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To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Comments on the Business Case Analysis

Dear Sirs:

I have read the proposed A-76 Circular carefully. Although there are errors in the entire document, I have chosen to concentrate on the Business Case Analysis. Conducting full A-76 studies is expensive, and so we should only do them when significant cost saving is predicted. If the Business Case Analysis is formulated properly, it can be a useful tool for agencies to identify those functions that, when studied, will provide cost savings.

Included in the body of this message is a copy of a suggested text. Also attached is a MSWord document that has the final text and the original text with comments and the changes tracked. One group of changes are directed at correction of factual errors, such as, having the ATO fill in lines in the SCF that are associated with the contract costs. The line associated with the contract costs should be completed by the CO. Another group of changes are adjusting the requirements so that they can be met.

An example of this change is the extension to 90 days the timeframe of an analysis. Finally, I strongly recommend that the highest contract cost be chosen for comparison. Given that all of the contracts for this comparison were bid in the past and that contract costs always go up, the highest cost is a likely a better indicator of the cost of a bid if it is made for the studied function.

Finally, I would like to suggest that the Business Case Analysis be pulled out of the Direct-to-Contract appendix and put into its own appendix. Furthermore, a separate SCF should be developed for the Business Case Analysis. The SCF in appendix E has several lines that aren't applicable the Business Case Analysis and the ATO is requested to make certifications about the MEO, which is not developed during the analysis.

Thank you for considering my suggestions.

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(See attached file: Business Case.doc)

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**THIS DOCUMENT CONTAINS TWO SECTIONS (1) THE FINAL SUGGESTED TEXT
(2) THE ORIGINAL TEXT WITH CHANGE TRACKING AND COMMENTS**

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D. BUSINESS CASE ANALYSIS. If the requirements in paragraphs D.1 are met, a Business Case Analysis is permitted to determine if an agency should conduct a full cost comparison.

1. Approval Requirements. The agency shall prepare a written certification that the activity being analyzed meets all of the following:

- a. The activity is or will be performed in aggregate by 50 or fewer agency civilians;
- b. The activity is commonly provided by the private sector to the Federal government by contracts of comparable, size, workload and scope;
- c. The activity has no more than \$5,000 in asset purchase requirements and will be predominately Government furnished/contractor operated;
- d. The time-frame from the certification to conduct a Business Case Analysis to completion of the business case analysis will not exceed 90 days.

2. Business Case Analysis Documentation.

- a. To perform a business case analysis, the ATO shall (1) provide the CO a written description of the workload and (2) develop an Agency Tender in accordance with Attachment B. The ATO shall not develop an MEO when considering conversion from agency performance to a private sector source or public reimbursable source (the business case analysis shall be based upon agency's current organization, costs, performance and structure). The ATO shall calculate the Agency Cost Estimate by (1) completing Standard Competition Form (SCF) Lines 1, 2, 3, 4, 6, and 15 in accordance with Attachment E; (2) including contract support costs to the Agency Tender on SCF Line 3, and (3) not calculating any other costs. The ATO shall submit the Agency Tender to the CO in a sealed package.
- b. Upon submission of the sealed Agency Tender, the CO shall: (1) identify four comparable, existing, fixed price, Federal contracts of similar size, workload and scope but shall not issue a solicitation. The CO shall make adjustments in cost to reflect minor differences in size, workload, or scope. Existing public reimbursable agreements may be used but all costs shall be adjusted to reflect the total cost to the taxpayer in accordance with the costing requirements of this Circular. If four comparable contracts (or ISSAs) are not available, the CO shall document the efforts in searching for the contracts and make the decision to either accept the agency tender or perform a Standard Competition in accordance with this Circular; (2) determine that the adjusted contract costs are reasonably grouped. If the CO determines that the selected contract costs (or ISSAs) are not reasonably grouped, the outliers shall be eliminated from consideration; (3) select the highest contract price; and (4) open the agency tender, complete lines 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, and 18 and sign the SCF. If the agency tender is selected, the contract period will be assumed to be five years. If the agency tender is not selected, a Standard Competition will be performed in accordance with this Circular.

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D. BUSINESS CASE ANALYSIS. If the requirements in paragraphs D.1 and are met, a Business Case Analysis is permitted to determine if an agency should conduct a full cost comparison. **(Comment: The Business Case Analysis, as proposed, has a flaw that likely will result in contracts that cost more than the agency tender. A way to prevent this is to require a full cost comparison if the agency loses the competition with existing contracts. When an agency uses direct to contract, it has to develop a solicitation. Since the solicitation is the largest fraction of the work for a Standard Competition, the agency gets assurance that the final bidder is the lowest cost for only a small incremental cost.**

1. Approval Requirements. The agency shall prepare a written certification that the activity being analyzed meets all of the following: **(Comment: It makes no sense to have the 4.e. official prepare this certification. This certification should be done by the people preparing the SCF.)**

- a. The activity is or will be performed in aggregate by 50 or fewer agency civilians;
- b. The activity is commonly provided by the private sector to the Federal government by contracts of comparable, size, workload and scope;
- c. The activity has no more than \$5,000 in asset purchase requirements and will be predominately Government furnished/contractor operated;

(Comment: this is a meaningless statement since these are the only costs included in the SCF.)

- d. The time-frame from the certification to conduct a Business Case Analysis to completion of the business case analysis will not exceed 90 days; **(Comment: 15 working days is too short)**

(Comment: items f, g, h, and i are either too vague to be useful or are covered below.

2. Business Case Analysis Documentation.

- a. To perform a business case analysis, the ATO shall (1) provide the CO a description of the workload and (2) develop an Agency Tender in accordance with Attachment B. The ATO shall not develop an MEO when considering conversion from agency performance to a private sector source or public reimbursable source (the business case analysis shall be based upon agency's current organization, costs, performance and structure). The ATO shall calculate the Agency Cost Estimate by (1) completing Standard Competition Form (SCF) Lines 1, 2, 3, 4, 6, , 15, **(Comment: Since lines 7, 8, 12, 13, 14, 16, 17, and 18 relate to the contract costs, the lines in the SCF that should be entered at this point should only refer to the agency.)** in accordance with Attachment E; (2) including contract support costs to the Agency Tender on SCF Line 3, and (3) not calculating any other costs. The ATO shall submit the Agency Tender to the CO in a sealed package. **(Comment: Since the SCF makes assurances about the MEO, the ATO can't sign the SCF. A different SCF will have to be developed for the Business Case Analysis)**

- b. **(Comment: These requirements are redundant. The next sentence provides the same requirements.)** Upon submission of the sealed Agency Tender, the CO shall: (1) identify four comparable, existing, fixed price, Federal contracts of similar size, workload and scope but shall not issue a solicitation at this point in the process. By documenting the method used, the CO can make adjustments in cost to reflect differences in size, workload, or scope. Existing public reimbursable agreements may be used but all costs shall be adjusted to reflect the total cost to the taxpayer in accordance with the costing requirements of this Circular. if four comparable contracts (or ISSAs) are not available, the CO shall document the efforts in searching for the contracts and make the decision to either accept the agency tender or perform a Standard Competition in accordance with this circular; (2) determine that the adjusted contract costs are reasonably grouped. If the CO determines that the selected contract costs (or ISSAs) are not reasonably grouped, the outliers shall be eliminated from consideration; (3) select the highest contract price; and (4) open the agency tender, complete lines 7, 8 ,9 ,10 ,11 ,12 ,13 ,14 , 16, 17, and 18 and sign the SCF. If the agency tender is selected, the contract period will be assumed to be five years. If the agency tender is not selected, a Standard Competition will be performed in accordance with this Circular. **(Comment: If contracts cannot be found, the function is likely not being done by private contractors and an agency should not waste money developing a solicitation that will get no outside bidders. The choice of the highest contract in the group may seem controversial, but given that all of the contracts used for comparison were bid in the past and that the cost of contracts always goes up, the highest price is likely a better indicator of a bid that would be submitted for the function being studied.**