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

cc:

Subject: Fwd: Association of Private Correctional and Treatment Organization\'s Comments on Circular No. A-76

Please find below comments submitted by the Association of Private Correctional and Treatment Organizations on OMB's proposed revisions to Circular No. A-76. If you should have any questions, please contact me at 703-548-8532.

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December 19, 2002

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, N.W.
New Executive Office Building
Washington, DC 20503

Re: Proposed Revision to Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities."

Dear Mr. Childs:

This responds to the Office of Management and Budget's (OMB) request for comments, as set forth in the November 19, 2002 Federal Register, in connection with its proposed revision to OMB Circular No. A-76, "Performance of Commercial Activities." These comments are submitted on behalf of the Association of Private Correctional and Treatment Organizations (APCTO), a 501 (c)(6) non-profit association serving the private correctional and treatment industry.

The President has identified competitive sourcing, or opening the government's commercial activities to the discipline of competition, as one of the five main initiatives of his Management Agenda for improving the performance of government. APCTO fully supports OMB's efforts to broaden and strengthen the process by which federal agencies determine whether commercial activities will be performed by public or private sources in order to facilitate greater and more strategic use of competitive sourcing to improve agency performance and, ultimately, lower costs for taxpayers and improve program performance for citizens.

Growth in Federal Inmate and Detention Population

Since the early 1980s, the United States has seen a dramatic increase in the number of inmates on all levels. According to the federal Bureau of Prisons, the federal inmate population has ballooned from approximately 24,000 in 1980 to nearly 136,000 in 1999. This represents an extraordinary 466 percent increase in 20 years.

Furthermore, according to the Office of the Federal Detention Trustee, the federal detainee population under the control of the U.S. Marshals Service and Immigration and Naturalization Service has increased from 25,675 in September 1994 to 58,029 in September 2001. This represents an average increase of 12.4 percent annually over that seven-year period. These numbers could grow even faster in the future given the Administration's focus on homeland security and protecting our nation's borders. In fact, the U.S. Department of Justice (DOJ) Inspector General has identified detention space and infrastructure as a "material weakness" and one of the top ten management challenges facing the DOJ.

Historical Use of Private Prisons by the U.S. Department of Justice

To house this rapidly growing federal inmate and detainee population, the DOJ relies upon three sources for prison and detention space: 1- facilities owned and operated by the DOJ; 2- state and local facilities; and 3- private facilities owned and/or operated by private vendors. What is interesting to note about the breakdown of the above listed categories is the federal government's growing reliance on private facilities to house federal detainees. According to DOJ statistics, the total number of detainees housed in private facilities has increased by 116 percent from 1994 to 2001, while the number of detainees in federally owned facilities has dropped by 33 percent during the same time frame.

Many of the member companies of APCTO have a long history of housing inmates and detainees under contracts with the Federal Bureau of Prisons, the U.S. Marshals Service and the Immigration and Naturalization Service. In fact, several of our member companies have contracted with the federal government since the mid 1980s.

According to a 2001 report by the DOJ Inspector General, there are at least six private companies, excluding community correction contractors, which currently provide the DOJ with either prison or detention services. In another report, the DOJ Inspector General stated that the government depends "on private prison contractors to help manage its growing prison population and reduce overcrowding."

Definition of "Inherently Governmental" Functions

After reviewing the proposed revisions to Circular No. A-76, APCTO respectfully requests clarification with regard to the definition of "inherently governmental" functions. Clearly, the federal government has long utilized private contractors to provide prison and detention services. It is APCTO's expectation that the federal government intends to continue these successful public-private partnerships in these areas.

Given OMB's longstanding view that prisoner detention authority is distinct from arrest authority - which is viewed as an inherently governmental function - APCTO therefore assumes that OMB does not include operation of prison and detention facilities under the definition of an "inherently governmental" function that cannot be subject to competitive sourcing.

At the same time, APCTO also understands that the federal government is concerned about employing private contractors to make arrests, act as enforcers of law within the general population, or otherwise exercise judicial powers. APCTO believes that the revised definition of an "inherently governmental"

function in Circular No. A-76 is intended to capture these situations, and not to interfere in any way with the long-established role private correctional companies have played in operating prison and detention facilities under contract with federal agencies. Any clarification that OMB could provide which confirms this understanding would be greatly appreciated.

If you have any questions concerning this issue, please feel free to contact me at 703-548-8532 or alefevre@apcto.org.

Sincerely,

Andrew T. LeFevre
Executive Director

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