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12/19/2002 02:50:44 PM

Record Type: Record

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Subject: Comments on proposed revision to OMB Circular A-76

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January 10, 2003

Ms. Angela Styles  
Administrator  
Office of Federal Procurement Policy  
Via Email: A-76comments@omb.eop.gov



RE: Comments on proposed revision to OMB Circular No. A-76, Performance of Commercial Activities (67 Fed. Reg. 69769-69774)

We appreciate this opportunity to provide comments on the “*proposed revision to Office of Management and Budget Circular No. A-76, Performance of Commercial Activities*” (67 Fed. Reg. 69769-69774). Overall, the revision represents a major improvement over the previous guidance for competitive sourcing initiatives in the federal government. We commend OMB for its efforts to improve a process that has been broken for many years and are confident that the new process will serve the interests of the taxpayers, federal employees and federal partners.

It is our view that the revision substantially streamlines the competitive sourcing process, as well as enhances the key sourcing principles of competition, transparency, and accountability for improved performance. Because we see these three principles as vital, these comments of our support for the proposed changes—and in some cases, our recommendations for additional changes—are organized by the key sourcing principles.

### ***Principle 1: Competition***

An ideal sourcing process must yield more competitions of federal commercial activities, not less and should provide for more competitors for those activities. Competition creates a “race-to-the-top” in almost any undertaking. Truly competitive environments force innovation, demand improvements, and maximize benefit while preventing price-gouging. Without routine and robust competitive sourcing, federal agency processes will become stale and inefficient. Moreover, without competitive review, agencies might engage in activities that distract from their core mission responsibilities.

By clarifying the guidance for categorizing agency activities, the revised guidance places a premium on expanding activities subject to competition. It requires that activities be regularly competed on a schedule consistent with the Federal Acquisition Regulations (FAR). Moreover, by subjecting Inter-Agency Support Service Agreements (ISSAs) to regular competition, the process ensures all commercial activities in government will be subject to competitive forces. Finally, the guidance requires agencies to identify solicitations that do not receive competitive responses and review alternative solicitations before proceeding forward with the process. All of these requirements are laudable.

In the long-term, OMB may want to consider an additional change to provide for more opportunities for federal employees to meaningfully compete for work as well as provide incentives for employee-initiated conversion from federal service to the private sector. One key

change would be to support legislation modifying Title V allowing employees a vehicle to maintain their federal pension upon conversion into non-governmental service. Moreover, as noted in our October 2002 report on “Creating a Performance-based Competitive Sourcing Process,” OMB may want to consider guidance and/or legislation allowing employees to transition into an Employee Conversion Organization (ECO) vehicle. Under this path, agency management would announce a direct conversion and employees would have the opportunity to form either a governmental or non-governmental vehicle to compete for the work. Regardless of what vehicle the employees choose, their vehicle would be fully subject to the FAR during a standard private-private competition. Should the employees win, their vehicle would be placed under contract and treated as a standard vendor to the agency. The contract would be re-competed on a regular cycle using the FAR. In order to make the ECO approach work, employees would be given a modest amount of support by the agency as they select their vehicle for competition, e.g. employee stock ownership plan (ESOP), transitional benefit corporation (TBC), etc. In addition to having the option of creating a private entity, employees could link up with a governmental or non-governmental vehicle using an existing federal ECO already under government contract.

### ***Principle 2: Transparency***

An ideal sourcing process must provide more information to decision makers and the public on cost and performance achievements of sourcing decisions. The revised guidance requires agencies to submit inventories in electronic format for both commercial and inherently governmental activities. The guidance also provides more structured and consistent methods for achieving “cost realism” in price evaluation among bidders. Both of these changes are laudable.

However, there are several modifications we would like to see made to bolster the transparent nature of competitive sourcing. First, while requiring agencies to submit inventories in electronic format to OMB is a good reform, it is our hope that OMB will commit to making FAIR Act submissions available to the general public in electronic format as well.

Additionally, we are concerned that agencies will not be required to address competitive sourcing as part of the GPRA or similar performance-based process. Competitive sourcing is ultimately designed to improve the performance of the federal government. As such, competitive sourcing initiatives should yield *cost savings* (as defined by reduction in cost-per-unit output) and/or *improved performance* (as defined by improved service levels of outputs or enhanced impact on intermediate or end outcomes.) To ensure this focus is maintained at all stages of the competitive sourcing process, we suggest OMB revise OMB Circular A-11 to require agencies to address competitive sourcing in their long-term strategic plans as well as set annual performance goals will be necessary. In setting goals, agencies should address the cost efficiencies and performance achievements gained through competitive sourcing to reinforce the importance of BOTH aspects of the sourcing process, as well as demonstrate the relative benefits of sourcing decisions.

Finally, performance must be evaluated on a competition-specific basis. While endorsing the concept of performance evaluation, the guidance might not go far enough in providing a structure for performance evaluation of bidders against recognized industry benchmarks and/or

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performance goals set by the agency. In each activity studied, a unique cost savings and performance measure should be included. Where the activity being studied is associated with a pre-existing GPRA performance goal or measure, the GPRA goal or measure should be used. By requiring submission and review of the performance measures, OMB can ensure that agency competitions are proceeding with clear performance criteria that will be used during the competition and in evaluating and selecting the winning bid. In short, additional clarification of how to define and measure performance in “best value” competitions might be needed in the revised guidance.

### ***Principle #3: Accountability***

An ideal competitive sourcing process would make winners of competitions accountable for delivering on cost and performance expectations over the life of the contract. Unfortunately, this has not always been the case under the existing federal sourcing process. Federal agencies rarely have enforced the requirement for employees who win competitions to maintain the cost and performance standards of the MEO—and in some cases, the same has been true for private sector winners.

The revised competitive sourcing process clearly communicates the expectation that agencies should make winners of competitions more accountable for performing. However, the guidance might not go far enough. In order for the winning Most Efficient Organization (MEO) or contracting entity to be held accountable for its performance and cost, contract data, including personnel records, cost records, and workload data, must be constantly and accurately maintained. As such, OMB should require agencies to make available transparent, accurate, and timely data on cost and performance achievement of contract winners as a requirement for agencies over the life of the contract. To enforce this provision, OMB may want to consider adding an action-forcing mechanism, such as a threat for early re-competition, for agency activities that fail to meet this accountability requirement. At the most basic level, for agencies to not collect and evaluate employee or vendor performance regularly is a high-risk contracting practice.

### ***Implementing the New A-76 Process***

The A-76 process can be difficult for even competitive sourcing veterans to implement. To ensure that competitions are conducted by qualified staff in a consistent manner across government, the Office of Management and Budget should create a “Competition Corps” of highly trained competitive sourcing managers who would be assigned to each study conducted by the agencies. Similar to the public defender/judge roles of the justice system, the Competition Corps would assume two roles: the Agency Tender Official (ATO) and the Source Selection Authority (SSA).

An agency such as the General Services Administration could take the lead in housing the Competition Corps, with costs financed by a fee charged to each agency. By consolidating expertise for managing competition into a central entity, the federal government can achieve

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economies of scale, foster maximum competency for managing competitions, and ensure a consistently applied process government-wide. Ideally, the Competition Corps would be organized into “functional” Centers of Excellence where staff would develop specific and honed expertise in management improvement, cost calculation, performance measurement, and proposal evaluation in key commercial activities.

Our recommended improvements notwithstanding, we enthusiastically support the revised A-76 process proposed by OMB. We look forward to working with the Administration, Congress and each federal agency in implementing the new competitive sourcing process for the federal government.

Signed,



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