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

MR. CHILDS - ATTACHED YOU WILL FIND AGC'S FORMAL COMMENTS. THE TEXT APPEARS IN THE BODY OF THE EMAIL BELOW. THANK YOU FOR THE OPPORTUNITY TO COMMENT.

Building Your Quality of Life  
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## THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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December 19, 2002

Mr. David C. Childs  
Office of Federal Procurement Policy  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
New Executive Office Building - Room 9013  
Washington, DC 20503

### **RE: Performance of Commercial Activities**

Dear Mr. Childs:

The Associated General Contractors of America (AGC) appreciates the opportunity to comment on the proposed revisions to Office of Management and Budget Circular A-76, Performance of Commercial Activities, as published in the *Federal Register* on November 19, 2002 (67 Fed. Reg. 69769). AGC is the largest and oldest national construction trade association in the United States. AGC represents more than 35,000 firms, including 7,500 of America's leading general contractors, and over 12,000 specialty-contracting firms. Over 14,000 service providers and suppliers are associated with AGC through our nationwide network of chapters.

These comments are offered on behalf of construction contractors involved in government contracting and those vying for increased opportunities in the federal market. Many of our members rely on an efficient, fair competitive process in providing the federal government with goods and services.

AGC supports the revised Circular because it should help reduce the time and expense necessary to conduct competitive bidding plus add clarity to the process. It should also assist the federal government in purchasing best value in goods and services for taxpayers' dollars, as it encourages competition.

Competition provides cost savings regardless of who prevails, as well as increasing quality of service and efficiency. A fair, streamlined process will encourage businesses, particularly small businesses, to enter and remain in the federal market. AGC applauds OMB efforts to add efficiency to this policy and OMB's stated goals to;

- Significantly expand the use of public-private competition;
- Make processes simpler and easier to understand;
- Improve the effectiveness of competitions by giving agencies greater flexibility to consider quality in source selections;
- Improve public trust in public-private competitions by avoiding any appearance of conflicts of interest;
- Increase visibility into the management of government by requiring agencies to develop lists of commercial and inherently governmental activities; and
- Strengthen accountability for achieving results by centralizing agency oversight for the management of commercial activities.

The realization of these objectives would go a long way in improving the fairness and efficiency in the process for all stakeholders. We appreciate the opportunity to provide our comments.

1. **INVENTORY PROCESS.** The revised policy directs agencies to presume all activities are commercial, unless the agency can sufficiently prove that the function is inherently governmental. This is critical to a fair competitive process. AGC supports the premise that all activities should be "presumed to be commercial" unless clearly demonstrated otherwise.
2. **PUBLIC-PRIVATE COMPETITIONS.** In 2001, the administration released the "President's Management Agenda." Competitive sourcing was identified as one of the main initiatives for improving government performance. The proposed revision to Circular A-76 to use the competitive sourcing tool – with an emphasis on competition – would do just that. AGC strongly supports the intent of this provision.

The proposed revisions state that a "standard competition shall not exceed 12 months." Small businesses can find it difficult to afford to participate in the current process, which may take up to four years to complete. AGC supports this effort to make the time frames for conducting public-private competitions more reasonable.

In traditional procurements, government personnel involved in evaluating the procurement must declare any interest in any of the competitors. An employee who is or will be affected by the procurement should not be in a position to influence the award. AGC supports the provision in the revised Circular that strengthens and clarifies conflict-of-interest rules by requiring that individuals participating in the process shall comply with procurement integrity, ethics and standards of conduct rules.

3. **DIRECT CONVERSION PROCESS.** AGC supports permitting federal agencies to directly convert work to the private sector. By doing so, agencies are afforded the flexibility needed to ensure they are receiving the best value to meet its needs.
4. **INTER-SERVICE SUPPORT AGREEMENTS (ISSAS).** AGC supports provisions to eliminate unfair competition under Agency-to-Agency arrangements. These provisions would eliminate the current practice that permits Federal agencies to obtain commercial work non-competitively from other Federal agencies. Competition is key to ensuring that the government obtains the most innovative, efficient services at reasonable cost. This is a step in the right direction toward ensuring that Federal agencies obtain the best value for the American taxpayer.

**5. CALCULATING PUBLIC-PRIVATE COMPETITION COSTS.** Fair cost comparisons and the integrity of the procurement process are crucial.

Agency personnel costs should include the cost of obtaining professional licenses. In many areas, private sector personnel are required to obtain professional licensing. Federal employees are not required to meet these standards, particularly with regard to State licensing requirements. Since professional licensure is designed to protect public health, welfare and safety, the Circular should require the Standard Competition to address licensing of personnel for both the government and the private sector, and the cost of licensure should be factored into an agency offer.

AGC also strongly urges you to remove inmate labor from the Circular. While inmate labor appears cost-efficient, many costs (such as guard labor) may go unconsidered. Inmate laborers may also be ill-equipped, ill-trained and less motivated to work efficiently or safely which can add additional hidden costs. The private sector is prohibited from utilizing inmate labor under Federal law. Thus, in order to provide a fair and balanced competition, inmate labor should not be included or permitted in an agency tender. If inmate labor remains in the Circular, we urge you to insert language stating that if inmate labor is used, all terms and conditions that would be applied to the private sector must be met.

Thank you for the opportunity to submit these comments. We look forward to working with OMB to ensure a process that benefits our members, our government and the American taxpayer. If you have any questions, please contact Stu Megaw at 703-837-5321 or [megaws@agc.org](mailto:megaws@agc.org).

Sincerely,

A handwritten signature in black ink that reads "David R. Lukens". The signature is written in a cursive, slightly slanted style.

David R. Lukens  
Chief Operating Officer

DRL:scm