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Subject: [Fwd: Comments on Proposed revision to OMB Circular A-76]

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From: USDA, Natural Resources Conservation Service (NRCS)

Subject: COMMENTS TO A-76 CIRCULAR PROPOSED REVISION

1. Given that we have a new circular that changes definitions of Inherently Governmental and Commercial, OMB should change their base for calculating agency goals to the most current inventory each year.
2. The Business Case rules are too strict, it's just based on low price.
3. The 4e Official responsibilities are often stated with the words "without delegation." USDA is too decentralized for decisions, properly made at the Bureau state level, to come in to a Department official.
4. The 4-month time frame from Solicitation to Award is very, very tight.
5. The Streamlined Cost Comparison process should be "grandfathered in" for FY03 as opposed to utilizing the Business Case Analysis process. By the time the revised circular is in effect, we will have developed our agency policy, implementation procedures, and training program. To change in mid-course could jeopardize agencies meeting the FY03 15% deadline.

6. Attachment D appears to be in conflict with NRCS statutes. The proposed revised circular discourages the agency to develop cooperative agreements with state and local governments. Our statutes (PL-46, PL 74-46, 16 USC 590 A-F, etc. encourages the agency to cooperate with state and local governments through cooperative agreements, etc.
7. Attachment D 4 d is unclear and appears to present a potential bottleneck in contracting.
8. Consideration of the core capacity of the agency to achieve its mission does not appear to be adequately addressed. NRCS has a very dispersed field structure, providing assistance to producers across the nation. Employees have an extremely wide variety to knowledge, experience and education that is unique to government.
9. Page A-2. Item C.3 states that “agencies shall justify these inherently governmental activities in accordance with paragraph E.” The manner in which an agency “justifies” the designation is not clear. What form will the documented justification take, beyond the reason code assignment?
10. Page A-3. Item E explains what are inherently governmental activities. A major change from the previous circular is the deletion of the item, “commission, direct, or control offices or employees of the United States.” We believe this should be inserted in the new revision.
11. Page B-3. Section B could include a chart showing the primary officials, their jobs, and who they can and can’t work with, related to conflict of interest issues.
12. Page C-2. Item A.3 related to R&D is not clear, even when reading the definition of R&D in the glossary.
13. Attachment B - Allow agencies flexibilities in assigning responsibilities in lieu of Circular mandated responsibilities.
14. The implementation date for the new requirements, as it relates to ongoing studies, is a serious concern. The new timelines for completion of Standard Cost Comparisons are challenging enough, even when an agency has had prior notice. But to convert an ongoing study, planned and resourced under the old A-76 guidelines, to the new rules in mid-study will create numerous implementation problems. We recommend that the new rules be applied only to studies announced after January 1, 2003.
15. The proposed 15 working day timeline for completion of Business Case Analyses does not appear realistic. This does not allow time for resolution of workload problems, researching existing contracts and establishing their comparability, etc. We understand OMB’s desire to expedite the study process, but believe that 30 working days is the shortest timeframe that could reasonably be established for the Business Case Analysis process.
16. The elimination of the Independent Review in the Standard Cost Comparison is also a concern. A Source Selection Board does not typically have the resources or expertise to conduct an IR-like review, and the in-house organizations are not as adept at proposal preparation as their private sector competitors. Eliminating the IR entirely will simply push more problems into the appeals process. We recommend that an IR-like process be established as support to the Source Selection Board. This will retain the

acceleration of the A-76 process desired by OMB (i.e., by conducting the IR concurrent with, rather than prior to, the Source Selection effort), but detect more of the problem areas and reduce the Appeals.

17. Page B-8, Paragraph 3.2.(2) states that “The ATO shall develop an Agency Tender that responds to the requirements and bid structure stated in the solicitation.” What does the “and bid structure” mean? Is the Government’s In-house Cost Estimate to be subdivided in some manner, so that the Government can reflect its cost for each CLIN in Section B?
18. We know that under the current rules, once an A-76 is announced, the MEO cannot assume contracting out of existing in-house work where adverse impact on employees would result. However, the new language (Page B-9, paragraph 3.2.(4)) which states that “New contracts shall not be created as part of MEO development,” appears overly-restrictive, and limits the Government’s ability to reengineer. We believe that we should have the ability to create new contracts in the MEO (e.g., by combining existing contracts, or contracting out work which would be performed by currently vacant positions) so long as no current employees are adversely impacted.
19. Several of the proposed changes are beneficial (e.g., the establishment of a standard cost factor for non-severance personnel conversion costs). However, until the concerns over timeline-related issues and IR are addressed, our agency will retain reservations about the proposed revisions.

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