



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

CIRCULAR NO. A-120

April 14, 1980

TO THE HEADS OF EXECUTIVE AGENCIES AND ESTABLISHMENTS

SUBJECT: Guidelines for the Use of Consulting Services

1. Purpose. The Circular establishes policy and guidelines to be followed by executive branch agencies in determining and controlling the appropriate use of consulting services obtained from individuals and organizations. This Circular supersedes OMB Bulletin No. 78-11, dated May 5, 1978, on the same subject.

2. Background. OMB Bulletin No. 78-11 was based largely upon data received from the agencies in response to the President's memorandum of May 12, 1977, which asked the heads of agencies to assure that consulting service arrangements of their organizations were both appropriate and necessary. The Bulletin was issued to meet the identified need for uniformity of definition, criteria, and management controls among the agencies.

This Circular provides permanent guidance in lieu of the interim guidance provided by the Bulletin. To assist agencies in identifying consulting services, as defined in the Bulletin and this Circular, an expanded list of examples is included in the Attachment to this Circular.

An additional policy is provided in this Circular with respect to responsibility for final determination of whether or not a proposed procurement action is for consulting services, as defined in this Circular.

3. Relationship to OMB Circular No. A-76. In summary, OMB Circular No. A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government" revised March 29, 1979, directs that:

- Governmental functions must be performed by Government employees (reference 4b and 5f of A-76);
- Commercial or industrial products and services should be provided in the most economical manner through the use of rigorous cost comparisons of private sector and Government performance (reference 4c of A-76); and
- Consulting services are not either of the above categories and should be provided either by Government staff organizations or from private sources, as deemed appropriate by executive agencies in accordance with executive branch guidance on the use of consulting services (reference 6d(5) of A-76).

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4. Coverage. The provisions of this Circular apply to consulting services obtained by the following arrangements:

- a. Personnel appointment;
- b. Procurement contract; and
- c. Advisory committee membership.

5. Definition. As used for administrative direction in this Circular, Consulting Services means those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management. (See Attachment for examples of the type of services to which this Circular applies.)

These services are normally provided by persons and/or organizations who are generally considered to have knowledge and special abilities that are not generally available within the agency. The form of compensation is irrelevant to the definition.

6. Basic Policy

a. Consulting services will not be used in performing work of a policy/decision making or managerial nature which is the direct responsibility of agency officials.

b. Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

c. Consulting services will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.

d. Former Government employees per se will not be given preference in consulting service arrangements.

e. Consulting services will not be used under any circumstances to specifically aid in influencing or enacting legislation.

f. Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.

g. The contracting officer shall be responsible for determining whether a requested solicitation or procurement action, regardless of dollar value, is for consulting services. The contracting officer's determination shall be final. Prior to processing any solicitation or procurement action for consulting services, the contracting officer shall insure that the applicable provisions of this Circular have been adhered to and that documentation required by the Circular (see 8.a.

and 8.b.) is complete and included in the official contract file. The contracting officer will also insure that awards over \$10,000 are identified as consulting service contracts on either the agency's data collection form (which conforms to the requirements of the Federal Procurement Data System) or optional Form 279, for input into the Federal Procurement Data System (reference 9.b.).

7. Guidelines for use of Consulting Services. Consulting service arrangements may be used, when essential to the mission of the agency, to:

a. Obtain specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.

b. Obtain outside points of view to avoid too limited judgment on critical issues.

c. Obtain advice regarding developments in industry, university, or foundation research.

d. Obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects.

e. Secure citizen advisory participation in developing or implementing Government programs that, by their nature or by statutory provision, call for such participation.

8. Management Controls

a. Each agency will assure that for all consulting service arrangements:

(1) Every requirement is appropriate and fully justified in writing. Such justification will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services;

(2) Work statements are specific, complete and specify a fixed period of performance for the service to be provided;

(3) Contracts for consulting services are competitively awarded to the maximum extent practicable to insure that costs are reasonable;

(4) Appropriate disclosure is required of, and warning provisions are given to, the performer(s) to avoid conflict of interest; and

(5) Consulting service arrangements are properly administered and monitored to insure that performance is satisfactory.

b. Each agency will establish specific levels of delegation of authority to approve the need for the use of consulting services, based on the policy and guidelines contained in this Circular. Written approval of all consulting service arrangements will be required at a level above the organization sponsoring the activity. Additionally, written approval for all consulting service arrangements during the fourth fiscal quarter will be required at the second level above the organization sponsoring the activity.

c. OMB Circular No. A-63, Advisory Committee Management, governs policy and procedures regarding advisory committees and their membership.

d. The Federal Personnel Manual (FPM), Chapter 304, governs policy and procedures regarding personnel appointments.

e. Until the Federal Acquisition Regulation is published, the Federal Procurement Regulation and the Defense Acquisition Regulation govern policy and procedures regarding contracts.

9. Data Requirements. The following data systems will continue to provide information on consulting service arrangements within the executive branch:

a. Central Personnel Data File (CPDF), operated by the Office of Personnel Management, will have data on personnel appointments, segregating consultants, experts, and advisory committee members (as defined in OMB Circular No. 63).

b. Federal Procurement Data System (FPDS) will have data on contract arrangements.

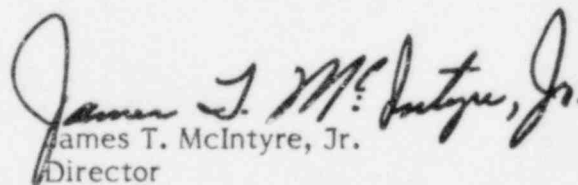
c. Advisory committee data will continue to be maintained in accordance with OMB Circular No. A-63.

10. Effective date. This Circular is effective immediately.

11. Implementation. All executive branch agencies have previously implemented OMB Bulletin No. 78-11. That implementation is applicable to this Circular and will continue under the guidance of this Circular.

To implement the new policy with respect to responsibility for final determination of whether or not a proposed procurement action is for consulting services, the Secretary of Defense and the Administrator for General Services are directed to incorporate the applicable provisions of this Circular (see 6.g.) into the Defense acquisition Regulation and the Federal Procurement Regulations, respectively, within sixty (60) days of the date of this Circular.

12. Inquiries. All questions or inquiries should be submitted to the Office of Management and Budget. Telephone Number (202) 395-6810.


James T. McIntyre, Jr.
Director

Attachment

ATTACHMENT

This attachment contains examples of the type of services which are consulting services, as defined in this Circular, and to which this Circular applies.

- o Advice on or evaluation of agency administration and management, such as:
 - Organizational structures;
 - Reorganization plans;
 - Management methods;
 - Zero-base budgeting procedures;
 - Mail handling procedures;
 - Records and file organization;
 - Personnel procedures;
 - Discriminatory labor practices;
 - Agency publications;
 - Internal policies, directives, orders, manuals, and procedures; and
 - Management information systems.

- o Advice on or evaluation of agency program management, such as:
 - Program plans;
 - Acquisition strategies;
 - Assistance strategies;
 - Regulations;
 - Assistance or procurement, solicited or unsolicited technical and cost proposals;
 - Legal aspects;
 - Economic impacts;
 - Program impact; and
 - Mission and program analysis.

This Circular also applies to any contract task assignment for consulting services given to Federally Funded Research and Development Centers.

See OMB Circular No. A-76 for examples of Governmental functions and commercial and industrial products and services. It should also be noted that the conduct of research and development and technology assessments are not consulting services.