competition process may be extended should be clarified, and we urge a flexible application of this deadline (p. B-5). Unforeseen circumstances are likely, especially given the recent and current changes in the A-76 area. Furthermore, regarding remedies for missing deadlines, it appears contrary to the goals of government efficiency and cost-savings for OMB to allow punishment of late MEOs by direct conversion to the private sector without MEO comparison, potentially permanently eliminating the MEO as a future competitor, simply because of what could be a day or two delay in an MEO submission (pp. B-8, B-9). We recommend setting forth more flexible timelines that include various options or justifications for extension.
C.	When Standard Competition is attempted and the SSA receives only the Agency Tender in response to the solicitation, and the SSA chooses to accept that Agency Tender and not resolicit, it is unclear why the Revision requires the SSA to then debrief the ATO and affected employees "in accordance with FAR 15.503" (p. B-10). FAR 15.503, *Notifications to unsuccessful offeror*s, appears to be much less applicable than, for instance, FAR 15.504, *Award to successful offeror,* or FAR 15.506, *Postaward debriefing of offerors*. Paragraph (a)(2) at the top of p. B-11 is confusing grammatically. Also, paragraph (2) on p. B-11 contains the following: "The CO shall enter the price of the apparent lowest priced private sector bid or public reimbursable tender on Line 7 of the SCF that is submitted in the Agency Tender. The CO shall enter the lowest contract price or public reimbursable cost on Line 7 of the SCF . . . ." It is not clear if a substantive difference between these two sentences is intended. It is difficult to determine from the Revision who has ultimate responsibility for source selection. (p. B-12: " . . . CO intends to make award without discussion . . .;" "SSA certifies the SCF;" but the SCF is the "decision document," and "[t]o certify the Performance Decision, the ATO, SSA, and CO shall sign the SCF." p. B-15). It does not seem reasonable that the ATO, an interested party, should have any decisional authority, and the entirety of Attachment B needs editing for clarity. Page B-12: Communications, negotiations and discussions are addressed in FAR 15.306(b) and (d), not FAR 15.306(a). The description of "Phased Evaluation" outlines a process that seems virtually identical to "Lowest Price Technically Acceptable" (pp. B-12; B-14). Clarify. Page B-13: FAR 15.101-1 is a section number, not a subpart. The "Integrated Evaluation Process" (p. B-13) is not explained well; it is unclear what is being integrated, or why the Agency Tender (but not, apparently, other offers?) may be eliminated from the competitive range, or why the decision potentially could be based entirely on non-cost factors (given that it appears to be a type of Cost/Technical

Attachment B – Public-Private Competition	
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	Tradeoff). Page B-13: FAR 15.406 does not require a documented "rationale for tradeoffs" specifically (although it does require documentation for negotiations generally). FAR 15.101-1(c) requires the "rationale for tradeoffs," although that section incorporates FAR 15.406 by reference. Page B-14: FAR 15.306 is a section number, not a subpart. In the "Phased Evaluation Process," it is not clear why Phase Two cannot be commenced "until the SSA agrees that the Agency Tender is technically acceptable" (p. B-14). Explain what happens if the Agency Tender is not technically acceptable, and why the SSA is prohibited from eliminating the Agency Tender if it is not technically acceptable. Page B-15: FAR 15.307 does not address the notification of unsuccessful offerors. FAR 15.503(a)(2), *Preaward notices of exclusion from competitive range*, and/or FAR 15.505, *Preaward debriefing of offerors*, appear more appropriate. FAR 15.506, not FAR 15.503, addresses postaward debriefings of offerors Page B-16: The drafting of "Agency or Public Reimbursable Source Decision" implies that the exercise of options is mandatory; we assume that implication is unintended. Page B-17: Drafting problems make it difficult to understand what is intended by the assertion that "private sector proposals shall not be subject to appeal." It does not seem reasonable to interpret this to mean that private offerors have no avenue for appealing their non-selections. Page B-17: We urge that the Appeal Submission Period be a minimum of 20 days. A shorter period may encourage frivolous appeals simply to avoid losing the opportunity. Page B-17: It is unclear why the Revision limits administrative appeals of compliance and cost calculations to "factual questions." Determining compliance with applicable laws and/or guidance typically involves both questions of fact and interpretations of law (or guidance). We urge that the term "factual questions" be changed to "issues." Page B-17: Drafting problems cause confusion as to how all "directly interested parties" will be given a fair opportunity to react to all eligible appeals, within a maximum of ten working days, when the CO provides copies of all appeals only to "directly interested parties who submitted eligible appeals." Page B-18: Drafting problems cause confusion as to how the "AAA shall simultaneously evaluate all eligible appeals (and comments . . .)" if the "AAA shall not . . . wait for the comment period to end before beginning to evaluate eligible appeals" (B-17).

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	Page B-18: Commenters, as well as appellants, should be given a copy of the Administrative Appeal Decision Document. The comments in the Revision's Administrative Appeal process replace responsive pleadings, motions to intervene, and other filings by interested parties in other types of administrative appeals, and commenters likely will include competition winners. Furthermore, since potential exists for more than one appeal, it does not make sense to provide a copy of the Decision to all appellants, regardless of whether the decision relates to that appellant's appeal, while not providing a copy of any Decision to parties opposing any or all appellants. Page B-18: Given that the AAA may take up to "45 working days," in a complex case, to issue an Administrative Decision, it is unclear why the AAA is permitted to suspend implementation of the Performance Decision for only "30 days or less."
C.	We are concerned about how past performance will be taken into account under the Revised Circular. The government must evaluate past performance in all competitively negotiated acquisitions expected to exceed $100,000 (FAR 15.304(c)(3)(ii)), unless otherwise documented by the contracting officer why past performance is not an appropriate evaluation factor (FAR 15.304. (c) (3)(iii). When an offeror does not have a record of relevant past performance or when information on past performance is not available, FAR 15.305(a)(2)(iv) states that the offeror may not be evaluated favorably or unfavorably on past performance. OFPP Best Practices for Collecting and Using Current and Past Performance Information dated May 2000, distinguishes **comparative** past performance evaluations used in the tradeoff process where consideration to award to other than the lowest priced offeror or other than the highest technically rated offeror is made from **pass/fail** evaluations in the low price technically acceptable process. This pass/fail evaluation of past performance helps the Contracting Officer determine whether an offeror is responsible (FAR Subpart 9.1). The concept of responsibility addresses whether an offeror has the capability to perform a particular contract. The **comparative** past performance evaluation seeks to identify the degree of risk or confidence the Government has in the offeror's likelihood of success. The **comparative** assessment of past performance information is separate from a responsibility determination required by the FAR. The pass/fail evaluation provides for a "yes/no," or "pass/fail," or "go/no-go" answer to the question, "Can the offeror do the work?" Under the Revised Circular, section C.2a.(13) requires agencies to include past performance evaluation criteria in a solicitation where the Agency Tender (MEO) previously competed. (Please note that this paragraph references paragraphs C.6.b. (2) and C.6.d. (2), which do not exist.) The Revised Circular allows for two types of acquisitions, Sealed Bid and Negotiated Acquisitions. The Performance Decision under a Sealed Bid is based upon the lowest priced private sector bid or public reimbursable tender. The source selection process

Attachment B – Public-Private Competition	
Section	Comments
	under Negotiated Acquisitions may be conducted utilizing the Lowest Priced Technically Acceptable (LPTA) methodology or upon a Cost/Technical Tradeoff (CTTO). Within the CTTO source selection, the Circular allows for the Integrated Evaluation Process or the Phased Evaluation Process. The Integrated Evaluation Process allows for an Other Than Low Cost Decision or a Low Cost Decision. **Suggestion:** Use **pass/fail** past performance evaluation criteria in solicitations for Sealed Bids and for all processes under Negotiated Acquisitions that involve a low price technically acceptable decision. In these instances, the Agency Tender has performed the work and would receive a "pass" evaluation. The comparative past performance evaluation would be used when conducting the remaining methodology under Negotiated Acquisitions, the Integrated Evaluation Process where Other Than the Low Cost Decision. If past performance information on the Agency Tender is not available as the tender has not previously competed, consistent with FAR 15.305(a)(2)(iv), the tender would not be evaluated favorably or unfavorably. Consistent with OFPP Business Practices for Collecting and Using Current and Past Performance Information dated May 2000, a **pass/fail** past performance evaluation that determines whether the offeror is capable of performing the work, to assist the Contracting Officer to determine whether the offeror is responsible pursuant to FAR Subpart 9.1, should be made for the Sealed Bid Acquisitions and for the Negotiated Acquisitions where a Lowest Priced Technically Acceptable (LPTA) and Low Cost Decision is made. In these instances, the Agency Tender would most likely be determined to be capable of performing and "pass" the evaluation. All other offerors (contractors) will similarly be evaluated in a manner consistent with FAR Subpart 9.1. Consistent with the Best Practices guidance, when performing a tradeoff under the Integrated Evaluation Process and making an Other Than Low Cost Decision, a comparative past performance evaluation should be conducted. This comparative evaluation will seek to identify the **degree of risk** associated with each competing offeror and assess the likelihood of success. Pursuant to FAR 15.305(a)(2)(iv), the evaluation of the Agency Tender will not be evaluated favorably or unfavorably on past performance when an Agency Tender is competing for the first-time, as past performance information is not available. The comparative past performance evaluation of all offerors, including the Agency Tender will be conducted for recompetitions where past performance information is available after collecting performance information during the administration of the Agency Tender (MEO).
D.	Page B-18: FAR 52.207-3, not FAR 52.203, addresses *Right of First Refusal of Employment*. This FAR clause does not limit employment to "non-management job vacancies." The Revision's limitation appears to make managers ineligible to exercise the Right of First Refusal, and could have the effect of limiting a private or public-reimbursable source's access to needed talent and expertise. Page B-19: The SSEB appears to be introduced for the first time at the very end of

Attachment B – Public-Private Competition	
Section	Comments
	Attachment B. It would be helpful to include some description of this entity's role in the earlier section on negotiated procurements. Page B-19: 41 U.S.C. § 423, not 41 U.S.C. § 253, addresses procurement integrity. Furthermore, the Revision inaccurately summarizes the applicable requirements. The statute applies to personnel participating personally and substantially "in a Federal agency procurement," not only to personnel personally and substantially participating "in developing the solicitation." Page B-20: FAR 15.303 refers to a source selection "evaluation team." It is confusing to label the Revision's similar entity an "Evaluation Board," especially since one task this entity performs is to "[c]onsider the recommendations of advisory boards." FAR 15.303(b)(5). Page B-20: Paragraph D.3 is the last paragraph in Attachment B, and the reference to it appears to be incorrect. If C.3 is the intended reference, it remains unclear how employees individually (not the ATO) and their representatives may participate in this process.

Attachment C – Direct Conversion Process	
Section	Comments
A.	Page C-2: The reference to 41 U.S.C. § 44 appears incorrect as a JWOD citation. (The remainder of the citation appears appropriate.) The Revision's provision that an activity may be directly converted "where direct conversion is permitted by law" is confusing (p. C-2). We are aware of no law other than the FAIR Act that appears to address public/private competitions or lack thereof through direct conversions. It is not clear whether a set-aside permitted by law is tantamount to a "direct conversion" that is "permitted by law." If OMB chooses not to allow direct conversions to preferential procurement programs such as small business concerns, we urge that OMB coordinate with the SBA to revise downward agency small business percentage goals, for any year in which A-76 competitions are conducted. Even without A-76 competitions, it is unlikely that most agencies, including DOL, would be able to meet their small business goals without small business set-asides and other preferences described in FAR Part 19. Adding large numbers of procurements (50% of all commercial activities) to DOL's existing procurements, without permitting direct conversions to small business in conjunction with those additional procurements, may render achievement of existing small business goals impossible.
C.	Pages C-2, C-3, and C-5: 5 C.F.R. Part 351 does not appear to address "agency assistance." Is this a reference to 5 C.F.R. Part 330, or is other assistance envisioned as well?

D.	It is confusing to have the Business Case Analysis process (essentially a substitute for the current streamlined cost comparison procedure) merged with the direct conversion process. An attempt should be made to keep the two processes separate within the document. Otherwise, it is too difficult to determine what requirements apply where. This section should make clear that this process could also be used to justify retention of a function. Fifteen days is not sufficient time to conduct and document a business case analysis for smaller civilian agencies that operate with limited procurement personnel. A market analysis should be allowable in lieu of comparison with actual contracts. This offers greater flexibility to agencies. The comparison to four government contracts should be based on the <u>average</u> cost of the contracts rather than the lowest. Comparison should be allowed for labor-hour contracts. The Revisions should also specifically provide that GSA Federal Supply Schedule contracts can be used for this exercise.
E.	Page C-4: For direct conversion to agency performance, the Revision requires that the cost be "fair and reasonable." It is unclear how this requirement may impact upon a proposed direct conversion to agency performance on the basis of "National Defense and Security." Page C-5: Given that direct conversions are permitted for a variety of reasons, and that the only cost criterion for most of these reasons is that costs be "fair and reasonable," it is likely that some direct conversions will not result in savings. Clarify whether an accounting for all results is intended, as opposed to an accounting for savings only.

Attachment D – Inter-Service Support Agreements (ISSA)	
Section	Comments
A.	The applicability of this section is overly broad. Raise the dollar threshold to five or ten million. The administrative burden on competing these contracts is great for smaller agencies. Exclude intra-agency agreements within an agency. Narrow this definition to exclude inter-agency contracts that coordinate or support legislative or Executive initiatives for cross-agency projects.
B.	It is not clear what is meant by "applicable" existing commercial ISSAs. Are some existing commercial ISSAs "inapplicable" in some way?
C.	Consider eliminating the five-year time frame for recompetition of ISSAs. This allows agencies to focus on the competition of existing FTE that are commercial in nature. Phase in the competition of inter-agency agreements later. Agencies may not maintain records of the FTE number used by a provider agency. Calculation of this would create unnecessary administrative burden. The cost of the inter-agency agreement should be sufficient to report to OMB annually.
H.	It appears that the Presidential Memorandum of Nov. 8, 1968, was "terminated" by Executive Order 12372. Also, it is not clear why OMB Circular A-97, *Specialized or Technical Services for State and Local Governments*, is not referenced in this section.

Attachment E – Calculating Public-Private Competition Costs	
Section	Comments
A.	In general, we found Attachment E to be confusing, and, for the most part, are unable to determine whether the instructions for determining line-item costs outline a process that is likely to reflect actual costs with any degree of accuracy. The rationale for a number of the rules in this Attachment is unclear, and thus we are unable to assess whether they are fair to all potential competitors. Pages E-1 and E-3: It is unclear whether the Performance Periods listed on the SCF are meant to include any options indicated in the solicitation, or whether these periods have to do with some type of sub-divisions within the base contract. All offers, whether Agency Tenders or otherwise, should include option costs as well as base period costs; we assume this is intended.
B.	Pages E-4 and E-5: "Intermittent position" is not defined. It is not clear what this is, and why an assumption of 2007 annual hours available is used to calculate intermittent FTE. The source for the figure of 1776 hours available annually for other FTE also is unclear. Page E-6: Paragraph j (3) is confusing. If a position is subject otherwise to an EPA by virtue of FAR 52.222-43 or 52.222-44, it is unclear why the fact that the position is exempt under the FLSA would negate the effect of these clauses. Page E-7: FAR 51.101 addresses government supply sources. It is not clear if the Revision is encouraging or requiring the CO to authorize, in A-76 solicitations, government supply sources for contract performance. Page E-10: It is not clear how task order costs should be adjusted downward "to offset for potential Federal income tax revenue to the Government." Clarify whether this calculation should be made using the Tax Rate Table described on E-15.
C.	Pages E-11 and E-12: It is not clear how an MEO would account for and manage any award fees due. In any event, it is not clear why 65% of a possible award, as opposed to some other percentage, should be listed in the Agency Cost Estimate. Page E-12: The circumstances under which an MEO or a public reimbursable tender offeror could be found non-responsible are unclear. Page E-12: It is not clear how an agency would calculate the cost of tax loss for tax-exempt organizations, given that final tax assessments are predicated on a number of factors involving the totality of the organization's activities. Clarify whether this calculation should be made using the Tax Rate Table described on E-15. Page E-13: If the Contract Administration chart was created in whole or in part by a non-OMB entity, it should be attributed clearly so that others may check the

Attachment E – Calculating Public-Private Competition Costs	
Section	Comments
	assumptions. Win.compare[2] is a DOD software product, with a home page at http://compare.mevatec.com. However, we are unable to locate the assumptions used to create this chart, so we are unable to comment on its validity.
G.	Page E-16: A positive number on Line 17 of the SCF does not necessarily determine an agency decision if the decision is to include technical factors as described in Attachment B. Clarify this paragraph.

Attachment F – Glossary of Acronyms and Definitions of Terms	
Section	Comments
A.	The "Acronyms" section contains numerous minor inaccuracies. "CLIN" stands for "Contract Line Item Number" (see FAR 15.203(a)(2)(i)); "IFB" stands for "Invitation for Bids" (see FAR 14.101(b)); and "LPTA" should be "Lowest Price Technically Acceptable" (see FAR 15.101-2).
B.	In general, acronyms within definitions are confusing ("Administrative Appeal Authority . . . is an inherently governmental agency official who is independent of the activity being competed, the ATO, CO, SSA, and HRA;" "Human Resource Advisor . . . shall be an HR expert; shall be independent of the CO, SSA, and AAA; and may participate on the MEO Team"). The "Definitions" section follows an unclear ordering system ("Quality Control Plan" is placed between "Quality Assurance Surveillance" and "Quality Assurance Surveillance Plan;" "Direct Research and Development" follows "Representatives of Directly Affected Employees"). Editing that simplifies the reader's experience is needed in the "Definitions" section. "PWS Team" is an example. Since "PWS" is neither defined nor spelled out in the definition, the reader is required to go to "Acronyms" to determine what "PWS" and "QASP" stand for, and then go back to "Definitions" to determine the meaning of "Performance Work Statement" and Quality Assurance Surveillance Plan." 103 U.S.C. § 356, which is referenced under the definition of "Public Reimbursable Source," does not exist. The Government Management Reform Act of 1994 was Pub. L. 103-356.