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12/19/2002 11:26:21 AM

Record Type:Record

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Subject: Comments on Proposed Circular A.76 (Revised) dated 11/14/02

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**COMMENTS ON PROPOSED  
CIRCULAR A-76 (REVISED)  
DATED NOVEMBER 14,2002**

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The draft proposed by OFPP goes far to improve and simplify the process of competing work between public employees and private companies. It reflects careful thought and consideration of the various competing priorities and interests. The speed with which it was produced is nothing short of astounding and can only be the result of tremendous concentrated effort. Nonetheless, significant problems exist in the draft policy.

The most fundamental is its failure to recognize that it has transformed the old A-76 process, which is a process for competing for work currently being performed by government employees, into a human capital policy. By presuming that a government employee performs a commercial function until determined otherwise and by then mandating that each commercial employee's position be considered for competition, the government fundamentally changes the relationship between it and all its "commercial services" employees. This is quite unprecedented. While many organizations over the last decade have shed some "non-core" functions, none to my knowledge have told all employees (except those designated in writing as so intimately related to the organization's own interests as to mandate performance by employees), that their jobs will be at risk every three to five years. See Attachment A, para. D and E. As elaborated in the proposal, only senior management is entitled to the status of a normal employee. By "normal employee" I mean one who is hired to become an integral part of a team with the expectation that as the organization flourishes, there will be job security. Instead what the proposal would do is change all commercial employees to something akin to consultants or contract employees. These people will perform services for the agency but not be part of it. This will have a fundamental effect on how such employees view their role at the agency. It will also make public service much less attractive to potential employees worsening the human capital crisis facing the government.

While the proposal tracks many of the procedural recommendations of the Commercial Activities Panel, it would largely divest agencies of their ability to make strategic human capital decisions. The CAP Report's fundamental premise, unanimously agreed to, was that sourcing decisions had to be integrated into work force planning decisions. Report Recommendations 1, 2, 3, 4 and 6; pages 46-47. Sourcing under the proposal will dominate all commercial work force planning since the agency must either periodically compete or a 4.e official must periodically justify not competing each commercial position. It is difficult to understand how this can be applied without denigrating and demoralizing the government's commercial employees.

This seems to be an unintended consequence of the proposal but nonetheless overlooks the fact, as the CAP Board stated, that "Sourcing Policy is inextricably linked to human

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\* These comments reflect my personal views, not those of my employer or past or current clients.

resources and human capital policy.” The implications of this policy, which the proposal emphatically embraces, is profound. The employer-employee relation is, and should be, fundamentally different from the relation between an agency and its service contractors. Contractors manage their own employees to achieve the goals set forth in the contract. An agency manages its employees to meet agency needs. Only when the contract accurately and completely reflects changing agency objectives can one reasonably expect contractor employees to be rewarded for meeting agency objectives. But even then, there will be other objectives the Contractor will pursue, not the least of which is making a profit, for which it will reward its employees.

The proposal rightly recognizes that the profit motive and competition can result in efficiencies and quality improvement but seems to ignore the fundamental change it makes in a commercial employee’s relation to his or her agency, even when the employee organization wins. When an employee organization wins a public-private competition, the proposal changes the relationship by viewing the government employees henceforth as an organization to be judged collectively the next time their jobs come up for consideration for competition. But who is to manage this new employee organization, the ATO? What authority will this manager have to manage, e.g. hire, fire, pay or reassign? How does this authority, if any, relate to the employee’s other supervisors’ authority? What happens when the employee organization is asked to perform tasks not specified in the Competition? Can it refuse? Who decides? Is the decision to take on a new task, or change an existing one, a decision to be made by the employee organization (like it would be if a contractor were performing the work) or the individual employee asked by his or her supervisor to do the task? If the new tasks are taken on, will the employee organization be downgraded if its performance is less than stellar? If it refuses to take on the task, or requires more employees or contractor assistance to perform, how will its performance be judged?

First, I would recommend that the commercial versus inherently governmental distinction for deciding what to consider for competitive sourcing be eliminated. Instead, the newly created Chief Human Capital Officer, Homeland Security Act of 2002, PL 107-296, §§ 1301 et. seq., should be given express authority to decide what positions are to be considered for outsourcing. That official should decide what employee positions or functions should be subject to competition with the private sector based on the agency’s mission; its employees’ capabilities; the commercial sector’s similar capabilities; potential cost savings, quality improvements or both; the human resources impact of the decision on what to outsource; and all other relevant factors’. Second, OMB should request appropriate budget and staffing resources to manage and

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<sup>1</sup> Even if the proposal is adopted with no other change, the Chief Human Capital Officer should be designated as the ultimately responsible official for implementing the Circular. Congress has charged this official specifically with “selecting, developing, training, and managing a high-quality, productive workforce...”, P. L. 107-296, § 1302(a). In addition, Congressionally designated functions of Chief Human Capital Officer are:

(1) setting the workforce development strategy of the agency; (2) assessing workforce characteristics and future needs based on the agency’s mission and strategic plan; (3) aligning the agency’s human resources policies and programs with organization mission, strategic goals, and performance outcomes; (4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities; (5) identifying best practices and benchmarking studies, and (6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

oversee these efforts by the Human Capital Officers rather than trying to manage through rulemaking.

Our government has many things to do. It can accomplish much through contracts but it needs the right workforce – a mix of well trained employees, consultants and service contractors. Deciding that mix is a management decision that depends only in part on what is inherently governmental. Possible recompetition ever three to five years will discourage long term training and development. Absent such training and long term experience, federal employees will not be prepared to become the senior managers and technical experts every agency needs to fulfill its missions. The proposed policy fundamentally and unwisely, albeit unintentionally, cripples each agency's ability to wisely manage its workforce by viewing outsourcing not as a human resource decision but instead one just concerned with procurement of services.

Thank you for the opportunity to comment. I am available to discuss these concerns at your convenience.

December 19, 2002

A handwritten signature in black ink, appearing to read "Michael R. Lof". The signature is written in a cursive style with a large, stylized initial "M".