



**U.S. Department of  
Transportation**

Assistant Secretary  
for Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

December 19, 2002

The Honorable Angela B. Styles  
Administrator  
Office of Federal Procurement Policy  
Office of Management and Budget  
Washington, DC 20503

Dear Ms. Styles:

Thank you for the opportunity to comment on the proposed revisions to the Office of Management and Budget (OMB) Circular A-76, Performance of Commercial Activities.

We applaud OMB's effort to simplify and rationalize A-76, and we believe that the draft circular has taken large steps toward achieving that goal. However, we have some serious concerns about the organizational impact of some of the policy decisions reflected in the revised circular. We also think there could be further significant improvements to the procedures for conducting A-76 competitions.

The U.S. Department of Transportation (DOT) remains committed to accomplishing the President's Management Agenda. To that end, we believe that some of the provisions of the draft A-76 work against some of those objectives, especially the development of an effective human capital strategy. By mandating competitions every 3 to 5 years regardless of who wins a competition, the draft circular will hinder an agency's ability to develop a long-term work force strategy for recruiting and retaining top-notch people for government service. This is inconsistent with best commercial practices that embrace the benefits of long term supplier relationships in producing desired organizational outcomes through a stable and committed work force. The use of short-term contracts or performance agreements will also hinder the use of some of the state of the art business strategies and incentive arrangements being used in performance based acquisitions, such as award term contracting and managed services.

We strongly suggest OMB reconsider the inclusion of inter-service support agreements in this competition initiative. Subjecting intra-agency agreements to competition infringes on the Secretary's statutory authority to direct work within his own agency. Subjecting inter-agency agreements to competition infringes on the Secretary's authority to exercise the right under the Economy Act to determine that another agency can best meet the requirements.

We are very concerned about the 12 month limit placed on competitions. OMB has stated that it wants A-76 competitions to be conducted substantially in accordance with the Federal Acquisition Regulation (FAR), but the imposition of arbitrary time limits on competitive acquisitions is inconsistent with the FAR and could even be viewed as an arbitrary and capricious action in the event of potential litigation. We think that agency officials are in the best position to determine the appropriate timeframe for a competition with oversight from the 4.e. official and OMB.

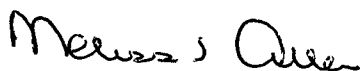
We agree with OMB's concept to conduct A-76 competitions substantially in accordance with the FAR. Unfortunately, the draft circular deviates from that concept significantly by introducing unexplained exceptions and deviations to the FAR competitive process, identifying official roles and responsibilities inconsistent with the FAR, and creating procedures and concepts that either duplicate or deviate from FAR coverage. We believe that the circular should adopt FAR procedures with minimal exceptions and strongly urge OMB to gather a small working group of senior contracting professionals to bring the procedures more in alignment with the FAR.

Finally, we want to express our concern about the potential resource impact of the draft circular. The creation of new official positions, the identification of new responsibilities for existing officials such as the Human Resource Advisor and contracting officer, the stringent conflict of interest requirements, and the need for frequent recompetitions will create a resource burden under current budget constraints. Although adopting DOT recommendations to eliminate inter-service support agreements from consideration, increase the amount of time between competitions, and align the procedures more closely with the FAR, will provide some relief, the resource burden of the new circular is still expected to be substantial with no new resources identified to support it.

The revised OMB Circular A-76 is a vital business tool to both advance the President's Management Agenda and support Agency mission accomplishment. We would be happy to work with OMB to make the necessary policy and procedural changes to the draft Circular A-76 to ensure achievement of these important outcomes. It is essential to take a little extra time now to seriously consider the issues we have raised and make the needed changes.

We have also enclosed detailed section by section comments. If you have any questions, please contact David Litman at 202-366-4263.

Sincerely,



Melissa J. Allen  
Assistant Secretary for Administration

Enclosures