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Subject: Comments on Revision to A-76

COMMENTS ON THE PROPOSED REVISION OF OMB CIRCULAR A-76  
AS ADVERTISED IN 67 FED. REG. 69769 (NOV. 19, 2002)

The Library of Congress believes that the benefits of interagency agreements (or ISSA's) – efficiency, expertise, and concern for the best interests of the Government – more than offset the benefits of competition. Therefore, we recommend that the proposed Appendix D be omitted from the final revision of OMB Circular A-76.

Assuming that OMB retains the proposed Appendix D, our comments are as follows:

**1. Procurement Activities Are Not Commercial Activities Within Scope of A-76.** The Library of Congress suggests that the proposed Appendix D be revised to clarify that agencies procuring goods/services for requiring agencies via private sector contracts are exempt from competition because the act (service) of negotiating and letting contracts falls within the definition of “inherently governmental activities” in proposed Appendix A-3. (An example would be the Library of Congress’s FEDLINK program, a statutory revolving fund program that negotiates contracts and prices with providers of commercial information services for purchase by Federal agencies, and, following procedures in the Federal Acquisition Regulation, issues Government contracts on behalf of those agencies, thus acting as the contracting activity for Federal agency customers interested in obtaining information services. FEDLINK is explicitly authorized to conduct procurement activities, under 2 U.S.C. § 182c (f)(1) of its revolving fund legislation.) Under the A-76 definition of “inherently governmental activities,” the term includes “[b]inding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise . . . .”

Applicable competition requirements would, of course, be observed with respect to the contracts let by providing agencies on behalf of requiring agencies, but the agency’s choice to entrust its procurement activities to another Federal agency should not itself be subject to competition. Private parties should not be competing with Government agencies to provide Government contracting services to other agencies.

In conformance, the definition of “public reimbursable source” in proposed Appendix F-8 should be revised to reflect that the term does not include a providing agency performing contracting services for another agency. As it stands, the definition of “public reimbursable source” is overly broad because it includes the inherently governmental activity of contracting; as a result, the proposed redraft of Circular A-76 is internally inconsistent.

At the very least, we suggest that you consider exempting from competition, if not programs operating under the Economy Act, then at least those programs, such as FEDLINK, that are conducting inherently governmental functions with explicit Congressional authorization.

**2. The Threshold for Competition Should Not Include Amounts Passed Through to the Private Sector.** The proposed Attachment D should be revised to clarify Section A's exception for Commercial ISSA's for which the revenue generated by the reimbursable rate does not exceed \$1 million annually. The "reimbursable rate" should exclude those monies provided by a requiring agency to a providing agency on a pass-through basis to a private sector contractor. Thus, for a program such as FEDLINK, the \$1 million "rate" amount would be the amount of service fees, not the total cost of the service provided – even where the total cost of the service provided is passed through from the requiring agency to the providing agency to the contractor.

**3. The \$1 Million Dollar Threshold Should Be Increased to \$10 Million.** The Library of Congress suggests that the proposed Appendix D, Section A be revised to raise the proposed \$1 million Commercial ISSA exception from competition to \$10 million. The Library's statutorily authorized Federal Research Division (a research provider to Federal agencies) rarely takes in more than \$1 million annually per any particular ISSA. However, we are mindful that costs increase every year and that \$10 million may, in the near future, be a more realistic level for providing an exception to competition. This \$10 million level would be consistent with the Federal Acquisition Regulation's rules for other than full and open competition. Under the FAR, the competition advocate for the procuring activity can approve contracts not exceeding \$10 million without full and open competition. See FAR Part 6.304(a)(2).

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