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To: David C. Childs A-76comments/OMB/EOP@EOP  
cc:  
Subject: Comments on proposed rule

Please accept my comments, attached. My major concerns are (1) the assumption that all government activities are commercial unless proven otherwise. I believe this is a very dangerous precedent. (2)The impact of the 12-month limitation on both the MEO and small business offerors. (3)The lack of an independent authority to assure fairness in the competitive process. Detailed comments on these issues and others are contained in the attachment.

- JG Comments to Revised A-76.doc

PAGE #	PARAGRAPH #	COMPONENT RECOMMENDED REVISION	RATIONALE FOR REVISION
1 A-2	4.b D.1	All activities should be presumed to be inherently governmental until determined otherwise.	Statement in the draft creates a potentially dangerous precedent. For reasons of security, force readiness, stewardship, and customer service, managers should be required to justify or otherwise document the commercial nature of activities. Although the statement in the draft is made to encourage maximum commercialization, the nature of government is governance, and the process should be one of determining which activities are other than governance. To do otherwise, through either neglect or intent, would be a potential to hand the governance reins to commercial interests. Although we need to assure that commercial activities are subject to competition, and are undertaken by those best equipped to do so, the Government's approach needs to be conservative in doing this.
A-1	2 <sup>nd</sup> bullet	See comment above.	See comment above. Also, the bullet presents a bias in the document, and seems to create a sense of less than full objectivity. The inventory needs to be conducted in an objective manner.
A-1	A.1 B.1	Inventory should be on other than an annual basis.	Question the need for annual inventories. The inventory process is time consuming and labor intensive. The need to complete an inventory each year is not clear, and not without cost.
A-1	C.1.a	Inventory should also encompass any government work currently performed by the private sector.	Statement in the draft assumes that commercial work will always remain commercial. This is not necessarily correct. There are many examples in the media of work performed by the private sector that should have been the responsibility of public employees.

A-3 to A-4	E.	Definition of inherently governmental is too restrictive.	A number of essential, government activities appear to fall outside the definition. For example, internal auditing would not be considered inherently governmental. The question is, will there be activities that fall outside of the definition that should not.	
B-5	C.1.b(3)	Reconsider 12 month limitation	A 12 month limitation will add considerable expense to preparing MEO proposals. In particular, there is inadequate time between the solicitation issue date and the tentative decision. The Government does not have the professional staff and infrastructure that most private sector companies have to devote to developing proposals. Although many (but not all) private sector offerors could meet the abbreviated bid period, it is impossible for MEOs, as well as small businesses, to do so without much additional expense. This requirement alone will eliminate many MEOs and small businesses from the competition, which in turn will undermine the competitive process laid out in this document.	
B-5	C.1.b(6)	Change to "...shall identify verified savings."	For effective use in budget matters, all savings should be verified by audit or similar means.	
B-7	C.1.b(12)	Reconsider non-inclusion of costs associated with security clearances on the SCF.	If security clearance costs results in increased costs from a taxpayer perspective, it is proper to include such costs on the SCF unless such costs are "wash costs." Not to include such costs on the SCF would underestimate the costs to the taxpayer that should be used for any subsequent comparisons.	
B-7	C.1.b(13)	Reconsider exclusion of past performance history of the MEO.	For a level playing field competition, past performance is an important factor to consider for all offerors. If private offerors can be penalized for poor prior performance, it would not be fair for the MEO to be able to avoid the same consideration.	
B-8	C.3.a(1)	After the performance decision, the procurement sensitivity of Agency Tenders should be identical to that of private sector offers as specified in the FAR.	Because the intent of this proposed circular is to create a more fair competition by bringing the MEO offer under the requirements of the FAR, the same procurement sensitivity requirements of the private sector offers should apply to the MEO. Again, the MEO should be treated as would any "contractual" offer.	
B-8 B-9	C.3.a(2) C.3.a(5)	Add criteria for ATO approval.	The revised circular should provide specific criteria on which the ATO will base an approval. In not specifying such criteria, the revised circular does not assure that the Agency Tender is submitted in accordance with the requirements (as specified in section C.3.a(2) of the revised circular).	
B-9 E-10	C.3.a(4) B.3.g(2)	Allow the MEO to consider new contracts.	Not allowing the MEO to include new contracts as part of its proposal in contrary to the principle in this revised circular to promote maximum competition in the interest of the	

			taxpayer. The objective should be better quality at low cost, irrespective of the source of the cost savings. Moreover, since private sector offerors are permitted to include new contacts, it creates an unfair playing field not to allow the MEO to do so.	
B-9	C.3.a(9)	Included criteria for the 4.e. official decision.	Inclusion of specific criteria will avoid arbitrary decisions that are later contestable.	
B-10	C.3.d(1)	Change "b" to "2", and renumber subsequent items accordingly	Correctness.	
B-10	C.3.d	Expand to apply the factors in the subsequent subparagraphs to those cases where only one bid is received, irrespective of the source.	The discussion in this and subsequent subparagraphs pertain to constraints or restrictions imposed leading to less than a full and open competition. In point of fact, such constraints and restrictions may apply to one or more offerors, whether private sector, public reimbursable, or MEO. The reasons that competitive offers were not received should be reviewed and evaluated irrespective of what sector may be impacted.	
B-10	C.3.d. C.3.d(2)	Change to "...implement the sole offer."	Consistent with issue above. Any sole offer should be considered for implementation after the determinations required in C.3.d.	
B-11	C.4.b(1) C.4.a(3)(c)2b	Include minimum requirements for the Cost Realism analysis.	To assure fair and equal competitions, include criteria for the Cost Realism analysis. What organizations may or may not conduct the analysis, what are the qualifications of those conducting the analysis, what should be the level of independence of the reviews, etc.? Not to place quality sand management controls on the Cost Realism analysis will result in substantial appeals and protests.	
B-11	C.4.b(1)	Change "lines 7-18" to all lines.	If, as proposed in the revised circular, the SSA conducts the cost realism analysis, such verification activities should make the SSA accountable for information as included on all lines of the SCF.	
B-11	C.4.b(1) C.4.b(3)	Add assurance that the cost realism review is comparable to that as required by the FAR.	Fair competition issue.	
B-17	C.6.a(2) C.6.a(4)(b)	Reconsider availability of Agency and Public Tenders	If all offerors, government and private, are to be treated alike, then they should be subject to the same rules pertaining to the release of documentation. If all or portions of the private submittal are presumed to be proprietary, then the MEO documentation should also be considered proprietary.	
B-17	C.6.a(3)	The appeal period is insufficient	Without the independent review and other appropriate reviews, it is expected that future appeals will be far greater than that experienced prior to the revised A-76.	
E-4	B.1.b(1), line 4	Change "ertime" to "overtime"	Corrects error.	
E-4	B.1.b(2)	Many of the examples cited are duties that would be performed irrespective if the competed work is performed by the private sector or MEO. The paragraph on indirect labor needs to be clarified so that it is clear not to include any indirect personnel	Accuracy and fairness. Many of these costs would already be included in the overhead costs entered on line 4.	

		"wash costs."		
E-4	B.1.b(3)	Delete the reference to "step 5" in this section. The "step 5" requirement is not introduced until later in the document.	Understandability. To introduce the "step 5" reference here is confusing. It can be deleted from this paragraph without any loss in meaning or definition.	
E-11	B.3.h(2)	If a monetary incentive is potentially available to all offerors, private sector as well as the MEO, it becomes a "wash cost." It should be deleted as a required MEO entry on the SCF. Similarly, it should be deleted as a requirement of private sector offerors on line 7. Although mathematically correct to include this incentive cost on both lines, it becomes a non-factor in the cost comparison, and thus can be deleted.	Efficiency.	
E-12	All	Renumber paragraphs. Currently there is no C.2	Clarity.	
E-12 E-13 E-14	C.1 C.3 C.4 C.5	State which official is to compute and enter these lines into the SCF. It should be preferably the CO. It should not be the ATO, who is the Agency's proponent of the MEO. Similarly, the MEO should not be allowed to compute these costs. Currently, the cited paragraphs inconsistently disperse the responsibilities to the SSA and the ATO.	Clarity and Objectivity	
E-13	C.3 Table	Table refers to win.COMPARE. Delete unless win.COMPARE is mandatory	Clarity	
E-15 E-16	D.2.a E.	The SCF should be revised to include a line after line 14 for the conversion differential as cited in this paragraph. To go back and readjust line 6 is confusing, and should not take place once the ATO has certified the MEO	Clarity and Objectivity	