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Washington, DC 20017
14 December 2002

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW—NEOB Room 9013
Washington, DC 20503

RE: Proposed Revision to OMB Circular No. A-76, Performance of Commercial Activities

Dear Mr. Childs:

I am a Republican, and a member of that party's District of Columbia central committee, but one with grave concerns about the President's contracting out initiatives in general, and this one in particular. My fear particularly is that contracting out as wide a range of work now performed by federal staff as this proposed revision envisions would create a powerful special interest with vested interest in preserving government programs from which, through these contracts, this special interest would profit. This would make it politically much more difficult to eliminate inappropriate, wasteful government programs.

Firstly, the proposed revision cites only a few studies of how contracting out federal work has saved money, but says nothing of the many studies and examples showing otherwise. The proposed revision should thoroughly address the entire range of studies and examples and only put revisions into place if the preponderance demonstrate savings.

Secondly, the revision should not require jobs to be assumed commercial unless proved inherently governmental. Building in an assumption jobs are commercial unless proven otherwise implies the work the government has long done is somehow illegitimate. Moreover, such a policy runs the risk of contracting out a marginally inherently governmental function. Because inherently governmental functions cannot legitimately or lawfully be performed by the private sector, this is a greater evil than continuing to keep in-house a marginally commercial function.

Thirdly, in order to minimize the risk of contracting out tasks which federal staff more appropriately should perform, the definition of inherently governmental should be broad rather than narrow. The definition should include not only establishing policy and law enforcement, but the implementation of laws, granting of benefits, tasks affecting public well-being requiring the exercise of judgment, and any tasks more appropriately performed by federal staff. The latitude for making these determinations should rest with the agencies, rather than OMB.

Fourthly, proposed revisions should more closely rely on the original statutory basis for contracting out—the legal concept of the federal government not competing against the American people. Accordingly, contracts should not be allowed to be given to foreign nationals or companies, if Americans are available even if we cost more. Similarly, companies winning contracts should not be allowed to use noncitizen workers, if Americans are available even if we cost more.

Fifthly, the proposed revision should include explicit provisions for assuring quality does not decline as a consequence of contracting out. For example, not only is US citizenship required to perform federal work, but many jobs have explicit qualification standards or positive educational requirements. Contractor staff should be required to meet the same qualifications as if federal staff were performing the work. Otherwise, the work contractors perform, although it might appear cheaper, would also be of a lower caliber.

Sixthly, often, after contracts are signed, improved understanding of work requirements or changed circumstances lead to costly contract amendments. Performing work with federal staff would obviate these costs because federal managers have much greater flexibility to modify expectations when federal staff are performing work than when it is contracted out. The proposed revision should prohibit contract amendments and instead require recompetition when government managers decide they need to modify a contract. This would insure fairness and force government managers to write good contracts in the first place.

Seventhly, to control for the normal business practice of contractors low bidding on initial contracts and, after the federal staff performing work has been dispersed, increasing subsequent bids, the proposed revision should require initial bids from outside sources to be adjusted to account for this phenomenon when compared to the in-house bid.

Respectfully submitted,



Dino Drudi