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William R. Dougan, President

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September 14, 2006

To: Charles R. Christopherson, Jr.
Cc: Mark Rey, Dale Bosworth, Hank Kashdan, Ron Ketter
From: William Dougan
Subject: Forest Service noncompliance with OMB Circular A-76

Pursuant to Office of Management and Budget (OMB) Circular No. A-76, the Competitive Sourcing Official (CSO) is responsible for proper implementation of the Circular to ensure that the American people receive maximum value for their tax dollars. We have been informed that you are the CSO for the Forest Service (FS). If we have been misinformed, please forward this memo to the FS CSO and inform us of this action.

On June 29, 2006, the FS made a formal public announcement of intent to conduct a Competitive Sourcing Study in accordance with OMB Circular No. A-76 of communication functions involving web posting and photography (Solicitation Number WO-3187-CS-01). In so doing, the agency violated A-76 requirements, described below, to complete certain well-defined preliminary planning tasks before public announcement. Pursuant to your responsibility under Sec. 4.f. of the Circular, we ask that you use the authority bestowed upon you by Attachment B, Sec. B.3.a. of the Circular to cancel this study and direct the FS to meet its obligations under the Circular prior to any re-announcement.

Brief Chronology. The feasibility study for communications activities, released on July 1, 2005, recommended competitive sourcing study of 21 work functions, estimating that this would involve approximately 130 full-time equivalents (FTEs) of work. The report also made note of the need for subsequent preliminary planning.¹ The feasibility team was disbanded upon completion of this report.

Almost a year passed before the new competitive sourcing teams and sub-teams were assembled and trained.² Development of the definitions of work to be studied, a necessary prerequisite to preliminary planning tasks mandated by the Circular, began in April or May of 2006. Definitions were first provided to the field with the May 22, 2006 data call to field employees, with responses due by June 7. According to Jennifer Plyler, the Communications Competitive Sourcing Team Leader, the purpose of this data call was to “get an idea of what the universe looks like out there in terms of [communications] activities because we do not know that.”³ Initial plans called for a second data call to look at scoping and grouping.⁴ This plan was dropped when it was learned that, in stark contrast to the feasibility study’s report, approximately 133 FTEs of work resided in only 2 of the 21 functions recommended for study: web posting and photography. The study was announced with no further data calls, on June 29. In announcing this study, the Forest Service violated the following provision of OMB Circular No. A-76.

Before the public announcement, the Circular requires an agency to “scope” the study, i.e. to “determine the activities and [FTE] positions to be competed.” Prior to announcement, the agency had only an approximation of the number of FTEs encompassed by the study, based on a single data call for which there was substantial confusion regarding precisely what work was in scope and what work was excluded from study. Because the categories of work were newly defined, there were no records upon which to base time spent; respondents were therefore forced to make retrospective estimates of time spent on a number of collateral duties in a short time-frame using ill-defined and shifting definitions. These data are of highly questionable accuracy. The record abounds with examples of continued work to determine the activities to be competed and the number of FTEs involved.

- Hank Kashdan, Forest Service Deputy Chief for Business Operations, acknowledged on July 14 that the “estimated number [of 133 FTEs] will be refined over the course of the study process.”⁵
- Jennifer Plyler, Competitive Sourcing Team Leader, stated on July 18, “[133 FTEs is] just an estimate right now but that is kind of a ballpark with which we’re working in and with which we would base the budget on.”⁶
- On July 18, Plyler could not resolve ambiguities regarding whether or not specific photographic work was within the scope of the study and should have been reported on the already-expired May 22 data call.⁷
- On July 19, Plyler sent an email to Office of Communications colleagues which stated, “The Performance Work Statement (PWS) Team is working diligently this week to determine the workload and technical requirements of web and photography activities and who is doing that work. The team needs your help at this time with the latter. They are reviewing the surveys and need to contact PAOs on forests, district, units, and other staff areas to compare the survey results with what is actually happening on the ground.”
- In a July 27 posting to the agency’s competitive sourcing intranet site, it was indicated that efforts to refine the definitions and scope of work to be studied were ongoing, and would involve data collected during an upcoming data call.⁸
- On July 30, Plyler sent an email informing employees that “receipt of a notification letter simply means that an employee is performing duties that are considered within the scope of the study... As the study progresses we may request delivery of additional employee notifications, as subsequent data calls reveal additional details about work with the scope of the study. We may also ‘denotify’ employees (i.e., remove them from the study) as the study progresses.”
- A data call distributed on August 9 (response due August 25) revised the activities to be competed.
- On August 17, Plyler stated, “[O]nce we have all the surveys in and we’re able to go through and analyze the data, the performance work statement team will look at that. They will define the scope, redefine the scope.”⁹

Clearly, determination of the scope of the study was not completed as required by the Circular prior to the June 29 announcement. Further, there is no evidence it has been determined even as of now.

Before the public announcement, the Circular requires an agency to “conduct preliminary research to determine the appropriate grouping of activities as business units (e.g., consistent with market and industry structures).” On July 18, three weeks after announcement, identification of contractors that perform either Web or photography activities was still ongoing.¹⁰

Before the public announcement, the Circular requires an agency to “assess the availability of workload... and other similar data [and] establish data collection systems as necessary.” As of July 14, determination of “the information we need to collect and then what’s going to be the best way to collect that” had not yet been made.¹¹ On August 17, efforts were ongoing to “figure out a way to get [workload] information to [the PWS team].”¹²

Before the public announcement, the Circular requires an agency to “determine the activity’s baseline costs as performed by the incumbent service provider.” As noted above, personnel costs (based on FTEs in-scope) were not determined prior to announcement and there is no evidence this has been done to date. In addition, determination of other costs (such as existing contracts to perform in-scope work) was not completed.¹³

Recent Department audits revealed that earlier A-76 studies of fleet and road maintenance in Region 5 and the national Information Technology study failed to determine baseline costs, and as a result claimed savings cannot be substantiated. The same thing is happening once again. Both the Circular’s technical requirement to determine baseline costs and its stated policy to ensure that the American people receive maximum value for their tax dollars are inconsistent with crude and unsubstantiated estimates.

As CSO, you have the responsibility to ensure proper implementation of the Circular. We ask that you do so by canceling the above referenced study and directing the FS to complete the required preliminary planning requirements prior to any re-announcement. This is a matter of some urgency, as the agency has already released a draft Performance Work Statement and appears committed to moving forward at a rapid and reckless pace regardless of the inadequacy of its data.

Sincerely,

William R. Dougan, President
NFFE Forest Service Council

¹ USDA policy requires that feasibility studies be conducted “to determine whether or not to conduct public-private competitions.” In testimony before the House Appropriations Committee, Chief Bosworth admitted that the decision to study around 100 FTEs in communications had already been made before the feasibility study began. See *Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 109th Congress, Second Session, Subcommittee on Interior, Environment, and Related Agencies, Part 6* at 356. We note in passing that this appears to constitute a violation of Department policy. With the decision already made, the study was cursory at best. The feasibility team did not perform data calls to determine work actually being performed across the agency. As a result, the feasibility study was based on general categories of work performed by some hypothetical organization, not on the wide variety of work actually performed across the Forest Service.

² See [letter from Stana Federighi](#), Director, Forest Service Office of Communication (April 7, 2006).

³ See [May 23, 2006 Conference Call: Competitive Sourcing for Communication Activities](#), moderated by Jennifer Plyler, Team Leader, Competitive Sourcing Team, at 3.

⁴ See [May 2, 2006 Conference Call: Competitive Sourcing for Communication Activities](#), moderated by Jennifer Plyler, Team Leader, Competitive Sourcing Team, at 6.

⁵ See [letter from Hank Kashdan](#), Forest Service Deputy Chief for Business Operations (July 14, 2006).

⁶ See [July 18, 2006 Conference Call: Competitive Sourcing for Communication Activities](#), moderated by Jennifer Plyler, Team Leader, Competitive Sourcing Team, at 27-28. See also pp. 33-34 for discussion of continuing efforts to obtain accurate data.

⁷ See [July 18, 2006 Conference Call](#), *supra* note 6, at 40-41. Data accuracy depends upon all employees responding consistently, *i.e.* with universal understanding of what work is in-scope and what work is not. This is still not being achieved. Guidance provided for the most recent data call (August 9) seemed to conflict with activity definitions that excluded “every-day” photography to document work. See [August 17, 2006 Conference Call: Competitive Sourcing for Communication Activities](#), moderated by Jennifer Plyler, Team Leader, Competitive Sourcing Team, at 27-28 and 47-49.

⁸ See [Q & A from the Competitive Sourcing for Communication Activities](#) (July 27, 2006).

⁹ See [August 17, 2006 Conference Call](#), *supra* note 7, at 3. Numerous other statements in this transcript allude to ongoing work on determining the activities to be competed and the number of FTEs involved. Of particular interest, even the fundamental determination of whether or not to include collateral fire-fighting and incident support duties within the scope of the study had not yet been made (see pp. 42-43).

¹⁰ See [July 18, 2006 Conference Call](#), *supra* note 6, at 4.

¹¹ See [July 18, 2006 Conference Call](#), *supra* note 6, at 11.

¹² See [August 17, 2006 Conference Call](#), *supra* note 7, at 31. As one data call respondent noted, “So basically we are left with a short timeframe to be – to our own devices to try and figure it out. That’s my concern as we’re not going to get a very accurate account without just guessing – throwing something up on the wall (p. 15).” Numerous other statements allude to ongoing difficulties with data collection. Difficulties with distribution, consistency, availability of data, management oversight, etc. of data calls persist.

¹³ See [July 18, 2006 Conference Call](#), *supra* note 6, at 26. See also the letter from Hank Kashdan, Forest Service Deputy Chief for Business Operations (August 23, 2006) which acknowledges that nearly two months after announcement, the agency did not even have a list of contractors currently providing in-scope work, much less a cost for it.