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Subject: Comments on Revised OMB Cir A-76

Mr. David Childs,

Jupiter Corporation applauds OMB's efforts in making some very innovative and positive changes to the public/private competitive process. Our enclosed comments and questions focus on suggestions for improving the revised process presented in the November 19, 2002, Federal Register. As required, our comments have been also electronically forwarded to you.

If you have any questions regarding our comments, please contact the following:

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Sincerely,

Joseph C. Alexander
Senior Program Manager

Jupiter Corporation
Attachment

- Input Revised A76 Cir.DOC
- Cr Ltr Input Revised A76 Cir.DOC



December 19, 2002

Mr. David Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, N.W.
New Executive Office Building, Room 9013
Washington, DC 20503

Dear Mr. Childs

This is in response to the Office of Management and Budget (OMB) notice in the November 19, 2002, Federal Register, requesting comments on the proposed revised OMB Circular No. A-76, "Performance of Commercial Activities."

Jupiter Corporation applauds OMB's efforts in making some very innovative and positive changes to the public/private competitive process. Our enclosed comments and questions focus on suggestions for improving the revised process presented in the November 19, 2002, Federal Register. As required, our comments have been also electronically forwarded to you.

If you have any questions regarding our comments, please contact either Ms Ann Benson or my self at 301-946-8088.

Sincerely

Joseph C. Alexander
Senior Program Manager
Jupiter Corporation

Enclosure

**DRAFT OMB CIRCULAR A-76 (NOVEMBER 14, 2002)
REVIEW COMMENTS AND QUESTIONS**

GENERAL REVIEW:

The Draft Circular seems to have expanded the scope of its purpose from a more narrow focus on competing “commercial activities [presently] performed by government personnel” to establishing on-going public-private competition for all commercial activities performed by the government. References to the ability of the government to bid on work performed by contractors, the rules regarding ISSAs, and the recompetition requirements would support this expanded scope. Though to some it may seem a subtle difference since all these things were actually available under the current Circular, the administrations emphasis on on-going competition represents a significant change and requires much thought in its practical application.

For example, although the intent may be to promote fairness of the process by allowing federal employees to bid on contracted work, the reality is that once a federal organization has been contracted out and federal employees have been through a RIF, there are no employees left to prepare a bid. Those that transferred to other organizations have different responsibilities, and as a taxpayer, do we want to pay for and encourage the federal government to bid on this work when there are plenty of private sector competitors in the marketplace. The strict re-competition requirements actually appear to say that we will conduct these competitions until the work is contracted out and then it will remain contracted out. If that is the intent, then the government should be upfront about saying that.

Another example is that of ISSAs competing against contractors and other federal employees for additional work, if ISSAs have excess capacity, they should be downsized or agency leadership should make prudent business decisions to consolidate similar functions between agencies; is it in the best interest of the taxpayer to have them operating as free agents in search of work? We don't think so.

We believe that the current process was not necessarily “broken,” but the process was executed poorly in some instances. Changing the rules and assigning responsibilities will not necessarily improve execution of the process. To execute these competitions in a timely manner is going to require agency's to have more flexibility (not less) and additional resources for dedicating full-time agency staff; educating and training agency leadership, competition officials, employees and for consultant support to assist the competition process, but also to implement business practices that will provide requirements, workload, and cost data necessary to support the competition process. Is the administration willing to provide the flexibility and funding to agencies to support the competition process to sufficiently to “fix” it?

Increasing leadership accountability and flexibility at the agencies for conducting competitions will be the most significant factor to improving the competition process. Leadership sets the priority for the agency, allocates resources, and holds participants accountable. To increase agency accountability and responsibility while allowing flexibility in conducting competitions, the Circular should be more performance based, stating desired outcomes and limiting mandated requirement of who should do what. Federal agencies have very different missions and therefore widely varying organizational structures and resources to perform competitive sourcing.

Although the Draft Circular calls for centralized management of the program within an agency, the “4e official” is tasked with a large number of responsibilities. (See the 4e Official Duties Summary) With the “4e official” being the equivalent of an Assistant Secretary, it is doubtful that this person would have sufficient time to be actively engaged with the execution of the program. This is another argument for providing agencies flexibility in how to precisely execute their programs.

Throughout the circular where OMB approval is necessary, will OMB have the staff to expeditiously respond to agency requests? A primary reason why the competition process takes so long in the government is the requirement of decision makers to get various approvals before they can act, these OMB requirements will add time to the competition process.

The proposed timeframes of 12 months for a Standard Competition and 15 working days to prepare a business case analysis for a Direct Conversion are unrealistic and if imposed will undermine the process rather than speed it up. The government is fundamentally designed to move very slowly with multiple checks and balances and approval chains to protect taxpayers; this means that change happens slowly in the government, but it also prevents “bad things” from happening so fast they can’t be corrected. To continually compare the speed and flexibility of the private sector to make business decisions or prepare a proposal with the speed and flexibility of the federal government is naïve. It is great that we are trying to move government in this direction, but that will take fundamental changes in the way government operates that are greater in scope than the competition process (personnel, funding, financial reporting, etc.). We recommend a compromise of 18 months for a Standard Competition and 3 months for a Direct Conversion that will greatly speed up the process, but will still allow for the government to make good business decisions within its existing constraints. Perhaps in the not too distant future as government fundamentally changes how it operates, we can further reduce the timeframes.

To the A-76 novice, the Draft Circular is not clear and understandable. The Draft Circular is certainly more succinct than previous versions however it remains complex and incomprehensible for most interested or affected parties. The explanation and references to the acquisition strategies and procedures seem to be simplified.

The following section provides detailed review comments, questions, and recommendations.

REVIEW COMMENTS BY SECTION:**1. Purpose.**

[Page 1, 1.] The statement of purpose is subject to wide interpretation. What is OMB’s intent for this Circular? What is the purpose of this Circular? Is it to require that all commercial activities currently performed by federal employees be subject to competition? Is it to require that all commercial activities performed by federal employee (this includes ISSAs) and all commercial activities performed by contractors will be subject to on-going public-private competition? Is it to require that all commercial activities needed by the government should be subject to competition? Is it to establish the rules for public-private competition? Currently, we see the Draft Circular trying to fulfill all these interpretations, and therefore we find inconsistencies or complete omissions depending upon which interpretation you try to support. We recommend that OMB clarify the scope of this Circular by stating one clear purpose and then ensuring the remaining supporting policy and procedures are consistent with and support this purpose.

4. Policy.

[Page 1, 4.a.] Reverse the order of paragraphs “a” and “b” to maintain focus on commercial activities per the purpose of the Draft Circular; it also represents more logical alignment with the proposed way that agencies should look at all their activities. Paragraph “b” represents a necessary and important change to the Circular that will significantly change in the way that government currently looks at its activities. The inclusion of this requirement does not in any way preclude an agency from identifying inherently governmental and commercial activities that should be performed by federal employees to meet mission requirements.

[Page 1, 4.c.] In keeping with the expanded scope of the Draft Circular, we recommend simplifying the sentence to read: “Use a competitive process to determine the providers of commercial activities.” Or if the intent is to mandate use of Attachments A and B only, reword “ Use the Standard Competition or Direct Conversion process to determine the providers of commercial activities.

[Page 1, 4.e.] When applying the current Circular, “9a official” is a slang term that developed because there was no specific title assigned to this official. To perpetuate use of this slang jargon seems inappropriate for a high level official designated this important responsibility, especially when the Draft Circular designates a list of competition officials with specific titles. We recommend that this official be given a proper title (i.e., Agency Competition Official) and referenced by that title throughout the document.

[Page 1, 4.f.] This policy seems somewhat contradictory, “centralize in one or more offices.” Is the intent for OMB to have one central point in an agency to interface with? Or is the intent to ensure that agency’s establish sufficient oversight for implementation of the Circular? Or is the intent that OMB wants agencies to establish an office responsible for implementation of this Circular? Or is oversight responsibility implied in 1, 4.e. in the responsibilities of the “4.e. official” to implement the program and how the agency decides to do that is left up to them? Recommend deleting or rewording for clarity as to the intent.

7. Effective Date. [Page 2, 7.] The application of this Circular to competitions that are in-progress will be subject to wide interpretation, and is therefore unclear. For example, is the “solicitation date” the “issue date” or the “due date”? For solicitations that are issued on or after January 1, 2003, how does the timeline requirement affect them? Will they need to make an announcement in *FedBizOpps* per the

policy, how do they address the timeline? Will they need to officially appoint the competition officials at this time? Do they need to amend the solicitation and release the QASP? We recommend clearer transition guidance here or in a transmittal memorandum to eliminate a wide variety of interpretations and establish a standardized implementation across federal agencies. This should reduce debate over interpretations in an agency, between OMB and agencies, resulting in considerable timesavings.

ATTACHMENT A: INVENTORY PROCESS

A. INVENTORY REQUIREMENTS.

1. Agencies.

[Page A-1, A. 1.] Recommend rewording the second sentence for clarity and to indicate that commercial activities are found in small agencies that perform inherently governmental or classified work. “Commercial activities may be found throughout organizations that perform inherently governmental or classified work.”

C. TYPES OF INVENTORIES.

Although, the three separate inventories required in this section, when combined, add up to the federal employees that belong to the agency, this still does not present an adequate “picture” of the agency’s activities. For example, the inventory/list of commercial ISSAs required in Attachment D.B.4 should be included, as well as an inventory of commercial activities that are already contracted out with the equivalent CMEs (NAFI personnel should also be included). For determining activities, or groupings of activities for competition, these separate inventories give a distorted view of the activity, and it is difficult, almost impossible to match them up in their current form. On many occasions, an activity is chosen from the FAIR Act inventory, announced for competition, only to find out during the PWS development that many of the functions imbedded in the activity are inherently governmental and/or that part of the work is being performed by a contractor; determining how to handle this situation is one reason why PWS development may take longer than expected. Correctly identifying the functional grouping that maximizes the government’s potential for a successful competition is the foundation of the competition process.

We recommend requiring both an inventory of commercial ISSAs and contractor activities with CMEs in addition to the three inventories already required. We also recommend that these separate inventories be combined into one comprehensive, consolidated inventory for the agency. This inventory would meet all the requirements of the FAIR Act, but would also include the additional inventories’ information. A more comprehensive set of reason codes could be established to make this inventory easy to understand. This comprehensive inventory would give OMB, the private, and public sector more visibility into the agency. This complete picture of the agency’s activities and who is performing them would facilitate better decision making when choosing activities to compete, saving considerable time in the pre-announcement planning and competition process.

D. COMMERCIAL ACTIVITIES

[Page A-2, D.] There is no mention of function codes for the inventories; inconsistent use of function codes makes the inventories very difficult to understand for the private sector. We recommend that each agency provide a narrative describing the work associated with functions identified in their inventory.

F. FAIR ACT CHALLENGE AND APPEAL PROCESS

2. The FAIR Act Inventory Challenge and Appeal Process.

[Page A-5, F.2.] We recommend expanding the challenge and appeal process to cover all the inventories, not just the FAIR Act Inventory. Having one comprehensive, consolidated inventory would facilitate the entire review and publishing process.

Editorial:

[Page A-1, C.1.a.] For consistency, replace “work” with “activities.”

ATTACHMENT B: PUBLIC PRIVATE COMPETITION

The chart depicting the Standard Competition Process is straight forward and simple which should aid in understanding the process; however the flow chart starting with “Type of acquisition “ under Source Selection and Performance Decision is confusing because in reality all those “decisions” are made during the solicitation step, but they are executed in the source selection step. We recommend that the simple five-step process be simplified by removing this flow chart. This flow chart should be revised for clarity and inserted in the appropriate section to show a higher level of detail. The “start date” and “end date” circles should be moved up to the timeline where it is relevant and easier to see.

A. LIMITATIONS AND CRITERIA.

2. Criteria to Perform a Standard Competition

b. To Justify a Source.

[Page B-2, a. (2), and 2.(3) and (4)] Practically speaking, how would an agency or a public reimbursable source justify spending tax dollars to prepare the agency tender to compete for work currently being performed by the private sector or for a new requirement or expansion when there are sufficient private sector providers in the market place to create the competitive forces that reduce costs. Is this contrary to the “Policy” statements on page 1, 4? “The longstanding policy of the federal government has been to rely on the private sector for needed commercial services...For the American people to receive maximum value for their tax dollars, all commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular.” This is where some of the inconsistencies occur (see comments on Purpose) in implementing this Circular. Work that is being performed by a contractor, a new requirement, and expansions have built in mechanisms to allow the private sector to compete for the work; therefore, these are already subject to the forces of competition--it is only those commercial activities performed by federal employees that are not subject to the forces of competition.

If we allow federal employees to bid on this work, how can we say that it is our policy to rely on the private sector? If you argue that it is our policy to rely on competition, then these commercial activities are already subject to competition, why would we need to fund the government to compete. If the decision were to allow the federal employees to compete for this work, what checks and balances would be in place to prevent the government from becoming a monopoly in some industries and taking over all this type of work? Isn't this why OMB Circular A-76 was written in the first place, to prevent government from using its power in the marketplace to displace private sector providers?

Although the idea of free competition between government and the private sector seems ideal and the fair thing to do for federal employees, the funding of government with taxpayer dollars makes this concept fundamentally unworkable. Although we strive for government to function like the private sector, hoping to take best practices, introduce competition, etc., there is a limit to the application of capitalism to the government because it is funded with taxpayer dollars. If the government were self-supporting and not funded by taxpayer dollars, then it wouldn't be the government; it would be the private sector.

B. DESIGNATIONS AND RESPONSIBILITIES

The designation of competition officials that will be held accountable in their performance appraisals is an important step in improving the effectiveness and the timeliness of competitions. In practice, the most successful studies have been where Senior Leadership has taken an active role in the process, where competitive sourcing is a priority, and where decision makers in the PWS, MEO, and acquisition process are encouraged to innovate.

In our experience, the effective participation of the Contracting Office and Human Resources have been the key to a successful competition. The PWS Team can write clear requirements in the PWS, but that is only one part of the solicitation (Section C), the CO must develop an acquisition strategy that encourages competition and innovation, and that can facilitate source selection. In conducting performance-based acquisitions, the source selection process becomes more significant. The MEO Team can design a winning MEO, but if HR cannot recruit, staff and retain staff, then the MEO may be unable to perform. If the private sector wins the competition, HR must effectively transition the displaced federal employees. Agencies spend considerable time training MEO and PWS teams, but it often seems that the Contracting Office and HR are left trying to see how what they do fits into the competition process. They are often only familiar with common parts of the process, and do not understand how their decisions may impact the entire competition. In our experience, CO and HR contribute to many of the delays in conducting the competition process, so we are glad to see that they have been designated responsibilities and will be held accountable.

2. Contracting Officer.

[Page B-3, B.2.] The Contracting Officer (CO) is clearly accountable for the solicitation including the PWS, but we would not necessarily want the CO to “designate” or “directly assist” the PWS Team. In reality, the CO is not usually familiar with the function or the personnel in the function, so Senior Leadership, perhaps even the ATO, would make recommendations as to who should be on the PWS Team and the designation by the CO would be a formality (another step that adds coordination time).

Effectively assisting a PWS Team is time consuming and would probably not be the best use of the CO's time; this role is usually performed effectively by a Contracting Specialist. (With the number of competitions that will be occurring, practically there would not be enough CO's to perform this work.) Can we interpret this to say that the CO is responsible, but may designate this responsibility accordingly to meet the objectives? It is difficult to take this interpretation because it would be inconsistent with the clearly designated responsibilities of the other competition officials.

In addition, if the CO is actively participating in the development of the PWS, they will likely lose their objectivity as part of the checks and balances that help ensure a level playing field. The CO is the facilitator of the acquisition process. We see his primary responsibilities being to ensure the source selection strategy or acquisition plan creates a level playing field for the competition, encourages competitors to come to the table, and that he ensures the responsiveness and cost realism of both private sector offers and the agency tender. Requiring an acquisition plan that is approved by the SSA prior to

the issuance of the solicitation will ensure that the CO considers all aspects of the acquisition early in the process and can mitigate problems that might hinder meeting the timeline. It also more accurately portrays the roles of the contracting officer, the PWS Team, and the SSA working together to conduct the acquisition.

We recommend that “The CO shall designate and assist the PWS Team.” be replaced with “The CO shall work with the PWS Team and SSA to develop and execute the acquisition plan consistent with FAR Subpart 7.1.”

3. Human Resource Advisor (HRA).

[Page B-3, B.3.] The designated responsibility of Human Resources (HR) in this process is an important addition. However, we feel that responsibilities (c) “inform the incumbent service providers of the competition,” and (d) “make public announcement at the local level and in *FedBizOpps* and include in these announcements the agency, location, resources being competed and agency officials responsible for its completion,” should be stated as general requirements in Section C.1., Preliminary Planning for Public Announcement. We agree that these things need to be accomplished, but not by the HRA; Senior Leadership should probably be responsible for (c), and (d) could be accomplished by a wide range of agency personnel. In practice, HR works as facilitators between employees and management—in the competitive sourcing environment it will be even more important to maintain HR in this neutral role so that federal employees feel comfortable working with HR on sensitive employment issues. Putting (c) and (d) in this general section will allow agencies flexibility to designate who should perform these tasks.

Editorial.

**[Page B-3, B.2.] For consistency, Contracting Officer should have the acronym after the title, i.e., Contracting Officer (CO)

**[Page B-3, B.] For clarity, it might be helpful to title this section “B. DESIGNATION OF COMPETITION OFFICIALS,” then “1. Designation and Appointment” with language that tells the reader that the “4.e. official, shall appoint, in writing, competition officials...etc. Also consider revising the listing order to: SSA, CO, ATO, HRA, and AAA

**[Page B-3, B.3.b.] In title of section, replace colon with period.

C. STANDARD COMPETITION PROCEDURES

1. Preliminary Planning For Public Announcement.

b. Competition Preparation Considerations.

[Page B-4, General] The page and a half of special consideration listed at the back of this Attachment in section D. Special Considerations should be moved in its entirety to this section. It can be reordered to fit nicely here, but the conflict of interest concepts are so fundamental to the process that they must be considered at this point in the Competition Process. Having them in this section will help the reader understand the process.

[Page B-4, C.1.b] Include requirements for public announcement. Presently, two are listed in the duties of the HRA, but they would be better placed in this section.

(1) Designation and Responsibilities of Competition Officials.

[Page B-5, C.1.b.(6)] There is a great deal of controversy about the computation of savings resulting from A-76 studies. Both GAO and the Center for Naval Analysis have written reports questioning the amount savings. This paragraph should provide some criteria for computing savings such as identifying the difference between the winning proposal and the current operating expenses.

Editorial:

[Page B-4, C.1.b.(1)] Last sentence should end with a period, not a comma.

2. The Solicitation and Quality Assurance Surveillance Plan (QASP).

[Page B-5, C.2.a.(1)] In most cases the QASP is considered to be an internal document and not released; typically the method of surveilling the contractor is revealed to them in the Performance Requirements Summary, but the details of government staffing and exact surveillance methodology contained in the QASP is an internal document.

[Page B-6, C.2.a.(7)] Someone in authority should make the determination if the government will provide GFE, but not necessarily the “4.e. official.” Maybe the SSA should have this responsibility. This is another example of why agencies should have the flexibility of determining their organizational hierarchy. Also, would this paragraph be better titled “Government Furnished Property and Services?” This would then cover decisions to offer utilities (i.e., electricity, water, telephone), facilities maintenance, grounds maintenance, security (and other services already provided by blanket contracts), network access, etc.

[Page B-8, C.2.a.(13)] Performance bond and phase out plan are not included in this list because they are mentioned in their own categories, but the paragraph is stating that the “solicitation must explicitly state which requirements will not be applied to the Agency Tender” and these will not.

Might want to rethink the exclusion of past performance criteria for all bidders because the MEO has no past performance; the danger in this practice is that a service provider will be selected that cannot perform. It would be much easier to establish past performance for the government than to omit it entirely as a consideration. Private sector organizations create new organizations to bid on government work all the time and they must establish past performance qualifications. The fact that an MEO is new carries some risk and should be evaluated accordingly.

[Page B-8, C.2.a.(15)] This paragraph alludes to a residual organization (RO) but offers no explanation for determining how many FTE are required and how they are selected.

Editorial:

[Page B-8, C.2.a.(6)] For consistency and clarity, in the last sentence in the paragraph, “calculated” should read “included.”

[Page B-8, C.2.a.(9)] “(C TTO)” has an unnecessary space.

[Page B-8, C.2.a.(11)] In the first sentence, “selections” should not have an “s”, and the word “include” should be replaced with “require.”

3. The Agency Tender, Private Sector Offers, and Public Reimbursable Tenders.

[Page B-9, C.3.a.(2) and (8)]

In the requirements for the Agency Tender, it is not clear what is required in “(1) an MEO.” In the definitions an MEO is described as a staffing plan for the government’s Most Efficient Organization, but

a staffing plan is typically a requirement in section L and would be provided in the government's proposal. In current practice, the MEO is essentially the MEO Concept of Operations that documents the existing organization and the rationale supporting the new organization. The Independent Review and the MEO Certifying Official use this document to substantiate that the government's MEO is viable.

If the MEO is just a staffing plan, and it is typically required by Section L, as are a QCP and the Phase-In Plan, then requiring these documents in addition to the technical and cost proposal is redundant. (This is actually the current practice—they are just worded differently in the proposal, so there is double the work which takes time, especially when making corrections to two sets of similar documents. Also, since there is not Independent Review, why does the SSEB have access to more documentation from the government than from the private sector.) The ACE is the same as the private sector cost proposal, except that it is prepared according to Attachment E. What might be different is the Employee Transition Plan, which is not even required by this paragraph.

If the government's MEO is going to be held to the same standards as industry in preparing its offer, why is it required to produce these additional documents that essentially repeat requirements in Section L? This is especially significant if the MEO Team is only going to have as much time as the private sector.

To streamline the process and to reduce paperwork, we recommend that the Agency Tender fulfill only the requirements of the Solicitation. (In the solicitation section, requirements about minimum requirements for Section L can include the QCP, Phase-in Plan etc.; it can also be stated in the solicitation that the Agency Tender will prepare its cost proposal in accordance with OMB Circular A-76 Attachment E.) The ATO can then determine what information is necessary for certifying the MEO as viable; that information will be prepared for internal use by the agency and not included as part of the Agency Tender.

[Page B-9, C.3.a.(4)] This paragraph states that the MEO is a product of management analysis that include ABC. Many agencies do not have the capacity to provide ABC data.

[Page B-9, C.3.a.(4)] This paragraph states that new contracts shall not be created as part of the MEO. Although the intent is to preclude government jobs being transferred to the private sector without competition, there should be some provisions to allow the government to team with the private sector or to consolidate existing contracts.

4. The Source Selection Process and Performance Decision.

(1) Special Requirements

[Page B-11, C.4.a(1)(a)] This paragraph addresses the SSA and CO responsibilities in the evaluation of public tenders. Should there be a firewall between the CO leading the PWS effort and those assisting the MEO?

(b) Cost Price Realism.

[Page B-16, C.5.b(1)] This paragraph indicates that re-competitions are required by the end of the last year of the period of performance. This requirement puts a great deal of strain on the system. For most contracts, the re-competition would occur in the 4th year of the contract. Planning for the competition would begin in the 3rd or possibly 2nd year. To reduce strain on the government and to provide a more stable work environment the providing workforce regardless if they are public or private re-competitions should be staggered. A suggestion might be that an agency must re-compete at least half of their studies

by the end of final year of the contract, and the remainder must be re-competed with seven years from the contract initiation data

(2) Sealed Bid Acquisition

[Page B-11, 4.a.(2)] It seems that the CO should be evaluating the private sector bids and the Agency Tender for responsiveness and responsibility prior to entering the lowest cost bid on Line 7 of the SCF. We recommend reordering the sentences to more logically reflect the actions that must be taken.

5. Post Competition Accountability.

Editorial comments:

Second sentence, 8th line of paragraph, contains an unnecessary “an”

Fourth sentence, use of “public-private Competition” should be “Standard Competition” for consistency?

Editorial comments:

Section title has period missing...”Failure to Perform.”

Subsection (3), first sentence has two periods

[Page B-19, D.2.a] This paragraph should include giving the PWS team responsibility for developing the Residual Organization (RO) and determining how it will interface with the MEO or the contractor.

Attachment C: Direct Conversion Process

[Page C-3, D.2.a.] The fifteen working day time constraint to conduct a Business Case Analysis is unrealistic. It will likely take three weeks to document a description of the workload, and prepare the Agency Cost Estimate (ACE). Time will also be needed by the CO to identify comparable contracts and adjust them for comparison to the ACE. We recommend a 3-month time frame for conducting the business case analysis for a Direct Conversion.

Attachment D: Commercial Interservice Support Agreements (ISSA)

[Page D-1, B.1.] The requirement to compete all ISSAs within 5 years of the effective date of the Circular would place a great amount of stress on the system and competition process. There is uncertainty about the number of current ISSAs and their value. The first step is to establish an inventory. The next step is to allow the agencies to integrate the ISSA’s into their competition plans

[Page D-1, B.3.] The decision to retain or terminate an ISSA should reside with an official in the agency receiving the support. That decision should be based upon mission requirements

[Page D-2, C.2.a.] ISSA’s should be allowed to respond to a notice or solicitation only if their agency leadership approves. It should be a higher authority than a Reimbursable Tender Official making the decision to submit and offer. This is the same philosophy about having a principal or partner approving bid/no bid decisions. It would be chaos if every ISSA were allowed to submit and offer without their leadership’s knowledge.

Attachment E: Calculating Public-Private Competition Costs

Special Provisions:

1. Proration of Performance Periods. The paragraph does not deal with prorating performance periods, therefore the title would be clearer if simply, “Period of Performance.” The first sentence would be clearer if stated in the positive, “Agencies shall conduct Standard Competitions using three or more performance periods of proposal cost data, excluding a phase-in period.”

3. Common Costs. Reword for clarification the last sentence. Recommend sentence “Examples include costs for conducting joint inventories and government furnished property and services”

4. Minimum Conversion Differential. Application of the minimum conversion differential should be uniform. The last sentence, “Agencies shall not include the minimum conversion differential for Standard Competitions conducted between private sector and public reimbursable sources.” seems to be unfair to federal employees that are public reimbursable sources.

5. Inflation. The second sentence in this paragraph is confusing; it is assumed that the “increases” are referring to inflation, but the references to the first performance periods and proration are confusing when discussing application of inflation factors.

The third sentence is also confusing changes in scope of work with inflation; as presently worded, it does not deal with inflation at all and should be deleted.

The last sentence in this paragraph, “Agencies shall then apply the inflation factors for pay and non-pay categories through the end of the first performance period,” is not consistent with standard cost estimating practices for pay and non-pay categories. Pay categories that are not subject to an economic price adjustment as stipulated in the solicitation should be inflated through all performance periods. Non-pay categories that are not subject to an economic price adjustment as stipulated in the solicitation should be inflated through all performance periods.

Recommend: “Agencies shall apply the annual inflation rates issued by OMB for conducting Standard Competitions. These inflation rates are developed for the President’s Budget to represent the best estimate of inflation for both pay and non-pay categories. Agencies may use agency unique inflation factors (e.g., military inflation) with prior written OMB approval. Inflation factors should be applied to both pay and non-pay categories for all performance periods. Those pay and non-pay categories that are subject to an economic price adjustment per the terms of the solicitation will only be inflated through the first performance period; inflation will not be applied to the remaining performance periods.

6. Phase-in and Phase-out Costs.

What is more difficult to determine, and has not been effectively addressed in making an “fair” competition, is the treatment of the cost of government personnel in the Phase-in Period

Standard Competition Form.

To facilitate the provisions of paragraph “1,” “5,” and “6,” the Standard Competition Form (SCF) should include a Phase-in Period and five performance periods as part of its template. These changes would be simple to make (even in win.COMPARE²). The addition of the Phase-in Period to the SCF would eliminate confusion between the phase-in period and the first performance period in the text when discussing inflation and application of the economic price adjustments per the requirements of the solicitation

Block 19. The term “Transition Plan” should read Phase-in Plan to be consistent with Attachment B, Paragraph C.3.a.(7).

Editorial:

Block 21 should not use the possessive form to be consistent with Blocks 19, 20, and 22; should read “Contracting Officer Signature”

Block 22 is labeled “20” and has an extraneous parenthesis

Blocks 21 and 22 should repeat the competition official’s title under the signature line to be consistent with Blocks 19 and 20.

B. THE COST OF AGENCY PERFORMANCE (LINES 1-6 OF THE SCF)

1. Personnel Costs (Line 1 of the SCF)

c. Full-Time Equivalents.

[Page E-4, B.1.c.] Please clarify what training is included in calculating the productive hours. Is this agency-wide required training? For years this has been open to interpretation as to whether this includes training specific to meet the requirement of the MEO or agency wide training.

Editorial:

[Page E-8, B.3.a.(5)] Since the entire paragraph refers to facilities, the seventh sentence would be clearer if “If an asset (such as a facility)...” were reworded as: “If a facility...”

[Page E-10, 3.h.] For consistency, adjust spacing for heading to the left.

[Page E-12, C.1.(d)] The last sentence would be clearer reworded as: “The solicitation bid structure should facilitate the exclusion of this cost for purposes of the competition.”

[Page E-12, C.3.(d)] The numbering sequence skips number 2. Delete reference to win.COMPARE²

[Page E-14, C.5.(a)] Delete extra period in paragraph title.

Attachment F: Glossary of Acronyms and Definition of Terms

A. Glossary of Acronyms

[Page F-1] Need to add the following acronyms to the list:

DBA – Davis Bacon Act
 IG – Inherently Governmental,
 QA – Quality Assurance,
 RO – Residual Organization

Editorial:

To be in alphabetical order, CO should come before COLA

B. Definition of Terms

[Page F-2] 4e. Official should have a name such as “Agency Competition Official.” (see comment on 4e for

4.e. OFFICIAL DUTIES SUMMARY

The 4.e. Official is defined as “the inherently governmental agency assistant secretary or equivalent-level official designated by an agency head, in accordance with paragraph 4.e., of the Draft Circular, to be responsible for the implementation of this Circular in the agency.” Note that actions requiring OMB approval are in bold text.

FUNCTIONAL AREA	THE 4e OFFICIAL
Inventory	<ul style="list-style-type: none"> • Shall justify in writing agency personnel designated as performing inherently governmental activities • Shall designate an Inventory Challenge Review Authority and an Inventory Challenge Appeal Authority • May exempt, in writing with sufficient justification, agency performed commercial activities from private sector performance using Reason Code A
General	<ul style="list-style-type: none"> • Shall (without delegation) receive prior written OMB approval to use an alternative Competition process or make a specific procedural deviation from the Circular • Shall (before public announcement) appoint, in writing, the following Competition Officials: ATO, CO, HRA, SSA, and AAA; and shall hold these Competition Officials accountable for the timely and proper conduct of Standard Competitions through the use of annual performance evaluations • Shall assign individuals responsible for the Quality Assurance Surveillance Plan that are external to the selected service provider (i.e., agency, private sector or public reimbursable source) to perform quality assurance • Shall approve Agency cost rate/factor updates for the Agency Tender • May delegate, in writing, responsibilities to comparable officials in the agency or agency components • May, at competition announcement (start date)(without delegation) waive the timeframes required to complete a competition if the competition is particularly complex and issue a revised completion date with notification to the Deputy Director for Management, OMB
Standard Competition	<ul style="list-style-type: none"> • Shall identify savings resulting from completing Standard Competitions, in accordance with OMB Circular A-11 • Shall approve Standard Competitions in excess of five years prior to issuance of the solicitation • May cancel a Standard Competition after the start date only if the commercial activity being competed will not be competed pursuant to a decision by the 4.e. official, without delegation, before a Performance Decision • May grant a one-time six-month extension if approved by the Deputy Director of Management of OMB to go beyond the 12-month limit for completing a competition
Direct Conversion	<ul style="list-style-type: none"> • Shall approve Competition Waivers (without delegation) • Shall make a written certification that the activity being analyzed meets the requirements for a business case analysis for direct conversion • Shall make a written certification of the following to authorize a Direct Conversion: (1) the activity meets one or more of the criteria to permit a Direct Conversion, (2) the cost of obtaining the activity from another source is expected to be fair and reasonable in accordance with this Circular, OMB Circular A-25, when appropriate, and the FAR, and (3) the activity has not been reorganized or restructured for the sole purpose performing a Direct Conversion to avoid the Competition requirements of this Circular • Shall determine that the cost of converting the activity from private sector or ISSA performance to an agency source is fair and reasonable • Shall identify savings achieved as a result of Direct Conversions in accordance with the instructions of OMB Circular A-11 • May (without delegation) authorize a direct conversion necessary for National Defense or Intelligence Security, with the prior written concurrence of the Deputy Director for Management, OMB

FUNCTIONAL AREA	THE 4e OFFICIAL
Commercial ISSA	<ul style="list-style-type: none"> • Shall identify savings achieved from competing Commercial ISSAs in accordance with the instructions of OMB Circular A-11
Solicitation	<ul style="list-style-type: none"> • Shall notify the Deputy Director for Management, OMB, in writing, no later than seven months after the start date and identify corrective actions that have been taken or are planned, whenever a standard competition solicitation cannot be issued within eight months • Shall justify the use of government furnished property in writing; solicitations may offer the use of existing government facilities and equipment, and may make such use mandatory if the CO obtains prior approval from the 4.e. official • Shall (without delegation) sign and forward to the Deputy Director for Management, OMB, a written report when a Performance Decision results in the selection of a private sector source, but an agency cancels the solicitation and does not award the contract • Shall be notified when the ATO does not submit the Agency Tender to the CO on or before the due date stated in the solicitation • Shall receive a written document when there are no private sector responses to a Standard Competition solicitation explaining why • Shall obtain written approval from OMB prior to issuance of the solicitation for an integrated evaluation process if other than IT activities or new requirements are involved
Performance Decision	<ul style="list-style-type: none"> • Shall issue a Letter of Obligation to the ATO and the head of the requiring organization if the agency wins the competition
Post-Performance Decision	<ul style="list-style-type: none"> • Shall approve either (1) a Direct Conversion based upon a Standard Competition Waiver or (2) a Standard Competition if an agency, private sector or public reimbursable provider fails to perform • May approve the use of agency personnel as a temporary remedy if a service provider is terminated

NEW TERMS SUMMARY FOR DISCUSSION:

Draft Circular	Current Circular	Common Practice
Agency Cost Estimate (ACE)	In-House Cost Estimate (IHCE)	
Agency Tender	Management Plan	Management Plan
Agency Tender Official (ATO)		MEO Certifying Official
Phase-in Plan	Transition Plan	Transition Plan
4.e. official		9.a official
Standard Competition	Full-Cost Comparison	Full-Cost Comparison A-76 Study
Standard Competition Form	General Cost Comparison Form	IHCE, GCCF, CCF, GCE