

August 31, 2000

Circular No. A-76 (Revised)
Transmittal Memorandum No. 22

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jacob J. Lew
Director

SUBJECT: Performance of Commercial Activities

This Transmittal Memorandum implements changes to the OMB Circular A-76 Revised Supplemental Handbook, in furtherance of the requirements of the Federal Activities Inventory Reform Act ("The FAIR Act"), Public Law 105-270 and to clarify other issues of concern. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum 15, published in the April 1, 1996, *Federal Register* at pages 14338-14346. The March 1996 Revised Supplemental Handbook was further revised to implement the requirements of the FAIR Act on June 14, 1999, *Federal Register* at pages 33927-33935.

After having requested and considered agency and public comments, OMB is making three changes to the OMB Circular A-76 and its Revised Supplemental Handbook. The Federal Activities Inventory Reform Act (FAIR) provides that there shall be a 30-day administrative challenge period available to interested parties who might wish to challenge an agency's decision to include or omit an activity from the list of commercial activities. As a part of OMB Circular A-76 Transmittal Memorandum No. 20, dated June 14, 1999, OMB stated that the statutory 30-day and 28-day challenge and challenge response periods would be *calendar* days, while the 10-day appeal period would be *working* days. OMB is aware that the *30-calendar day* deadline for filing challenges posed certain difficulties in 1999. Appendix 2, paragraph g.3., of the Revised Supplemental Handbook is, therefore, revised to provide for *30-working* days for the filing of challenges. Appendix 2, paragraph g.4., is also changed to provide *28-working* days for the agency's issuance of its decision on the initial challenge.

Concern has been expressed that Part 1, Chapter 3, paragraph K.1.e., of the OMB Circular A-76 Revised Supplemental Handbook may be in conflict with the statement at Part 1, Chapter 3, paragraph K.7., that provides that sequential administrative cost comparison appeals are not authorized. It is OMB's view that all concerns regarding the conduct of a cost comparison should be brought forward to the designated administrative appeal authority within the single appeal period. Therefore, to ensure that all relevant concerns with the conduct of a cost comparison are brought forward, and to eliminate sequential appeals and their related delays, OMB is rescinding Part 1, Chapter 3, paragraph K.1.e. of the Supplement. In order to emphasize that all interested parties need to review the tentative A-76 cost comparison decision and all supporting documentation and

immediately identify and to bring to the attention of the Administrative Appeals Board any potential errors that, if corrected, would provide for a more accurate determination, OMB is revising Part I, Chapter 3, Paragraph K.1.a., to read as follows:

- “a. Be submitted by all interested parties, including the tentative winner of a cost comparison decision, within the initial administrative appeal period.”

And finally, OMB has been concerned that the use of Federal employees on Source Selection Teams, when those employees are subject to losing their jobs or otherwise being adversely affected by the award of the contract being reviewed by that Source Selection Team, is a poor business practice. OMB is also concerned that such a practice puts certain important skills that are developed by participating on a Source Selection Team at risk. Therefore, OMB revises Part 1, Chapter 3 paragraph H. 3.b. of the Revised Supplemental Handbook as follows:

- b. “The Government should establish a source selection evaluation or advisory team. Individuals who hold positions in the function under study should not be members of the team, unless an exception is authorized by the head of the contracting activity. Exceptions will be authorized only in compelling circumstances and, in such cases, the head of the contracting activity shall provide a written statement of the reasons for the action. As a result, OMB has decided to strengthen its longstanding policy limiting such participation, as a better business practice. Individuals who hold positions in an A-76 study should not be members of the Source Selection Team, unless an exception is authorized by the head of the contracting activity. Exceptions may be authorized only in compelling circumstances and, in such cases, the head of the contracting activity will provide a written statement of the reasons for the action.”

All changes in this Transmittal Memorandum are effective with publication in the *Federal Register* and shall apply to all cost comparisons where the in-house offer remains sealed as of the date of this publication. Copies of the OMB Circular A-76, its Revised Supplemental Handbook and currently applicable Transmittal Memoranda may be obtained at the OMB home page. The online address (URL) is <http://www.whitehouse.gov/OMB/circulars/index.html#numerical>. Paper copies of the Circular and Supplemental Handbook can be obtained by contacting the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395-7579.