

July 9, 2003

MEMORANDUM TO: Office Directors and Regional Administrators
(See Attached List)

FROM: Michael L. Springer, Director */RA/*
Office of Administration

SUBJECT: REVISED OFFICE OF MANAGEMENT AND BUDGET'S (OMB)
A-76 CIRCULAR

On May 29, 2003, OMB published an extensive revision of its A-76 Circular, Performance of Commercial Activities, that requires a revision of our strategy for meeting our competitive sourcing goals under the President's Management Agenda (PMA). A summary of the significant changes affecting NRC is provided in Attachment 1.

Among other changes, the revised Circular prohibits direct conversion of commercial activities to contract, eliminating a key element of our strategy to meet competitive sourcing targets. The revised Circular also contains significant changes in the procedures for conducting cost comparison studies. OMB has announced plans to release new, less prescriptive guidance that will give agencies greater flexibility in meeting the President's Competitive Sourcing goals. We expect OMB to issue this guidance shortly. In view of these developments, we have instructed office and region representatives on the Core Group to suspend action on direct conversions and Streamlined Cost Comparison Studies that are pending.

The revised Circular also impacts NRC's Year 2003 Commercial Activities Inventory under the FAIR Act. Specifically, the Circular clarifies the definition for inherently governmental activities and requires agencies to justify, in writing, any designation of government personnel performing such activities. These justifications must be provided to OMB and the public upon request. Because these changes were published at the end of May, after we had developed our Year 2003 Inventory, we did not have sufficient time to consider the new definition and meet the June 30 statutory deadline for submission of the Inventory as prescribed under the FAIR Act. Therefore, NRC submitted the inventory to OMB based on guidance that existed before release of the revised Circular.

We expect to publish our inventory in mid August at which time interested parties may request NRC to provide written justification for inherently governmental positions in accordance with the revised Circular. To help satisfy this new requirement, we have assigned codes to the specific criteria previously furnished to offices and regions for use in classifying positions as inherently governmental on your year 2003 inventory submissions and request that each office and region provide the basis for designating FTE as performing inherently governmental activities. The reason codes have been augmented with additional criteria from the A-76 revision and are provided in Attachment 2. We have also e-mailed an Excel spreadsheet (Attachment 3) reflecting inherently governmental positions identified by offices or regions for the 2003

Office Directors and Regional Administrators -2-

inventory to your representative on the Core Group. Please identify the appropriate reason code for the positions listed and return the completed spreadsheet electronically to Sharon Stewart, Acting Assistant for Acquisition Management and Competitive Sourcing, by July 31, 2003.

The Division of Contracts will continue to work with the Core Group to assess the impact of the revised Circular on NRC's competitive sourcing plans and to develop appropriate training for staff involved in the process.

In light of these major changes, we will be working with Office Directors and Regional Administrators to develop an overall agency strategic approach for competitive sourcing that will enable us to meet our performance goals under the PMA in an efficient and effective manner, improve efficiency of commercial activities, and ensure organizational effectiveness.

Attachments: As stated

inventory to your representative on the Core Group. Please identify the appropriate reason code for the positions listed and return the completed spreadsheet electronically to Sharon Stewart, Acting Assistant for Acquisition Management and Competitive Sourcing, by July 31, 2003.

The Division of Contracts will continue to work with the Core Group to assess the impact of the revised Circular on NRC's competitive sourcing plans and to develop appropriate training for staff involved in the process.

In light of these major changes, we will be working with Office Directors and Regional Administrators to develop an overall agency strategic approach for competitive sourcing that will enable us to meet our performance goals under the PMA in an efficient and effective manner, improve efficiency of commercial activities, and ensure organizational effectiveness.

Attachments: As stated

DISTRIBUTION:	ADM r/f	SD.Stewart	C.Cooper	J.Cucura	E.Williamson, OGC	M. Fox, HR
R.Seltzer, OEDO	M.Flynn	G.Benoit	Jack Davis	J.Horn	J.Joyner	BJ.Holt
B.Williams	C.Velez	C.Turner	C.Miotla	K.Hamill	E.Spellman Williams	M.Kemerer
P.Wolfe	J.Gallo	M.Case	KO.Greene	T.Hagan	M.Springer	DC r/f

Document Name: G:\DC\FLYNN\CEASE AND DESIST6.18.03

Subject: Revised Office of Management And Budget's (OMB) A-76 Circular

ADAMS Accession No.: ML031550791

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosures "E" = Copy with attachments/enclosures "N" = No copy

OFFICE	ADM/DC	ADM/DC/D	ADM/DD	ADM/D
NAME	SDStewart*	KOGreene*	TFHagan*	MLSpringer
DATE	7/7/03	7/7/03	7/8/03	7/09/03

*see previous concurrence

OFFICIAL RECORD COPY

This document should be placed in ADAMS:

This document should be made available to the PUBLIC:

This document is NON-SENSITIVE:

SDS
(Name or Initials)

7/7/03
(Date)

Significant Changes in Revised OMB Circular A-76 Affecting NRC

1. Defines new roles and responsibilities for key players - including the roles of a Competitive Sourcing Official and Human Resource Advisor.
2. Eliminates direct conversions (emphasis is on competition).
3. Requires the synopsis of public notices both at the start and end of streamlined competitions. The process generally follows Federal Acquisition Regulation principles and procedures.
4. Requires agencies to publish both inherently governmental and commercial activities inventories.
5. Redefines an inherently governmental function, placing emphasis on the exercise of substantial discretion in applying government authority.
6. Requires that written justification of inherently governmental designations be made available to OMB and the public upon request.
7. Requires streamlined competitions (65 or fewer FTE) be completed within 90 days - can be extended to 135 days with OMB approval.
8. Eliminates the 10 percent cost conversion factor previously added to the contractor's price under a streamlined cost comparison study.
9. Requires commercial activities be performed by the low-cost provider (agency, contractor, or interagency agreement). Under the prior Circular, the government could justify maintaining work in-house if its estimate was within the range (highest and lowest) of four government contractors' prices.
10. Requires agencies to use COMPARE software in conducting and completing Streamlined Competition Forms.
11. Requires re-competitions of competed functions every three to five years.
12. Eliminates challenges or protests of the results of a streamlined competition by any party.
13. Eliminates the proposed requirements to subject Inter-Service Support Agreements (interagency agreements) to public-private competition.

Reason Codes for Inherently Governmental Activities

AA - Supervisory responsibilities, to include Team Leaders.

BB - Project officers/technical monitors as they provide oversight of efforts under contracts, interagency agreements, task orders, or contract line item numbers, to include issuance of delivery orders, approval of invoices, inspecting and acceptance of deliverables, and providing documentation to Division of Contracts to support contractual actions when contractors are not compliant with the statement of work or terms and conditions therein.

CC - Fiduciary responsibilities that bind the government for payment and/or services, i.e., the certification of funds, obligation/deobligation of funds, purchase card holder.

DD - Making decisions/determinations on issues related to policy, budget, guidance and/or strategy on behalf of the agency. Note: Providing input to or developing policy, budget, guidance and/or strategy do not constitute inherently governmental functions.

EE - Secretaries that directly support and report to a Senior Executive Service employee. Backups for this position are to be considered commercial.

FF - Exerting ultimate control over the acquisition, use, or disposition of U.S. property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

GG - Involved in wide-ranging interpretation of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures; claims or entitlement adjudication; and legal representation before administrative boards and courts.

HH - Possesses signature authority to approve notifications to licensees, which requires the incumbent to routinely and independently make determinations whether the licensee's request meets the criteria of NRC regulations.

II - Individuals in upward mobility, intern, or coop positions that are being trained for positions that are inherently governmental.

JJ - Responsibility for reviewing and approving inspection reports.

KK - Other (any activity classified as inherently governmental that does not fall within any of the above listed reason codes requires a written justification and will be evaluated on a case-by-case basis).

MEMORANDUM TO THOSE ON THE ATTACHED LIST DATED:

SUBJECT: REVISED OFFICE OF MANAGEMENT AND BUDGET'S (OMB) A-76 CIRCULAR

	<u>Mail Stop</u>	
George M. Hornberger, Chairman, Advisory Committee on Nuclear Waste	T-2	E26
Mario V. Bonaca, Chairman, Advisory Committee on Reactor Safeguards	T-2	E26
John T. Larkins, Executive Director, Advisory Committee on Reactor Safeguards/Advisory Committee on Nuclear Waste	T-2	E26
G. Paul Bollwerk, III, Chief Administrative Judge, Atomic Safety and Licensing Board Panel	T-3	F23
Karen D. Cyr, General Counsel	O-15	D21
John F. Cordes, Jr., Director, Office of Commission Appellate Adjudication	O-16	C1
Jesse L. Funches, Chief Financial Officer	O-17	F3
Hubert T. Bell, Inspector General	T-5	D28
Janice Dunn Lee, Director, Office of International Programs	O-4	E21
Dennis K. Rathbun, Director, Office of Congressional Affairs	O-16	C1
William M. Beecher, Director, Office of Public Affairs	O-2	A13
Annette Vietti-Cook, Secretary of the Commission	O-16	C1
William D. Travers, Executive Director for Operations	O-16	E15
William F. Kane, Deputy Executive Director for Reactor Programs	O-16	E15
Carl J. Paperiello, Deputy Executive Director for Materials, Research and State Programs	O-16	E15
Patricia G. Norry, Deputy Executive Director for Management Services	O-16	E15
William M. Dean, Assistant for Operations, OEDO	O-16	E15
Ellis W. Merschoff, Chief Information Officer	T-6	F15
Michael L. Springer, Director, Office of Administration	T-7	D57
Frank J. Congel, Director, Office of Enforcement	O-14	E1
Guy P. Caputo, Director, Office of Investigations	O-3	F1
Paul E. Bird, Director, Office of Human Resources	T-3	A2
Corenthis B. Kelley, Director, Office of Small Business and Civil Rights	T-2	F18
Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards	T-8	A23
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation	O-5	E7
Ashok C. Thadani, Director, Office of Nuclear Regulatory Research	T-10	F12
Paul H. Lohaus, Director, Office of State and Tribal Programs	O-3	C10
Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response	T-4	D18
Hubert J. Miller, Regional Administrator, Region I	RGN-I	
Luis A. Reyes, Regional Administrator, Region II	RGN-II	
James E. Dyer, Regional Administrator, Region III	RGN-III	
Thomas P. Gwynn, Acting Regional Administrator, Region IV	RGN-IV	