NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power Corporation (the licensee) to withdraw its August 14, 2002, application for proposed amendment to Facility Operating License No. DPR–72 for Crystal River, Unit No. 2, located in Citrus County, Florida.

The proposed amendment would have revised the Technical Specifications pertaining to two inoperable control complex chillers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 6, 2002 (67 FR 57042). However, by letter dated October 24, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 14, 2002, and the licensee's letter dated October 24, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of November 2002.

For the Nuclear Regulatory Commission.

Ram Subbaratnam,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29327 Filed 11–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Future Plant Designs; Canceled

The meeting of the ACRS Subcommittee on Future Plant Designs scheduled to be held on November 21, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland, has been canceled due to the unavailability of documents. Notice of this meeting was published in the **Federal Register** on Monday, November 4, 2002 (67 FR 67218).

FOR FURTHER INFORMATION CONTACT: Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (EST) or by e-mail *MME@NRC.gov*

Dated: November 13, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–29326 Filed 11–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 18, 25, December 2, 9, 16, 23, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 18, 2002

Thursday, November 21, 2002

10 a.m.—Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, ''Risk-Informed Caterogization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors'' (Public Meeting) (Contract: Eillen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

2 p.m.—Discussion of Security Issues (Closed—Ex.1)

Week of November 25, 2002—Tentative

Tuesday, November 26, 2002

9:30 a.m.—Discussion of Security Issues (Closed—Ex.1)

Week of December 2, 2002—Tentative

Wednesday, December 4, 2002

10 a.m.—Briefing on Decommissioning Bankruptcy Issues (Closed—Ex. 4 & 9)

Week of December 9, 2002—Tentative

There are no meetings scheduled for the Week of December 9, 2002.

Week of December 16, 2002—Tentative

Wednesday, December 18, 2002

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of December 23, 2002—Tentative

There are no meetings scheduled for the Week of December 23, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: November 14, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–29487 Filed 11–15–02; 2:32 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Performance of Commercial Activities

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

ACTION: Proposed revision to Office of Management and Budget Circular No. A–76, ''Performance of Commercial Activities.''

SUMMARY: The Office of Management and Budget (OMB) proposes major revisions to Circular No. A–76 to improve the management of commercial activities that are needed to conduct the business of government. The revisions would expand the use of public-private competitions to all activities performed in-house and through commercial inter-service support agreements (ISSAs). The revisions would also incorporate principles of the Federal Acquisition Regulation (FAR) into the competitive sourcing process, including the ability to conduct an expanded best value cost-technical trade-off source selection process. In addition, the revisions would provide guidance for the development of inventories identifying the commercial and inherently governmental activities agencies perform, and prescribe limitations regarding the reimbursable services federal agencies may provide to state and local governments.

To accomplish these changes, OMB is proposing to revise and incorporate the following documents into the revised Circular A–76: the ''Revised Supplemental Handbook to OMB Circular A–76'' (March 1999); OMB Circular A–76 Transmittal Memoranda Nos. 1–24; Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, ''Inherently Governmental Functions''; and OMB Circular A–97, ''Provision of Specialized or Technical Services to State and Local Units of Government by Federal Agencies Under Title III of the Intergovernmental Cooperation Act of 1968.'' The Revised Supplemental Handbook to Circular A–76 (hereafter ''Supplemental Handbook''), OFPP Policy Letter 92–1 and OMB Circular A–97 would be rescinded.

DATES: Interested parties should submit comments to OFPP, Office of Management and Budget, at the address shown below on or before December 19, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to: *A-76comments@omb.eop.gov.* Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–5105. Comments may be mailed to Mr. David C. Childs, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street NW., New Executive Office Building, Room 9013, Washington, DC 20503.

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 (tel: (202) 395–6104).

Availability: Copies of the proposed revision to OMB Circular A–76 may be obtained at the OMB home page at www.whitehouse.gov/OMB/circulars/index.html#numerical. Copies of the current OMB Circular A–76, the Revised Supplemental Handbook, applicable Transmittal Memoranda, OFPP Policy Letter 92–1, and OMB Circular A–97 are also available on the OMB home page. Paper copies of any of the documents identified above may be obtained by calling OFPP (tel: (202) 395–7579).

SUPPLEMENTARY INFORMATION:

A. Overview

To lower costs for taxpayers and improve program performance to citizens, OMB has undertaken major revisions to the processes and practices in OMB Circular A–76 that govern how federal agencies determine whether commercial activities will be performed by public or private sources. The proposed revisions would:

- Significantly expand the use of public-private competition by (i) eliminating exceptions that have permitted federal agencies to provide services to one another on a sole-source basis under reimbursable fee-for-service agreements (*i.e.*, commercial ISSAs) and (ii) requiring periodic recompetitions of commercial activities performed for the government;
- Make processes simpler and easier to understand, including greater reliance on concepts and practices set forth in the FAR that are familiar to, and well tested by, the acquisition community;
- Improve the effectiveness of competitions by giving agencies greater flexibility to consider quality in source selections, including the use of cost-technical tradeoffs for information technology (IT) and certain other activities;
- Improve public trust in public-private competitions by avoiding any appearance of conflicts of interest;
- Increase visibility into the management of government by requiring agencies to develop lists of their commercial and inherently governmental activities and make them available to the public; and
- Strengthen accountability for achieving results by centralizing agency oversight for the management of commercial activities and increasing the focus on post-award administration of agreements with public providers to be more consistent with practices applied to contracts with private sector providers.

B. The Purpose and Procedures of OMB Circular A–76

Federal agencies rely on a mix of public and private sector sources to perform a wide variety of recurring commercial activities that are needed to conduct the business of government. These activities range all the way from custodial services to data collection, computer services and research, testing, and maintenance of equipment used by our nation's war fighters. OMB Circular A–76 establishes the policies and procedures for identifying commercial activities and determining whether these activities should be provided through contract with commercial service providers, by in-house government personnel, or through reimbursable fee-for-service providers under ISSAs with other government agencies.

Before an agency shifts commercial work from one sector to another (*e.g.*, from in-house performance to contract, or vice versa), Circular A–76 generally requires the agency to conduct a public-private competition in which the cost of performance is compared between and among the public and private sectors. To perform a ''cost comparison'' under the current Circular, agencies must:

- Develop a performance work statement (PWS);
- Create a management plan to determine the government's ''most efficient organization'' (MEO);
- Establish an in-house government cost estimate for the in-house plan that is then certified by an independent reviewing official (IRO) for compliance with the PWS and costing policies set forth in the Circular;
- Issue a solicitation in accordance with the FAR seeking offers from private and public sector sources, except for the in-house source, whose cost estimate is submitted and evaluated independently;
- Identify the best offer submitted in response to the solicitation and compare it to the in-house estimate; and
- Make award to the lower cost alternative (which is subject to review under an administrative appeals process).

The Circular also recognizes a variety of circumstances in which agencies are

not required to conduct cost comparisons.

No shifting of work contemplated. Cost comparisons are not required where work is not presently being performed in-house and the agency seeks to award a contract for a new or expanded service requirement or for a service that is currently being obtained through a competitively awarded contract.

Direct conversions. The Circular allows agencies to directly convert work to or from the private sector without cost comparison under certain circumstances. For example, work may be directly converted where an activity is or will be performed by an aggregate of 10 or fewer ''full-time-equivalent'' employees (FTEs), or where conversion will result in no employee impact (*e.g.*, because they are reassigned to comparable federal positions or voluntarily retire).

Ongoing agency performance. Commercial services activities that have been continuously performed by an in-house provider or another agency through an ISSA are not subject to recurring cost comparisons. In March 1996, OMB amended the Supplemental Handbook to require cost comparisons before new or expanded work is performed in-house or through an ISSA. However, there is no limitation on the length of the new agency performance agreements, thus allowing indefinite deferral of further competitions.

Exercise of agency waivers. Agency heads are authorized to waive cost comparisons under certain conditions. For instance, an agency may waive the cost comparison requirement where a conversion will result in a significant financial or service quality improvement and the proposed conversion will not serve to reduce significantly the level or quality of competition in the future award or performance of work.

C. Shortcomings of Current Circular A–76 Processes

Since its original issuance in 1966, Circular A–76 has been revised three times—in 1967, 1979, and 1983. The Supplemental Handbook, first issued in 1979, has been revised three times—in 1983, 1996 and 1999. Despite the revisions, including the development of streamlined cost comparisons for activities with 65 or fewer FTEs, the policies and processes of Circular A–76 have not been widely applied. While the Department of Defense has undertaken some noteworthy efforts, most of the 850,000 FTEs that agencies have identified as performing commercial activities (nearly half of all federal employees) remain insulated from the dynamics of competition.

A variety of factors have limited the Circular's use and effectiveness:

The Circular's exceptions allow for significant amounts of agency work to be performed without competition. As described above, ISSAs between federal agencies for commercial support services in place before 1996 enjoy a special exemption from the Circular's competition requirements. Simply put, there is no requirement to subject these reimbursable agreements to competition unless an agency voluntarily decides to consider changing its current provider. As a result, billions of taxpayer dollars continue to be spent on federal operations that have never been exposed to the innovation and efficiency that competition generates. Even where competitions are conducted, there are no requirements to limit the period of performance if a public provider wins the competition. Consequently, many public providers continue to escape the competitive pressures that would likely motivate optimal performance.

The competition process is complicated and not well understood. Conducting a cost comparison can be time consuming and complex. In-house providers often lack the training and technical support needed to develop management plans, solicitations, or fully allocated cost estimates. In addition, the Circular includes numerous procedures that are different from the established acquisition processes set forth in the FAR for conducting competitions among private sector sources. These differences serve as necessary safeguards for public-private competitions, especially when in-house performance is contemplated. However, many believe the process for carrying out public-private competitions under Circular A–76 could be made more understandable by using basic FAR principles.

Current processes do not give agencies sufficient flexibility to make best value decisions. Historically, Circular A–76 has focused agency sourcing decisions on cost. Cost must always be a factor and often should be the most important factor. At the same time, securing good performance often hinges on quality considerations that may require agencies to make tradeoffs between cost and quality when evaluating sources. The 1996 Supplemental Handbook introduced the concept of best value to public-private competitions. However, it places significant limitations on an agency's ability to use cost-technical tradeoffs in a public-private source selection process.

Many believe the process is susceptible to gaming. Despite various safeguards, including costing principles that allow federal managers to make cost comparisons between sectors that have vastly divergent approaches to cost accounting, there remains a general sense that public-private competitions are not always fair. This perception is driven, in part, by the fact that agencies have considerable control over the timing of competitions. Managers often delay the start of, or unnecessarily draw out, competitions without consequence, hurting morale and reducing the number of private sector firms willing to compete. In addition, federal employees historically have been allowed to participate both in defining performance requirements and developing the in-house offer—causing some to question if conflicts of interest could exist. These concerns serve to discourage participation in public-private competitions and weaken taxpayer confidence in the overall process.

Accountability for results is limited. When public employees compete and win work, government managers are often not held fully accountable for making good on the projected savings and improved performance identified in the agency's offer. Current guidance requires post-competition reviews, but only for 20 percent of the functions performed by the government following a cost comparison. As a result, even where competition is used to transform a public provider into a high-value service provider, few steps are routinely taken to ensure this potential translates into positive results.

D. Proposed Revisions to Circular A–76

OMB is committed to improving significantly the processes and practices federal agencies use to determine whether commercial activities will be performed by public or private sector sources. These decisions have a direct and substantial effect on the government's ability to deliver quality service to our citizens in a cost-effective, timely, and responsible manner. Therefore, OMB is proposing major revisions to Circular A–76 to: (1) Improve and expand the use of competition in public-private sourcing decisions, (2) better ensure fairness, integrity, and transparency in the decision-making process, and (3) strengthen accountability for achieving results.

In addition to making significant substantive changes, OMB is modifying the organization of the Circular to improve clarity and ease of use. The main body of the Circular (now a two-page document) lays out the basic

policy tenants and responsibilities that agencies must undertake. Guidance for carrying out these responsibilities, and a detailed glossary of acronyms and definition of key terms, are set forth in six attachments:

Attachment A—Inventory Process
Attachment B—Public-Private Competition
Attachment C—Direct Conversion Process
Attachment D—Inter-Service Support Agreements
Attachment E—Calculating Public-Private Competition Costs
Attachment F—Glossary of Acronyms and Definitions of Terms

The key substantive changes in the proposed revision to Circular A–76 are as follows:

1. Improving and Expanding the Use of Competition

This Administration's general policy is to rely on competition to select the providers of commercial activities that agencies perform in carrying out their missions. The benefits of competition are well documented. The General Accounting Office (GAO) and the Center for Naval Analysis repeatedly have concluded that subjecting larger in-house operations to competition has consistently generated cost savings exceeding 30 percent. See, e.g., Future Years Defense Program: Funding Increase and Planned Savings in Fiscal Year 2000 Program Are at Risk, GAO/NSIAD–00–11 (November 1999); Evidence on Savings from DOD A–76 Competitions, Center for Naval Analysis, CRM 98–125 (November 1998); Long-Run Costs and Performance Effects of Competitive Sourcing, Center for Naval Analysis, CRM D0002765.A2 (February 2001).

The President has identified competitive sourcing—i.e., the process of opening the government's commercial activities to the discipline of competition—as one the five main initiatives of his Management Agenda for improving the performance of government. Changes set forth in the proposed revisions to Circular A–76 are designed to facilitate broader and more strategic use of competitive sourcing as a management tool for improving agency performance.

a. Competition as the Norm

i. Presumption that an activity is commercial. The revised Circular will require agencies to presume that all activities are commercial in nature unless an activity is justified as inherently governmental. See § 4.b. of the Circular and ¶ D.1 of Attachment A. To reinforce this presumption, agencies will be required to submit annual inventories of their inherently governmental positions. See ¶ C.3. of Attachment A. The Circular offers a more concise definition of ''inherently governmental'' and rescinds the more complex description contained in OFPP Letter 92–1 to achieve greater consistency in the identification of inherently governmental positions. The responsibility to develop an inherently governmental activities inventory will be in addition to the general obligation for agencies to prepare comprehensive annual inventories of their commercial activities performed by Federal activities, a requirement derived from the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270; 31 U.S.C. 501 note). See ¶ C.1. of Attachment A. With limited exception, the list of inherently governmental activities will be made available for public review. These additional steps should help to improve the accuracy of inventories and cast greater transparency on the government's commercial activities overall.

ii. Elimination of anti-competitive agency-to-agency arrangements. The revised Circular will eliminate the ''grandfather clause'' that currently permits public reimbursable service providers working under commercial ISSAs in existence prior to March 1996 to perform work indefinitely without being subject to competition. Agencies relying on public reimbursable providers will be required to develop plans for competing these commercial ISSAs within five years. All commercial ISSAs that are not competed or directly converted within this timeframe will be terminated, unless specific approval is granted by OMB's Deputy Director for Management, based on a report submitted by the head of the customer agency demonstrating why competition is not yet feasible. See ¶ B.3.of Attachment D.

In addition, customer agencies will be required to periodically test the marketplace by recompeting requirements performed by public reimbursable providers, just as they would with private sector contractors. This will help to ensure that all sources, public and private, are appropriately incentivized to perform at their best. Generally, agencies will be required to recompete commercial ISSAs every five years. The exact performance period will be identified in the ISSA or in a letter of obligation when the work is performed in house directly by the agency employees. See ¶¶ C.2.a.(5). and C.5.a.(4). and b.(2). of Attachment B.

There will be limited exceptions to the recompetition requirement. For example, commercial ISSAs will not be subject to competition if the revenue generated to the public reimbursable service provider performing under the ISSA does not exceed $1 million on an annual basis. An exemption will also be provided for inherently governmental ISSAs that, among other things, establish contracts for inter-agency use *e.g.,* such as a government-wide acquisition contract or multi-agency contract), and where the public reimbursable provider bears no responsibility to the customer agency for performance of the work and the customer agency is responsible for making all payments directly to the contractor. See ¶ A of Attachment D.

Finally, the revised Circular will incorporate long-standing limitations imposed on federal agencies regarding the reimbursable services they provide to state and local governments. See ¶ H of Attachment D. These requirements, which are based on section 302 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6505), are currently implemented in OMB Circular A–97. Circular A–97 states that federal agencies may provide only specialized or technical commercial services to a state or local government if, among other things: (1) The requesting state or local government entity demonstrates that it has sought but has been unable to identify a satisfactory private sector source, (2) the provision of such specialized and technical services shall not require additional resources, beyond those necessary to meet federal requirements, and (3) the service is currently provided by the agency for its own use and, if commercial in nature, has been competed in accordance with Circular A–76. By rescinding Circular A–97 and incorporating its requirements in Circular A–76, the key policies addressing the appropriate parameters of federal performance of commercial activities will be set forth in one document.

b. Expanded Reliance on Well-Established FAR Practices

The revised Circular requires that agencies generally comply with the FAR in conducting competitions. *See* § 4.d. of the Circular and ¶ C.2. of Attachment B. The general principles of the FAR are well established and enjoy widespread familiarity within the procurement community. Greater application of FAR-type principles and practices throughout the Circular is intended to bring public-private competitions closer to mainstream source selection and reduce confusion that may currently

make it more difficult for parties to compete. Examples of FAR-type principles that have been incorporated into the revised Circular include:

• Greater uniformity in the application of basic requirements to private and in-house providers. For instance, in-house offers (referred to in the proposed Circular as ''agency tenders'') will be required to respond to a solicitation within the same timeframes required of private sector offerors or public reimbursable tenders or risk elimination from the competition. *See* ¶ C.3.a.(2), (8) and (9) of Attachment B. Furthermore, instead of having an IRO review the agency tender, while all other offerors are reviewed by the source selection evaluation board (SSEB), the SSEB will simultaneously evaluate all tenders simultaneously with all offers. *See* ¶¶ C.4.a.(1).a, a.(2)., and a.(3).a. of Attachment B;

• Ability to conduct cost-technical tradeoffs in certain circumstances, largely in accordance with FAR Part 15, including the ability to eliminate an agency tender from the competitive range (see further discussion below);

• Exchanges between public tenders and the government in accordance with the general principles set forth in the FAR for exchanges between the government and the private sector. *See* ¶ C.4.a(3)(a). of Attachment B;

• Post award accountability for in-house performance similar to that expected of private sector contractors. Agencies relying on an in-house provider or a public reimbursable provider will be required to document changes to the solicitation, track actual costs, and terminate for failure to perform. *See* ¶ C.5.a.(4). of Attachment B. As described above, agencies will also be required to recompete work being performed by in-house or public reimbursable providers in accordance with the same time limitations imposed by the FAR on contracts with the private sector.

The revised Circular recognizes the talents and conditions under which the federal workforce operates and the importance of providing them with adequate training and technical support during the competition process to ensure they are able to comply with the requirements of the Circular and compete effectively. In this regard, the Circular requires that the agency tender official, the PWS team, and the MEO team be assisted by specific experts, including human resources, procurement, and management experts. *See* generally ¶ B.3.a. of Attachment B.

c. Greater Emphasis on Best Value

Cost comparisons have been the traditional focal point of Circular A–76. Reflective of the focus of the Circular for most of its history, the term connotes a cost-only sourcing decision. While cost will always be an important consideration in sourcing decisions, and often the most important consideration, agencies should also have the ability to take quality and innovation into account, especially where needs may require complex and inter-related services. For this reason, the term ''cost comparison'' has been dropped from the proposed Circular and replaced with the term competition.

The new focal point will be on ''standard competitions,'' or direct conversions when appropriate. Recognizing that agency needs cannot be met through a ''one-size-fits all'' approach, the Circular's guidance is broader and more accommodating than that which was developed over the years for the conduct of cost comparisons.

For example, when conducting a standard competition, agencies will have three options for considering non-cost factors. First, an agency may conduct a low price technically acceptable source selection where the performance decision is based on the low cost of offers that have been determined to be technically acceptable. *See* ¶ C.4.a.(3).b. of Attachment B. Second, if an agency wishes to have the flexibility of considering alternative performance levels that sources may wish to propose, the agency may conduct a ''phased evaluation process.'' During the first phase when technical factors are considered, the in-house provider, public reimbursable providers and private sector offerors may propose performance standards different from those specified in the solicitation. If the agency determines that the proposed alternative performance standards are appropriate and are within the agency's current budget, the agency could issue a formal amendment to the solicitation and allow revised submissions. The technically qualified offerors and the in-house offeror would then compete based on price against the revised performance standard. *See* ¶ C.4.a.(c).2. of Attachment B.

Finally, if non-cost factors are likely to play a more dominant role, agencies may conduct an ''integrated evaluation process'' with cost-technical tradeoffs similar to those authorized by FAR Part 15. Like the FAR Part 15 process, private sector offers, public reimbursable providers and in-house providers may submit higher performance standards than the solicitation. If the in-house offer is not among the most highly rated proposals, it could be eliminated from the competitive range, as would be envisioned by FAR 15.306(c). The source selection authority (SSA) would be required to document its rationale for any tradeoffs as required by FAR 15.406. Given the special considerations that must be taken into account with a public-private competition, the Circular recognizes that this integrated evaluation technique may not be appropriate for all needs and should be tested before wider application is authorized. For this reason, the Circular limits usage to (1) IT activities currently performed by federal employees, (2) contracted commercial activities, new requirements, or segregable expansions where an agency tender will be submitted, or (3) any other commercial activities where the agency's assistant secretary or equivalent level official with responsibility for implementing the Circular (*i.e.,* the ''4.e official'') receives approval from OMB prior to issuance of the solicitation. *See* ¶ C.4.a(c)1. of Attachment B.

2. Ensuring Fairness, Integrity, and Transparency

The revised Circular will establish new rules to separate the team that is formed to write the solicitation from that established to develop the agency tender. In addition, the agency MEO team, directly affected personnel (and their representatives) and any individual with detailed knowledge of the MEO or agency cost estimate in the agency tender will not be allowed to be members of the SSEB. *See* ¶ D.2. of Attachment B. These steps are intended to avoid any appearance of a conflict of interest and garner the public's trust in the processes used to make critical sourcing decisions.

3. Strengthening Accountability for Results

The ultimate success of Circular A–76 to deliver results for the taxpayer requires that appropriate mechanisms be in place to ensure selected public or private sources make good on their promises. To this end, the revised Circular will:

• *Require agencies to centralize oversight responsibility.* Agencies will be required to establish a program office responsible for the daily implementation and enforcement of the Circular. Improved oversight will serve to enhance communications, facilitate sharing of lessons learned, and significantly improve overall

compliance with the Circular. *See* ¶ C.1.b.(5). of Attachment B.

• *Impose competition timeframes.* The revised Circular states that a standard competition shall be completed within one year of the public announcement that a competition will be conducted. The 4.e. official (*i.e.*, an agency assistant secretary or equivalent level official with responsibility for implementing the Circular) may waive the one-year completion requirement at announcement of the competition and set an alternative completion date if the competition is particularly complex and notification is provided to OMB. *See* ¶ C.1.b.(3). of Attachment B. These timeframes are designed to incentivize agencies to complete competitions and will instill greater confidence by all participants that agencies are committed to competitive sourcing and selecting the best provider. It will also ensure that the benefits of competition are realized.

• *Improve post competition oversight.* To ensure public providers are subjected to the same oversight that private providers routinely face, customer agencies will be required to document changes in the solicitation and agency tender and track actual costs. Before exercising an option for additional performance, the agency will be required to determine that performance by the in-house, public reimbursable, or private contract provider meets the requirements of the solicitation and that continued performance is advantageous to the agency. *See* ¶ C.5.b.(2). of Attachment B.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–29472 Filed 11–15–02; 12:37 pm]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46800; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving Amendment to the Plan Allocating Regulatory Responsibility Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

November 8, 2002.

Notice is hereby given that the Securities and Exchange Commission (''SEC or ''Commission'') has issued an Order, pursuant to sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 (''Act''), approving an amendment to the plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively the ''SRO participants'').

I. Introduction

Section 19(g)(1) of the Act[4] requires, among other things, every national securities exchange and registered securities association (''SRO'') to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d)[5] or 19(g)(2)[6] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for, and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1[8] and Rule 17d–2[9] under the Act. Rule 17d–1, adopted on April 20, 1976,[10] authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[11] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

On October 11, 2002, the Commission published notice of the SRO participants' amended plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[12] No comments were received. The primary purpose of the amendment is to allocate regulatory responsibilities among all of the SRO participants.[13] In addition, the amended

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d).

[6] 15 U.S.C. 78s(g)(2).

[7] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[8] 17 CFR 240.17d–1.

[9] 17 CFR 240.17d–2.

[10] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

[11] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

[12] Securities Exchange Act Release No. 46590 (October 2, 2002), 67 FR 63474.

[13] Under the previous agreement, only the Amex, the CBOE, the NASD, and the NYSE were designated options examining authorities (''DOEAs''). *See* Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 34759 (May 31, 2000).