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cc: See the distribution list at the bottom of this message
Subject: Comments on the Proposed Revision to OMB Circular A-76

I have attached the Social Security Administration's comments on the proposed revision to OMB Circular A-76. Thank you for the opportunity to provide comments.

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SOCIAL SECURITY

The Commissioner

December 19, 2002

Mr. Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Daniels:

The purpose of this letter is to provide the Social Security Administration's (SSA) comments on the November 19, 2002 Federal Register notice of proposed revision to the Office of Management and Budget (OMB) Circular A-76, Performance of Commercial Activities. Following are our major concerns with the proposed revision.

Under the current proposal, the revised circular will be effective upon publication for any study where the solicitation has not been issued. We believe the revision should provide the option of a grandfather clause allowing studies that have been formally announced to continue under the current circular process and procedures. As an agency learning the A-76 process, we have focused much effort on training our study teams and educating employees on the current procedures. It is important to ensure that employees conducting the studies adequately understand the changes and can successfully implement them. The proposed revision to the circular is comprehensive and procedural changes after study announcement may cause confusion, delay and possibly add unnecessary costs to the process.

The proposed timeframe of 12 months for completing a standard competition may be too restrictive. Like SSA, many agencies are learning how to perform A-76 studies and need flexibility in the timeframes to ensure that competitions are conducted with integrity and the necessary rigorous analysis to make the most efficient and effective decision. On average in SSA, traditional acquisitions utilizing full and open competition require between 6 to 8 months from completion of the final performance work statement (PWS) until contract award. This would reduce the time to prepare a PWS to between 4 to 6 months. Given the criticality of a good PWS as the basis for all subsequent acquisition activities, 4 to 6 months is insufficient time. Mandating a 12-month timeframe from study announcement to cost comparison decision is unreasonable and will not provide agencies with the flexibility needed to make acquisition decisions in the best interest of both the Government and the American taxpayer. The timeframe should be determined by the agency based on the type, complexity and historical norms of a specific acquisition rather than a mandated arbitrary timeframe.

At various points in the standard competition process, the proposed revision mandates OMB approval for deviations or extensions in the process. This change will be administratively burdensome, may delay the process and could impede the ability of agency officials to manage their organizations. We recommend changes to the language that allow agency managers more authority in managing the process with appropriate notification to OMB at key points in the project's schedule.

The requirements to compete commercial inter-service support agreements (ISSA) within 5 years and to re-compete them every 3 to 5 years should be reconsidered. A significant number of agency resources are currently devoted to addressing the competitive sourcing goals as part of the President's Management Agenda. The proposed revision would significantly increase project management, procurement and related workloads that will require redirection of limited Agency resources from our critical mission workloads and current competitive sourcing activities.

Attached is a complete list of SSA's technical comments. These comments have also been emailed per requirements in the Federal Register notice.

If additional information is needed on these comments, please have your staff contact Dale Sopper, Acting Deputy Commissioner for Finance, Assessment and Management, at 410-965-2910.

Sincerely,

/s/

Jo Anne B. Barnhart

Enclosure

**Technical Comments
on the Proposed Revision to Circular A-76**

OMB Circular A-76

Paragraph 4.e. The Circular requires that the 4.e official be an assistant secretary or equivalent official. It permits the 4.e. official to delegate some responsibilities to comparable level officials. In many smaller agencies, there will be no one at a comparable level to an assistant secretary. This places considerable responsibility on the 4.e official. We recommend building in some flexibility in the language for the 4.e. official.

Paragraph 4.f. We do not believe oversight can be centralized in one or more offices. We recommend the sentence be rewritten to state, “Agencies shall centralize oversight responsibility.”

Attachment A: Inventory Process

Page A-3. The definition of reason code B should be changed to exclude “within specified timeframe”.

The proposed revision eliminates OFPP Policy Letter 92-1, Inherently Governmental Functions. Appendix A of the policy letter is helpful in the identification of inherently governmental activities. We recommend that Appendix A of OFPP Policy Letter 92-1 be incorporated in the revised circular.

Attachment B: Public-Private Competition

The timelines for completing certain study milestones (8 months from study announcement to issue of Performance Work Statement (PWS) and 4 months from solicitation issue to initial decision) are too aggressive, especially for civilian agencies inexperienced with the current process. We recommend using timeframes in the current circular.

No mention is made of a Transition Plan in this attachment. However, a definition for a Transition Plan, and presumably the requirement for one, is provided in Attachment F, Acronyms and Definitions.

No mention is made of a Technical Performance Plan (TPP). Will the Agency Tender’s response to Section L of the solicitation satisfy the requirement for a TPP?

Paragraph A.1.a. The requirement to notify the Deputy Director of Management (DDM) of OMB restricts the ability of an agency to adequately plan and schedule the appropriate timelines for individual acquisitions. This is administratively burdensome and will slow the competitive

process. Furthermore, is notification in fact only notification and not approval/concurrence? We assume the last sentence in this paragraph deals with a procedural deviation which would not mean a change in the overall timeframes.

Paragraph A.2.b.(4). A recompetition is required if government-performed work is expanded by 30 percent or more, but not if segregable contractor work is expanded. If this is correct, it seems unfair to the in-house workforce. Also, expansions should not be restricted to standard competitions. In some cases it would be more cost effective to perform a direct conversion, e.g., 10 or fewer FTE's.

Paragraph B.1. The Agency Tender Official (ATO) position is proposed to provide legal standing to file a protest before the GAO, which could lead to some agencies having a single General Counsel's office arguing both sides of the issue. This appears to be a conflict of interest. There should be specific guidance given on this issue.

Paragraph B. 2. This paragraph requires the Contracting Officer (CO) to designate the PWS team. In most cases the CO does not know the functional experts to be placed on the team. Appointing a PWS team is a management responsibility. We recommend that the responsible management head name the team.

Paragraph B.3.a.(c). This requires the Human Resource Advisor (HRA) to notify incumbent service providers of the start of a competition. This is a management responsibility and the responsible management head, or his designee, should make this announcement.

Paragraph B.3.a.(d). This requires the HRA to post a public announcement of a study in FEDBIZOPPS. This is a CO responsibility. In addition, the requirement to name in FEDBIZOPPS the agency officials responsible for the completion of the study should be removed. The CO is the interface with all offerors. If other officials are named in the announcement, they could be swamped with inquiries from private industry, and there will be no controls to ensure that proper and consistent information is being communicated to private industry.

Paragraph B.3.a.(g). This indicates that the HRA will determine agency "priority considerations" for vacant positions. This section should specify that this list is for **reassignment** to vacant positions. It could be misinterpreted as priority consideration for **promotion** due to a competitive sourcing activity. We recommend clarifying the language to make it clear that the section in question refers to "priority considerations for reassignments."

Paragraph B.4. Throughout the document it is not clear if the Source Selection Authority (SSA) and the CO may be the same person or must be different individuals. Please clarify this in the definition of the SSA.

Paragraph C. Generally, references are made to sections of the Uniform Contract Format. Does this imply that procedures under FAR Part 12 for the Acquisition of Commercial Items (which includes services) are not to be followed for acquisitions under this Circular?

Paragraph C.1.b.(1). This paragraph implies that the 4.e. official will be evaluating the performance of the named competition officials. We question the ability of the 4.e. official to be responsible for the performance appraisals of the other competition officials. Many individuals have other job responsibilities and report to other functional area managers. We recommend the modification of the performance plan of anyone involved in A-76 activities to include aspects of their A-76 responsibilities. In addition, timeliness of the competition itself would not be an appropriate performance factor; rather, timeliness of the individual's responsibilities should be evaluated. The competition official's immediate supervisor should be responsible for determining the success or failure of these performance factors.

Paragraph C.1.b.(2). A substantial change in business or functional requirements should be included as a reason to cancel a standard competition. Also, this reason should be added to "cancellation of a standard competition" in Attachment F, Glossary of Acronyms and Definition of Terms.

Paragraph C.1.b.(3). Timeframes for completing a standard competition are too tight and should be based on the type and complexity of the acquisition rather than a mandated arbitrary timeframe. Also, an agency should not have to obtain approval from DDM, OMB for extension. From a practical standpoint, the timing of the extension may be such that it would be impractical or impossible to accomplish. For example, within the last few days of the proposal due date, vendors ask questions or seek additional time. It is considered appropriate to modify or extend the closing date of the solicitation. The timeframe requirement should be removed altogether and replaced by OMB oversight through progress reporting.

Paragraph C.1.b.(5). As mentioned earlier, we do not believe that oversight can be centralized in one or more offices. We recommend the sentence be rewritten to state, "Agencies shall centralize oversight responsibility to facilitate..." Also, this paragraph acknowledges that agencies will learn a consistent competition process based on lessons learned. Given that agencies have to overcome a learning curve for the first competitions attempted, why not modify timeframes stated elsewhere to reflect this fact?

Paragraph C.2.a.(2). The requirement to notify DDM, OMB should be eliminated and OMB maintain oversight via progress reporting if necessary.

Paragraph C.2.a.(4). Citations in this paragraph to B.4.a.(2), B.4.b.(b).1 and B.4.b.(b).2 are incorrect and do not exist in the text of the proposed Circular.

Paragraph C.2.a.(7). We recommend eliminating the requirement that the 4.e. official must approve the inclusion of Government Furnished Equipment (GFE) in a solicitation. GFE is common in many contracts and saves the government money. Also, GFE is a "wash" cost in a cost competition as it applies equally to private vendors and the Most Efficient Organization (MEO).

Paragraph C.2.a.(12). This paragraph states that the costs associated with security clearance requirements are not to be included on the Standard Competition Form (SCF). Does this mean

that the government cannot charge contractors at all for this function or these costs are not included in the SCF?

Paragraph c.2.a.(13). The following items should be listed as not applicable: bonds, insurance, and service contract act and Davis Bacon wage determinations. Also, the references to C.6.b.(2) and C.6.d.(2) do not exist.

Paragraph C.2.a.(15). The agency has to 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. We assume that these individuals can be agency employees but outside the particular activity/function and the MEO employees performing these services. It could be stated more clearly so that an agency does not have to go outside itself for this capability if it exists within another organization within the agency. There is a potential problem if the function is so unique that there is no capability outside the MEO organization itself to assess MEO performance.

Paragraph C.3.a.(3). This paragraph says that the ATO may change the Tender after negotiations with the SSA. Negotiations are the CO's responsibility (FAR 15.306). The same comment applies to C.4.(a).(3).(a).

Paragraph C.3.a.(4). The agency tender offer should not be limited to **existing** contracts. Innovations will require new approaches including, for example, facilities, equipment, software and support services. The tender offer should be able to incorporate a mix of contractor services based on sound market research in its proposal. This will be especially true in information technology.

- OMB staff has indicated that licensing or certification requirements will apply to the government after the initial agency implementation of an MEO when the next competition occurs. It seems inappropriate, impractical, and in some cases impossible to apply licensing and certifications requirements to government employees. Notwithstanding these assertions, there is no place in the circular where it indicates that these will be required now or in the future for the government offer.
- In addition, the issue of past performance came up and OMB staff indicated that since past performance cannot be applied to the government initially that it will not be applied to contractors as well. This is in direct conflict with the FAR and furthermore is not in the circular as currently written. The circular indicates that past performance should be evaluated in subsequent solicitations where a government MEO has been implemented. We recommend that the government receive the benefit of incumbency and be considered as good as the best offeror in the competitions until an MEO with a record of accomplishment is established. This would appear unfair to vendors but would be no different from that which has occurred to date under the current A-76 circular. Furthermore, this would be only until the government establishes its past performance record. It is not in the government's best interest to discard consideration of a vendor's past performance. This is essential in arriving at a best value selection of a contractor.

Paragraph C.3.a.(7). The Phase-In Plan seems to be a repeat of paragraph C.2.a.(6). We recommend combining the two and placing in one area.

Paragraph C.3.a.(8). Submission of Agency Tender is a partial repeat of paragraph C.3.a.(2). Consider combining this guidance in only one area.

Paragraph C.3.a.(9). Why is it necessary for the agency to return offers and tenders at added expense to the government and vendors? Instead, the offers should be retained unopened and vendors allowed to make revisions and modifications as necessary and submit by revised due date. Vendors could request return of their submission at their own expense.

Paragraph C.3.c. It states, “Public reimbursable tenders respond to the solicitation in accordance with Attachment C and prepare tenders in accordance with paragraph C.3.a.” This statement is confusing as Attachment C refers to Direct Conversion. Is the intent of the statement to require public reimbursable tenders to prepare a proposal in the same manner as the Agency Tender?

Paragraph C.3.d. This section is confusing because it talks about non-responsive and non-responsible offers from private vendors and reimbursable tenders. It is impossible for a public reimbursable to be non-responsible. These issues should be broken into two subparagraphs and discussed separately.

Paragraph C.3.d.(1). The numbering system in this section is confusing. It mixes numbers and letters.

Paragraph C.3.d.(2).(a). This states, “Before revising or reissuing the solicitation, the CO shall return the sealed Agency Tender to the ATO.” C.4.a.(1).(a) states, “The SSA shall evaluate all offers concurrently.” These two statements would be in conflict if this is a revision after a determination of non-responsiveness by the private sector offers. Also the word “the” at the end of the first line should be omitted.

Paragraph C.3.d.(2).(b). This paragraph states that the SSA shall provide a debriefing in accordance with FAR 15.503. The debriefing requirements should be consistent with the FAR process, which is that debriefings will be provided upon written request. “Shall” makes the requirement otherwise imperative. Also, the referenced citation of C.5.b.(1)(a) and (b) does not exist.

Paragraph C.4.a.(1).(b). Cost/Price Realism should be a joint effort between the SSA and the CO. If the CO is responsible for awarding a contract to the private offeror determined to be the most cost effective, he/she should be involved in this process.

Paragraph C.4.a.(2). The references to paragraph C.4.b do not exist. It appears that C.4.a.(2).(c) is misnumbered and may be the actual reference.

Paragraph C.4.a.(3).(a). This reads as if exchanges are directly between the ATO and the SSA and do not involve the CO. We recommend the paragraph be rewritten so that all communications between the SSA and all offerors, public and private, go through the CO.

Paragraph C.4.a.(3).(a).2. This paragraph is confusing and should to be rewritten to be more understandable.

Paragraph C.4.a.(3).(b). This section on Lowest Price Technically Acceptable (LPTA) indicates that the SSA shall allow all tenders and offers determined to be technically acceptable to submit their final proposal revisions. This section should be revised to be consistent with the FAR requirements for establishing a competitive range (CR). Establishment of a CR takes into account both technical and cost/price considerations. Also, if stated in the solicitation, a CO can limit the CR for purposes of efficiency to the greatest number that will permit an efficient competition among the most highly rated proposals (FAR 15.306(c) (2)). Also, the referenced paragraph, C.4.b, does not exist.

- Sentence 3, requiring request for revised proposal of all offerors determined to be technically acceptable (if discussions are required), seems to go against current FAR language. For instance, the FAR currently states that only those having a reasonable chance for award should be kept in competitive range, and cost shall be considered during the selection process. It would be overwhelming and futile to request revised proposals from offerors who have extremely high prices. This would cause offerors that do not have a chance to win to expend further resources in order to submit a revised proposal.

Paragraph C.4.a.(3).(c). This paragraph states that a Cost Technical Trade-Off (CTTO) source selection cannot be used to justify increases in the government’s budgetary limitations and may include a not-to-exceed amount. Imposing a ceiling affects the ability to determine the most efficient method of performance.

Paragraph C.4.a.(3).(c).1. An Integrated Evaluation Process should not be limited to only IT acquisitions. It is in the government’s best interest to use best value acquisitions where applicable. Further, this proposal places an administrative burden to request approval from OMB to use this process on any other type of acquisition.

- The Integrated Evaluation Process again says the SSA negotiates. This is a CO responsibility as per FAR 15.306. Also, it states that the SSA may determine the Performance Decision on either low cost or other than low cost. This must be specified in the solicitation. The basis for selecting the low cost offer in a best value decision must be documented.

Paragraph C.4.a.(3).(c).1.b. The reference in this paragraph to C.4.a.(3) is for the same general paragraph that the reference appears in. It should be more specific.

Paragraph C.4.a.(3).(c).2.a. This paragraph states, “In consultation with the requiring organization, the SSA shall determine whether any of the proposed performance standards are necessary and within the agency’s current budget limitations.” How does one determine if the

standards are within the agency's current budget when all one has is a discrete cost or price difference for specific performance standards?

- Why would there not have to be a written rationale on why better technical solutions were not worth the higher cost in a low cost decision? The basis for selecting the low cost offer in a best value decision must be documented.
- This appears to be a repeat of the current Circular by mixing two concepts, i.e., greatest value and low cost. This appears to be a very unwieldy process in which avoiding “technical leveling” will be difficult.

Paragraph C.4.a.(3).(c).2.b. Phase Two. The government should get price proposals from those offerors considered to be technically acceptable in Phase One. Thereafter, the agency should establish a competitive range in accordance with the FAR to consider whether any further consideration should be given to offers and tenders for purposes of conducting negotiations.

- This paragraph indicates that when all cost proposals and cost estimates have been received, the SSA shall perform price/cost realism in accordance with paragraph C.4.a.(1). Then the lowest contract price or public reimbursable cost will be entered on Line 8 of the SCF. There is no acknowledgement that cost/price negotiations may be needed after receipt of price proposals. Since there are no price/cost proposals in Phase One, any cost related issues need to be addressed in Phase Two which certainly could include the need for negotiation.
- There appears to be an ambiguity between Phase One and Phase Two. If the solicitation is amended in Phase One, the SSA shall request the ATO to meet the revised solicitation and revised performance standards prior to proceeding to Phase Two. Why then insert the statement in Phase Two, “If the solicitation is amended as a result of Phase One, the SSA shall request the ATO who bid the requirements of the solicitation to submit an update to the Agency Tender to meet the revised requirements? Also, Phase One allows other offerors the opportunity to submit a revised proposal. However, Phase Two does not have this language.

Paragraph C.4.a.(3).(c).2.c. This paragraph states the CO shall provide the SCF and the Agency Tender to interested parties to start the appeal process. In a later section, a statement is made that private sector proposals are not subject to appeal. This process is unfair and not consistent with the FAR in that it treats the interested parties differently.

- This section requires that the SSA shall provide a debriefing to private sector offerors, public reimbursable tenders, the ATO and directly affected agency civilian employees (and their representatives). This should be changed to be consistent with the FAR and should be only if upon written request. We know this was stated previously, however, we feel that it should also be noted in this section for consistency.

Paragraph C.5. What/who is the “Head of the requiring organization”?

Paragraph C.5.a.(1). This mentions that the “Administrative Appeal Process provides directly interested parties an opportunity to have an independent agency official review the Performance

Decision.” Since the definition in Attachment F distinguishes between “directly interested parties” and “other interested parties,” are other interested parties excluded from this review?

Paragraph C.5.a.(1) Why are private sector proposals not subject to appeal? This process is unfair and not consistent with the FAR in that it treats the interested parties differently. Additionally, while the section first states that such proposals “shall not be subject to appeal,” it goes on to state that “questions regarding a private sector offeror’s compliance with the scope and technical performance requirements of the solicitation may be **appealed** (emphasis added).” Does this not constitute an appeal (or at least partial appeal rights)? The last sentence of this paragraph has an extra “a”.

Paragraph C.5.a.(2). Change 4.a. official to read 4.e. official.

Paragraph C.5.b.(2). This section states, “For future Standard Competitions, the CO shall include agency past performance criteria in the solicitation requirement”. OMB has directed agencies to use electronic means for collection of past performance. Under NIH system, the “contractor” must have a DUNS and Taxpayer Identification Number (TIN). This will require the ATO to obtain a DUNS and TIN for that “agency tender”. Is this possible? Since FAR 42.15 addresses Contractor Performance Information, the policy at 42.1502 is not applicable to the MEO or ISSA. Are MEOs and ISSAs being considered for inclusion in this policy?

Paragraph C.5.b.(2) The word “an” in (d) should be removed.

Paragraph C.5.c.(2). This section directs the CO to comply with FAR Part 49 when terminating a private sector provider. FAR 12.403 states “the requirements of Part 49 do not apply when terminating contractors for commercial items and contracting officers shall follow the procedures in this section.” Does this imply that commercial contracting procedures at FAR 12 are not to be used for A-76 acquisitions?

Paragraph C.5.c.(3). The section indicates that if a service provider is terminated, agencies shall not use agency personnel as a temporary remedy unless approved by the 4.e. official. Why does this requirement exist? If the actual MEO fails, why can’t the organization use other organization personnel in order to get by on a temporary basis? An agency must still accomplish its mission when a service provider fails.

Paragraph C.6.a.(1). Costs, or how costs were determined and calculated, should be added as an item subject to administrative appeal. For example, both parties to a cost competition should be able to appeal non-current labor rates used in the cost calculations.

Paragraph C.6.a.(4).(d) and (e). The timelines in these paragraphs are contradictory. In subparagraph (d) the Administrative Appeal Authority (AAA) has 30 workdays (or 45 workdays for a complex competition) to render a decision. In subparagraph (e) the AAA may suspend implementation of a Performance Decision for 30 days or less. Also, these timelines do not take into consideration the 10 workdays allowed to file an appeal (paragraph C.6.a.(2)). Also, what happens if the AAA’s decision is late (i.e., longer than 45 working days)?

Paragraph C.6.a.(6). An exception to implementing the results of the AAA's decision should be allowed if the Agency Tender Official (ATO) intends to file a protest with GAO. Otherwise, a commercial vendor can win the AAA decision, have his offer implemented and the in-house workforce disbanded. As a result, the ATO would not be able to reconstitute the MEO if he won a GAO protest.

Paragraph D.1. This section allows the HRA to determine who is qualified for the job openings. This will be difficult to impossible to enforce and ensure compliance without some change in the FAR clause. Furthermore, it will be difficult to get into an organizational structure of a company and be able to ascertain and ensure they are not hiring or otherwise transferring employees within their organization. The larger the company the more difficult it will be. Also, the government will bear some responsibility if the employees fail to perform adequately as the contractor can place blame on the government for deeming the employees qualified. The FAR reference is incorrect and should read 52.207-3.

Paragraph D.2.a.(1) Last sentence: "Members of the MEO Team shall not be members of the SSEB." This sentence should appear under D.2.b.(1) as it pertains to the MEO Team and not the PWS Team.

Paragraph D.2.c - This says the SSA appoints the SEB (should be SSEB). Attachment F says the CO appoints the SSEB. Also, the reference C.3.a is incorrect and should read C.4.a.

Paragraph D.3. The citation within the paragraph to D.3 refers to itself.

Attachment C: Direct Conversion Process.

Paragraph C. The manner in which a competition waiver is described implies that such a waiver is needed in all cases for a direct conversion, even those of fewer than 10 employees. This probably is not the intent. The description of when a competition waiver is to be used should be clarified.

Paragraph D. Business Case Analysis. This is the new name for Streamlined Cost Comparison. Recommend that the old name be retained and the discussion for it be moved to Attachment B, Public-Private Competition, or a separate attachment be created. There is still an element of competition involved in these studies. In addition, the streamlined (business case analysis) procedures seem to lack detail. Some of the elements that should be addressed are:

- What are the announcement requirements?
- What is the appeals process for streamlined/business case analysis?
- What is the guidance if the results of the streamlined/business case analysis call for conversion from agency performance to private sector or public reimbursable performance? Would we then follow the procedures for a Direct Conversion – full and open competition? This would seem to make the most sense to ensure adequate competition.
- What is the guidance if the results of the streamlined/business case analysis call for retention in-house? Will it require the same type of monitoring as a standard competition? Will options be exercised? When will another business case analysis be required?

- The current proposed language seems to imply the possibility of negotiating with the vendor/public agency that was identified as having the lowest price during the streamlined cost comparison. If so, would we be required to complete a justification for other than full and open competition?
- This stipulates that a Business Case Analysis can only be performed if four comparable, existing, fixed price contracts are identified. Why can't labor hour contracts be used for this comparison? Do GSA's Federal Supply Schedule contracts qualify?
- What would be the timeframes for completion? Would the clock start over?
- Is the business case-analysis conducted in 15 days and then the market research and cost comparison are completed outside of the 15-day time frame, or is all the activity regarding a streamlined competition completed in 15 days? It would be impossible to conduct everything in 15 days. What is the impact if it is not conducted in 15 days?

Paragraph D.2. For a Business Case Analysis, the ATO is to submit to the contracting officer a description of the workload and an agency tender offer. This should be clarified to read that the ATO shall submit to the contracting officer a description of the workload that includes current staffing information and a tender offer.

Paragraph D.2.a. The first and second sentences are inconsistent. The first sentence states "(2) develop an Agency Tender in accordance with Attachment B" and the second sentence states "The ATO shall not develop an MEO." It would be clearer if these sentences were consolidated and stated that the ATO should provide an agency cost estimate only based upon the current organization, costs, performance and structure.

Paragraph D.2.b.(3). We recommend that the contracting officer should select the agency tender if it falls below an average of the selected comparable contracts. The average should be used because these are not actual contract bids but the contracting officer's analysis of what a contract bid might be.

Paragraph D.2.b. There is no discussion of an Administrative Appeal Process under a Business Case Analysis.

Paragraph E.2.b. An incumbent contractor is to be notified when contracted work is to be directly converted to the Agency. Can this decision be appealed or protested by the incumbent contractor? Experience has shown a propensity for contractors to resort to litigation in order to prolong revenue flow.

Paragraph E.2.b.(2). The citation should be corrected to refer to C.5.1.(4).

Paragraph E.2.c. The citation should be corrected to refer to C.5.b.

Attachment D: Commercial Interservice Support Agreements (ISSA).

Paragraph B. There is an inconsistency between B.1 and B.3. The former says to recompete within 5 years; the latter says to not renew current agreements prior to compliance with the

competition requirements. If we have 5 years to meet the requirement, why couldn't we renew annual or biennial agreements?

We suggest that the timeline for competing ISSAs be moved to a later implementation date. Civilian agency resources are overwhelmed at this point simply dealing with the current competitive sourcing goals regarding in-house commercial activities.

Attachment E: Calculating Public-Private Competition Costs.

Paragraph A.3. There appears to be an inconsistency in the first and second sentences. The first sentence states, "Costs that are the same for agency, private sector or public reimbursable sources are **not** calculated in the Standard Competition." The second sentence states, "Common costs (wash costs) **shall be** identified in the solicitation and **Agency Tender.**" Why must these costs be identified in the Agency Tender?

Paragraph A.4. We recommend the minimum cost differential be applied if the incumbent is a public reimbursable source. The impact on Federal employees is the same as when this differential is applied to the in-house MEO except that the employees belong to a different agency.

Paragraph A.8. This section discusses "retained pay". A definition of "retained pay" would be helpful.

Paragraph A.10. This paragraph has two statements about the SSA responsibilities and certification on the SCF. These should be consolidated into one statement. There is no mention of the CO's signature or the AAA's signature. However, the SCF has a signature block for both. What purpose do the signatures have since there is no certification or reason why these two individuals are signing this form?

Paragraph B.1.b. This paragraph encompasses general and administrative overhead (G&A) costs such as human resources, comptroller, general counsel, environmental, and OSHA. In many cases these are fixed costs. In other cases these costs are a wash. Environmental and safety monitoring will be performed regardless of who wins the cost comparison, MEO or contractor. Recommend that these costs be included in the cost computation only if the agency will reduce these costs in line with the MEO or a contractor win.

Paragraph C.5.c. The proposed Circular allows 1 percent for Relocation, Retraining and Other Costs. We recommend OMB allow, or provide a waiver, to the 1 percent rule if an agency can clearly demonstrate costs above this amount.

Attachment F: Glossary of Acronyms and Definition of Terms

Paragraph A.

- The word "Acronyms" is misspelled.

- CLIN is defined as “Contract Line Item”. This should read “Contract Line Item Number”.

Paragraph B.

- *Cancellation.* It is confusing as to why solicitation cancellation is mentioned here. It may be helpful to mention “cancellation” as defined herein should not be confused with the cancellation of a solicitation.
- *Competition Officials.* This definition is somewhat ambiguous. Many of the positions listed are in support of a cost competition but **not** responsible for its execution.
- *Contracting Officer.* There are concerns that it is the responsibility of the CO to select the Source Selection Evaluation Board and source selection methodology. Would this not be the responsibility of the Source Selection Authority?
- *Directly Affected Civilian Employees or Military Personnel.* Does this imply that if any portion of that individual’s job is included in the competition that he/she is considered to be directly affected? What if only 10 percent of the job is included?
- *Interested Parties.* The Agency Tender Official (ATO) that “submitted” the Agency Tender is presented as the definition of a Directly Interested party. Should this not read “submits” the Agency Tender to permit the ATO to file a protest before award (i.e., protest specifications or evaluation methodology prior to receipt of proposals/opening of bids)? Is this worded to preclude the ATO from filing a protest on grounds other than the basis for award selection?
- *Negotiated Acquisition.* This states that the SSA performs negotiations. Shouldn’t the CO perform this task? Or is the CO negotiating on behalf of the SSA?
- *Transition Plan.* This is defined here but nowhere else in the Circular. In Attachment B, paragraph C.2.a.(6), there is discussion of Phase-In and Phase-Out Plans. If these Plans replace the Transition Plan, then this definition should be eliminated. If it is a different requirement, it was never addressed in Attachment B.
- Add definitions for the following items:
 - Head of Requiring Activity
 - Inventory Challenge Review Authority
 - Inventory Challenge Appeal Authority
 - Source Selection Authority