

**OMB CIRCULAR A-76:
LEVEL PLAYING FIELD CONSIDERATIONS**

**- A Presentation to the Commercial Activities Panel
San Antonio, Texas, August 15, 2001 -**

By

**Lawrence L. Martin
Associate Professor
Columbia University
622 W. 113 Street
New York, New York 10025
Tel: (212) 854-2735
e-mail: <LLM15@columbia.edu>**

INTRODUCTION

Mr. Chairman and members of the committee, my name is Lawrence L. Martin. I am an associate professor at Columbia University in New York City. I would like to talk to you today about Office of Management & Budget Circular A-76 and level playing field considerations.

My comments today are drawn from two studies I have conducted on the subject of level playing field considerations in public-private competitions. One of these studies specifically addressed the A-76 process.¹

WHAT IS A LEVEL PLAYING FIELD?

A “level playing field” can be defined as a public-private competition (such as the A-76 process) that is structured in such a fashion as to be competitively neutral. In a situation of competitive neutrality, the public-private competition process itself does not provide either the public sector or the private sector with an inherent competitive advantage.

WHY IS A LEVEL PLAYING FIELD IMPORTANT?

A level playing field is important because:

- one of the stated reasons for the 1996 changes to the A-76 process was to, “provide a level playing field between public and private offerors to a competition.”²
- both the public and private sectors must have confidence in the fairness of the A-process. Currently, neither the public sector nor the private sector believes the A-76 process is fair and equitable.
- The more A-76 achieves a level playing field, the more confidence the public and private sectors should have in the process.

-
1. L. L. Martin (1999). *Determining a Level Playing Field for Public-Private Competition*. Arlington, VA: The PricewaterhouseCoopers Endowment for the Business of Government. L. L. Martin (2000). “Public-Private Sectors Compete on Uneven Field: A-76’s Goal Still to Be Met.” *The Federal Times* (March 6):15
 2. Office of Management & Budget (OMB) (1996). *Circular A-76: Revised Supplemental Handbook Performance of Commercial Activities*. Washington, D.C. (OMB). p. iii.

THE LEVEL PLAYING FIELD CHECKLIST

As part of a study conducted in 1999, I developed a level playing checklist for use in assessing the extent to which an individual public-private competition or a government's public-private competition policy achieves a level playing field. The checklist was developed by reviewing both the literature on public-private competition and the actual public private competition policies of national and sub-national governments in Australia, the United Kingdom and the United States.

The study identified 13 major level playing field issues grouped into three categories:

- (a) process issues,
- (b) costing issues, and
- (c) contract administration issues.

The most common government responses to each of the 13 major level playing field issues were also identified. Each response was categorized as:

- (a) tends to favor the public sector,
- (b) is competitively neutral, or
- (c) tends to favor the private sector.

The level playing checklist is shown on the following pages.

DOES A-76 ACHIEVE A LEVEL PLAYING FIELD?

Based on the level playing field checklist (see following pages), the A-76 process achieves competitive neutrality on only 8 of the 13 major level playing field issues. The conclusion is that the A-76 process *approximates*, but *does not achieve*, a level playing field.

RECOMMENDATIONS

Consideration should be given to amending the A-76 process to create a more level playing field between the public and private sectors. Specific actions that could be taken include:

- using a parallel process rather than the current sequential process.
- separating more clearly the government's purchaser and provider functions.
- conducting cost comparisons using the Texas approach.
- dealing more equitably with contract administration and monitoring costs.
- including penalties for public sector failure to perform.

Level Playing Field Checklist

<i>Process Issues</i>	Tends to Favor the Public Sector	Competitively Neutral	Tends to Favor the Private Sector
1. Type of Competition - Sequential Process - Parallel Process	X (A-76)	X	
2. Public Sector Access to Outside Consultants - YES - NO		X (A-76)	X
3. Independent Review of Public Sector Benchmarks, Bids & Proposals - YES - NO	X	X (A-76)	
4. Separation of Purchaser & Provider Functions - YES - NO	X (A-76)	X	

Level Playing Field Checklist

<i>Costing Issues</i>	Tends to Favor the Public Sector	Competitively Neutral	Tends to Favor the Private Sector
5. Mandated Private Sector Wage Scales - YES - NO	X	X (A-76)	
6. Mandated Private Sector Employee Benefits - YES - NO	X	X (A-76)	
7. Minimum Cost Savings Threshold - YES - NO	X	X (A-76)	
8. Cost Comparison Approach - Fully Allocated Costs Approach - Avoidable Costs Approach - State of Texas Approach	X	X	X (A-76)
9. Transaction Costs - Included for Private Sector only (when service delivery is currently public sector) - Included only for Public Sector (when service delivery is currently private sector) and included for Private Sector (when service delivery is currently public sector) - Excluded for both	X	X X (A-76)	
10. Contract Administration & Monitoring Costs - Included for Private Sector only - Included for Both Public Sector & Private Sector - Excluded	X (A-76)	X X	

Level Playing Field Checklist

<i>Contract Administration Issues</i>	Tends to Favor the Public Sector	Competitively Neutral	Tends to Favor the Private Sector
11. Public Sector Memorandum of Understanding - YES - NO	X	X (A-76)	
12. Penalties for Public Sector Failure to Perform - YES - NO	X (A-76)	X	
13. Provisions for Monitoring - Private Sector Only - Public Sector & Private Sector	X	X (A-76)	

A-76 Process

4

8

1