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

cc:

Subject: Comments on proposed changes to A-76

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Text of letter follows (also attached in MS Word):

December 19, 2002

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

I appreciate this opportunity to comment on proposed revisions to OMB Circular A-76, on behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME). The members of AFSCME include employees of numerous federal agencies, including the Federal Aviation Administration, the Library of Congress, the Architect of the Capitol, the Department of Justice, the Department of Agriculture, the Peace Corps, the Corporation for National Community Service, the Voice of America, and the US Commission on Civil Rights. These proud federal employees belong in particular to AFSCME Council 26.

AFSCME also represents workers in state, county, and municipal governments, schools and universities, Head Start and community service agencies, and medical facilities such as hospitals and group homes. Ours is a diverse union, representing all types of workers, but we are united in our view of privatization, and in our belief in government employees as major national resources.

Our General Viewpoint

In general, AFSCME's experience has been that privatization, or contracting, is often far from the cure-all claimed by its supporters. In many cases, it rests on shaky assumptions and stereotypes about both the public and private sectors, particularly that the private sector always knows best and can best organize the delivery of services. Contracting discussions frequently ignore the very real, but sometimes delayed or unseen, costs of substituting private interests for public ones.

These costs include possible drops in quality if contractors have profit incentives to cut corners, social costs of lower wages and benefits if contractors win bids by neglecting worker standards, and concrete costs relating to converting to a private

workforce, and to the bidding process itself -- writing performance specifications, seeking bids, evaluating them, negotiating contracts, and monitoring them, the last of which can only be ignored at great peril. There is also a real danger of growing public cynicism about government, when contracting decisions appear to be political.

#### Our View of the A-76 Rewrite

AFSCME sees the initiative by the Office of Management and Budget to "streamline" and speed up contracting out of federal employees' jobs to the private sector, in the form of proposed revisions to OMB Circular A-76 and associated guidance documents (as published in the Federal Register on November 19, 2002) as ill-advised. It shows indifference or disregard to the valuable contributions of federal employees, and does not protect the interests of the taxpaying public. On the contrary, the proposed revisions threaten to dramatically accelerate contracting, regardless of whether a governmental function is truly "commercial" in nature, and regardless of whether there is any reliable evidence that contractors will improve quality or cost-effectiveness.

We also object to the arbitrary and highly aggressive quotas and timelines contained in the proposed revisions. Specifically, it appears that OMB states a philosophical commitment to real analysis of the "most efficient organization," whether public or private, but then undermines this commitment by insisting that large numbers of federal jobs be considered for outsourcing very quickly. The fact that there are incentives and mandates in the direction of more contracting, but no comparable incentives or directives to consider "insourcing," is very troubling. For that matter, so is the extremely abbreviated comment period for this sea change in federal contracting.

#### Specific Criticisms

The draft revisions contain a number of problems. Those listed below are just the most grievous.

1. The revisions turn the very concept of "government work" on its head, by adopting a presumption that all jobs performed by government employees are "commercial" in nature, rather than the common sense presumption that all, or at least most, jobs performed by the government are "inherently governmental" in nature. The revisions would place a burden of proof on federal officials and managers to show that certain work really should be retained by the government, but place no similar burden, indeed almost no burden at all, on contractors to demonstrate results.

2. The revisions impose a twelve-month time limit, which is completely unrealistic for such a complex endeavor, and create disincentives for agencies to perform thorough and well-researched cost comparison studies. Agencies are not being given increased funding, staffing, or training for newly mandated functions, and are given a de facto choice of whether to engage in cost comparisons and competitions, or simply convert tasks to the "commercial" and private sector category in one fell swoop. Even federal managers who might generally be loath to lose direct control over important functions may have a powerful incentive to simply let functions go, since they get the same "credit," it would seem, for direct conversion as for complex competition.

3. The revisions impose arbitrary quotas and annual reporting requirements, which presume that allowing federal employees to continue performing federal government work is inherently inappropriate, regardless of whether their work is actually better, more cost-effective, or subject to stricter cost controls and monitoring than private sector work. Among further problems with this approach is the fact that, at least in our reading of the revisions, there are no information-gathering requirements for contractors, nor even a way to keep track of a growing contractor workforce. Again, if OMB is truly committed to the best possible form of organization, it would seem necessary to track both federal and contractor workers, not track, and target, only public workers.

4. As noted above, the revisions make it easier for agencies to forgo or circumvent competition, and simply to directly convert jobs which have long been performed by federal employees to private-sector contractors. Furthermore, it appears that the

revisions give considerable standing to private firms to appeal and otherwise influence deliberations at all stages of the "perform or procure" decision-making process, while giving federal employees no such standing. In a similar vein, there seems to be no way for federal agencies to "take back" even poorly performed work. Once a job or function has been contracted out, it becomes less transparent, and less accountable.

5. Along these same lines, numerous steps in the process seem extremely loaded against public workers. For instance, if a federal manager fails to submit a bid on time, the default option seems to be converting the function to private status. It is not clear to us why this is the default, rather than maintaining the function in government, or at least extending deadlines if appropriate. At any rate, this default option is in sharp contrast to the treatment contractors receive; if no private bids are found responsive, contractors are extensively surveyed on why they did not bid, and the contract officer has to critique the specifications to see if they could be reworked and made more viable to contractors. This arrangement seems open to subjectivity and manipulation.

6. The revisions suggest that "best value" should replace lowest cost as the driving criteria for determining who should do the work of the federal government -- the private sector or federal agencies. Because this principle is potentially very subjective, we fear that "best value" will be a smokescreen for political decision-making, to meet the underlying goal of privatization at all costs. We are also concerned about the use of evaluation factors and subfactors which might not have to be disclosed clearly in advance of bidding, and which would therefore be very vulnerable to manipulation after bidding. Such manipulation could well be used against federal employees.

On the other hand, it should be noted that we support decision-making models which make use of quality considerations. By questioning the "best value" approach, we are not arguing that cost is all that matters. We are arguing that criteria should be articulated in advance, well-defined, and applied fairly across the board, but we do not believe the proposed revisions accomplish this.

#### Available Alternatives

Given the views outlined above, it should come as no surprise that we favor "public-public partnership," so to speak, as opposed to privatization.. By "public-public partnership," we mean the power and promise of labor-management cooperation. Ironically, at the same time federal agencies and many in the Administration tout the efficacy of private sector solutions, one genuine private sector innovation - "high-performance work organizations" which make use of employees' brainpower to jointly solve tough problems - seems to be under attack in the federal government. One of the Administration's first moves was to dismantle labor-management partnerships, and it seems intent on hollowing out the federal service with revisions such as this.

Studies have consistently shown that only when workers are truly empowered, can represent themselves (rather than having representatives handpicked by management), and can protect their own interests - particularly their jobs - does true employee involvement, and valuable innovation, occur. The crux of these studies is simple - that workers are assets to be developed, not costs to be cut. The current emphasis on outsourcing ignores this fact, and neglects the best way to improve agencies.

In the federal context, there is considerable lip service given to solving the "human capital crisis," i.e., attracting and retaining quality workers. However, the message sent to the federal workforce by proposed revisions such as this one is quite different, and very likely demoralizing.. It is difficult to solve a human capital crisis, but at the same time place jobs on the auction block.

#### Closing Comments

OMB's proposed A-76 revisions are dangerous and ill-advised for all the reasons outlined above. At the risk of oversimplifying, the reasons could be boiled down to saying that the proposed revisions seem stacked in favor of contractors, and target large numbers of federal jobs for outsourcing, while failing to provide a framework for fair analysis of how to perform federal work. Dedicated and experienced public servants deserve a fair

system, and a fair chance to show what they can do. In our view, the proposed A-76 revisions should not be put into effect.

Thank you for providing an opportunity for AFSCME to comment on this matter. We look forward to continued discussions of the complex issues raised by these proposed A-76 revisions.

Sincerely,

Kerry Korpi  
Director  
Department of Research and  
Collective Bargaining Services

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