

In the July 13 supplement, the petitioners requested the reinstatement of their request that Dr. Hopenfeld's DPO be resolved before allowing IP2 to restart, asserting that the resignation of a DPO panel member raised doubts about the efficacy of the DPO process, and that, therefore, the Petition Review Board should reconsider its rejection of Dr. Hopenfeld's DPO for review under the 10 CFR 2.206 process. However, the NRC staff rejected this request because it did not meet the the 10 CFR 2.206 criteria. Dr. Hopenfeld's concerns were generic in nature and the information the petitioners had provided was not uniquely applicable to IP2 to support the assertions raised in their 10 CFR 2.206 Petition. The information in the July 13 supplement did not provide any information to alter that determination, and, therefore, this request will not be treated pursuant to 10 CFR 2.206 of the Commission's regulations.

Copies of the Petition and additional information are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www/nrc.gov>).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of August 2000.

**Roy P. Zimmerman,**

*Acting Director, Office of Nuclear Reactor Regulation.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Review Commission

#### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m. on September 15, 2000.

**PLACE:** The Commission's National Office at One Lafayette Centre, 1120 20th St., NW., 9th Floor, Washington, DC 20036-3419.

**STATUS:** Pursuant to 29 CFR § 2203.3(a) the first part of this meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** This meeting will be opened to allow the Commission to evaluate the Commission's pilot program for the Settlement Part (29 CFR § 2200.120) and to decide whether to make it permanent. After that matter is disposed of the meeting will be closed for the

Commission to consider cases pending for adjudication.

**CONTACT PERSON FOR MORE INFORMATION:** Earl R. Ohman, Jr., General Counsel, (202) 606-5410.

**Earl R. Ohman, Jr.,**  
*General Counsel.*

[FR Doc. 00-23192 Filed 9-5-00; 5:11 pm]

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## OFFICE OF MANAGEMENT AND BUDGET

### Issuance of OMB Circular A-76 Transmittal Memorandum No. 22

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**SUMMARY:** The Office of Management and Budget (OMB) publishes technical changes to the OMB Circular A-76 Revised Supplemental Handbook.

**DATES:** The OMB Circular A-76 Transmittal Memorandum No. 22 is 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. Inventories produced in accordance with the Federal Activities Inventory Reform Act shall also comply with these changes.

**FOR FURTHER INFORMATION CONTACT:** Mr. David C. Childs, Office of Federal Procurement Policy, NEOB Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395-6104.

**Availability:** 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.

Interested parties are reminded that OMB Circular No. A-76, Transmittal Memoranda 1 through 14 have been canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook dated March 27, 1996 (**Federal Register**, April 1, 1996, pages 14338-14346). Transmittal Memoranda 16, 17, and 18, which provided A-76 related Federal pay raise and material escalation cost factors are canceled. Transmittal Memorandum No. 19, to the

extent that it provided A-76 related Federal pay raise and material escalation cost factors, has been canceled. The standard retirement cost factors for the weighted average CSRS/FERS pension and Federal retiree health cost estimates and the post-retirement health costs also provided by Transmittal Memorandum No. 19, remain in effect. Transmittal Memorandum No. 20, which implemented the Federal Activities Inventory Reform (FAIR) Act, remains in effect. Transmittal Memorandum No. 21, which provides the current A-76 related Federal pay raise and material escalation cost factors also remains in effect.

#### SUPPLEMENTARY INFORMATION:

On May 4, 2000 (65 FR 25966), the Office of Management and Budget (OMB) requested agency and public comments on proposed changes to the OMB Circular A-76 Revised Supplemental Handbook. The proposed changes would:

(1) Amend the Federal Activities Inventory Reform Act (FAIR) implementation guidance provided by OMB Circular A-76 Transmittal Memorandum No. 20, by changing the A-76 Revised Supplemental Handbook at Appendix 2, paragraph g.3., to provide for 30 working days rather than 30-calendar days as the period during which an interested party may submit its initial challenge to an agency's FAIR Act inventory. It was also proposed that Appendix 2, paragraph g.4., be changed to provide for 28 working days rather than 28 calendar days as the period during which the agency should issue its decision on the initial challenge;

(2) Delete Part 1, Chapter 3, paragraph K.1.e., of the Revised Supplemental Handbook, which requires A-76 cost comparison appellants to "demonstrate that the items appealed (in an A-76 cost comparison) individually or in aggregate, would reverse the tentative decision." The proposed change was intended to avoid any conflict in requiring a single A-76 cost comparison administrative appeal period, as provided at Part 1, Chapter 3, paragraph K.7.

(3) Strengthen OMB's longstanding policy of limiting the participation of directly affected employees on an A-76 cost comparison Source Selection Board or its evaluation teams by revising Part 1, Chapter 3, paragraph H. 3.b. of the Revised Supplemental Handbook.

OMB received 13 responses to its request for comments (65 FR 25966); 6 Federal agencies, 5 industry or trade groups, 1 employee organization and one individual. A discussion of the

significant comments, and OMB's responses to those comments follows. After considering all comments received on the proposed changes to the Revised Supplemental Handbook, OMB is issuing final guidance to the agencies.

#### Summary of Comments Received

1. The proposed revision to expand the FAIR Act's inventory challenge and agency response periods from calendar days to working days.

Four commentors supported the proposed change. All other commentors were silent on this issue, except one who asked that the FAIR Act administrative appeal period be extended "from 30 to 180 days." The change from 30 days to 180 days would require a change in the statutory language of the FAIR Act itself, which provides for a 30-day administrative appeal period and a 28-day period for the agency to issue its decision on the initial challenge. The proposed revision from calendar days to working days is adopted as a final revision to the Supplemental Handbook.

2. The proposal to delete Part 1, Chapter 3, paragraph K.1.e., of the Revised Supplemental Handbook to avoid any conflict with the provision at Part 1, Chapter 3, paragraph K.7 that there is a single cost comparison appeal period.

a. *Comment:* One commentor asked for changes that would revise the language to clarify that an appeal must continue to demonstrate that the items appealed individually or in aggregate, would reverse the tentative decision. There was concern that unless this requirement was firmly re-established the Administrative Appeal Authority could be burdened by appeals that would not affect the outcome of the tentative decision. Similarly, one commentor objected to the deletion of Part 1, Chapter 3, paragraph K.1.e., based on the perception that its deletion—alone—eliminated any threshold for reversing a decision.

*Response:* OMB agrees with the commentors' concerns. The Supplemental Handbook has for years provided that an administrative appeal needs to raise outcome-determinative issues. See 1983 Supplemental Handbook, Part I, Chapter 2, Paragraph I.6.c (an appeal must "Demonstrate that the result of the appeal may change the cost comparison decision"); 1996 Supplemental Handbook, Part I, Chapter 3, Paragraph K.1.e (an appeal must "Demonstrate that the items appealed, individually or in aggregate, would reverse the tentative decision").

The requirement that an administrative appeal raise only

outcome-determinative issues had been intended to streamline the appeal process. However, in recent years, this requirement has had the unintended opposite effect in a number of cases. While the process permitted appeals of individual items or items that would in aggregate reverse a tentative cost comparison decision, neither the 1983 Supplement or the 1996 Revision anticipated sequential appeals or even the appeal—by the party that had originally prevailed in the tentative decision—of an Administrative Appeal Board's initial decision to reverse the tentative decision. In the latter situation, the party that originally prevailed could not ask the Administrative Appeal Board at the start of the appeals process to review and correct alleged errors in the cost comparison, because the correction of such errors would not be outcome-determinative. However, in those cases where the Administrative Appeal Board issues an initial decision that would reverse the cost comparison, the originally-prevailing parties have responded by filing a sequential appeal that raises the errors in the original cost comparison. As a result, contrary to its intent, the requirement to raise only outcome-determinative issues in the initial appeal has resulted in a longer and more burdensome appeal process.

To eliminate these concerns, to reduce the administrative burden of potential sequential appeals, to ensure equal access by all parties to the administrative appeal process and, to emphasize that the Government seeks the best overall decision, OMB is implementing the proposed change published in the **Federal Register** (65 FR 25966).

By deleting Part I, Chapter 3, paragraph K.1.e., of the Supplemental Handbook, OMB eliminates sequential appeals and their related delays. All interested parties need to review the tentative A-76 cost comparison decision and all supporting documentation and immediately identify and bring to the attention of the Administrative Appeals Board any potential errors that, if corrected, would provide for a more accurate determination. Additional language has been added at Part I, Chapter 3, Paragraph K.1.a., to emphasize that all appeals must be filed within the initial A-76 administrative appeal period, including any concerns identified by the apparent winner of the tentative decision.

We expect that the revision will streamline the administrative appeal process. The vast majority of cost comparisons are appealed already, and we do not anticipate that the revision will result in many new issues being

raised to the Administrative Appeals Board. Instead, our expectation is that, by having the parties immediately bring before the Administrative Appeals Board all the issues that they have with the tentative decision, the revision will ultimately result in a shorter appeals process. If this expectation is not borne out by future experience, then OMB can revisit the matter.

b. *Comment:* One commentor, while concurring with the deletion of Part 1, Chapter 3, paragraph K.1.e. suggested that the Appeal Authority be required to make its proposed finding available for public and agency comment prior to issuing a final decision.

*Response:* The suggestion that the Appeal Authority be required to submit its proposed findings to agency or public comment prior to issuance of the final A-76 cost comparison decision constitutes a substantial change to the current process and such a requirement could potentially result in significant additional delays to the appeals process. Such a change is, therefore, beyond the scope of this current revision process. We have accordingly not made the proposed change.

c. *Comment:* One commentor suggested that OMB take this opportunity to establish that the 20-30 day A-76 cost comparison administrative appeal period be converted to working days from calendar days at Part 1, Chapter 3, paragraph K.1.b., consistent with the changes made above at Appendix 2, paragraph g.3., and paragraph g.4., regarding the FAIR Act inventory appeal process.

*Response:* The March 1996 A-76 Revision increased the period for which an interested party could file an administrative appeal from 15 days to 20 days with the possibility of extending it to 30 days, at the agency's discretion. The submission of an A-76 cost comparison administrative appeal is a very focused submission, directed at the costs entered on the cost comparison form and compliance with the Circular and its Supplemental Handbook. The challenge and appeal of agency FAIR Act inventories is significantly different in scope. The Government's experience since the 1996 revision has been that the 20-30 day A-76 appeal period appears to be sufficient for challengers to file their appeals, furthers the public interest in reaching an expeditious resolution and avoids placing employees or contractors in a position of uncertainty for any longer than necessary. We have accordingly not made the proposed change.

3. Strengthen OMB's longstanding policy of limiting the participation of

directly affected individuals on an A-76 cost comparison Source Selection Team.

a. *Comment:* All commentors agreed that additional guidance is needed. Where they differed was in the use of the term "individual" as proposed by OMB, and the application of the term to military service members whose work is included in the competition. In the view of several commentors, directly affected military service personnel should continue to be eligible to serve on the Source Selection Board (SSB) and its evaluation teams, because the military member's job will continue—either at another location or another function at the same location, even if the ultimate decision was that the work would be contracted-out. In accordance with this view, military members could continue to be eligible to serve on the SSB and evaluation teams unless they have a financial interest in one of the competing offerors to the solicitation.

*Response:* OMB believes that it is good business practice to exclude individuals who are directly affected by an A-76 cost comparison from participating in a Source Selection Board (SSB) for the resulting contract. The source selection process is most effective when decision-makers are chosen independent of the function under review. OMB readily acknowledges that the employment of military service personnel will not be adversely affected by the decision to retain or convert work to or from in-house, contract or Inter-Service Support Agreement performance. However, we do not believe that including military personnel, whose current jobs, local responsibilities, assignments and even supervisory relationships could be affected, is a good business practice in the context of an A-76 cost comparison. Indeed, in many cases, these are the management and other support personnel who have likely had input to the local scope and performance criteria of the PWS and the in-house MEO. The special skills that are afforded by local military personnel and the workforce investments that have been made in these kinds of support staff can be acquired from other sites, installations and made readily available through modern technology or contract support. The proposal would permit the inclusion of individuals whose work is included in the scope of the competition in only compelling circumstances and

with a full understanding of these business practices.

**Jacob J. Lew,**  
*Director.*

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

August 31, 2000.

**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 1, 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.

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