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

Mr. Childs and Friends,

Warden Associates, Inc. is pleased to provide the attached questions/recommendations concerning the proposed revisions to OMB Circular A-76. Please call or contact me if you have any problem in opening the attachment or have questions concerning the content.

(See attached file: Questions Concerning The Proposed Revisions to OMB Circular A.doc)

Congratulations for all that you have accomplished to date,

Dale Warden  
Chief of Operations  
Warden Associates. Inc.  
703.644.5912

- Questions Concerning The Proposed Revisions to OMB Circular A.doc

Questions/Recommendations Concerning the Proposed Revisions to OMB Circular A-76

No.	Ref.	Questions/Recommendations
Circular		
1	1	This Circular establishes federal policy for the <i>management, inventory, and</i> competition of Commercial activities. We understand the emphasis on competition, but it is not totally accurate.
2	2	Will new inflation guidance be issued with the new Circular to replace the superseded Transmittal Memorandum 24? We need the guidance to complete current reviews. Or, do not supersede Transmittal # 24.
3	3	Does Authority also still include The Budgeting and Accounting Act of 1921 (31 U.S.C. 1 <i>et seq.</i> )?
4	4	Is it still the policy of the Circular to “Achieve Economy and Enhance Productivity” (clients see this as being replaced by an emphasis on relying on the private sector for needed commercial services – which use to be equal to achieving economy and enhancing productivity)?
5	4	OMB officials have said that the reliance is now on competition, not the private sector. This is not reflected in the first sentence, but would be a major selling point if included in the wording. Recommend – “The longstanding policy of the federal government has been to rely on <i>competition</i> for needed commercial services.”
6	4	Is law enforcement and stewardship of public lands provided as examples of inherently governmental activities?
7	4b	Is compliance with the inventory requirements the proper method to justify inherently governmental activities? Attachment B, paragraph E does not provide justification documentation requirements.
8	4c	Are the standard cost comparison and the ten methods of direct conversion the only authorized competition/conversion methods? What is the status of agency specific methods that have been approved by OMB? Are currently approved 1o and under rules acceptable through FY 03. Is the HHS exp
9	4d	This statement supports No.1 – that the purpose of the Circular is <i>management</i> of commercial activities
10	4e	Will the 4.e. official designation and written delegations be published or posted on a web site for each department/establishment?
11	4f	“One or more offices” is being seen as a way to continue decentralization. Please hold one agency office accountable for implementation.
12	5a	What are the provisions by law that exempts application of the Circular (executive departments and military departments)? Does this definition match the same organizations required to submit a FAIR Act inventory?
13	5b	What documentation and posting is required to exempt an agency performed commercial activity from performance by the private sector?
14	7	When the solicitation date is after 1/1/03: Will cost comparisons and direct conversions under way be terminated and new comparisons initiated to comply with these rules? Is it required to re-announce cost comparisons that are “re-packaged” to comply with the new rules? How do we accommodate on-going streamlined cost comparisons,

No.	Ref.	Questions/Recommendations
		which will be eliminated, and never required a solicitation date to make a decision?
Attachment A		
15	A.1.	What is the significance of identifying classified work as separate from inherently governmental and commercial?
16	A.2.	Will there be any time limits for consultation and publication in the <i>Federal Register</i> ?
17	B.1.	Why is there no interest in inventorying <i>commercial</i> performed commercial activities not subject to the FAIR Act?
18	B.2.	Should agency-specific definitions be pre-approved by OMB?
19	C.1.	A continuing problem is the inventory of FTEs and the competition of Activities. Many agencies continue to struggle in packaging FTEs to form commercial activities that are clearly separable for accountable performance. Dropping the separability criteria from the definition of a commercial activity may compound this problem. The Circular should emphasize that function codes may not be appropriate in defining commercial activities suitable for comparison.
20	C.1.a.	Do organizations have to post inventories on web sites?
21	C.1.b.	There are two items (4). Need to renumber to (6).
22	C.2.	Are there any categories applicable to the Non-FAIR Act CA Inventory not identified in C.1.b.
23	C.3.	Attachment B, paragraph E does not provide justification documentation requirements – only criteria
24	C.4.	Is there a requirement to report beyond the Agency Component level?
25	D.1.	What length of time must a service be scheduled for performance to be defined as “recurring”?
26	D.1.	Why was the “separable” criteria dropped from the definition of commercial activities?
27	D.1.	Recommend that the definition of commercial activity include – <i>A commercial activity is clearly separable so as to have measurable outcomes/outputs.</i>
28	D.2.	Who determines if written justification is “sufficient”?
29	D.3.	How does the public request written justifications? Does it have to be through the FOIA process?
30	D.3.	Does Reason Code B require the specified time frame to be specific to the next Fiscal Year?
31	D.3.	Does Reason Code D include Business Case Analysis that results in the decision to retain the activity under agency performance? And Waivers for agency retention? And no satisfactory commercial source? And temporary authorizations for in-house performance?
32	D.3.	What are the parameters of a “specified time frame”?
33	D.3.	Does the Agency approved restructuring have to be approved by OMB?
34	D.3.	Can “Core” activities be a justification for Code A?
35	E.1.	What is the significance of changing the term “Inherently Governmental Function” to “Inherently Governmental Activity”? Or the term “Government Employees” to “Government Personnel”?

No.	Ref.	Questions/Recommendations
36	E.1.	Do budget examiners at OMB still qualify as performing inherently governmental activities? Are there still only 19 positions at OMB that meet the definition of a commercial activity?
37	E.1	Will any examples of Inherently Governmental Activities be provided?
38	E.1.a.	Is “Binding” defined only as signatory authority, or does it include the data collection and analytical activities to determine that a decision is justified?
39	E.1.b.	Are all facets of contract management inherently governmental?
40	E.1.c.	Does medical research significantly affect Life? What level of medical research? Only the final decision of what to research?
41	E.2.	The intent is clear, but without examples, it is still left to self-serving interpretations.
42	E.3.c	The term “de novo” is a legal term that could be better understood with a more common adjective.
43	E.3.d	The term “not proscribed” is a double negative. Is the meaning here “not prohibited” (which would be better said as “is allowed”)?
44	F.1.	Can the Challenge and Appeal process be delegated to the Agency component level?
45	F.1.a.	Must the Inventory Challenge Review Authority be in an inherently governmental position?
46	F.1.a	Must the Inventory Challenge Review Authority be independent of the original inventory development?
47	F.1.a	Who is the <i>individual</i> who prepared the inventory (this is usually a team effort fed from component organizations)? Is this the individual whose name appears the most as the inventory point of contact?
48	F.1.b.	What must the Challenge Appeal Authority be independent of – the development of the inventory, the Challenge Review Authority, or both?
49	F.2.a.1	Must the Agency publicize all challenges received?
50	F.2.a.1	The FAIR Act definition of interested party is not included. Inclusion would allow for better understanding.
51	F.2.a.2	Are decisions just transmitted to <i>the</i> interested party, or is it publicized, so other parties can submit opinions?
52	F.2.b.1	What constitutes “receipt” and who resolves questions concerning the receipt date?
53	F.2.b.2	What constitutes “receipt” and who resolves questions concerning the receipt date?
54	F.2.c	Is there a second level of challenge/appeal so that other interested parties can question the changes that may affect them?
Attachment B		
55	Graphic	What is the amount of time allowed between Steps 2 and 3? Some are trying to misinterpret the graphic.
56	Graphic	The Phrase inside the Step 3 box does not print in full. What is the complete phrase?
57	A	Is the standard competition now the only method of competition allowed? Why was Business Case Analysis considered a direct conversion tool instead of a competition tool

No.	Ref.	Questions/Recommendations
58	A.1.a	How does a citizen report perceived deviations that have not been approved?
59	A.1.a	How does a citizen report reorganization in violation of this requirement?
60	A.1.c	How does this apply to agreements (not contracts) between a contractor and the government for reimbursement from the contractor to the government for work performed by the government within the scope of the contract for which the contractor could not perform in a specific period of time? (This happened for a 1 month period after transition should have been completed and adverted a default until the contractor could perform)
61	A.2.a.2	Does this apply to a change to a public reimbursable source, regardless of whether they use contract support or government personnel?
62	A.2.a.3	Does this apply to a change from public reimbursable source of contract support to public reimbursable source use of government personnel (or vice versa)? And if so, who conducts the comparison, the receiver or provider of services?
63	A.2.b.4	Are operating costs as reflected by budget and accounting documentation, or as calculated on the SCF?
64	B.1.	Can the ATO file a protest to GAO as a directly interested party?
65	B.1.	Must the ATO be in the Agency component being competed?
66	B.1.	Must the ATO be a professional in the activity being competed?
67	B.1.	Could we add that the ATO shall be independent of the PWS team?
68	B.1.	Could we add that the ATO must sign financial disclosure, non-compete and non-disclosure forms and report any issues that could concern even an appearance of a conflict of interest (such as relatives owning or working for potential competitors, or contacts with potential competitors for post-government employment)?
69	B.1.	What is the process for replacing an ATO during the competition due to promotion, reassignment, retirement, illness, or death?
70	B.1.	Who oversees the ATO to confirm that he/she is performing their responsibilities? Could an ATO be removed for non-performance?
71	B.1.	What are the rights of affected employees to influence the selection of the ATO or complain about the selection?
72	B.1.	Could the ATO be a re-annuitant? A temporary or term employee? A political appointee? A foreign national?
73	B.1.	Is the ATO a procurement official?
74	B.1.	The Agency Tender Certification on Line 19 of the SCF contradicts the Authority granted here to the ATO. In that requirement, the ATO certifies that “competent agency authorities” have approved the organization, staffing and cost. Please reconcile who has the approval authority for the Agency Tender.
75	B.3.	Must the HRA be in the Agency component being competed?
76	B.3.	Could we add that the HRA shall be independent of the PWS team?
77	B.3.	Could we add that the HRA must sign financial disclosure, non-compete and non-disclosure forms and report any

No.	Ref.	Questions/Recommendations
		issues that could concern even an appearance of a conflict of interest (such as relatives owning or working for potential competitors, or contacts with potential competitors for post-government employment)?
78	B.3.	What is the process for replacing an HRA during the competition due to promotion, reassignment, retirement, illness, or death?
79	B.3.	Who oversees the HRA to confirm that he/she is performing their responsibilities? Could an HRA be removed for non-performance?
80	B.3.	What are the rights of affected employees to influence the selection of the HRA or complain about the selection?
81	B.3.	Could the HRA be a re-annuitant? A temporary or term employee? A political appointee? A foreign national?
82	B.3.	Is the HRA a procurement official?
83	B.3.a.	Is the HRA implementing the communication plan?
84	B.3.a. (b)	Is the identification of adversely affected employees authorization for a mock RIF? If not, how can all potentially affected employees be identified? Or, should all employees in the competitive range be considered to be potentially adversely affected?
85	B.3.a.(c)	Is this the official employee announcement?
86	B.3.a.(d)	Is this the official announcement often managed by public affairs offices?
87	B.3.a.(e)	Could we add - accomplish retraining and relocation actions and other placement actions when RIF authority is not granted?
88	B.3.a.(h)	Does the HRA have the authority to <i>determine</i> compliance with a FAR clause?
89	B.3.b.	Can the employee transition plan be used justify additional one-time conversion costs in excess of the mandated factors?
90	B.4.	Does independence from the activity mean no direct authority over the activity? Or, completely out of the organizational chain of command? Or, from another Agency or Agency component? The term “agency official” has been omitted from this definition.
91	B.4.	FAR Part 15.303 states: “The CO is designated as the SSA, unless the agency head appoints another individual”. It is OMB’s intent that the CO can never be the SSA for public/public or public/private competitions? Can the 4.e. official designate the SSA, or does it have to be the agency head?
92	B.4.	Must the SSA be a professional in the activity being competed?
93	B.4.	Could we add that the SSA shall be independent of the PWS team?
94	B.4.	Could we add that the SSA must sign financial disclosure, non-compete and non-disclosure forms and report any issues that could concern even an appearance of a conflict of interest (such as relatives owning or working for potential competitors, or contacts with potential competitors for post-government employment)?
95	B.4.	What is the process for replacing an SSA during the competition due to promotion, reassignment, retirement,

No.	Ref.	Questions/Recommendations
		illness, or death?
96	B.4.	Who oversees the SSA to confirm that he/she is performing their responsibilities? Could an SSA be removed for non-performance?
97	B.4.	What are the rights of affected employees to influence the selection of the SSA or complain about the selection?
98	B.4.	Could the SSA be a re-annuitant? A temporary or term employee? A political appointee? A foreign national?
99	B.5.	Must the AAA be in the Agency component being competed?
100	B.5.	Must the AAA be a professional in the activity being competed? Many AAAs are lawyers, but have no functional knowledge.
101	B.5.	Could we add that the AAA must sign financial disclosure, non-compete and non-disclosure forms and report any issues that could concern even an appearance of a conflict of interest (such as relatives owning or working for potential competitors, or contacts with potential competitors for post-government employment)?
102	B.5.	What is the process for replacing an AAA during the competition due to promotion, reassignment, retirement, illness, or death?
103	B.5.	Who oversees the AAA to confirm that he/she is performing their responsibilities? Could an AAA be removed for non-performance?
104	B.5.	What are the rights of affected employees to influence the selection of the AAA or complain about the selection?
105	B.5.	Could the AAA be a re-annuitant? A temporary or term employee? A political appointee? A foreign national?
106	B.5.	Is the AAA a procurement official?
107	C.1.a.	Is the public announcement (start date) the same announcement assigned to the HRA?
108	C.1.a.(1)	Should associated existing contracts also be determined? And whether they will be in scope or not?
109	C.1.a.(1)	Should the determination also be designed to prevent acquisition of personal services?
110	C.1.a.(2)	Can preliminary research include industry days? Requests for information? Sources Sought?
111	C.1.a.(5)	Are competition officials the same as the designations in Section B? Recommend you use the definition in the next paragraph here, since this is the first time the term “competition officials: is used?
112	C.1.a.	The designations and responsibilities do not identify who will do this work. The CO? The PWS Team? A program management office?
113	C.1.a.	Is this work inherently governmental? Data collection, data analysis and recommendations? Decisions?
114	C.1.b.(1)	Will the appointments be publicized or made available to the public?
115	C.1.b.(2)	Does the conditions for (a) and (b) require 4.e. official approval? With or without delegation?
116	C.1.b.(3)	This section is inconsistent with A.1.a. That paragraph does not have a “one-time six-month” limit. It also has OMB notification requirement, not OMB approval. It says the waiver must be at the start date, this section does not.

No.	Ref.	Questions/Recommendations
117	C.1.b.(4)	Which specific rules require compliance? Can agencies add additional requirements to Federal rules? Does GAO agree that compliance with these rules is sufficient to avoid even the appearance of a conflict?
118	C.1.b.(5)	One office is centralized, “or more” leads to decentralization. Will OMB sponsor official groups to assist sharing of information between Agencies?
119	C.1.b.(6)	How are savings to be calculated? Based on the SCF? Based on proposed budgeted savings? Based on actual budgeted savings every year? Based on budgeted savings, adjusted for Circular cost factors?
120	C.1.b.(8)	Do Agencies also have to comply with all of Chapter 35 of Title 5, United States Code?
121	C.2.a	FAR Requirements include many options. Are the following allowed in public/public-public/private competitions – Sole source acquisitions? Oral presentations? Cost reimbursable Contracts that are not consistent with performance based service contracting? <i>Intra-agency</i> agreements under FAR 17? Small Business and preferential program set-asides?
122	C.2.a.(1)	Why must the QASP be issued with the solicitation? QASPs might be improved if they are written after the QCP is approved. Changing QASPs later may require a contract modification.
123	C.2.a.(1)	The requirement to be performance based should significantly affect the consideration at C.1.a.(1) and (2). In specific, support activities like secretarial services are not separable from the activities supported, but yet we are still doing a lot of reviews of just low graded secretaries and trying to avoid the appearance of personal services.
124	C.2.a.(1)	Statutory obligations and regulatory requirements may significantly reduce the ability to be performance based, as opposed to regulatory compliance.
125	C.2.a.(1)	Will OFPP release a library of what they consider to be performance based PWSs?
126	C.2.a.(2)	The requirement of “no later than seven months after start date” prohibits reporting delays that occur during the last month of the timeframe. Recommend that known delays be reported as soon as found and there must be a report if the 8-month requirement is not met.
127	C.2.a.(6)	Can the CO specify requirements for phase-in and phase-out to accommodate operational needs?
128	C.2.a.(7)	The FAR assigns final GFP decisions to warranted COs. The Circular requires the 4.e. official (without delegation?) to make these final determinations. This could be a massive requirement and create long delays in large organizations. This seems to be a very detailed requirement for an assistant secretary or equivalent level official. Please make it clear that this responsibility can be delegated to the CO or the SSA.
129	C.2.a.(8)	Is the amount of the maximum incentive fee for each year or the total for the contract period?
130	C.2.a.(11)	Are CDRLs required in all performance based service contracts?
131	C.2.a.(12)	Commercial offers often incur more initial security costs that tenders. Why is this legitimate additional cost excluded form the cost comparison?
132	C.2.a.(13)	The reference to C.6.b.(2) appears to be in error.

No.	Ref.	Questions/Recommendations
133	C.2.a.(14)	This is the first reference to the letter of obligation and should have a reference to the appropriate section (and be defined in Attachment F).
134	C.2.a.(14)	If required, are the 4.e. official reports released to the public?
135	C.2.a.(15)	The 4.e. official (without delegation?) is being assigned responsibilities assigned to contracting offices and contract administration offices in FAR 46.103 and 46.104. Again, this is a detailed level of responsibilities for an assistant secretary or equivalent level official.
136	C.3.a.	Please add to the first sentence – “developed and certified by the ATP with assistance from the HRA and the MEO team (See D.2.b).”
137	C.3.a.(1)	Can proprietary information be redacted from the Agency Tender prior to release?
138	C.3.a.(2)	This is the first mention of disqualifying the Agency Tender and should be referenced.
139	C.3.a.(2)	Section L may require sealed packages. Please add “(s)” to the phrase.
140	C.3.a.(3)	Can the Agency Tender be changed to respond to Amendments issued after the receipt of proposals/Tenders? This is happening.
141	C.3.a.(4)	Should the MEO include a crosswalk between the current and proposed organizations?
142	C.3.a.(4)	Must new PDs be developed?
143	C.3.a.(4)	Could legitimate MEO analysis conclude that the current organization is efficient and effective?
144	C.3.a.(4)	The term “MEO” is putting emphasis on efficiency and has lost an emphasis on effectiveness. Is the intent of OMB?
145	C.3.a.(4)	The term “not hired” to staff the MEO implies a process not in compliance with Title 5. Recommend use of the term “not filled.”
146	C.3.a.(4)	Can an MEO propose a new contract to replace an existing non-efficient/effective contract?
147	C.3.a.(4)	Are existing MEO subcontractors tied to the MEO team and prohibited from competing with the “prime” contractor (a common commercial practice)?
148	C.3.a.(4)	Must new PDs be approved by the servicing HR office, or just reviewed by the HRA?
149	C.3.a.(4)	The word “in” should be removed from the last sentence.
150	C.3.a.(9)(2)	Under what conditions would the 4.e. official instruct the CO to proceed with source selection without the Agency Tender? Could affected federal workers lose the right to competition simply because an ATO is not competent? Would this violate any legal restrictions on conversions without comparisons?
151	C.3.b	This is a rare example of the Circular providing directions to Private Sector Offers. Any significance in this duplication of FAR requirements?
152	C.3.d	Is the term “agency” referring to the CO, SSA, 4,e official, or some other party?
153	C.3.d(1)	Do these discussions occur before or after the determination of non-responsive or non-responsible.

No.	Ref.	Questions/Recommendations
154	C.3.d.(1)	How does the PWS team, ATO and public know to request this written document? Does the CO/SSA have to announce this?
155	C.3.d.(2)	Is the 4.e. official written determination also releasable? By whom? And how?
156	C.3.d.(2)(a)	This is a requirement for reissue? Could the existing solicitation just be amended? If so, is the Agency Tender still returned?
157	C.3.d.(2)(b)	The reference to C.5.b.(1) (a) and (b) appears to be in error.
158	C.4.a.(2)	The reference to C.4.b appears to be in error and the whole numbering for this section is in error as a result.
159	C.4.a.(3)(a) 2.	The second reference to FAR 15.306(a) is in error, or two references are not required.
160	C.4.a.(3)(a) 3.	Please refer to the individual appointed to resolve the disagreement as the “Resolution Official” for future reference.
161	C.4.a.(3)(b)	The word “simultaneously” is being misinterpreted is forcing a specific method and order within the evaluation. We believe the point here is that there is “one step” and all offers and tenders are evaluated in this step. Recommend: “The SSA shall evaluate private sector offers, public reimbursable tenders, and the Agency Tender in accordance with the evaluation plan to determine technical acceptability.”
162	C.4.a.(3)(b)	(Second sentence) The Performance Decision shall be based on the lowest cost of all offers and tenders determined to be technically acceptable, <i>as calculated on the SCF</i> .
163	C.4.a.(3)(c) 1	For planning purposes, how much time does OMB require to approve a request from the 4.e official to use the integrated evaluation process on an exception basis?
164	C.4.a.(3)(c) 1	We believe the intended reference has been changed to C.4.a.(3)(b) (The Resolution Official)
165	C.4.a.(3)(c) 1	Federal employees can loose their right to a cost comparison based on the ATO’s incompetence or stubbornness?
166	C.4.a.(3)(c) 1	The proper reference is “Line 7”.
167	C.4.a.(3)(c) 1.a.	After going through an integrated evaluation process, there is no rationale required for picking low cost?
168	C.4.a.(3)(c) 1.b.	Should there be a prohibition against revealing any proprietary information from an offer or a tender?
169	C.4.a.(3)(c) 2	The Performance Decision shall be based on lowest cost of all technically acceptable offers and tenders, <i>as calculated and certified on the SCF</i> .
170	C.4.a.(3)(c)	Should we reference the “Resolution Official”?

No.	Ref.	Questions/Recommendations
	2	
171	C.4.a.(3)(c) 2.	The word “simultaneously” is being misinterpreted is forcing a specific method and order within the evaluation. We believe the point here is that there is “one step” and all offers and tenders are evaluated in this step. Recommend: “The SSA shall evaluate private sector offers, public reimbursable tenders, and the Agency Tender in accordance with the evaluation plan to determine technical acceptability.”
172	C.4.a.(3)(c) 2.b.	The proper reference is “Line 7” of the SCF.
173	C.4.a.(3)(c) 2.c.	The Agency Tender should be treated fairly under the FAR in respect to all proposals. The Agency Tender should be redacted for proprietary information. Many Agencies perform multiple reviews of very similar activities and use nearly identical “proposals”. Release of this information on the first cost comparison is an unfair advantage to the competition that would never be tolerated for other public tenders or commercial offers. The practice of redacting government proposals has been allowed in the past. If this rule is passed, we need a legal determination in writing to show Agency lawyers that disagree on the legality of this clause.
174	C.5.a.	This section should come after the administrative appeal process.
175	C.5.a.	The head of the requiring organization has not been defined. Is this an inherently governmental position and therefore not be part of the MEO?
176	C.5.a.	The revised PWS should reflect <i>changes in the scope of work, requirements, standards, workload and conditions of performance during that performance period.</i>
177	C.5.a.	Do “costs necessary to compare to estimated costs submitted in the Agency Tender” include – Full costing or only non-common costs? Use of average steps? Ignoring save grade and save pay? Using non-budget fringe benefit, insurance and overhead factors? Using contract admin factors? Using tax factors? – In short, how are costs adjusted between actual costs in budget and accounting systems and the SCF requirements used in the Agency Tender?
178	C.5.a	At what organizational level are the resources for the annual PWS maintenance/caretaking and tracking of actual performance costs? Are they at CGA or elsewhere in the organizational structure? What are CO responsibilities in the maintain currency of PWS caretaking and the cost tracking requirement?
179	C.5.a.(1)	Could we add a more specific reference such as FAR Part 14--Sealed Bidding (subpart 14.408-Award) and /or FAR Part --15 Contracting by Negotiation (subpart 15.504 Award to successful offeror) in this section?
180	C.5.a.(1)	Other than awarding the contract, does the CO have any specific responsibilities in implementing the Performance Decision? Could we provide any guidance regarding the CO requirement for administering the private sector contract?
181	C.5.a.(2)	The proper reference is the “4.e.” official.

No.	Ref.	Questions/Recommendations
182	C.5.a.(2)	Does the CO have any responsibility for monitoring the implementation of the Performance decision to Public Reimbursable and Agency Sources? Are there any administering requirements?
183	C.5.a.(3)	The ATO and the head or the requiring organization are the wrong personnel to be “obligated” to perform. The head of the requiring organization is the recipient of services. The ATO is an inherently governmental official that is outside of the scope of the MEO. The “MEO Manager” (or comparable title) is the person obligated to perform. It could be appropriate for the ATO to hold the obligation letter until the “MEO Manager” is selected.
184	C.5.a.(4)	The requirement to retain the Standard Competition documentation is assigned in this paragraph and 5.a.
185	C.5.a.(4)	The reference to paragraph C.7.b(2) is in error.
186	C.5.b.(2)	Is it intended to imply that MEOs should be treated as a reimbursable provider in the budget?
187	C.6	This section should precede Post Competition Accountability.
188	C.6.a.(1)	What is the definition of “directly interested parties”?
189	C.6.a.(1)	What is the significance of changing the term “Tentative Decision” to “Performance Decision”?
190	C.6.a.(1)	The decision documentation is too limited to questioning only tenders. An Appellant is blocked from any visibility to public offers by the FAR. This is not fair treatment of offers and Tenders. The solution is to release section B of the RFP and change the AAA from a judge to an investigator. Appellants should be allowed to question if all costs were included in an offer and if cost realism was correct. The AAA should have authority to examine offers, including proprietary and cost information. Specifically, it is not fair for government workers to lose their jobs to an offer designed to loose money. Although legal, this is not an equitable comparison.
191	C.6.a.(1)	What documentation will be provided for the appellant to base an appeal of a private sector offeror’s compliance with the scope and technical performance requirements?
192	C.6.a.(2)	10 or 15 days is to short a period to prepare an intelligent appeal with limited discovery rights. Recommend the 20 to 30 day period of the past.
193	C.6.a.(3)(b)	Does this include calculation of costs on Line 7?
194	C.6.a.(3)(c)	Why is the AAA limited from correcting errors they find in the review? Doesn’t OMB want an accurate decision, regardless of whether an appellant can find the error in 10 days or less?
195	C.6.a(3)(d)	Does the CO also comply with the AAA’s Administrative Appeal Process Decision Document?
196	C.6.a.(3)(e)	“30 days or less” does not cover the 10-15 day review period and the 30-45 day decision period (assuming the optional ten day comment period is concurrent with the decision period).
197	D.1	(3) add regular retirements to the list.
198	D.1	How does the HRA get access to data to determine qualification for contractor jobs? Does the contractor provide the equivalent of positions descriptions?
199	D.1	How is the distinction made between creation of job vacancies and transferring existing employees?

No.	Ref.	Questions/Recommendations
200	D.1	How did the government get authority to tell a contractor who they must hire?
201	D.1	Is there any limitation on how long a person must be retained when hired under the right-of-first-refusal?
202	D.2.a.	What is the distinction between “technical” and “functional” experts?
203	D.2.a.	Recommend the following: “(1) Assisting the Co in preparing the solicitation, to include the PWS and QASP, in accordance with paragraph C.2, and compliance with this Circular.”
204	D.2.a.(1)	The second sentence should be moved to paragraph D.2.b.(1)
205	D.2.c.	Can a Union member who is not a directly affected be on the SSEB?
206	D.3	This reference is true circular logic ☺
Attachment C		
207	A.1.	Is an aggregate the same as an FTE? How does other than full-time positions count?
208	A.2.	How do we know if these conditions will be met prior to the decision? Can we obligate someone to make a retirement decision? Are we authorized to base the decision on a mock RIF?
209	A.2	(b) Does the “time limited appointment” have to conclude before the direct conversion?
210	A.3	The second sentence is confusing. Does direct conversion comply with competition requirements? How do we comply with Competition requirements when we can direct convert to or from any source?
211	A.4	Is nursing a direct patient care activity?
212	A.5	Is the term “military” limited to forces assigned to DOD? If not, what are the other classifications of “military”?
213	A.6	Does the term “national defense” cover all commercial activities conducted in DOD?
214	A.7	Why have other preferential procurement sources been eliminated?
215	A.9.	Lawyers can’t agree on this list. Can OMB release a list of the current legal requirements for or against direct conversions?
216	B.	How is the certification published or announced?
217	B.	Insert “of” between “purpose” and “performing”.
218	C.2.	How can the requirements of (1) and (2) be met without a comparison? What is allowed to meet these requirements?
219	D.1.e	Many COs are having trouble with the 15 working day limit. Recommend a 30-day period.
220	D.1.g	Insert “of” between “purpose” and “performing”.
221	D.2.a	Recommend: “(1) provide the CO a short description of requirements and performance standards (quantity, quality and workload) and (2) develop an Agency Tender in accordance with Attachment B, with the following modifications.”

No.	Ref.	Questions/Recommendations
222	D.2.b.	What defines “establishing comparable contract or ISSA costs”? 4.e. officials may require preliminary research to certify that the activity is commonly provided by the private sector to the Federal government by contracts of comparable size, workload and scope. Can comparable contracts be identified in advance?
223	D.2.b.	Must it be four and only four comparable contracts?
224	D.2.b.	How many public reimbursable agreements can be used? All four?
225	D.2.b.	We have a dangling “)” after the word Circular.
226	D.2.b.	What is the definition of “reasonably grouped”.
227	D.2.b.	Can a specific CLIN cost, or other method of cost breakout be used to create a “comparable” cost from a large contract that includes the smaller CA?
228	D.2.b.	Are any adjustments allowed to the “comparable” costs? For prevailing wage determinations? For inflation rates? For differences in scope (where they are similar, but not exact)?
229	D.2.b.	Why is the low cost used instead of a range?
230	E.	Are there any timeframes for direct conversions other than for BCAs? Can JWOD conversions occur over time as the government workforce leaves/retires?
231	F.	What is the logic of a direct conversion at a Department that has stated that there will be no RIFs and all employees will have a job after the conversion?
232	G.	Can you specify the rules that must be followed? This is too vague.
233	H.	How are costs savings calculated? Using A-76 factors? Or budget/Accounting practices?
Attachment D		
234	A.	The term “ISSA” is not defined. The prefix “INTER” is used consistently. OMB officials have stated that this includes “INTRA” service agreements also. This interpretation is not clear, and if correct, greatly increases the workload driven by this Circular. If “INTRA” is truly meant, at what level? Is it Navy supporting Army? Or NAVSUP supporting NAVSEA? Or FISC Norfolk supporting FISC San Diego? This is too much to subject to competition on a regular basis. The acquisition infrastructure would have to be greatly increased.
235	A.	Where do customer agencies go to get the acquisition infrastructure to perform all this additional work?
236	A.	Please prohibit reorganization or dividing the requirements to get under the \$1 million threshold.
237	A.	Which ISSAs are statutorily mandated? Do we have to compete GSA provided services?
238	B.	This requirement does not exclude the \$1 million threshold or the exceptions in paragraph A.
239	B.1.	The five-year requirement is not realistic in combination with the 50% of the FAIR Act Inventory requirement. This is especially true if “INTRA” is included.
240	B.3.	This is the first requirement for the “head of the customer agency”. Is this the 4.e. official, or potentially a cabinet secretary?

No.	Ref.	Questions/Recommendations
241	B.4.	Could you pick another date for the annual Agency ISSA Competition Plan that does not potentially distract and interfere with the FAIR ACT and related inventories due on June 30?
242	C.1	How does a public reimbursable source participate and provide tenders for Small Activities, R&D, Direct Patient Care, and National Defense and Security being converted to contract? Or to conversions to JWOD organizations?
243	C.1	How does the “No employee impact” direct conversions apply to ISSA employees?
244	C.1.e.	Insert “of” between “expansions” and “commercial”
245	C.2.c.	What are the cost realism requirements between the A-76 cost estimate and the reimbursable rates?
246	D.	It is better to develop a FAR clause for this requirement.
247	E.	The first part of this paragraph is more appropriate to Attachment B.D.
248	F.	Can you specify the rules that must be followed? This is too vague.
249	G.	How are costs savings calculated? Using A-76 factors? Or budget/Accounting practices?
250	H.	Why is this included in A-76, Commercial Activities? The definition of specialized and technical services may be a sub-set of CAs, but this topic is causing confusion.
251	H.1.a.	What other applicable laws?
252	H.1.a.	This is a run-on sentence with double colons.
253	H.1.a.(3)	Service cannot be provided until a competition is completed? What happens to current services? Do we have to stop them until our competition?
254	H.1.a.(5)	How does a citizen know to request this information?
255	H.1.b.(1) H.1.d	Who in OMB provides the written approval? Deputy Director for Management?
256	H.1.f	Who is authorized to make the recertification? The 4.e official?
Attachment E		
257	Text Box	An A-76 Cost Comparison is a “make or buy” decision and does not include “full” costs of performance of a particular function. For example, “common costs” are not calculated in the Standard Competition.
258	A.2.	Most standard cost factors have no supportable mathematical basis for their use other than the OMB mandate to use them. Also, many of these factors are more appropriate to DOD. After all the effort to improve this process, why is OMB content to use “made-up” factors? Why doesn’t OMB commission research into more supportable cost factors? This is the first example of why A-76 costs are hard to reconcile to budgets.
259	A.3	Common costs are the second reason it is hard to reconcile to budgets.
260	A.4.	Does the differential apply only to an incumbent private sector or agency provider?
261	A.4.	There is a dangling “]” at the end of the paragraph.

No.	Ref.	Questions/Recommendations
262	A.5.	What is the URL for the “OMB Website for Standard Competitions”? Will the information contained on the website be policy or guidance? Who in OMB approves unique inflation factors?
263	A.6.	Insert “number” between “line” and “(CLIN)”. Remove “in the” from the last sentence.
264	SCF	Does the use of this form preclude completing section B of the RFP? An OMB official has stated that the “MEO must bid to the CLINs”. How do you do that with this form? Is there a form submitted with each CLIN?
265	SCF, Line 19	This requires “competent agency authorities” to approve specific elements of the MEO. This requirement is not reflected in Attachment B. This is a big deal in the field. Does the ATO have certification authority or not? Who are these competent authorities and who gets to pick them? The 4.e. official?
266	SCF, Line 19	Revise the last sentence to read – “...with the transition plan and the agency <i>will</i> schedule the recompetition in compliance with the requirements of OMB Circular A-76.
267	B.1.a.	Is “indirect labor support” the same as what used to be called “operations overhead”?
268	B.1.b.(1)	Does “dedicated” mean 100%, the way GAO claims?
269	B.1.b.(2)	Is “indirect labor” the same as what used to be called “operations overhead”?
270	B.1.b.(3)	The examples of “indirect labor” include functions that have previously been defined as General and Admin
271	B.3.a.(3)	What is the significance in the change between the use of the term Capital Asset as used in the OMB A-76 Revised Supplemental Handbook (March 1996) as updated through Transmittal 20 of June 1999 and the use of the term “Major Items” as used in OMB Circular A-76 (revised)?
272	B.3.b.	Is it the intention to impute a cost of capital on ALL non-common assets over \$5,000, no matter when purchased? Is it the intention to impute a cost of capital on all assets (common or non-common) scheduled during the performance period?
273	B.3.g.(1)	Is it correct to assume that the use of either an IMPAC card or task order contract for nonrecurring and/or surge workload would not be considered a new MEO Subcontract, and therefore permitted?
274	B.3.h.(1)	What was the decision-making process for changing the Minor Items costing from the 10% allocation to a costing of each item?
275	B.3.h.(2)	What “potential” does the MEO have to receive an award fee? What entity would receive the “award fee”?
276	C.1.d.	What method will the Contracting Officer use to determine whether a performance bond will be required?
277	C.1. & C.3.	Is C.2 reserved for future use, or is the numbering sequence incorrect?
278	C.3.	Contract Administration Costs (Line 8 of the SCF) provides a Table for Contract Administration Costs. The table references the DOD Costing Software win.COMPARE <sup>2</sup> . Does this reference infer that OMB is requiring the use of the win.COMPARE <sup>2</sup> software? Will OMB fund the upkeep of the software and help desk functions (as it is currently funded by OSD and not supportive of clients outside of DoD)?
279	C.4.b.	What are the supporting calculations for the determination of including the fees added to non-profit agency (4%)?

No.	Ref.	Questions/Recommendations
280	C.4.c.	Why was the politically incorrect term used ‘Indian Tribe’ as opposed to ‘Native American Tribe’?
281	C.4.c.	What are the supporting calculations for the determination of including the fees added to the ‘Indian Tribes’ (5%)?
Attachment F		
282	A.	CLIN – Contract Line Item <i>Number</i>
283	A.	CO – first use on page B-3 needs to be spelled out.
284	A.	COLA – only used on page E-6, can be eliminated form list.
285	A.	CSRS – only used on page E-5, can be eliminated from list.
286	A.	EPA – first use on page E-6 needs to be spelled out.
287	A.	FAR – remove long name from page B-2, acronym already used.
288	A.	FERS – only used on page E-5, can be eliminated from list.
289	A.	FICA – first use on page E-5 needs to be spelled out.
290	A.	GAO – only used on page A-2, can be eliminated form list (and from making policy ☺).
291	A.	GSA – first use on page E-9 needs to be spelled out.
292	A.	IFB – only used on page B-6, can be eliminated from list.
293	A.	IMPAC – only used on page E-10, can be eliminated from list.
294	A.	MEO – first use on page B-3 needs to be spelled out
295	A.	NAICS – only use on page E-14, can be eliminated from list.
296	A.	PWS – first use on Page B-3 needs to be spelled out
297	A.	QCP – remove long name from page B-12, acronym already used.
298	A.	R&D – first use in Page C-2 Header needs to be spelled out.
299	A.	SSA – first use on page B-3 needs to be spelled out.
300	A.	SSEB – First use on Page B-23 needs to be spelled out.
301	A.	TSP – Defined as thrift Savings Program, called thrift savings <i>plan</i> on page E-5., which is only use
302	A.	VERA – first use on Page E-14 needs to be spelled out.
303	A.	VSIP – first use on Page E-14 needs to be spelled out.
304	A.	USC – Shown as U.S.C. and USC in the document
Final Questions (you’re welcome)		

No.	Ref.	Questions/Recommendations
305	Line 4 of the SCF	<p>In 1979 we had a requirement to calculate General and Administrative overhead and Operations Overhead rates. In 1984 we were directed to calculate the non-common General and Administrative overhead and Operations Overhead costs that would only be incurred if we remained in-house. In 1996 we were given the 12% factor to represent the General and Administrative overhead and Operations Overhead rates. Subsequent “Updates” clarified that many costs previously identified as Operations Overhead were to be treated as “indirect” labor on Line 1. This proposed revision to Circular A-76 defines the 12% factor as representing “costs that are not visible, allocable, or quantifiable to the agency, activity, or MEO. Also, line 1 “indirect costs include support previously defined as General and Administrative.</p> <p>What does the 12% actually represent? Is it a common or un-common cost? Why has there never been a review of this factor – given GAO criticism and the great change in definition since 1996?</p>
306	Attachment B and Attachment E	<p>Attachment B, C.2.a(13) states that 'A solicitation shall explicitly state which requirements will not be applied to the Agency Tender. Solicitation requirements for the following shall not apply to an Agency Tender: (1)labor strike plan, (2)small business strategy, (3)subcontracting plan goal, (4)participation of small disadvantaged businesses, (5)licensing or other certifications and (6)past performance criteria. For Agency Tenders where a government MEO has been implemented in accordance with paragraph C.6.b.(2)or a previous competition, the CO shall include Agency Tender past performance criteria in the solicitation and evaluation requirement,(except as provided in paragraphs C.6.b.(2)and C.6.d.(2)below).</p> <p>While there is no specific reference to compliance with Section B of a solicitation (bid schedule), the inference is that the Agency Tender will comply with everything other than the items mentioned in C.2.a(13), unless specifically mentioned in the solicitation. What is the OMB policy on an Agency Tender complying with Section B of a solicitation? Attachment E, B.2.a. states that 'The CO includes instructions for material and supply costs in the solicitation (FAR 51.101). An Agency Cost Estimate shall comply with this guidance. The reference to material and supply costs points towards the use of ceilings, plug costs, and single amounts used for miscellaneous items. It does not infer the Agency Tender must comply with Section B, in bidding by CLIN. How does this mesh with the inference in Attachment B.C.2.a(13)?</p>