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

cc:
Subject: Treasury's Comments to New A-76 Circular

- Treasury A-76 comments - Rev 1.doc

The following tables contain the comments from the Treasury Competitive Sourcing Working Group on the proposed new A-76 Circular. Treasury collected comments from all of the bureaus. These comments were then reduced to the Treasury Priority Comments. The first table in this document identifies the priority comments submitted for consideration. The remaining comments, identified as Other Treasury Comments to the New A-76 Circular, are the entire comments generated from the Treasury Competitive Sourcing Working Group.

<table>
<tr><th colspan="2">Treasury Priority Comments to New A-76 Circular</th></tr>
<tr><td>Section</td><td>Comment</td></tr>
<tr><td></td><td>The timeline are too short. To develop a PWS from scratch is a difficult task, especially for those who have not attempted it before. Development of the MEO is even more daunting since the agency workforce is generally attempting this for the first time.</td></tr>
<tr><td></td><td>The Source Selection Authority (SSA) appears to stand totally independent of the Contracting Officer, Source Selection Evaluation Team, and Cost/Price Team and makes all decisions for the sealed bid and negotiated procurement, which is contrary to the FAR. Although, the SSA makes the final independent award decision, FAR 15.303 states that the SSA should rely on recommendations of all advisory boards and panels, etc. Page B-4 cites FAR 15.303 in the definition of the SSA; however this is not amplified throughout the circular. In addition, FAR 15.303 states that the CO shall after release of solicitation, serve as the focal point for inquires from actual or prospective offerors; after receipt of proposals, control exchanges with offerors in accordance with 15.306 and award the contract.</td></tr>
<tr><td></td><td>Recommend that “Effective Date” be redefined as the issue date of the revised Circular and that a grand fathering period be authorized for standard competitions and direct conversions that were already in progress prior to the effective date of the new Circular.</td></tr>
<tr><td></td><td>The new circular should emphasize that agencies delegate 4e duties down to the sub-agency level to maximum extent possible. The old circular supported a decentralized reporting, implementation, and resource allocation structure. . However, the revised circular removes the resulting flexibility without a clear indication of improving decision-making and project performance.</td></tr>
<tr><td></td><td>Ensure the language and guidance is consistent with the FAR throughout the document.</td></tr>
<tr><td>Attachment A, 4(b)</td><td>It might better read, “Presume all activities are commercial in nature unless an activity is justified as inherently governmental, according to Agency discretion unless the determination can be clearly shown to be capricious, unreasonable, and arbitrary. This can also be applied to Inventory Process D (1), (2), Commercial Activities.</td></tr>
<tr><td>Attachment A, B.1</td><td>Paragraph 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.</td></tr>
<tr><td>Attachment A, B.1</td><td>Revise the guidance to state that The FAIR Act is not applicable to all organizations within the Judicial and Legislative Branches of the Government.</td></tr>
<tr><td>Attachment A, D.3</td><td>The reason code listing has removed the “old” Reason Code C and then moved the other reasons up one letter, i.e., D to C, E to D, etc. This is very confusing. If the “old” Reason Code C needs to be eliminated, the other codes need not (and should not) change. Suggested change to the table at D.3 as follows:
<table>
<tr><th colspan="2">REASON CODES FOR AGENCY PERFORMANCE
COMMERCIAL ACTIVITIES INVENTORY</th></tr>
<tr><th>REASON CODE</th><th>DEFINITION</th></tr>
<tr><td>A</td><td>Agency performance is not appropriate for outsourcing pursuant to a written determination of the 4.e. official.</td></tr>
<tr><td>B</td><td>Agency performance will be subject to a Standard Competition, Business Case Analysis or Direct Conversion within specified time frame.</td></tr>
<tr><td>C</td><td>Reserved – Not for FAIR Act inventory use.</td></tr>
<tr><td>D</td><td>Agency performance is the subject of an in-progress Standard Competition, Business Case Analysis</td></tr>
</table>
</td></tr>
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			or Direct Conversion.	
		E	Agency performance is a Most Efficient Organization (MEO) as a result of Standard Competition or Business Case Analysis.	
		F	Agency performance is pending an agency approved restructuring, i.e., closure, realignment, decision within a specified time frame.	
		G	Agency performance is required due to a legislative prohibition against private sector performance.	
Attachment B	Delete requirement for 4.e official to obtain written approval from OMB before using this process for any other commercial activities outside those defined in subparagraphs (1) and (2) of this section. Best value competitions are an integral part of the FAR acquisition process and their use should not be restricted.			
Attachment B,	Delete requirement for 4.e official to justify in writing the determination to provide government furnished property and reassign the responsibility to the head of the requiring activity. The availability of government furnished property is a common contracting practice, and the 4.e official does not need to be in a routine approval process.			
Attachment B, C.1.b.1	The last "sentence" ends with a comma.			
Attachment B, C.2.a.13	The references to "C.6.b.(2)" and "C.6.d(2)" are incorrect as such paragraphs do not exist.			
Attachment B, C.3.a(7)	State the Phase-In costs are identified on Line 3 of the SCF; Attachment E, B.5.b state they are identified on Lines 1 through 5.			
Attachment B, C.3.a.(2)	The last sentence states, "Failure to submit the Agency tender on or before the due date established in the solicitation may result in the Agency tender not being considered". Recommendation: Cite FAR references Part 14.3 Submission of Bids and FAR Part 15.2 Solicitation and Receipt of Proposals and Information and/or cite reference paragraph 3 a (9) Delayed Delivery after paragraph for further clarification.			
Attachment B, C.4.a.(3)1.(c)	The FAR reference used in the paragraph addressing CTTO Source Selection (page B-13) is incorrect. The correct FAR reference is 15.308.			
Attachment B, Chart	Type of Acquisition, Type of Source Selection, and Type of A-76 Evaluation Process should be identified at an earlier stage in the process.			
Attachment B, D.1	Paragraph appears to conflict with the FAR citation. FAR does not discriminate between management and non-management jobs for Right of First Refusal.			
Attachment B, D.1	The FAR reference is obsolete. The Right of First Refusal of Employment is at the current FAR 52.207-3, not the 52.203 in the proposed Circular.			
Attachment B, D.3	This paragraph has an inappropriate reference as it refers back to itself.			
Attachment C	The Business case Analysis alternative in this attachment should be separated from the Direct Conversion section and be given its own section or clearly identified as an alternative to direct conversion. Under the BCA approach the outcome could be an in-house or vendor win which is not a direct conversion process.			
Attachment C, D.1.c	Although this analysis is to be used for an activity that has up to 50 FTEs, the activity can not have more than "$5,000 in asset purchase requirements." Thus, a desk and a computer would limit this analysis to roughly 5 FTEs. We believe that the "asset purchase requirements" needs to be raised to a more realistic $2,000 per FTE.			
Attachment D	Eliminate Intra-Agency Service Support Agreements from this section and only require Inter-Agency Service Support Agreements to be competed.			
Attachment D	Recommend consideration be given to providing a period of exclusion or a grand fathering for the Agencies using Inter-Service Support Agreements (ISSAs).			
Attachment D	Increase Annual Revenue threshold to 10 million dollars			

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Attachment D	Eliminate Intra-Agency Service Support Agreements from this section and only require Inter-Agency Service Support Agreements to be competed
Attachment F	Define competition announcement start date and performance decision

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	1. Many of the job functions are long-term and/or ongoing in nature. The potential to experience a change in workforce every one to five years eliminates institutional awareness, knowledge, loyalty, and commitment. This would also reduce the cohesiveness and esprit de corps gained by having a stable and consistent work force. This creates a potential for conflicts of interest and manipulation of the system by employees and supervisors who may have the ability to "stack the deck" during the tender process to create opportunities for themselves in the private sector whether such a change would or would not be a benefit for the Government. 2. The proposal effectively reduces the Federal civil servant to a one-year temporary employee. There would effectively be no inherent rights accruing to the Federal employee any more (i.e., civil service protection). According to the provisions of the proposed A-76, performance would be measured against an "established" set of criteria. It is presumed that failure to perform in one or more of these categories would lead to termination and replacement by an alternative source. This action ostensibly could remove a career civil servant from Federal employment without due process and\or appeal rights. 3. The Federal work force is ill equipped to develop cost proposals for performance of work activities. This gives significant competitive advantage to private companies. Private firms hone their skills on a daily basis in the competitive arena where the career civil servant spends their time in performance of their assigned duties. Without significant training and experience, the Federal civil servant cannot be expected to compete with their private sector counterparts. 4. The revised A-76 provisions make competition for the Government more difficult because we do not have the same flexibility and discretion in recruiting & terminating employees. This adds to the competitive disadvantage on in-house proposal. A private firm can determine the skill mix and personnel required to perform a given set of performance criteria, whereas the Federal office would be required to bid with existing personnel. 5. Many of the job features and protections in the Federal Government are the direct result of programs considered to be in the "public interest". The social benefits of these programs have been considered to be more important than strict performance. The provisions of the revised A-76 tend to eliminate this consideration. 6. When a change needs to be implemented with private enterprises, the contract will need to be revised, and there will be delays as this occurs. There will also be funding and oversight issues. Government employees will be able to change direction without these impediments. 7. Management of contractors requires a level of overhead that may not be readily apparent. Thus, it may be an error to assume a one-to-one correlation between a Government employee and a contractor, all other things being equal. 8. There are substantial risks that anticipated costs would be exceeded, possibly substantially. This can happen with changes in plans, scope, the environment, and/or responsibilities that result in changes in the type and/or extent of work that needs to be done. It can also happen as the actual requirements become more apparent over time, especially on complex projects – consider the anecdotal data available about cost overruns at Boston's "Big Dig" and on DOD contracts. The Federal workforce cannot submit a claim for change order if the scope of work is found to be insufficient to

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	perform the duties required. It is likely that a private contractor would submit a request for contract modification to cover deficiencies and scope of work detail. It is difficult, if not impossible, to thoroughly capture all aspects of most administrative functions in words and phrases. Many of the activities of the office occur on an ad hoc basis resulting from requests from senior management and customers. A private company would certainly perform these ad hoc requests, but would just as certainly submit a claim for additional compensation. This would present an acquisitions issue. **Personnel- Staffing, Employment and Classification** 9. We understand that employees who are adversely affected by outsourcing will have reduction-in-force rights (bump and retreat rights) in accordance with 5 CFR Part 351 (Reduction-in-Force). We believe that greater emphasis should be placed concerning employee rights under this provision. This will lessen the negative impact on morale in the process. Also, if a RIF is instituted, will severance pay be offered? Will early outs/buyouts be extended? And, will it be financially prudent for agencies to offer buyouts? 10. How will agencies' annual budgets accommodate the financial effects of this process (for example funding early outs, retirements, buyouts, appeals, and lump sum payments, if they are authorized)? 11. We believe that due process and formal procedures should be developed to address how the impact of the loss of Federal health insurance, life insurance, annual/sick leave, and other Federal benefits will be factored for adversely affected employees who are vested and tenured. 12. If an employee is transferred to work for a selected contracting company, what (if any) procedures will be negotiated to compensate for current sick leave balances? 13. Because full field background investigations are mandatory and costly for the Bureau of Alcohol, Tobacco and Firearms (ATF), we believe that private contract award winners should bear the cost of all or a fair portion this expense. Also, background clearances are currently required for all new ATF employees prior to their becoming employed. Subsequently, ATF is notified when employees are involved in unlawful activities. Would ATF still be notified if an employee lists their employer as the contracting company? 14. We believe that private contract award winners should also bear the cost and be responsible for a fair portion of training, equipment, materials, supplies, office furniture, etc. Consideration should be given to offset the cost to the Government for these expenses. 15. How will performance be measured for in-house awards, i.e., a Government most efficient organization (MEO) award winner? 16. Will there be procedures in place to periodically review and analyze the use of contractors to perform the various selected governmental functions? 17. We believe that continuity of operations may be adversely affected by massive outsourcing initiatives. How will agencies maintain a "history" of events if current employees are displaced and contractors are hired? 18. Chief Human Capital Officers are responsible for overseeing the workforce, elevating, and giving greater visibility to the importance of human resource management issues in federal agencies. Who will oversee the contractors' work since they usually are generally unfamiliar with government processes? The oversight of the contractor is an added expense to the Government when contracting out for services and needs to be added to the contractor's total cost. 19. We believe that specific guidance needs to be developed to ensure that the process used to select which government employees are to be replaced or which functions are to be outsourced is fair and equitable.

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	20. If the private contracting company decides to reduce the number of positions performing a function, what procedures will be used to determine the employee(s) that move with the position? 21. We believe that the definition of "inherently governmental positions" should be consistently applied across all Federal agencies. 22. With respect to "right of first refusal" (Attachment B, D1), employees whose positions are to be abolished because the function is being converted to private sector must be offered a position in that private sector company if there is a "job opening" and if "the employees on this list are deemed qualified by the HRA (Human Resources Advisor) for these job openings." We believe this responsibility puts a rather interesting burden on the Federal HRA to determine if the affected employee is qualified for a position in the private sector company. 1) What specific criteria is the HRA going to utilize to determine if affected employees are qualified? Will it be OPM qualifications criteria or other criteria? 2) How is the HRA to determine if a proper offer has been made? 3) What is the recourse or remedy if the contractor violates this rule? 4) Are there any exceptions to the rule for designated "key" positions? Should there be? 5) How is a "job opening" defined? Is a job open if a tentative offer has been made to someone else? Would the contractor have to renege on a tentative offer in order to hire a qualified federal employee with First-Refusal rights? There is a reference in the Circular to the FAR 52.207-3. We believe this site provides no additional guidance to these questions. 23. With respect to Attachment C, A2, "No Employee Impact:" If all permanent employees are reassigned to comparable Federal positions or voluntarily separate, the conversion is considered to have "no employee impact." There is no reference to what a "comparable Federal position" is. We believe this should be clarified. 24. Under D.1.b. The document states that, "Agencies relying on an in-house provider or a public reimbursable provider will be required to document changes to the solicitation, track actual costs, and terminate for failure to perform." Our question is, if Federal employees are selected as the provider and they fail to perform and are terminated, do they have MSPB appeal rights? Would those rights come under 5 CFR Parts 752 or 432? 25. The "highlights" document accompanying the Federal Register notice states that, "Agency Officials designated to implement and comply with the Circular will be fully accountable through annual performance evaluations." OMB should specify who would be responsible for setting the actual performance standards and make rating determinations. Will the standards be Government-wide (e.g., set by OMB)? 26. Once an implementation date has been determined, what type of notification can the Agency expect prior to implementation? Will it be 30, 60, or 90 days for example? 27. Are the Teams referenced in the document "Executive Office of the President, Office of Management and Budget" dated November 14, 2002, OMB specific and/or Agency specific? This is an area in which the Union may want to participate. 28. Are employees required to sign a document if they refuse the position under the "Right-of-First-Refusal?" If so, will there be a window of time in which the employee would be able to change his/her mind and reconsider? 29. Will a supervisor or manager be put on a waiting list (priority placement list) for another position if the function(s) they supervise are contracted out? Or would they remain in that organization to supervise the contracted employees? 30. If an employee declines to accept a position with the contractor, and there is no available or comparable position, this may result in a RIF within the Agency. Should the employee not be placed as a result of a RIF, how will the severance package and afforded benefits be calculated and determined under personnel rules, is the employee eligible for retirement?

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	31. Should the employee be adversely affected by a RIF, then RIF procedures for both bargaining and non bargaining union employees must be followed in accordance with the Collective Bargaining Agreement and ATF Orders. 32. We believe that the Circular should emphasize that notice must be given to the Union if positions are going to be studied. It should also be emphasized that once a determination has been made to contract out positions; the Union must receive at least a 3-week notice of any proposed changes to terms and conditions of employment. 33. How will Unions be involved with contractors? Will there be any kind of a Union association with private sector award? Quality Assurance Surveillance Plan (QASP) (Pg. B-8). This section states that the QASP identify methods to be used to measure performance of the service provider against the requirements in the PWS. A quality control program (QCP) is also included in prospective offers and tenders to guarantee satisfactory performance. It also states that an agency may rely on the service provider to monitor daily performance and that the agency retains the right to inspect all services. OMB should ensure that this requirement does not violate personnel regulations or violate union contracts. At a minimum, it should give agencies the flexibility and power to address this issue.
	34. Cirl2. Circular talks about teams composed of "technical and functional experts", but where does a small agency get all of these technical experts, especially considering the firewall requirements? 35. Req3. Requirements for Inherently Governmental ATO, CO, HRA, SSA, and AAA, most required to be independent of each other and of the function under study. How can this be handled in a small bureau? What exactly does "independent" mean? 36. Since ATO is a government agent, what constraints will be placed on him/her in terms of funds and legal staff? 37. Does A.2.a.(2) and (3) guarantee increase in FTE authority in the event of agency "win"? 38. Does removal of the Independent Review of the Agency Tender place the government at greater risk by removing one of the major checks and balances in the system? Might this lead to an increase in GAO protests? 39. Does Direct Conversion Criteria "No Employee Impact" remove limit of 65 for this type of action?

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	40. Criteria for Direct Conversion with a Business Case Analysis says that allows a change of provider. Does it also qualify as "competition" for PMA if the decision as a result of the Business Case Analysis is to retain the current provider?

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	41. What constitutes "completion" of a Business Case Analysis? Is it finishing the analysis document, or making a decision based on the document? 42. With the emphasis on applying rules to both public and private sources, why does the Circular continue the pro- prohibition against new MEO subcontracts? The mechanism seems to satisfy goals of reducing costs (or the MEO would not use them), while granting private sources a portion of even an in-house win. 43. How would an award fee be distributed to the agency team? 44. "The 4.e. official shall hold these Competition Officials (ATO, CO, HRA, SSA, and AAA) accountable for the timely and proper conduct of Standard Competitions through the use of annual performance evaluations." What is this mechanism? Using current models, the only probable official even in a relatively direct chain of command with the 4.e. Official is the CO. The factors that delay a competition are frequently separate from the control of these officials. 45. Attachment B, A.2.b(3) states requirement is IAW FAR, but no actual citation provided. 46. Attachment B, C.3.a(1) appears to contradict FAR 24.202. If all tenders are treated equally, then the Agency Tender should be a procurement sensitive document in the same way contractor proposals are.) 47. Attachment B, C.3.a(2) states that the Agency Tender should be costed according to Attachment E. Shouldn't Sec Section L of the solicitation overrule Attachment E if there is a conflict? 48. Attachment B, C.4.a.(1)(b): Why is cost realism handled differently for agency and private sources? 49. Attachment B, C.6.a(2): Provision of redacted copy of proprietary information should not be limited to private sectsector offers. 50. Attachment E, C.5.c: No costs associated with VERA
	51. While it is the intent for public/private competing to inspire economic growth, the initial impact to small civilian agencies will be enormous. Agencies will incur added costs associated with establishing an A-76 centralized oversight office. To build-out an infrastructure with the expertise needed to fairly compete will take time, and will be costly. We will need funding for unanticipated training and an A-76 contractor for the initial competition process. How will these costs be factored? Have long term costs/benefits been analyzed? 52. A disadvantage will be placed on the government by Circular OMB A-76 because of its lack of experience with contract competitions. The private sector competes for contracts all the time, and has experienced employees who solely perform that role.

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	53. A-76 did not specifically address franchise funds. FMS' Agency Services is a franchise fund that provides financial training to government agencies. Requiring franchise funds to compete with commercial firms for "commercial services" would be potentially damaging. Franchise funds receiving reimbursable revenue already compete with the private sector. 54. The impact on agencies' human capital will be profound. To properly engineer an A-76 study, an agencies' procurement office responsibilities will increase. We will need additional staffing with specialty skills to support the various roles required by the A-76 process. In addition, personnel from other organizational areas will be needed to serve in various competition capacities (e.g., MEO team, PWS team, etc.). This means that an agencies' human capital will be strained during the competition process, jeopardizing their capability for carrying out the core mission responsibilities. Also, what considerations have been given to the agencies' ability to attract and retain top-notch public sector hires? 55. A-76 diminishes an agency head's ability to make business decisions on behalf of the organization. It does not acknowledge agencies that exercise " Best Business Practices," which includes competing contracts for commercial activities. FMS has traditionally pursued blending private/public sources in order to accomplish its fiscal responsibilities to the public. Agencies that have an established record for administering commercial contracts should have the ability to use A-76 as a management tool at their discretion. 56. Placing agency procurement officials in the position of monitoring "contract" performance of fellow federal employees is inappropriate and creates a conflict of interest. In addition, a duplicative performance monitoring system, separate from existing employee performance systems, will be required. This is wasting scarce resources and creating additional conflicts and/or redundancies. 57. The language for the federal employees to file an appeal process is vague and limited. A thorough explanation of the appeal process needs to be stated.
	58. In general, we like the concise and well thought-out layout of the draft A-76 Circular. It is nice that all pertinent information is together in one chapter. 59. Very few activities could qualify with the severe requirements for Business Case Analyses in Attachment C. Although many civilian agencies, with activities that have 50 or fewer FTEs, might benefit from using an alternative to public-private competitions and direct conversions, the present requirements for business case analyses won't give them that option. See specific comments below under Attachment C. 60. With the increase of contractor employees working in jobs previously held by government employees, there is likely to be more "supervisory" and personal services type relationships between government employees and contractor employees. The ability of the work force to react quickly will probably require some flexibility in this area. As such, we were hoping that the definition of "personal services contracts" would be revisited in the revised A-76. 61. A large part of the confusion of doing the annual FAIR Act inventory was due to the function code list that OMB borrowed from DOD without any modifications or revised definitions. In the past, this created the dilemma of, quite often, trying to force a round peg in a square hole. We were hoping that this would be fixed in this rewrite. 62. There is no mention of 8(a) set-asides and small business, women owned, HUBZone set-asides, etc. Are they to be used utilized for the Competition? If not, are all requirements to be full and open without exclusion of sources? 63. **Page A-1** (B.1) The submission of annual FAIR Act inventories should be accomplished by an automated system established by OMB. Too much time is wasted in compiling and consolidating excel spreadsheets. Also, perhaps the annual inventories should include an inventory of private sector employees working for the government. This type of an inventory would be invaluable in doing Private Sector Source conversions.

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	64. (C.1.a) Why weren't part-time employees included in the inventories? 65. **Page A-2** (C2) It is not clear what makes up the "Non-FAIR Act Commercial Inventory." 66. If it is mandatory to disclose the reason for using Reason Code A, why make the "public" request it from the agency? It would be a lot less work involved for the agencies if the reasons were listed on the web. 67. (E) It doesn't appear as if any change has been made to the definitions of "Inherently Governmental Activities". Therefore, it would in everyone's interest if some common examples were furnished in the circular, for example, Contracting Officer's Technical Representative, Contracting Officer's Representative, General Counsel attorneys, etc. 68. **Page A-5** (F.2) Is the appeal the final action that can be taken? Or can an "interested party" appeal the appeal to GAO or the court system? 69. **Page B-2** (A.1.a) Are sole source justifications considered to be within the competition process? If not, does the 4.e official need written OMB approval to go this route? If a sole source is considered an Alternative Competition Process, does the OMB approval need to be attached to a Justification for Other Than Full and Open Competition? 70. Should the government guarantee contractor assistance in preparing the Agency Tender response to a solicitation - due to lack of expertise on the government's side in this area? 71. **Page B-4** (C.1.b.3) A definition is needed for the "start date." If it is defined to mean the FedBizOps announcement date, then the timeframe of 12 months for advance planning, announcement, source selection, negotiation, award, etc. in many cases would seem to be unrealistic. 72. **Page B-8** (C.3.a.1) If an Agency Tender is fully releasable it seems appropriate that the winning contractor's proposal should also be fully releasable. However, under FOIA rules portions of contractor proposals are generally exempt. Will the rule be modified for this particular process? 73. It appears that the SSA is performing many functions that a CO performs. Does the SSA also need to be a CO? 74. Page **C-3 (**D.1) Business case analysis is the new process that replaces the "old" streamline approach. Unfortunately, the new severe limitations make it next to impossible in which to qualify. We believe the follow three areas need to be re-addressed: 75. D.1.e There is a timeframe put on the business case analysis that it must be completed within fifteen working days. This would appear to be unrealistic based on past experiences from all other agencies we contacted. 76. D.1.i The total elimination of market surveys seems severe. If it is feel that there were too many market surveys conducted in the past, why not limit (not eliminated) their use. Perhaps, allow one or two market surveys to be included in the necessary four comparable existing contracts. This compromise would still permit analysis done for cases where only two or three comparable contracts could be located. 77. Page **D-1** (A) Do reimbursable work authorizations (RWAs) fall under ISSAs?

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	78. The Standard Cost Comparison Form should be automated. Also, will this form be available to the public or be obtainable under FOIA?
	79. DOD experience and recent Federal Civilian Agency studies clearly identify that attempting to accomplish a full A-76 competition in 12 months is impractical and risky. It is imperative that sufficient time be allowed for the end-to-end competition process to take place and to not try to place an arbitrary 12-month constraint into the process. There is not an "one size fits all" approach to competitive sourcing, and as established in the current circular there is a two tier timeframe approach; one timeframe for simple single functions and one timeframe for more complex, multi-function studies. Not accounting for the difference between the two types of studies (simple and complex) is inappropriate for was not an issue for the CAP or subsequent OMB discussions for making revisions to the new circular. Recommend that for easy, straightforward, non-complex studies (such facilities support operations) that the 12 month timeframe apply and for complex, multifunctional studies (such as seat management) 18 months apply and then if more time is needed request an six month extension from the 4e official 80. Conflict of Interest should be addresses in the policy letter not sprinkled throughout the attachments. There needs to be definitive guidance on all aspects of the process (players, functions, roles, responsibilities) especially in light of Jones-Hill 81. The proposed A-76 Circular revision does not define nor address the issue of privatization and its relationship to this circular and its procedures. Recommend including a discussion of privatization and the applicability of Circular A-76. 82. The guidance is too vague in regard to the use of reason code A. Recommend that clear examples or criteria be established for what constitutes using Reason code A, especially since these may go public. 83. Recommend eliminating Code E because Reason Code A is broad and all encompassing for exempting or justifying a function for not being studied 84. What is the authority level for approving a change or addition to the OMB function codes list? 85. Most Efficient Organization: Does the ATO have to develop a Technical Performance Plan/Technical Proposal? If yes then it should be stated as one of the products in this section. 86. The MEO should be allowed to subcontract with the private sector for new contracts when developing the MEO. A percentage of the MEO should be allowed to be subcontracted to help bolster the MEO tender, and since this is a common practice in the private sector, the ATO should be afforded this option. To limit to just existing contractors and only the work they are doing is unfair to the ATO and tilts the scale to the advantage of the private sector vendors who will bid against the MEO. 87. Both the Source Selection Authority (SSA) and the Administrative Appeal Authority (AAA) should be non-bargaining unit employees, managers, or executives. This should be specified to avoid unnecessary grievances and complaints. 88. Paragraph C.4.a. (3)(c) 2 in Attachment B imply that the Agency Tender must always be determined technically acceptable. What if it is so technically deficient as to preclude a determination of acceptability? 89. "Agencies shall not reorganize or restructure a commercial activity to circumvent the competition requirements of this circular." Question: Does this mean after being identified on the FAIR Act inventory, after public announcement, prior to release of solicitation and/or after release of the solicitation? 90. Page B-18 paragraph 6.a (4)(e) Suspension of Performance Decision for 30 days or less. Question: Circular throughout represents working days. Does the 30 days represent working days or calendar days? Is the suspension from date of Performance Decision or date of appeal?

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	91. In section C.4 We recommend that this section includes clarity that the MEO, which includes such documents as position descriptions to staff the new organization, is part of the Agency Tender and as such, is procurement sensitive and not released until the Administrative Appeals Process. 92. The Right of First Refusal subsection reads in part: "When job openings are created by a conversion to contract or public reimbursable performance and the employees on this list are deemed qualified by the HRA for these job openings, the selected source contractor or public reimbursable shall be required to offer employment to these employees before hiring new or transferring existing employees to fill these job openings." The above provision would appear to make the HRA responsible for determining the qualifications of contractor positions and would give the HRA the authority to determine which of the adversely affected employees are qualified for the contractor's vacancies. The language of the subsection also requires the contractor to hire these employees. This is a very significant change from the prior regulations that allowed the contractor to decide the qualifications for its positions and determine solely which employees would be selected. 93. There appears to be some conflict in the responsibilities between the ATO and the CO with respect to allowable changes to the Agency Tender and actions to be taken if the ATO does not submit the Agency Tender to the CO on or before the date stated in the solicitation. The circular has the ATO responding to the 4e Official with the rationale for not complying with the solicitation while the CO is the authority responsible for the acquisition. The Circular also gives the 4e Official the authority to direct the CO to return the received offers and amend the solicitation allowing additional time for resubmission of offers/tenders. This leads to two issues in our interpretation. First, the 4e Official possessing the authority to direct the CO to change the acquisition process may present the appearance of impropriety to private sector offerors who do not need the additional time to prepare their offer. It may also cross the lines of autonomy provided the CO who must ensure the objectivity of the acquisition process. Second, the Circular fails to state the reasons for extending the solicitation should comply with the policy set forth in the Federal Acquisition Regulation. 94. Recommend further clarification on the use of the terminology “personally and substantially participating” when addressing personnel involvement in the development the solicitation, PWS, Agency Tender, and other similar procedure documentation. Recommend clarification also be provided to address issues related to non-disclosure of information and release of or access to acquisition sensitive information. 95. Page B-4, para C.1.a. - States "Prior to public announcement (start date)..." and goes on to list the activities of Preliminary Planning. Earlier, on page B-1, the "Standard Competition Process" chart listing the five steps lists the Preliminary Planning and Public Announcement on the same step, with the above time line indicating that the 8 months to Solicitation Development and Issue would start with both of those activities. The Preliminary Planning definition on page B-4 comprises 7 different steps that could be quite time consuming. This apparent contradiction makes it unclear whether or not this step is to be included in the 8 month time frame. 96. How is Past Performance evaluated in LPTA evaluations? LPTA requires evaluation of past performance on a "go - no go basis". How is the determination between go and no go made? 97. Page B-15, para 5 - Post competition accountability states that an agency shall be held accountable for performance in the same manner as a contractor. In the case of agency performance, the requiring official responsible for terminating an unsuccessful performance of the requirement may be in the management chain of the unsuccessful performance group. Doesn't this present a conflict of interest? 98. How will cost/price realism this be accomplished? Will Independent Government Estimates be used, and if so how do you establish a uniform/consistent approach throughout the Federal Agencies. 99. For Sealed Bid Acquisitions what is the role of the SSEB?

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	100. C.4.a. (3) (a) 1., 2, 3 – This section allows for the SSA to have discussions with the ATO to adjust the ATO's tender because of ambiguities and deficiencies however there is no discussion of how long this process should take. There should be some guidance that establishes how much time the ATO has to adjust the MEO and not have language such as "within a reasonable timeframe" but rather state more definitively "within 10 work days of being notified of ambiguities and deficiencies the ATO will make adjustments and submit to the SSA. If the SSA finds the adjustment unacceptable the SSA will notify the 4e official who will appoint an individual to resolve the disagreement within 5 work days. 101. Role of the Human Resource Advisor (HRA) -In Item 3.a., the word "interface" needs further clarification as to its meaning. -Item 3.c. would seem to be more of a contracting responsibility than a Human Resource function. . -Item 3.d. is not a human resource advisor duty but rather likely belongs to the Contracting officer. -In Item 3.h., the reference to paragraph D.2 should be to paragraph D.1 102. In cases where an optional comment period is exercised per paragraph C.6.a.(4).(b), is the start date for the 30/45 day timeframe in this section the original appeal receipt date or the end of the optional comment period? Clarification is needed to avoid confusion. 103. The Business case Analysis Timeframe is insufficient. IRS has conducted many business case analyses in support of the competitive sourcing program and our experience indicates that 2 weeks is insufficient and recommend 30 workdays to perform BCA, though this is still very aggressive. 104. It is not clear in Attachments B and C whether or not Federal Schedules can be used as a part of an acquisition strategy when conducting standard competitions or direct conversions. Additional language in this area would be helpful. 105. The threshold aggregate 50 FTE for Business Case analysis option should be larger, possibly 100 FTE, to allow agencies increased flexibility, and cost efficiency for conducting competitive sourcing studies. Small studies 100 FTEs or less can be just as costly to study as larger FTE studies but the return on investment or cost benefits in some cases not worth doing a full study. 106. The direct conversion approach using a Business Case Analysis in Attachment C, paragraph D.2.b 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. 107. Request clarification of the first two sentences in paragraph A, page D-1. Are the ISSAs to be competed based on the face value of the ISSA or the value of the fees generated by the ISSA?

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	108. If ISSA remain in the revised circular, do implement for one year after the implementation of the revised circular. 109. Local HR Personnel Classification Specialists should determine the quantity and pay grades of positions required to conduct contract administration, as opposed to using a notional guide that may not have been based upon the application of empirically defensible work measurement and resulting staffing standards. 110. 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. 111. **Define**: Inventory Challenge Appeal Authority, Inventory Challenge Review Authority, Challenge Decision, Inventory Appeal Decision, Technical Proposal, Source Selection Authority, Public Announcement, Working Day, Agency
	112. The A-76 process has become more manageable with the revised circular because Part 15 FAR Principles are being used to negotiate, and award a competitive A-76 actions. 113. **The** time frame for award of an A-76 action of one year from the start of the study will not be reasonable for complex studies involving multiple disciplines. The time frames set forth in the current circular should be considered for major A-76 actions. 114. **Department** of Homeland Security (DHS) components should receive an exemption from A-76 for up to three years. This exemption will give them an opportunity to stand up an organization in excess of 170,000 people. This is necessary because of all the uncertainties involved in establishing this department. This includes the inability of these components to determine their FTE needs and commercial needs with new responsibilities, and the Department having to reach down to the components to meet their needs. We have been told that DHS will be cost neutral. However, I fully expect that many of the DHS components will have mission critical work to be performed that is beyond the work that they are currently doing. This being said, without the proper A-76 training, additional staff, and contractor support, DHS will have the impossible task of standing up this department and making numerous personnel decisions that will effect their ability to conduct homeland security. 115. I see nothing in the revised circular that speaks to small competitions of 15 or less where the agency can do a mini competition between the agency tender, the private sector and ISSA. I believe that this is useful because it provides an opportunity for a simplified competition without all of the rules involved in a major A-76 study. 116. Page B-4 C.b. I have concerns about language in the revised circular that says that competition officials will be held accountable for timely and proper conduct of standard competition through the use of performance evaluations. I believe that that these competitions will take a considerable amount of time and effort in addition to the normal workload duties for procurement, HR staff, finance, and the effected organization. Without additional staff that have the training to handle these actions, I believe that many of the major A-76 studies are doomed to failure. I also believe that contractors that have expertise in A-76 competitions will be a necessity for agencies,and an expensive commodity. 117. B-13 (c) I do no understand the meaning of statement under Cost/Technical Tradeoff(CTTO)Source Selection, that under the CTTO selection process that an agency may accept an offer or or agency tender that is not the lowest price proposal if the offer is within the agencies current current budgetary limitations. This language seems to be in direct conflict with obtaining an the best technical approach even it cost more in the current and out years of a contract.

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	118. B-14 2 Phased evaluation Process I do not understand why the SSA cannot end the Phase I technical analysis and commence the the Phase II cost analysis until the SSA agrees that the agency tender is technically acceptable. I believe that even if the agency tender is unacceptable that the SSA should be able to go forth and only consider in Phase II the private sector or ISSA costs.
	119. Section C.2.a.(14) (Solicitation, page B-7) provides that the solicitation shall be cancelled when the performance decision results in the issuance of an ISSA or a letter of obligation to the ATO. We do not understand why that should be. Why should the fact that the agency wins require cancellation of the solicitation. Canceling a solicitation generally means that something went wrong, and the agency is either going to re-solicit, or it will determine that the requirement no longer exists. 120. Section C.4.a.(2) (Sealed Bid Acquisition, page B-11) is unclear. The second sentence seems out of place, or unnecessary, given the third sentence. 121. Under Section C.4.a.(3)(c)1, (Integrated Evaluation Process, page B-13) OMB approval is required to use the Integrated Evaluation Process. May bureaus obtain blanket approval to use this process for all standard competitions if they deem it useful or expeditious? 122. Under Section C.5.b.(2) (Agency or Public Reimbursable Source, B-16), if, as contemplated by C.3.d, there is no response to the original solicitation, must the activity continue to be subjected to follow-on competitions? This will cause undue administrative burden and associated costs on agency's to continually undergo competitions. 123. D.1., (Right-of-first-refusal, page B-18)), provides that employees are afforded the right only for non-management job vacancies. The FAR clause, 52.207-3, does not include a similar limitation. If a contractor has a vacant management position, why can't agency employees have the right-of-first-refusal for that position? 124. The independent review function needs to be clarified and its relationship to the ATO should be clarified. 125. As you discussed in our recent meeting, we share your concern regarding the requirement to compete intra-Departmental cross-servicing arrangements (ISSAs). 126. There is a concern with the presumption that all activities are commercial in nature. 127. PWS and QASP development. Under the new process, PWS development requires input and assistance by the Contracting Officer (CO). It appears to us the new guidance places the CO at the driver's seat for PWS completion. The question is how much, when, and at what time. In the past, many agencies hired consultants to develop and create their PWS and QASP documents under A76 that were submitted to agency Contracting Officers. The CO's have always been responsible for determining if the PWS is "contractible" or not for a solicitation, but now, with the recommended changes to the circular, it is not defined, nor clear and concise how directly involved a CO will be. The new circular does not set thresholds of involvement by the CO, that if crossed would give rise to "tainting the outcome" or having undue influence over those personnel responsible for the development of the PWS (the vendor or PWS team). The question becomes how much assistance from the CO is too much that interferes with the PWS consultants developing the PWS and QASP. Does the CO have the final say on the acceptance or rejection of PWS products, whether written by a consulting firm or by internal employees. It is our opinion a CO should "advise" the PWS team in terms of what elements are missing or insufficient that would lead to a flawed solicitation and require PWS edits (i.e., "final review authority" and over the product correctness and make up, including wording, ambiguities, technical exhibits, attachments, clauses and provisions). Another question is if a consultant is hired for their professional expertise, should the CO have total oversight over their product or some or limited oversight. Further, it is not clear whether it is the CO who ensures the solicitation is "contractible" for section C (the Statement of Work). Currently, the CO puts the appropriate clauses, terms and conditions in the solicitation, and selects the appropriate

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	contracting method and source selection process. It appears in the new guidance that OMB selects the appropriate contracting method for the CO in advance and agencies have to go to OMB to request a change. 128. Planning for the study. We have concerns regarding the 8-month timeframe OMB has set for issuing the solicitation and the study completed by 12 months. It may be too unrealistic given past history. As you know, many agencies are new to the A76 process (it has taken DOD 20 years to be able to get a sizeable single function study done in twelve months with its resources). Why then should non-DOD agencies who are short on resources and new to the A76 process be expected to do in one year what it has taken a long time for the DOD to accomplish. Planning and data collection will have to be done in advance of announcing the study to meet the deadlines. Under the new guidance, the process must start before announcement of any study - this is a major shift to shave time of the study completion. This could put the government in a position where they must hurry up and get the PWS and QASP finished quickly to meet an OMB deadline. This could lead to important tasks and activities being left out of the PWS development, ultimately costing the taxpayers more in the long run through issuance of many change orders. It is our opinion that planning should not start until the formal study is announced. That said, the time expected for planning should be added to the 12 month OMB standard timeframe not subtracted from it. 129. Accountability. In the new guidance, several new officials (e.g., human resource adviser (HRA) and the ATO) are designated. They have more responsibility and are to be held accountable, but it is not clear who will hold them accountable. In addition, there needs to be more clarification regarding the Authorized Tender Official (ATO) function; e.g., who chooses the ATO and training requirements. If the ATO is the government's tender official and the process for government to is to be "just like private enterprise," should it be the ATO who is responsible for guidance, direction, and compliance in lieu of the CO. If the PWS team, MEO team, vendor/consultant fail in meeting their required timeframes, who will get penalized? Under the FAR, contractor's get deducts. It is unclear in the new guidance whether officials, for example, the CO's, will be penalized for the failure of others if the 4e official has "significant input" into their appraisal. If others have the final say over one's direct supervisor, is the government setting itself up for numerous MSPB cases and law suits. 130. In the new guidance, the source selection process has changed. The new guidance specifies either Sealed Bid or Technically acceptable Low Cost Negotiations will be used as the "Standard" and agencies are to use Cost/Technical Trade off (Best Value) and a Two-Phased Approach when justified and approved in writing by OMB. It should be the agency's discretion (CO) to use best value when it makes sense to do so based upon the particular situation. It should not be in the policy that agencies can only use best value in complex or multifunction situations. Not all of what "seems to be" common service functions should be based on Technically Acceptable Low Cost proposals or Sealed Bid. This approach could also preclude some government employees from competing to perform their function. Further, this appears to be a one-size fits all solution that has the potential to cost much more down the road through issuance of many change orders. We understand the objective is to speed up the contracting process, but the concern is it should not be at a pace that will jeopardize the logical thought process for activities which require things to be done judiciously and correctly, which support the taxpayer and agency. The discretion as to how to proceed and what contracting method to use should be the contracting officer's decision. The CO knows what is best for his/her agency in conjunction with the agency's leadership. The CO is in the best position to make such judgments. 131. The Government MEO must submit its bid or offer on time. While we are in agreement that all bids or offers must be submitted on time, clarification should be included that requires the ATO to submit a detailed Decision and Finding (D&F) document to the head of procurement, a senior level contracting official, demonstrating why their bid or offer was not submitted on time to the CO as all other vendor bids or offers and why their bid should be accepted under the circumstances.
	132. Page B-4: It will be important to define the appropriate grouping of activities and how that ties to the $1,000,000 threshold. For example, can we tie this directly to each task order or group of task orders (where applicable) , instead of the entire agreement, since we provide a variety of support to many customer agencies? My initial read would be yes since that would be consistent with the appropriate grouping of activities as business units consistent with industry structures. 133. Page C-1: Direct Conversion: May need to discuss Direct Patient Care a bit since we have customers with medical task orders.

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	134. Page D-1 : We need to define ISSA since we use task orders with most customers in lieu of a formal ISSA. I suspect they'll be treated the same to stay within the spirit of the circular. 135. What do they mean by "revenue generated by reimbursable rate doesn't exceed $1M annually"? Does that include contract costs , our administrative fees or both? 136. What is their definition of customer agency being directly responsible for contract performance and contract payment? We have the customer designate an on-site Project Manager that is responsible for receiving services provided by the contractor. However, the contractor's invoice comes to us since it covers multiple task orders. We check it for accuracy, ensure the Project Manager has signed to receive services, make payment to the vendor and then bill the various customers that were included on the invoice. Will this scenario meet their definition? 137. Page E-11: What exactly is included in the overhead factor of 12%. Would we have covered that in our pricing since we must fully recover all our costs? If so, should we delete the portion of our charge that includes those same costs so they don't show twice? 138. Page E-13: Clarify that we don't add contract administration costs shown on the table - appears only customer agency shows those costs. 139. The circular requires the designation of a "4e official" at the Assistant Secretary level responsible for monitoring implementation of the circular. It requires this official, in some cases, without delegation, to review and waive study timeframes, appoint, in writing, the ATO, CO, HRSA, SSA and AAA for each study, play a role in their annual evaluation process, assign individuals to development of the QASP, approve providing government property, appoint individuals to resolve disagreements between an SSA and an ATO, certify Direct Conversions, competition wavers and the requirements for a Business Case analysis, issue a Letter of Obligation if an Agency Tender wins as competition, etc. Why is review and approval at this high a level necessary? How does OMB expect that the A-76 process will be speeded up given the inevitable delays when the Assistant Secretary's office must respond before the next step in a study can proceed? Given the large number of potential studies within a Department, the logistics of this process are extremely daunting. In addition, the training and knowledge level in the new A-76 procedures will be limited, especially in the first year of implementation of the new Circular. Is it expected that an executive or political appointee at that high a level would expect to be trained to the level necessary to deal with these issues in light of their other significant responsibilities? 140. Why would the Human Resources Advisor (HRA) announce the study in either FedBizOps (that should be the CO) or to the affected and other employees (that should be management's job)? 141. Why should the 4e Official have to approve the provision of government property to potential contractors as long as this is accounted for both in the Agency Tender and a solicitation? 142. The elimination of the Independent Review Officer (IRO) who performed a review of the agency costing **before** it was sealed will delay the process significantly. Under the revised circular, there is no IRO. Instead, the SSA "shall evaluate all offers concurrently." The SSA is then supposed to perform a "cost realism analysis" on the Agency Tender. If the SSA has a problem with the Agency Tender cost, he goes back to the ATO and asks for a change. The ATO can either agree and make the change or disagree and delay the process even further. All this could be avoided if an IRO reviewed both the Agency Tender Cost and the solicitation and certified the cost **before** it was sealed. 143. The requirement that the SSA should communicate, in writing, through the CO to the ATO (and vice versa, although that is not clear) seem unnecessary and time-consuming. As long as the all parties maintain files on changes made and the rationale, why is this process necessary? 144. It seems that the SSA is undertaking many of the roles that, under the FAR, more properly belong to the CO. For example, why wouldn't it be the CO

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	who would decide if the Agency Tender is deficient, just as the CO would do for private sector offers? The role of the SSA should be limited to determining if the offers and tenders submitted are technically acceptable and, in a best value competition, to rank technical proposals. The roles granted the SSA appear to grant government offers (whether agency or ISSA) special consideration and procedures as opposed to those granted public sector offers. What happened to the "level playing field" concept? 145. The problems with the roles accorded the SSA are further demonstrated when we get to the issue of disagreements between the SSA and the ATO. These disagreements then require the 4.e official, "within a reasonable timeframe," to appoint **another** person "who has not been involved in the source selection process" to resolve the disagreement. There is no such provision, of course, for presumed disagreements between the CO and other offerors. In addition, this provision has the potential to create significant award delays in the appointment of the mediator, his or her learning enough about the dispute to propose resolution and, finally, arriving at and documenting resolution. So instead of having the CO deal directly with the ATO on disputes, we now have four individuals (the SSA, ATO, 4e Official and a disinterested party) involved. 146. We fail to see why any agency, under strict deadlines to conclude a study and make an award, would ever want to use the "Phased Evaluation Process." Instead of rejecting any offers that do not at least meet the performance standards in the PWS, this process allows other standards to be proposed, requires those who do to complete a time-consuming matrix to justify the proposal and then involves the SSA (again this individual assumes the role more appropriate to the CO) in potentially protracted negotiations and amendments to the solicitation in order to winnow the offers down to the point where a "Phase Two" cost decision can be made. 147. If the Agency Tender has met the requirements of the solicitation, including performance periods, costing, submitted a QASP, etc, why is a Letter of Obligation issued by the 4e Official necessary. Why wouldn't the CO monitor agency (or ISSA) performance in the same manner they would a contract under the private sector. In the case of an Agency or ISSA award, the penalty for noncompliance or non-performance would be immediate re-competition. 148. Why remove the decision to exercise an option year under an awarded contract from the CO to the requiring organization head in the case where an Agency Tender or ISSA won the initial competition? The requiring organization head may not be a disinterested party when it comes to deciding issues affecting his own staff's performance. 149. The same comments in 10 above apply to "failure to perform" notices. 150. Under the "Right of First Refusal,' the HRA deems what affected employees are qualified to perform work for job openings in the private sector award winner. How is the HRA to make that judgment? The private sector winner may have decided to use a different class or number of employees to do the work that may not even remotely correspond to the Positions Descriptions and resumes of the affected federal employees. The private sector should make the qualification decisions in the same way the government makes its own qualification decisions when hiring from the private sector. 151. The "Right of First Refusal" section **requires** the private vendor to offer jobs to affected federal employees deemed qualified by the HRA. The private sector (as in the old Circular) should be required to **consider** affected federal employees that **apply**. The only independence the private sector would seem to have retained in this regard is to offer the wages and benefits it chooses. That would be the only way for them to keep from hiring individuals that they did not want. 152. There seems to be no sensible basis for denying the "Right of First Refusal" to agency personnel "personally and substantially" involved in either the solicitation or the development of an Agency Tender. The individuals involved in these tasks will need to be technical and functional experts in the work, so they most likely would be working in the area being studied and, thus, affected employees. Denying them the "Right of First Refusal" will make finding qualified staff to write the solicitation (PWS) and the Agency Tender extremely difficult.

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	153. Under Attachment D (ISSA), B.3., it states: "Customer agencies shall not renew or issue new Commercial ISSA's prior to compliance with this competition requirement." That is not realistic. Given that a competition will take at least eight months, there needs to be a phase-in period so that agencies can continue to modify or renew existing ISSA's for mission-critical work while they prepare and execute competitions. 154. The Standard Competition Form (SCF) contains a lengthy certification statement and signature line for the ATO that does not belong on that form. All the rest of the form is used to document the award decision process after the sealed agency tender has been received along with all other offers. The ATO certification should be included as part of the sealed Agency Tender. 155. **B-18 & 19, para D.1:** The second to last sentence refers to the HRA as the person responsible for determining the qualifications for employees eligible for the right of first refusal. Remark: Recommend that the HRA not be the responsible person for determining the qualifications for the employees eligible for the right of first refusal. Recommend that we follow the current process as stated in the FAR 52.207-3, and add: If the contractor determines an employee not qualified, the written justification must be provided to the HRA. Should the HRA not agree with the contractor's determination, the written justification from both the contractor and the HRA will be elevated to the Agency Tender Official for final determination.