

"Johnson, Charles" <johnsonc@emh1.ftmeade.army.mil>
12/17/2002 10:12:34 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: OMB A-76

I strongly oppose the twelve month period to accomplish a study. I further believe that all governmental contracts should use firm fixed pricing objectives. Additionally technical exhibits regarding facilities, equipment, and material should be at contractor expense and should not be provided by the government for consumption. The argument that governmental property, facilities, and equipment used by governmental employees which is outdated, and in many cases obsolete should be included in the costing is not fair and open competition.

A clarification of the effective date of the circular as it pertains to implementation date, since many contracts have not gone out for solicitation, and changes required in either performance, quality of work, or actual work load within 12 months will have many and numerous costs associated if a contractor wins, these modifications will quickly accumulate into long cost bearing factors to taxpayers given the facts. I am strongly supportive of fair and open competition, but not at taxpayers expense. Recommend incorporation that all contract costs be on a firm fixed cost and equipment, facilities, and property not be provided to any contractor when considering the cost of performance, nor should these costs be associated in any manner to governmental employees.

I further support clarification of workload data gathering, current events reflect that to expedite a contract limits reliability of the workload, sufficient trends and peaks and valleys of actual work performance requires at the very least one year of current workload, and two previous years for a proper comparison. This would eliminate the need for continual modification by contractors, and establish clear and precise modules based on Activity Cost Management Objectives.

If the twelve month period from start to finish is enacted, then each agency must have resources to accomplish the task successfully, I propose that each agency establish a well trained team of individuals to conduct the studies with in-house workforce. The hiring of outside contractors to perform the functions, does not allow for clear viability of the actual work performed.

Charles M. Johnson

"Westberg, David" <westbergd@ftscpac.navy.mil>
12/17/2002 10:11:59 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject:

I was the team leader of a multi-function, multi-site study that was just completed. It took us in excess of three years to complete. A large portion of that time was taken up by waiting for outside entities to provide support, including Navy Audit Service, FISC, major claimant, source selection board, ... If you add up all the time these agencies used up you would already exceed 12 months. Then you add on the time to negotiate with unions and find people who can be taken from their normal jobs to dedicate time to the study, and then there is a learning curve for those who have never performed a study, ... From my experience in running one of these competitions, 12 months is not enough and you will in many cases get very poor results.

David Westberg

John Rulison <John.Rulison@RavenServices.us>
12/17/2002 10:51:32 AM

Please respond to John.Rulison@RavenServices.us

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: Comments om A-76

Raven Services Corporation supports the A-76 revision. Small businesses such as mine will have a greater number of opportunities to perform work in support of the Government. The revision should also help eliminate unfair government competition. In every instance possible the Federal Government should rely on the private sector for goods and services.

One of the primary disincentives under the previous A-76 process has been the extremely long periods of time it takes to conduct an A-76 competition. This problem has been particularly to deal with given the immediate demand for talented employees that has existed in the employment markets during the last 36 months. Individuals are not willing to wait for months, and in some cases years, to find out if they have a new employment opportunity. The revisions state that a "standard competition shall not exceed 12 months." We strongly support this move to make the time frames for conducting public-private competitions more reasonable, and in line with standard procurements.

The Commercial Activities Panel made a recommendation that the A-76 procurements use a FAR based process, based on best value, for certain procurements. Raven strongly supports that recommendation.

We believe the proposed revisions to Circular A-76 will make the process more fair and timely. They will provide an incentive for private sector companies to enthusiastically participate in future A-76 procurements. Regardless of the party selected as the successful offeror in A-76 competitions the Government receives definite benefits in the form of reduced costs and improved organizational flexibility and usually better task response capabilities. We believe the revisions to Circular A-76 will result in major improvements over the past process.

John Rulison
President
Raven Services Corporation
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"Performance and Solutions as Promised"

Cathy Garman <cathy@csa-dc.org>
12/17/2002 10:57:50 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Performance of Commercial Activities -- Comments

17 December 2002

Ms. Angela Styles
Administrator
Office of Federal Procurement Policy
Eisenhower Executive Office Building
Room 352
Washington, D.C 20503

RE: Performance of Commercial Activities

Dear Ms. Styles:

These comments are provided in response to the proposed A-76 revisions:

1. We support the A-76 revisions, as it will open up jobs to all Americans and provide many new opportunities for small businesses. Workers will have new opportunities to seek work previously unavailable and it will help eliminate unfair government competition.
2. We particularly support the presumption that all activities are "presumed to be commercial" as this reinforces and supports the long-standing policy of both Democrat and Republican Administration to rely on the private sector for goods and services.
3. The revisions state that a "standard competition shall not exceed 12 months." We strongly support this move to make the time frames for conducting competitions more reasonable and consistent with other procurements.
4. The commercial activities panel astutely recognized the established mechanism exists to ensure high value service. Use of a FAR based best value process will ensure the government obtains the best value for the buck.
5. We support the provisions that eliminate unfair competition under agency-to-agency arrangements. This also would eliminate a loophole that has allowed the circumventing of Congress's right and responsibilities to appropriate funds.
6. We believe a greater reliance on standardized PWS and QASP would eliminate emotional issues in the development of those documents. It is only human nature to be reluctant to develop a document that may put you out of work particularly when not eligible for right of first refusal rights.
7. I am currently working on a government contract that allows government sites the opportunity to make important improvements to the real property for which they have responsibility. Prior to this contract, for various reasons, these improvements often didn't get made.
8. Finally, I have worked for the government most of my life in some capacity and as a contractor employee, the continued opportunity for employment is very important to my family and me.

John Peters
Chugach Management Services, Inc.
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Phone: 719-250-3979



A-76 Revisions(chugach).d

Kelly Smythe <crownmsi@bellsouth.net>
12/17/2002 11:56:51 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: A-76 Revisions

Crown Management Services, Inc. supports the A-76 revision as it will open up jobs to all Americans, including small businesses such as Crown. Entrepreneurs and workers will have new opportunities to seek work previously unavailable to the private sector and it will help eliminate unfair government competition.

We particularly support the presumption that all activities are "presumed to be commercial" as this reinforces and supports the longstanding policy of both Democrat and Republican Administrations to rely on the private sector for goods and services.

The revisions state that a "standard competition shall not exceed 12 months." We strongly support this move to make the time frames for conducting public-private competitions more reasonable, and in line with standard procurements.

The report of the Commercial Activities Panel noted that the government already has an established mechanism to ensure high value service -- that is the procurement process of the Federal Acquisition Regulation (FAR.), a system all private sector contractors compete under daily. The panel specifically recommended conducting public-private competitions using the FAR. Acting upon that recommendation, the November 2002 Circular A-76 revisions would establish a FAR based process, based on best value, for certain procurements.

We support the provisions that eliminate Unfair Competition under Agency-to-Agency arrangements. These provisions would eliminate the current practice that permits agencies to do work for other Federal agencies, and for state and local government.

The ability for all parties to compete on a fair and level playing field is the ultimate measure of a successful A-76 process. We believe the revisions to Circular A-76 will do just that.

W. Kelly Smythe
Vice President
Crown Management Services, Inc.
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Denise Cline <Denise.Cline@mevatec.com>
12/17/2002 01:05:43 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: Tomi Talor <Tomi.Talor@mevatec.com>
Subject: Review Comments from MEVATEC Corporation

Subject: MEVATEC Review Comments on Draft OMB A-76 Circular Re-write

Contact Denise Cline, 256-890-8129, denise.cline@mevatec.com or Tomi Talor, 256-890-8104, tomi.talor@mevatec.com if you have any questions on these comments.

	Reference	Comment
1.	General	Is the ATO being given rights to submit a GAO protest?
2.	General	Recommend using terminology that distinguishes between the “initial” performance decision and “final” performance decision which would follow resolution of an appeal.
3.	Pg. A-1, ¶B.2.	Is this paragraph authorizing an Agency to tailor OMB codes to reflect agency unique definitions? If so, won’t this defeat the use of standard codes and definitions?
4.	Pg. A-3, ¶E.1.c	Recommend more precisely defining “private persons”. Does this term include U.S. Citizens or citizens of other countries?
5.	Pg. B-2, ¶A.1.a	Recommend changing “Competition announcement (start date)” to “public announcement (start date)” for consistency with ¶C.1.a, ¶C.1.b.(3), and figure B.1
6.	Pg. B-4, ¶C.1.b.(1)	We are concerned with the statement designating such a high level for the 4.e. official and his responsibility to hold Competition Officials accountable via performance evaluations. Is it expected that Competition Officials will be reassigned to report directly to the 4.e. official? What formal process is expected to appoint or designate Competition Officials? Is there an expected timeline prior to the public announcement that the Competition Officials are assigned?
7.	Pg. B-7, ¶C.2.a(13)	Recommend including official positions descriptions as an acceptable substitution for the Agency Tender when the solicitation requires the submittal of resumes.
8.	Pg. B-8, ¶C.3.a.(1)	The rules should allow the Agency Tender to offer a redacted copy of the Agency Tender Offer for public review so in-house competitive advantages are protected similar to how proprietary information is protected for contractor offers. Recommend that language be added that allows the Agency Tender to redact proprietary sections that reflect competitive approaches to accomplishing the solicitation requirements.
9.	Pg. B-9, ¶C.3.a.(7), (1) Pg. E-1, ¶A.6. (2) Pg. E-11, ¶B.5.b	Inconsistent guidance between cited paragraphs. Request clarification on whether a separate phase-in period is mandated and whether it is mandated to be a separate contract line item (CLIN). Recommend that phase-in costs be included on SCF Lines 1-5, verses restricted to Line 3. Neither SCF Lines 3 nor 5 within win.COMPARE ² include the capability for personnel costs which generally is the major cost for phase-in period activities.
10.	Pg. B-11 to B-15	¶ C.4.b and C.4.a.(1).(c) do not exist in the Circular. Several references are made within Section C.4 to these paragraphs. Please correct paragraph references.
11.	Pg. B-12, ¶C.4.a.(3).(a).(3)	Recommend change to read “Mediator designee shall be external and independent of the function being competed.”
12.	Pg. B-14, ¶C.4.a.(3).(c).2	OMB should include a statement to whether the procedure described as the “Phased Evaluation Process” is acceptable to meet the requirements of the Brooks Act for acquiring Architecture and Engineering services.
13.	Pg. B-15, ¶C.4.a.(3).(c).2.b	Reference to Line 8 should read Line 7 of the SCF

	Reference	Comment
14.	Pg. B-15, ¶C.4.a.(3).(c).2.c	Recommend adding language that the performance decision documentation is made available to directly interested parties at the time of the decision announcement.
15.	Pg. B-17, ¶C.6.a.(2) and Pg. B-18, ¶C.6.a.(4).(e)	This statement could be interpreted to allow implementation of the performance decision even with a valid administrative appeal if final resolution of the appeal takes longer than 30 days. Recommend adding a provision that allows the 4.e official suspend implementation of the performance decision no longer than 60 days for a complex appeal.
16.	Pg. B-18, ¶D.1	Very concerned that the HRA determines for the contractor operation whether a government person is qualified for an open position which seems to <u>imply</u> that the person must then be hired by the contractor. Wouldn't this then make the government liable for the contractor's performance if the HRA had determined a person was qualified and then the same person's performance was unsatisfactory to meeting the contract terms? As an extreme example what if the government employee caused personal harm to someone in the contractor's organization and the government should have been aware of this person's mental problems, would the government then be liable for the person's actions? Recommend changed language so the HRA isn't given implied final authority to determine that a government employee is qualified.
17.	Pg. B-19, ¶D.2.b.(1)	Add to end of sentence "SSEB, or prepare any acquisition documents such as the Source Selection Plan, Source Selection Strategy, or Independent Government Estimate."
18.	Pg. C-3, ¶D.2.b.	Recommend changing the term "establishing" to "collecting" since the Business Case Analysis is based on existing contracts.
19.	Pg. C-3, D.2.a. and C-4, ¶E.2.b	Need to clarify if business case analysis only allows the use of SCF Line 3 to enter MEO subcontract costs or if all costs allowed on Line 3 are allowed for the business case analysis.
20.	Pg. E-1 ¶A.1	Recommend writing to state "Standard Competitions in excess of five years, <u>excluding a phase-in period</u> , are only..."
21.	Pg. E-1 ¶A.1	Recommend including a statement to explain prorating costs. Suggested statement "When a performance period, to include the phase-in period, is less than a full year, the costs should be prorated to reflect the shorter period."
22.	Pg. E-1 ¶A.5	Recommend changing the last sentence to read "Agencies shall then apply inflation factors for pay and non-pay categories through the end of the first performance period unless different escalation conditions are described in the solicitation. " This change accounts for ceiling costs and non-EPA costs which are inflated through the end of the last performance period.
23.	Pg. E-1, ¶A.5.	Recommend adding a statement that accounts for the situation where the phase-in period and first period are separately priced CLINs but the first period isn't treated as an option and the cost element has an EPA provision like FAR 52.222-43. In this described situation the first option period would be the second period. "When the solicitation includes escalation provisions on a cost element, the cost should be inflated through the end of the period proceeding the first option period." This change assumes that the contracting officer won't incorporate a new wage determination and adjust the contract price until the exercise of the first option which is the second period.
25.	Pg. E-3, ¶A.10.	Line 14 should read "Minimum Conversion Differential (Enter: The lesser of Line 1 Total x .10 or \$10,000,000."
26.	Pg. E-5, ¶B.1.d	Recommend adding a statement that "New salary/wage tables shall be implemented into the Agency Cost Estimate as soon as they are made available/published by OPM as long as the effective date of the salary/wage table does not follow the start of the phase-in or first performance period." If this recommend change does not occur we will need to determine a discounting calculation because inflation is applied based on the performance period dates. If the effective date of a salary/wage table occurs after the start of the first performance period, this would cause the Agency cost to discount the cost back to the beginning of the first period.
27.	Pg. E-5, ¶B.1.e, Pg. E-6, ¶B.1.g and Appendix F	Basic Pay is only defined with Severance Pay (Pg. E-14, ¶C.5.b.. Definition should be added to Appendix F since it applies to the cited paragraphs. Definition should read that "Basic Pay is the sum of base pay and other entitlement pay."
28.	Pg. E-5, ¶B.1.e.(2)	Only the social security portion (6.2%) of FICA has a limit; the Medicare portion (1.45%) does not have a salary limit. Recommend deleting the last sentence.

	Reference	Comment
29.	Pg. E-5, ¶B.1.e.(3)	Add sentence after the first sentence for clarification. “Seasonal employee positions can be designated as full-time, part-time, or temporary based on the number of hours scheduled to work and whether benefits are provided.”
30.	Pg. E-6, ¶B.1.f and Pg. E-5, ¶B.1.e.(1)(c)	Clarify existing sentence in B.1.f. to ensure that the Agency tender doesn’t duplicate annual performance awards covered by the miscellaneous fringe benefit cost factor. “...holiday, <u>awards and bonuses not covered by the Fringe Benefit factor, ...</u> ”
31.	Pg. E-7, ¶B.2.b	Clarify existing sentence to follow the solicitation instructions on whether material and supply ceiling cost will be included in the evaluated price. Some solicitations instruct offerors to include any ceiling costs in their price for the evaluation. “If the solicitation includes a material and supply cost ceiling <u>and the solicitation states that the ceiling cost are included in the evaluated price</u> , the agency cost estimate shall reflect this ceiling on Line 2.
32.	Pg. E-8, ¶B.3.a.	Include maintenance as a cost element. Recommended statement to ¶s 3.a.(2), (3), and (5) “If the MEO is responsible for maintenance, the agency cost estimate shall include the cost of maintaining the item (facility).”
33.	Pg. E-8, ¶B.3.a.(3)	Change sentence to read “Assets costing <u>\$5,000 or more</u> are major items for depreciation.” Current language for major and minor had omitted if something cost exactly \$5k.
34.	Pg. E-9, ¶B.3.b	The first sentence currently states that if an asset is not GFP <u>OR</u> purchased within the performance periods, the cost of capital applies. Shouldn’t the “or” be “and”?
35.	Pg. E-9, ¶B.3.f.	Same issue as described in item #27. Recommending “If the solicitation includes a ceiling cost for travel <u>and the solicitation states that the ceiling cost are included in the evaluated price</u> , the agency cost estimate shall reflect this ceiling on Line 3.
36.	Pg. E-10, ¶B.3.h.(1)	It is unclear how minor items are costed, i.e. at 10% of the value, the purchase price for each year of use, or the purchase price for the year of purchase only.
37.	Pg. E-11, ¶B.4	Are military personnel cost included in the calculation for overhead when the total of Line 1 is multiplied by the 12% factor? The current rule is that military personnel cost are excluded because the <u>military composite rate used for the salary is inclusive of overhead costs</u> .
38.	Pg. E-12 -14, ¶C.1, .3, .4b and .4c	It is unclear which competition official is responsible for entering the costs in Lines 7, 8, and 9. Recommend a statement in each cited paragraph that the SSA enters the costs on the specified line.
39.	Pg. E-14, ¶C.5	It isn’t clear if Line 10 costs are restricted to only the 4% severance pay and 1% “remaining ... costs” or if ¶a. allows for other cost to be included if justified.
40.	Pg. E-14, ¶C.6.a and b	¶a. Requires the ATO to “justify the type and calculation of asset disposal or transfer” but ¶b. states that “[t]his entry represents the gain ... at the net book value ... as of the start of the first performance period.” Since the value is set as prescribed in ¶b what is the ATO required to justify?
41.	Pg. E-15, ¶C.7	This paragraph should be changed to read “This table is organized by the North American Industry Classification System (NAICS) issued by the Department of Commerce. The tax rates are provided by the Internal Review Service based on business receipts by industry.” The correction we recommend is to avoid misleading someone to think that the IRS provides industry information that is an exact match to the NAICS codes. In some cases the IRS tax statistics combine multiple industries into a single industry classification and there is not an exact NAICS code match.
42.	Pg. E-16, ¶D.3.	“(3) allocate the minimum conversion attributed to the converting the contract work to Agency performance to Line 15, Adjusted Total Cost of Agency Performance.” This is an easier approach because Line 14 is always calculated the same way and only its allocation among Lines 15 or 16 changes depending on whether the Agency Tender has transferred contract work to in-house resources. Further, paragraph description incorrectly describes what should be included on Line 14 and doesn’t explain how the minimum conversion differential is added to Lines 6 or 13 for the adjusted amounts.

	Reference	Comment
43.	Pg. E-16, ¶D.2.b.(1 & 2)	<p>Recommended change for clarity:</p> <p>If a Standard Competition is performed only on the expanded work, all of Line 14 (minimum conversion differential) is added to Line 6 (total agency cost) to generate Line 15 (adjusted total cost of agency performance.)</p> <p>If a Standard Competition is performed on the entire commercial activity (existing work and expanded work), a portion of Line 14 (minimum conversion differential) is allocated to Line 6 (total agency cost) to generate Line 15 (adjusted total cost of agency performance). The allocated amount to Line 6 is based on Line 1 (personnel) which represents the expanded work. The remaining Line 1 (personnel) is applied to determine the Line 14 (minimum conversion differential) allocated to Line 13 (total contract/ISSA cost).</p>

Denise M. Cline, CPCM, CCEA

Director

Competitive Sourcing and Organizational Analysis

MEVATEC Corporation

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- MEVATEC Comments 12-17-02.doc

Brad Miller <bmiller@bifma.org>
12/17/2002 12:50:38 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: OMB Circular No. A-76 Revision

Mr. David Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
NEOB Room 9013
Washington, DC 20503

Dear Mr. Childs,

BIFMA International supports the A-76 revisions opening up jobs to all businesses and helping to eliminate unfair government competition. Under the proposed changes, entrepreneurs and workers will have new opportunities to seek work previously unavailable to the private sector.

The presumption that all activities are "presumed to be commercial" reinforces and supports the longstanding policy of both Democrat and Republican Administrations to rely on the private sector for goods and services.

Bringing the time frames for conducting public-private competitions into line with standard procurements is very reasonable and we support the revision that states that a "standard competition shall not exceed 12 months."

We also support the provisions that eliminate unfair competition under Agency-to-Agency arrangements. These provisions would eliminate the current practice that permits Federal agencies to obtain commercial work non-competitively from other Federal agencies, and for state and local government.

As you know, BIFMA has long sought reform Federal Prison Industries, Inc. within the Bureau of Prisons which has historically operated outside of the standard procurement process. We have done so with the belief that the ability for all parties to compete on a fair and level playing field is only fair and is in the best interest of the taxpayer, businesses, and the end customer. We believe the revisions to Circular A-76 move in that direction.

Sincerely,

Brad Miller
Communications and Government Affairs
BIFMA International
2680 Horizon Dr., SE Suite A-1
Grand Rapids, MI 49546-7500

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"Belcher, Zach" <Zach.Belcher@hq.doe.gov>
12/17/2002 02:19:13 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: comment

Replacing federal employees with cheap contractors should be accomplished with normal attrition in the targeted occupations.

With the baby boomers retiring, a substantial number will be retiring in the next few years.

I propose:

- Expanding the RIF and reorganization process so that feds with jobs contracted out could shift more easily to other occupations in their current agency or department or shift between agencies and departments with greater ease.**
- Firing feds with jobs contracted out should be forbidden. It is also unnecessary and demoralizing. Retraining and/or relocating those feds with jobs contracted out should be mandatory.**

"David K. Nale" <dnale@emap-int.com>
12/17/2002 02:41:38 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Comments on A-76

From: Emap International
To: OMB
RE: Input on A-76

Emap International supports the A-76 revision as it will open up jobs to all Americans, including small businesses. Entrepreneurs such as myself and workers will be given the opportunities to seek work previously unavailable to the private sector and it will help eliminate unfair government competition.

Sincerely,
David K. Nale

Emap International
David K. Nale
President / CEO
Certified Photogrammetrist, ASPRS
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Jeremy Wiley <JeremyWiley@correctionscorp.com>
12/17/2002 03:12:20 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: A-76 Comments

- OMB comment letter.pdf

GESTA <gesta@pop100.gsfc.nasa.gov>
12/17/2002 04:01:31 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: gjunemann@ifpte.org, mbiggs@ifpte.org, gesta@pop100.gsfc.nasa.gov
Subject: IFPTE Local 29 Comments on Circular A-76

I have reviewed the draft version of Circular A-76 in detail. I have attached two files. One is a set of editorial comments, correcting grammar, typos, references, and the like.

The second file is more substantive comments, with specific recommendations as to changes that should be made to the draft document prior to release. It is my position that failure to implement these decisions will result in a flawed document that would not be in the best interest of the public to release.

I represent a labor union of federal employees with 85 members, and representing approximately 1700 engineers, scientists and technicians at the Goddard Space Flight Center.

--

Stephen J. Leete, President
GESTA, IFPTE Local 29
GESTA: office 301-286-2066, fax 301-286-0319
Personal: office 301-286-9093, pager 1-877-466-9112, cell 301-792-4741 (new)
GESTA Office Building 23, Room W131/W135, Mail Code 220.9



Comments_on_A76_IFPTE_L29. Editorial_comments_on_A76.c

Comments on Circular A-76
Stephen J. Leete, President
301-286-2066, gesta@pop100.gsfc.nasa.gov
Goddard Engineers, Scientists & Technicians Association (GESTA)
IFPTE, Local 29
NASA Goddard Space Flight Center

I have reviewed the Circular No, A-76 (Revised) Draft of November 14, 2002. I noted a small number of typographical errors, which I will address in a separate document. My substantive comments will be in this document.

I am concerned with a statement in section 4., Policy, "For the American people to receive maximum value for their tax dollars, all commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular." It is my understanding that government agencies are allowed to exempt or except selected commercial activities from competition. This statement implies that not 99%, but 100% (i.e., "all") FTE's should be subject to either standard competitions or direct conversion. This violates such generally understood principles as the law of diminishing returns. It also fails to recognize the value of work performed by civil servants who are not subject to the corrupting forces of corporate greed and unscrupulous business practices. It ignores the fact that if a government agency does work through its own employees, this is simpler and less

bureaucratic than having to go through the red tape of holding competitions and then working through a maze of contractors and sub-contractors and consultants. It represents an ideological point of view not likely to persist past the current administration. In short, **Recommendation:** that this statement be modified to recognize reality, as follows, “For the American people to receive maximum value for their tax dollars, **a portion of** commercial activities performed by government personnel should be subject to the forces of competition, as provided by this Circular.”

Attachment B, section C.3.a(4). There is a prohibition on use of a new contract to support MEO performance of an activity: “An MEO may be comprised of either (1) Federal employees or (2) a mix of Federal employees and existing contracts (referred to as MEO subcontracts in this Circular). New contracts shall not be created as part of MEO development”. This appears to put an unfair disadvantage on the agency performance of work. I recommend removal of this restriction. If the restriction remains, there should be a statement of the rationale behind this restriction. Is it a deliberate decision to provide a competitive advantage to private prime contractors? Does it have to do with the uncertainties of relying on contracts that have not been made yet? – because if that is the case, the same restriction should apply to commercial bidders (probably a completely unacceptable restriction – so why apply it to agencies?). In summary, **Recommendation:** that either the prohibition on new support contracts as part of an Agency Tender be removed, or a rationale for this prohibition be added.

Attachment B, Section D.3, Participation of Directly Affected Employees and Representatives of Employees. There is an error in the reference for this section, although it seems obvious that the reference should be to D.2 (rather than to D.3, which is a self-reference). The permitted role of representatives of employees, such as labor union personnel, is not clear. There is a prohibition from service on the SSEB in D.2.c.1, but no other statements of when union representatives would be allowed to participate, and in what manner. **Recommendation:** Provide further explanation of the allowed participation of representatives of employees.

Attachment D, section 2, “**Prohibition.** A Federal agency shall not perform a commercial activity for a private sector source providing a commercial activity to a state or local government.” I am concerned that this would not allow use by state or local governments of Landsat data if there is a private company that provides intermediate data processing services. What if the Federal agency provides commercial services which won an A-76 competition? What if the Federal agency provides commercial services which are not available from the commercial sector? Some provision for exceptions to this statement are needed to rationalize this document with current reality. **Recommendation:** add an escape clause or exception procedure for this prohibition.

Attachment E, Item 9, “**Cost of Competition.** The cost of conducting a Standard Competition shall not be calculated.” This is an OUTRAGE! The AUDACITY of including a COVER-UP of the true COST of this policy right there in the policy exposes the biased, ideological thinking behind this revision! A more appropriate requirement would be to compute, track and publish the cost of conducting all standard competitions so that the public can comment on whether the policy is working, and the congress and administrations can make informed decisions. While we are on the subject of the cost of competitions, where does the funding come from to pay all these people that have to administer the competitions? What about their training costs? The answer is probably that it is agency overhead. Since general overhead numbers are used, there is probably little competitive disadvantage in having overhead costs for competitions. However, the public, the agencies, congress and the administration still deserve to know the costs of these competitions. **Recommendation:** that this item be modified to read as follows, “The cost of conducting Standard Competitions shall be calculated, and reported to Congress.”

Announcement of Opportunity Competitions: There another way of providing competition between government workers and private/academic sources. At the NASA Goddard Space Flight Center, we have scientists, engineers and support personnel working on in-house projects (and supporting out-of-house projects) for which they had to compete with universities and private industry to get the work. NASA HQ provides funds, and holds a competition initiated by an announcement of opportunity (AO) or similar process. The competition is open to anyone who cares to propose. Unlike a standard competition, staffing decisions are not made after each competition, but rather are based on the net result of several such competitions. In the last GSFC Competitive Sourcing Plan (which, as part of the NASA Interim Competitive Sourcing Plan, was accepted by OMB), GSFC management has taken credit for a large number of FTE’s as being exposed to competition by being funded in this way. Circular A-76 states that it is the only acceptable way for exposing FTE’s to competition. Modifying the AO process to comply with the proposed

revision to Circular A-76 may have negative impacts to the scientific outcome of AO's. **Recommendation:** Add language to Circular A-76 recognizing the validity of the AO and similar methods of competing between agency and private sector performance of work. Do not make any change to the AO and other similar competition methods. Modify Attachment A, Section D.3, to include on the list of Reason Codes for Agency Performance a new Reason Code to cover such other types of competitions.

FTE Limits: Currently, Federal agencies tend to have a FTE limit which they have to manage. What happens to the head-count limit as direct conversions and standard competitions take place? Is this addressed elsewhere in government procedure documents, or does it need to be addressed in Circular A-76? If any provision is made for reductions in FTE limits due to direct conversion or standard competition, there must be a related provision for the raising of FTE limits if there is a conversion of work to performance by an agency, or an agency wins a standard competition. Otherwise, we face the absurd situation in which the agency wins a competition, but is then told it cannot exercise its staffing plan due to agency head-count limitations. Companies certainly don't have these limitations. In fact, the revised A-76 calls into question the entire concept of FTE limits for Federal agencies. **Recommendation:** Explicitly state that agency head-count limits will rise and fall due to direct conversion and standard competition outcomes, or state some alternate policy on this matter.

Attachment E, B.3.f, Travel. The proposed revision states, "The agency shall include the projected cost of travel the MEO is expected to be expended unless the solicitation includes a ceiling cost for travel reimbursement or states that travel is government furnished. If the solicitation includes a ceiling cost for travel, the Agency shall enter this amount on SCF Line 3." It is my experience that NASA government personnel can often travel more cheaply than contractors due to the ability to obtain reduced airfares. The Agency tender should be able to estimate realistic travel costs, rather than artificially inflate their costs in this manner. **Recommendation:** replace the quoted text above with, "The agency shall include the projected cost of travel for the MEO."

Attachment E, C.7: Federal Income Tax Adjustment. We object to the competitive advantage given to the private sector companies via the Federal income tax adjustment. Also, it is not clear why this applies to public reimbursable performance - are they not also tax exempt? **Recommendation:** Delete all of E, C.7, and the corresponding line item on the SCF.

Editorial comments on A-76

Page	Para	Was:	Is / comment
B-7	C.2.a (13)	MEO has been implemented in accordance with paragraph C.6.b (2) or a previous competition, (except as provided in paragraphs C.6.b(2) and C.6.d (2) below).	The referenced paragraphs do not exist. Not obvious what correct references would be.
B-9	C.3.a (4)	Once announced, the Agency tender shall not include a new agency contract or ISSA that results from in the conversion of agency performed work as a part of the MEO or Agency Tender.	Poor grammar. Difficult to determine the intent of this sentence, or how to correct it.
B-10	C.3.d(2)(b)	The SSA shall document the reasons for not entering a price on Line 7 and attach the SCF the documentation....	The SSA shall document the reasons for not entering a price on Line 7 and attach to the SCF the documentation....
B-12	C.4.a.3.a.2	Through clarifications (see FAR 15.306(a) or communications, negotiations and discussions (see FAR 15.306(a) and depending.....	Through clarifications (see FAR 15.306(a)) or communications, negotiations and discussions (see FAR 15.306(a)) and depending..... [add two right parens]

B-12	C.4.a.3.b	...to resolve the disagreement	...to resolve the disagreement. [add period]
B-13	C.4.a.3.c.1	... the CO shall enter on Line 8 of the SCF each contract price....	... the CO shall enter on Line 7 of the SCF each contract price.... [change Line 8 to Line 7]
B-13	C.4.a.3.c.1.b	...signing and documenting on Line 19 of the SCF the following:	...signing and documenting on Line 20 of the SCF the following:
B-14	C.4.a.3.c.2	The Agency Tender shall be among the group of private sector offers and public reimbursable tenders considered in Phase Two.	The Agency Tender shall be among the group of offers and tenders considered in Phase Two. [delete extraneous text]
B-15	C.4.a.3.c.2.b	...then enter lowest contract price or public reimbursable cost on Line 8 of the SCF.	...then enter lowest contract price or public reimbursable cost on Line 7 of the SCF. [change Line 8 to Line 7]
B-15	C.5.a.2	...with a copy to the 4.a official.	...with a copy to the 4.e official.
B-17	C.6.a.1	...questions regarding a private a sector offeror's....	...questions regarding a private sector offeror's....
B-19	D.1 & D.2.a.1	...in the solicitation: & ...members of the SSEB	[Add periods to the ends of sentences.]
B-20	D.3	...in accordance with paragraph D.3 above.	[change to D.2, perhaps? This reference is in D.3]
C-4	C, D.2.b	...requirements of this Circular);	...requirements of this circular; [delete right parens]
E-1	A.4	...private sector and public reimbursable sources]	...private sector and public reimbursable sources.
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E-11	B.5.b	... phase-in period, these costs may be entered on Lines 1 through 5 may be used to document these costs.	...phase-in period, Lines 1 through 5 may be used to document these costs.
E-12	C.3	This Line reflects a full range on contractual...	This Line reflects a full range of contractual...
E-15	D.2.b.2	...Line 13 (total, contract/ISSA cost)	...Line 13 (total contract/ISSA cost)

GESTA, IFPTE Local 29
December 17, 2002

Johnmapps@aol.com

12/17/2002 04:13:35 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: MAPPS comments on A-76 revision

The Management Association for Private Photogrammetric Surveyors (MAPPS) is a national trade association of more than 170 member firms engaged in a variety of surveying, mapping, imaging, and other geographic information and geospatial data and services.

Our member firms are often contractors to a variety of Federal agencies, and to state and local government and commercial clients. Surveying, mapping and geospatial activities are "commercial activities" and are included in the definition of architect engineer services in 40 USC 541-544 and FAR part 36.

Mapping and related activities were target for A-76 in the last budget sent to Congress by President Reagan (proposed FY 1990 budget submitted in January, 1989). However, that initiative notwithstanding, no Federal agency has ever conducted a start-to-finish A-76 on a surveying or mapping activity..

We believe such activities should be subject to direct conversion. Mapping, surveying and geospatial activities is an example not only of government performance of a commercial activity (more than 70% of the Federal government's requirements are performed in-house), but one in which the government is in direct competition with the private sector by making its maps and mapping data, and its production services available for free or for sale outside the Federal government.

MAPPS supports many aspects of the Circular and we commend OMB for its effort on the revision. We particularly applaud the provisions limiting ISSA work for other Federal agencies and intergovernmental work for state and local government.

While we strongly support the intent of the Circular, to improve A-76, we offer the following suggestions:

- Page 1, paragraph 4. The policy addresses "needed commercial services" of the government. It does not address "provided commercial services" of the government. These are services (and products) produced by the government that are available to the public (for free or for a fee) which places the government in competition with the private sector. The Circular does not address this and should either address it or make reference to a separate Circular which does address this issue.
- The Circular no longer restates the policy, in effect for more than 45 years, that the government should not compete, that it should reply on the private sector, etc. This policy should be reinserted in the Circular.
- Page 2, section 5. The Federal government provides billions of dollars annually to state and local government in grants, cooperative agreements, aid and assistance and other means. Whether taxpayers dollars are spent by Federal agencies or by state and local agencies, the taxpayers have the right to be assured such dollars are being spent economically and efficiently, and that the taxpayers are getting the best value for each dollar spent by the government. Therefore, it is imperative that the provisions of this Circular apply to all governmental units that expend Federal tax dollars.. Consequently, this Circular should either be revised to apply to commercial activities of state and local and other units of government that receive grants, cooperative agreements, aid and assistance and other means of transferring Federal funds, or there should be such a requirement in OMB Circular A-102.
- Page A-3, section D.3. A new reason code "G" should be added "Agency is not performing, activity is performed by contractor". This will provided a more transparent view of agency operations. Currently, there are agency activities that appear on neither the commercial activities inventory nor the inherently governmental activities inventory, because, for example, the activity is a GoCo. It is difficult, if not impossible, for a private sector

interested party to file a FAIR Act challenge if it is not provided information on how the activity is being performed. The addition of this category should mean that the addition of the dollar value of the commercial activities inventory and the inherently governmental activities inventory should equal the appropriated budget of the agency.

- Page B.2., section A.2.a.2. The term "private sector source" is first used in this section. This term is not defined in the Circular. Other terms referring to the private sector are also used throughout the Circular. The "private sector" as used in this Circular, should be defined to mean a private, for profit individual, association, partnership or corporation. The Circular should not permit state and local government units, universities, or other tax exempt or not for profit entities to compete for commercial activities of the Federal government. These organizations are the beneficiaries of a host of government-provided advantages and exemptions, including those regarding unemployment insurance, minimum wage, securities regulation, bankruptcy, antitrust restrictions, copyright, workplace safety and health, zoning, as well as an exemption from the Federal Trade Commission Act, all of which apply to private, for-profit companies. These are advantages that A-76 has never considered. Moreover, by their very nature, these organizations are tax exempt. It is instructive to review the history of tax exempt organizations in the Internal Revenue Service Code. During consideration of the Revenue Act of 1938, the House Committee on Ways and Means provided in its report that "the exemption from taxation of money or property devoted to charitable and other purposes is based on the theory that government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds and by the benefits resulting from promotion of the general welfare." (See: Bennett, James T. and DiLorenzo, Thomas J., *Unfair Competition: The Profits of Nonprofits*, (Lanham, MD: Hamilton Press, 1989), p. 25-26.). Thus, the tax exemption of tax-exempt and non-profit organizations is predicated on the assumption that they perform inherently governmental, not commercial, activities. The performance of commercial activities by these organizations further deprives the Government of tax revenue from the performance of their activities, which undermines why the exemption was granted in the first place.

- Page B-2&B.3., section A.2.b.4. An expansion of a commercial activity should be subject to Direct Conversion or Standard Competition when the increase in operating cost is 10%, not 30% as proposed. A 30% expansion is too high, leads itself to incremental expansion to avoid competition, and denies the government the benefits of competition.

- Page B.5., section C.1.b.6. As proposed, the language on relationship to the budget provides an incentive for agencies NOT to perform competitions. The savings from direct conversions or standard competitions are calculated in OMB Circular A-11 budget estimates, only when standard competitions are conducted. In order to enforce Circular A-76, this section should be changed to either (a) strike "completing standard competitions" and insert in lieu thereof "implementing Circular A-76 for all activities on the agency's FAIR Act inventory" or inserting after "standard competitions" the words "or Direct Conversions". Agencies should be entitled to account for savings achieved through direct conversions in the same manner as savings from standard competitions.

- Page B.6., section 2.a.3&4. The Circular is currently in conflict with the Statute with regard to Architecture-Engineering and Related Services (A&E). The statute (40 USC 541 et. seq.) requires contracts for A&E services to be awarded on the basis of demonstrated competence and qualifications, not price competition. The Circular's standard competition process includes cost/price competition. Therefore, the Circular must be revised in order to be in compliance with the Statute. (Note: this provision in the Statute is implemented in the FAR in Part 36, including a definition of A&E services.) section B.2.3&4 should be revised to provide for the use of the FAR Part 36 process for A&E services, or such services should be subject to the direct conversion process.

- Page B.9, section 3.a.5. As noted above, for A&E services, an agency cost estimate, nor a private sector cost estimate, is permitted by Statute. In this section, and all subsequent sections of the Circular, all references to bids, costs and tenders should include a note that it does not apply to A&E services. In this section, a paragraph on past performance should be inserted for A&E services, such as "Past Performance. The ATO shall develop a Standard Form 254 and 255 submission (or any successor to such form(s)) outlining the past performance of the agency. Such submission shall include the agency's past performance with regard to qualification (including professional licensure) of personnel, agency record on meeting delivery and completion schedules and agency record on meeting budgets.

- Page B.16, section 5.c.. The Failure to Perform section must be revised to provide to evaluations of agency performance, after an agency wins a standard competition, or if an agency is awarded work through a direct conversion. Some recourse or penalty, equivalent to that to which a private firm is subjected, must be conferred upon the agency performance in order for the Circular to be fair and balanced.

- Page B-18, section D.1. The Right of First Refusal provision must be revised to provide private sector employees the right of first refusal for government positions if an agency is awarded previously outsourced work through a direct conversion. Some protection must be conferred upon the private sector employees who are directly affected by a conversion to in-house government performance in order for the Circular to be fair and balanced.
- Page C-1, section A.1. The small activity threshold should be increased to 50 employees. Small activities are those for which small business is most likely to be a prospective contractor. The ability of an agency to make a direct conversion, particularly to a small business. Either the threshold should be increased from 10 to 50 employees, or this provision should be revised to permit a direct conversion of any activity for which a small business is likely to perform (regardless of the number of FTEs). A determination, similar to a set aside determination under the current Small Business Act and FAR, could be utilized.
- Page C.2., after section 3 (research and development, R&D). A provision should be added that permits direct conversion of A&E services, as required by and defined in 40 USC 541 et. seq. and FAR part 36, provided such competition for the conversion is carried out in accordance with 40 USC 541 et. seq. and FAR part 36.
- Page C.2., section C. The term "Competition Waiver". In the procurement community, the term "waiver" has meanings and connotations that do not apply to A-76. The term "Direct Conversion Authorization" should be used.
- Page D.1. The attachment should clarify that for ISSA work performed by a multi-agency contract with the private sector and the revenue generated is less than \$1 million annually, the competition requirements do not apply.
- Page D.3., section H.1. In this section, strike "available to OMB and the public upon request" and insert in lieu thereof "available to OMB and made public in FedBizOpps". There must be sunshine and transparency to the intergovernmental process. Before a Federal agency can provide a service to state and local government, the proposed provision of that service should be made publicly known. Under the current language in the draft, the private sector has no way of knowing that such a transaction is being proposed, thus it would have no way of knowing to exercise its right to request such information from OMB. A notice in FedBizOpps will provide for the opportunity for the private sector to make an offer, thus providing a market-based determination that the state or local government has sought but has not been able to identify a satisfactory private sector source.
- Page D.3&4, section H.1.b.3. At the end of that section, the list of what "specialized or technical services" does not include should specify "architecture and engineering services (including surveying, mapping and geospatial services) to clarify that these are commercial services that can and should be performed by the private sector.
- Page D.4., section I.d. A request for services which is forwarded to OMB for approval should require a FedBizOpps or Federal Register notice requirement so the private sector can comment and respond in order to help determine whether the request indeed involves a commercially available service that the private sector could provide. Such sunshine and transparency will help provide a market test to the request and prevent abuse of the process.
- Page E.4., section 1. Agency personnel costs must include the cost of obtaining and maintaining professional licenses. In some areas, private sector personnel are subject to professional licensing. Federal employees are not required to meet these standards, particularly with regard to State licensing requirements. The cost of meeting the prerequisite education and experience requirements to obtain a professional license, the cost of licensing examinations, the cost of the license, and the cost of continuing education, etc. should be a level playing field cost for both the agency tender and the private sector. Since professional licensure is in place to protect public health, welfare and safety, the Circular should be revised to require the Standard Competition to address licensing of personnel on fair and equitable basis for both the government and the private sector, and the cost of licensure should be factored into the agency tender.
- Page E.7., section 1.1. Inmate labor should be removed from the Circular. The private sector is prohibited from utilizing inmate labor under Federal law. Thus, in order to provide a fair and balanced competition, inmate labor should not be included or permitted in an agency tender.
- Page E.9&10, section 3.a.5.e. (note the alpha-numeric system breaks down in this section of the draft - insurance, etc. should not be considered a subset of facilities). The draft does not specifically address professional liability that would apply to certain professional services contracts. If, for example, A&E services are not exempt from the Standard Competition provisions, attachment E must be revised to provide for equality in the cost of professional liability insurance of a private sector firm and the cost of self insurance of the government to assure an apples to apples comparison.

Finally, we oppose the "bundling" of any A/E services, including surveying, mapping and geospatial services, with non-A/E services. A provision in A-76 should prohibit such bundling, consistent with the Brooks Act for A&E services, and consistent with the President's recent initiative on contract bundling.

We urge the adoption of these recommendations in the final A-76.

John Palatiello
MAPPS
1760 Reston Parkway
Suite 515
Reston, VA 20190
(703) 787-6996
www.mapps.org

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: A-76

I've just returned from what I believe was a day working for the federal government that was the most colossal waste of time ever. I have spent the entire day not doing the job the taxpayers pay me for, but counting the time it takes for me to do the specific activities of that job. And we were given only a week in which to accomplish this task!

As a federal employee of an agency that is being "A-76'd" I wanted to take this opportunity to express my feelings about this project.

I am all for the government downsizing. I am all for the government using taxpayer monies wisely by doing their jobs efficiently. I am all for us streamlining and updating our processes. Having been a federal employee for quite some time, I am all too aware that these things are needed and support the President's desire to cut government waste.

But I am not in favor of the process by which we are attempting to do this. The process for A-76 is monstrous and massive and is costing our agency over a million dollars just to do. It has put an unbearable strain on my division--a division that is already stressed due to budget cuts that have resulted in our being severely understaffed. In a word, we barely have the necessary staff and resources to perform our jobs with excellence as we have always done according to our high customer service standards. Ours is one group of federal employees whose jobs are constantly busy. Our focus has always been serving the public well, and we do not have the time to do A-76 and our jobs as well. We have at least two employees who have all but forgone their jobs simply to focus on the A-76 work our division must complete. Let me just point out that morale in our agency, and particularly our division, is at an all-time low.

There has GOT to be a better way to make sure the federal government is a well-run machine and accountable to the taxpayer. There has GOT to be a process that requires fewer manhours and that doesn't burden employees in an unreasonable manner.

The A-76 process has been the one thing in my life that has made my career with the federal government FAR less appealing. And if we ever have to endure this again, my paycheck will be one the government won't have to pay again.

Mark Nelson <mark@mmjcd.net>
12/17/2002 07:42:15 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: Massive outsourcing could cause security problems.

I recently read about a consulting firm in the east, that the FBI raided, that had information technology contracts with many Federal agencies, including the USAF and also possible ties to Mid Eastern terrorist organizations. This raises a number of questions:

1. If 400,000 - 900,000 Federal jobs are outsourced in a short time, how can we prevent our enemies from infiltrating bases and computer systems.
2. Federal employees have to have background checks. What security checks will be made to prevent enemies of the US from exploiting this confusion to hurt our country?
3. Even if the contractors are found to be relatively secure, many of them subcontract work. Who checks up on the subcontractors?

Mark Nelson <mark@mmjcd.net>
12/17/2002 07:50:28 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Where do the lost Federal Jobs Go?

No one has spelled out what happens to the outsourced Federal employees. This raises a number of questions:

1. Will they simply be fired to add to the 6% unemployment in this recession?
2. Will the firms that bid on the work have to pick the ex Civil Service employees up for a set time and then be free to fire or cut wages and benefits as they wish at a later date?
3. Will this result in a transfer of jobs & buying power from one state to another?
4. Could it result in most of the outsourced jobs ending up in a few favored states and Congressional Districts with many good jobs lost from primarily rural states?

Mark Nelson <mark@mmjcd.net>
12/17/2002 07:56:50 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: Job security and spending habits

When employees are faced with job insecurity, most will cut back on spending. If consumer spending is propping up the economy at this time, is it a good idea to make 1,500,000 + workers, their spouses and families insecure about their job future so that they will cut back their spending? This could cause another 2,000,000 to 4,000,000 people to spend less at a time when the country needs confident spenders to get out of the recession.

Mark Nelson <mark@mmjcd.net>
12/17/2002 08:04:57 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Who checks contractor work?

In many technical fields (computer technology, engineering, science etc.) the Federal employees presently act as the agent of the Government (taxpayers) to review contractor work. Improperly done work is usually returned to the contractor to fix before the contractor is paid.

1. If government professionals are fired, who will have the expertise to check the work of the contractors to determine if it is any good before the taxpayers pay for it?
2. If only a few government professionals are left to check the work, but no longer practice in their professions any more, how long will it be before they have outdated skills and are less effective at finding poorly done work prior to payment?
3. If consultants are left to check on consultants, won't it will end up being another Arthur Anderson auditing Enron type situation? (Fox guarding the hen house!)
4. Couldn't this whole thing end up being a conduit of money from the taxpayers to consulting firms untouched by any safeguards?

DAVE BARON <starbuck365@email.msn.com>
12/17/2002 09:36:39 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: A76

I think the outsourcing should ALSO apply to the OMB. Why should they not be included???

Regards.

Johnzscott@aol.com
12/17/2002 10:47:32 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: A76 comment

Please accept the attached document as comment to the proposed revisions to Circular A-76, published in the November 19, 2002 edition of the Federal Register.

Thank you.

John Scott
1427 Mildred Place
Edgewater, Maryland 21037

- CommentA76.doc

Editorial comments on A-76

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		among the group of private sector offers and public reimbursable tenders considered in Phase Two.	among the group of offers and tenders considered in Phase Two. [delete extraneous text]
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E-11	B.5.b	... phase-in period, these costs may be entered on Lines 1 through 5 may be used to document these costs.	...phase-in period, Lines 1 through 5 may be used to document these costs.
E-12	C.3	This Line reflects a full range on contractual...	This Line reflects a full range of contractual...
E-15	D.2.b.2	...Line 13 (total, contract/ISSA cost)	...Line 13 (total contract/ISSA cost)

GESTA, IFPTE Local 29
December 17, 2002

george <oldschool@blackfoot.net>
12/18/2002 05:31:16 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Remailed Comments--this time with the attachment

----- Original Message -----

From: [george](#)
To: A-76comments@omb.eop.gov
Cc: [Gupton](#) ; [Liz Gupton](#)
Sent: Wednesday, December 18, 2002 3:13 AM
Subject: Comments to the proposed revisions of the A-76 process

December 18, 2002

The following comments are submitted by Elizabeth Gupton, President of Local 60, National Federation of Federal Employees, affiliate of the International Association of Machinists and Aerospace Workers, AFL/CIO. Replies to these comments may be made electronically to my home e-mail address (oldschool@blackfoot.net), or mailed to my home address: 100 River Street, P.O.Box 870, Superior, MT 59872; cell ph. # 406/240-9395. (w) 406/822-3920. These comments represent the views of Local 60 members, and are not to be misconstrued as an official agency statement:

First and foremost, the comment period for the proposed revisions to the A-76 process must be extended at least 90 days. This would allow time for government employees and the public to learn more about the consequences and impacts of such revisions. We believe that the revisions are specifically tilted toward favoring privatization of government jobs, and we do not believe that such privatization efforts are necessarily in the best interest of United States citizens. We have observed both successful and disastrous results from outsourcing government jobs, and to skew the process so that privatization is the favored outcome is an injustice to all citizens. The process must be fair and reasonable.

- The strict deadline revision: The circular will contain time limits for A-76 competitions and outline consequences for agencies that fail to meet them. The limit for most competitions will be 12 months. OMB will closely monitor Agencies that fall behind in their competitions, and if in-house employees fail to meet the deadline, their jobs could be directly outsourced to the private sector.

Local 60 comment: There are numerous factors involved in conducting A-76 studies, and to set an arbitrary deadline to study complex processes is extremely limiting and would likely lead to erroneous conclusions. Speed, not accuracy, would become the primary goal in completion of the study. A-76 studies tend to simplify functions in a mechanistic, assembly line manner.

Dynamic, complex organizations do not produce exact widgets (as in manufacturing where time and motion studies improve efficiency) and therefore must be studied carefully to understand their multi-faceted functions. With such an important task as determining the greatest value of a public service to the U.S. taxpayers, time should not be the limiting factor. (Additionally, the proposed new rules--particularly changes that compress the competitions to one year or less--could overwhelm procurement officials.)

We oppose implementing this revision.

- ❑ The binding performance agreement revision: Teams of federal employees that win job competitions will be required to sign binding performance agreements and will be subject to future competition after their agreements expire.

Local 60 comment: If the intent is to create an atmosphere in which government employees feel neither valued nor trusted to work efficiently, this revision will succeed. Good employee morale is necessary for continuity and high performance. Very few businesses treat their employees in such a manner--why should the government? The proposed rules would prompt many employees doing so-called 'commercial work' to leave their jobs rather than stay on amid the uncertainty of enduring numerous competitions.

We oppose implementing this revision.

- ❑ OMB's new "best value" competition: The "best value" competition process allows non-cost factors such as technical performance and reputation to be considered in procurement decisions. The in-house team could be eliminated before the final round of competition, a break from the current process. OMB will test the best value process on federal information technology jobs.

Local 60 comment: This proposed rule change would introduce a process allowing commercial companies to compete for jobs that are currently being performed by government employees at a significant cost savings over the private sector. It's fairly obvious how this revision would work: If the contractor could not compete on the lowest-cost standard, then the preferred method of study would be "best value". This competition would be skewed in favor of contractors who would convince managers they were better able to apply new technology and innovation in their bid proposals--for which a higher cost would be necessary. For government employees this would be a "no win" scenario either way. The obvious goal here is to privatize without regard for what is best for the American public. (Why shouldn't government employees be allowed to choose the "best value" standard in convincing the Administration that cost isn't everything when it comes to providing a service to the public?)

We oppose implementing this revision.

- ❑ OMB's revision of definition and reversal of defending "inherently governmental" versus "commercial": OMB overhauled the circular in response to the findings of the Commercial Activities Panel that urged widespread changes to federal outsourcing policy in its April report.

Local 60 comment: OMB made changes to the A-76 circular that the panel did not call for, including rewriting the definition of "inherently governmental" work. Inherently governmental jobs are "an activity so intimately related to the public interest as to mandate performance by government personnel." One of the most significant features of the proposed rule changes is its reversal of the premise that all federal jobs are presumed to be inherently governmental unless they can be justified as being commercial. According to the proposed changes, this presumption would change so that "all activities are commercial in nature unless an activity is justified as inherently governmental."

This change would address complaints by contractors and Bush administration officials that agency managers are not labeling enough of their jobs as commercial, even though they could be done by companies. The likely impact of the proposed change would be to significantly expand the pool of work now done by federal employees to be deemed commercial, and thus subject those jobs to competition by contractors.

We oppose implementing this revision.

- Funding necessary to be competitive: The sheer magnitude and cost of A-76 studies have not been addressed adequately. Comptroller General David Walker, head of the General Accounting Office, is reviewing the proposed rule changes and believes they would create the need for more financial and technical assistance. "From a practical standpoint, there's no way in the world you can conduct all these studies without more resources," he has said. (At the Nov. 14 release of the draft revisions, administration officials offered no specifics for what additional funding, if any, agencies would need or receive for additional staffing or training to carry out the rules other than to say that each agency must examine its priorities.) One federal official, who asked not to be named, said the lack of funding earmarked for hiring and training weakens the chances the new rules will be followed. "Sure, [contracting officers] will give lip service to the rules, but they won't be able to apply them because they're already swamped," the official said.

Local 60 comment: We believe additional funding and training must be provided to federal employees involved in A-76 studies. Otherwise, the in-house studies will be doomed to fail.

- Right to appeal a contract award before the GAO: Walker, who chaired the Commercial Activities Panel, said it was important to give federal workers the right to appeal a contract award before the GAO. Although appeal rights for federal employees are not spelled out in the proposed rule changes, Walker said his understanding is that OMB intends to permit federal teams to appeal adverse decisions before the GAO. "It needs to be expressed" in the rules, Walker said. "It makes sense to level the playing field."

Local 60 comments: Appeal rights for federal employees must be spelled out in the proposed rule changes, to state that federal teams may appeal adverse decisions before the GAO.

- The Commercial Activities Panel's recommendations: Walker has questioned why some of the panel's recommendations were not included in the administration's proposed rule

changes. The proposed changes, he has said, focus only on outsourcing and do not include the panel's recommendations to: promote more public-private partnerships, permit federal workers to bid on new federal contracts, and promote the use of a reorganization model for agencies called the high-performance organization. "The high-performance organization is a way a function that's never going to be competed can be made more efficient," Walker said.

Local 60 comments: We believe the Commercial Activities Panel's recommendations should be implemented to promote more public-private partnerships, permit federal workers to bid on new federal contracts, and promote the use of a reorganization model for agencies called the high-performance organization.

More specifically, Local 60 would like to add these comments about the impact of outsourcing on the effectiveness of the Forest Service:

By moving away from ground-based, long-term, dedicated employees to a mixed-purpose workforce with revolving contractors, we believe the valued tradition and heritage aspects of the FS will be further eroded. The downsizing and early retirements of the '90s have already depleted our ranks. These developments, as well as all the political, regulatory, legal, and fiscal wrangling of late have tested our morale and sense of mission.

Institutional knowledge and nuances of the FS culture contribute to the quality of work in the resources and the communities we serve. It is inconceivable that contractors could assimilate all the technical and organizational information, quirks, and idiosyncrasies efficiently--without a considerable lag time on the learning curve. People who grew up in the system, learned in the trenches and from mentors, and have been immersed in the organization have learned over time the ways in which our agency functions. It would be very challenging to impart this understanding of evolving policies, regulations, manual directions, handbooks, operating procedures, and all the other systems to a contractor--who may lose interest (for more profitable endeavors) very quickly. A general lack of knowledge about civics, branches of government, separation of powers, appropriations, and regulations would further compound the challenge. Even our most involved partners, cooperators, permittees, commentors, and appellants struggle to keep abreast of the ever-changing resource guidance that we work with daily.

The Forest Service is a big family of sorts with intangible qualities that have developed from long-term relationships of people to each other and to their entrusted resources and communities. To some extent, common backgrounds and experiences and a shared sense of proud organizational history have built a camaraderie that couldn't be maintained or acquired by frequently rotating in new contractors. Spouses and families are involved in this culture, especially in more remote and rural areas where most employees got started and where many choose to stay for the quality of work-life and other amenities. Fighting fire, repairing flood damage, finding lost hunters have also strengthened our sense of belonging, mission, and commitment felt by most employees. These qualities may be most pronounced at the field level, but are an underpinning of all the tiers of the organization.

Therefore, seasoned Forest Service employees are not interchangeable with ephemeral contractors who may qualify on paper. This would follow for many other agencies and, no doubt,

for many private companies and other institutions with a lot of history. Requirements on paper can never do justice to the depth of knowledge needed of nor the intricacies involved with managing these diverse public resources. Already, employees devote considerable personal time and energy to see that the interests of the public, the resources, and the affected communities are protected. Exactly how can such benefits be measured in the equation of "low cost" and "best value" computations?

Thank you for the opportunity to comment--please submit our comments for public record in the Federal Register.

MarkHelene@aol.com
12/18/2002 07:40:14 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: comments on A-76 proposal

Comments to the proposal to revise Circular No. A-76 dated November 14, 2002

Name: Helene Cleveland

Address: 2313 Hanson Road, Edgewood, MD 21040

Telephone: 410-676-7078

Email: markhelene@aol.com

Note: I am a government employee, but these are my comments and not my agency's.

Definition of Inherently Governmental Activities – The definition in the proposal is too narrowly defined. This definition goes against the intent of Congress when it developed the civil service and it goes against the intent of Congress when it passed the original A-76 process. In addition, President George Bush has stated in writing that “Federal employees carry out countless essential responsibilities that include maintaining critical government services, ensuring economic growth, and supporting efforts to extend peace and freedom around the world.” (From his December 2002 memo to the Employees of the Federal Government.) The “countless essential responsibilities” and “supporting efforts” include a much broader definition of inherently governmental than the definition in the proposed revision. By so narrow a definition of inherently governmental activities the proposal is not following the expressed intent of the President of the United States.

The proposal so narrowly defines “inherently governmental” that only agency heads will meet the definition. After getting rid of all the civil servants, where will the replacements come from to fill the senior executive service which is an inherently governmental function?

Congress and the President made all airport baggage screeners federal employees. The baggage screeners do not meet the proposed definition of inherently governmental function. Will they have to compete for their jobs with the private sector?

Why wasn't an environmental impact study done on this proposal? This is controversial and has a significant effect on the human environment. Just ask the government employees about their environment. Also, for those land management agencies (Forest Service, Bureau of Land Management, etc.) that will now be run or operated by contractors, what's the effect on the environment? Civil servants worked to carry out the will of Congress and the American public. Contractors are in the business to make money. Who analyzed the impacts?

In addition, a number of employees for the land management agencies fight forest fires as part of their jobs. They are not full time forest fire fighters, but fight fires when called upon depending on the severity of the fire season. How will this loss of fire fighting capability impact public safety and ecosystem health? This needs to be analyzed in an environmental impact statement.

Civil servants must live up to a code of ethics – we can hardly accept a cup of coffee from a contractor. How will the contractors be limited in their dealings with the public and other contractors? This is a cost to be factored in.

All civil servants must be US citizens. Will this be a requirement for the contractors?

Civil servants are limited in what they can do politically and the offices they can hold. Will contractors meet those same limits?

Civil servants cannot hold another job without approval from their supervisor and definitely cannot hold another job that relates to their government employment. Will contractors meet those same limitations?

Civil servants are paid fringe benefits (retirement, medical, etc.). Contractors should also have to pay its employees these fringe benefits otherwise the cost comparison is apples to oranges.

You need to figure in the “extras” that the contractors will eventually get. No contract is written to include every task. So when the government asks the contractor’s employee to do a task not written in the contract, how much extra will the contractor make off of it?

Why is there a material and supply cost for the agency bid but not the contractor’s bid? The government is going to end up buying the same amount and the cost should be on both or neither estimate. In addition, the contractor’s cost estimate should not include a deduction for federal income taxes. Government employees also pay federal income tax. If a contractor gets the bid, that firm will not pay any additional federal income tax, the firm’s tax lawyers will see to that.

Government employees are assured that if two people hold the same grade level they are paid the same amount. How will you ensure that private employees are not discriminated against especially since women in the private sector are universally paid less than men doing the same job?

The Government is under orders from the President, Congress, and certain judges to hire a certain percentage of women, minorities, and people with disabilities (yes, they call them goals not quotas, but it’s the same thing). How will this proposal affect these rulings and orders? What sort of environmental justice impacts did you analyze and document? How will you ensure the equal employment act is adhered to?

Will agencies be held liable for the discriminatory actions of private contractors?

When comparing costs between government employees and contractors, no where do you include the cost of preparing the solicitation package. This should be a cost borne by the contractor since if government employees did not have to compete for their jobs the solicitation expense would not have occurred.

Another cost that should be borne on the contractor’s side of the equation is the cost of unemployment benefits that the former government employee is entitled to. Because if a contractor gets my job, the government will have to pay salary and benefits and overhead to the contractor and unemployment benefits to me and that’s far more than what the government would have to pay if they kept me in the job.

Other costs that should be included on the contractor side should be the training cost and loss of productivity. New contractor employees will not know the systems, policies, and regulations of the agency they will now work for. Thus, for several weeks or months or years, they will not perform as the previous government employee did and this loss of productivity should be reflected in the contractor price. Also, on-the job training costs should be determined and added to the contractor price. In addition, the remaining government employees in the agency will not be doing their jobs, but training these new contractors – so that loss of productivity should be added to the contractor side of the estimate.

Government employees cannot strike. Loss of productivity due to potential strikes and negotiations or new solicitations for a new contractor should be borne by the contractor side of the equation.

When government employees are replaced by contractors, many former government employees who are near retirement age will retain retirement benefits (you haven’t gotten rid of them, have you?). Thus this expense should appear on the contractor’s side of the cost estimate.

Will contract employees oversee or supervise other government contractors such as loggers, park or campground concessionaires, outfitter guides, etc.? What safeguards do you have in place that contractors do not supervise contractors?

What safeguards do you have in place to keep government employees personnel records secret from contractors? Contractors should not have access to social security numbers, etc.

When Congress passed and President George H. W. Bush signed the Federal Employees Pay Comparability Act in 1990 they stated that government employees were not being paid at comparable wages to those in the private sector. In 2001, President George Bush reaffirmed that government employees were not being paid comparable wages because he signed the increase to the salary wages and locality payments. In 2002, President George Bush signed a 3.1% pay increase for government employees and stated that the locality payments would stay the same. If government employees are too expensive, why did the President sign the bill?

Helene Cleveland

- Comments to the proposal to revise Circular No.doc

Jim Griffin <Jim@griffinserv.com>
12/18/2002 09:15:21 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: Circular Revisions

Griffin Services Inc. strongly supports the presumption that all activities are presumed to be commercial. This will assure that there is competition and that the taxpayer will always be paying for the greatest value.

Griffin Services Inc. strongly supports the requirement for a standard competition not to exceed 12 months. The current process is harmful to the program, delays the resulting savings, demotivates potential competitors, and hurts the moral of the incumbent employee workforce.

Griffin Services Inc. strongly supports a procurement process based on the FAR in lieu of the current system which frequently results in unfairness and manipulation apparently designed to achieve unintended objectives of the procuring agency.

Regards,

James J. Griffin
Griffin Services Inc.
5755 Dupree Drive NW
Atlanta, GA. 30327
Phone: (770) 952-1479 ext. 233

"Katz, Ira B." <ikatz@dcmde.dcma.mil>
12/18/2002 09:19:10 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: A-76

To Whom It May Concern,

The below paragraph is very much misleading, weak and bias for the A-76 process. It doesn't take into account "SECURITY", which should be the "MOST IMPORTANT" issue. Comparing mowing the lawn to a job in Information Technology is ridiculous. The idea of outsourcing is another way of lessening the security of our country. How do you know who the new employees will be. Many will probably be foreigners, whom you really don't know their background. It is definitely asking for "TROUBLE!!". It's a, as you like to say "lose-lose" for all of us.

"Technology could help civilian agencies learn about how the military and state governments have run public-private competitions, Eggers added. "If I'm in a national park and I want to contract out lawn mowing and want to find best practices, and it turns out best practices are at an Army base in Georgia, there ought to be a way to get that information." "

Ira Katz
Concerned American

Dan Huffman <DanH@surdex.com>
12/18/2002 10:22:41 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: OMB Circular A-76 comments

To whom it may concern,

I wanted to take a moment to voice my opinion on OMB circular A-76. As a small business owner in the St. Louis metropolitan region, the proposed revision brings to light some interesting possibilities.

My company, Surdex Corporation, provides geospatial services to a number of counties, municipalities, and most recently, several federal agencies under the Department of Defense. For the Country's security, GIS is a vital tool in providing the groundwork for defense. We understand the importance of this, and want to be an active part in making sure the future of our country is not at risk. Thanks to the proposed revision, we will hopefully be able to play a more significant role in this challenging task.

Since 1954, Surdex has been at the forefront of providing such services to clients throughout the nation. We are widely recognized in the industry as being one of the leading companies in photogrammetry and geospatial services. Because of this, I feel we can provide the quality of work that is needed for our country's future. There are too many instances in the past when the government had been unable to provide this same quality because of budgetary restraints, lack of manpower or a simple lack of skills and know-how.

Surdex thrives in a competitive environment, and because of this, we are constantly forced to push ourselves to stay ahead of the competition. It is this order of competition that creates a technologically advanced field, be it in pharmaceuticals, business, or in our case, GIS services. Without this competitive environment, it is all too easy for technology to fall behind.

To coincide with this added competition, I would like to stress the importance of guaranteeing that all architectural, engineering, surveying and mapping services be in compliance with the Brooks Act's qualifications-based selection (QBS) process, as required in 40 United State Code, section 541-544 and part 36 of the Federal Acquisition Regulation (FAR). Because this act requires federal agencies to contract with the firm providing the highest quality, it will ensure superlative work. This is the perfect win-win situation for both parties involved.

I value the future of this country and relish the opportunity to make sure it's more secure. OMB circular A-76 provides the perfect chance for the United States to take a great leap forward in making sure we are prepared for whatever may come. I am in full support of this revision and sincerely hope it becomes a reality.

Thank you for your time,

Ronald C. Hoffmann
President
Surdex Corporation
520 Spirit of St. Louis Blvd.

Chesterfield, MO 63005
ronh@surdex.com
636-532-3427

- winmail.dat

Louis Carrillo <lcarrillo@wcc-corrections.com>

12/18/2002 11:26:08 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: A-76 Comments

Attached are comments submitted by Wackenhut Corrections Corporation to the recently published proposed revision to the Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities."

If there is any difficulty accessing the attached comments please contact me by return email or at the telephone number listed below.

Louis V. Carrillo
Vice President, Corporate Counsel
Wackenhut Corrections Corporation
(561) 691-6656 Direct
(561) 691-6777 Facsimile
lcarrillo@wcc-corrections.com

- A-76.pdf

"DeAngelis, Mary Ann" <MDeAngelis@Pennoni.com>
12/18/2002 11:48:04 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: OMB Circular A-76

- DPC dec 2002.doc

December 17, 2002

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Childs:

On behalf of my firm, Pennoni Associates, I am writing in support of several revisions to OMB Circular A-76 and several related policy documents that govern how the Federal Government obtains goods and services. Our company and its employees applaud the underlying premise behind these revisions, which is that all activities currently performed by the Federal government are presumed to be commercial in nature unless they are justified as inherently governmental.

Alignment of OMB Circular A-76 with the Federal Acquisition Regulations (FAR) is a very sound decision. With the exception of dealing with the procurement of Architectural-Engineering services that will be discussed later in this document, it will facilitate the Administration's competitive sourcing policy and ensure "apples to apples" comparisons in any resulting competition between the private sector and government agencies that are commercial in nature.

Leading edge companies such as ours provide the ideas, innovations, studies, designs, and related services upon which projects are based. These significantly impact life-cycle costs and ability to satisfy customers. We applaud the decisions to end "back door" inter- and intra-service agreements (ISSAS) that preclude our being considered and to restrict Federal agencies from aggressively marketing their services to our clients – state and local governments – often using the gambit of partial funding at taxpayer expense.

I call to your attention, however, a conflict between the revised Circular A-76 and the statutory requirements for the procurement of Architectural-Engineering services. The procurement of these unique services is done through "Qualifications Based Selection" (QBS) and not simply on the basis of cost, as prescribed under (40 USC Section 541 et seq.). An approach needs to be crafted to enable Federal agencies to compete in a manner consistent with the statute.

We strongly support the suggestions that are being made by our various industry organizations to address this matter consistent with statutory requirements. There is no justification for the Federal government to

have this costly and redundant capability when such are readily available from a more efficient and innovative private sector.

Our company and its employees applaud this courageous initiative to issue a revised OMB Circular A-76 and appreciate this opportunity to comment on them.

Page 2
David C. Childs
December 18, 2002

Pennoni Associates is a professional engineering consulting firm of over 600 people in the Mid-Atlantic and New England regions. We have been providing consulting services to both public and private sector clients since 1966, and look forward to our continued success in the Federal government market in both Homeland Security and Department of Defense assignments.

Very truly yours,

PENNONI ASSOCIATES INC.

Anthony S. Bartolomeo, P.E.
President

Judith Nitsch <JNitsch@jnei.com>
12/18/2002 11:48:14 AM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: comment on OMB Circular A-76

> 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, D.C. 20503
>
> Dear Mr. Childs:
>
> I am pleased to comment on the proposed revisions to OMB Circular A-76. I
> applaud your office for its positive efforts to restructure Circular A-76
> to align it with Federal Acquisition Regulations (FAR). The proposed
> revisions will pave the way for the Administration's competitive sourcing
> policy, allowing the private sector to fairly compete for public
> contracts.
>
> I am particularly supportive of the language to expand competition to now
> include services provided under commercial interservice support agreements
> (ISSA). In the past, these types of agreements were typically off-limits
> to private industry, which has not allowed for efficiency, innovation and
> best value to taxpayers.
>
> I also applaud your office's recognition of the importance of restricting
> Federal agencies from displacing private sector firms by providing
> services to state or local governments. Many Federal agencies continue to
> aggressively market their services to state, local and tribal governments,
> often by providing matching funds. Engineering companies simply cannot
> compete with agencies that offer partial project funding.
>
> Lastly, I urge OMB to fully recognize qualifications-based selection (QBS)
> procedures described in FAR Part 36 when writing the final rule for the
> A-76 revisions. For many years there has been a conflict between Circular
> A-76 procedures and Federal law that mandates QBS for architectural and
> engineering ("A/E") services (40 USC § 541 et seq). This conflict should
> be addressed in the revised circular to ensure that the government selects
> the company that is most qualified to meet a project's needs. Since the
> proposed A-76 revisions are largely based on the FAR, inclusion of an
> exemption for direct conversion of A/E services would align the new A-76
> process more closely with FAR Part 36.
>
> Again, I commend OMB for the clarity with which these revisions to
> Circular A-76 were developed and appreciate the opportunity to submit
> these comments.
>
> Judith Nitsch, P.E.
> President
> Judith Nitsch Engineering, Inc.
> Civil Engineers, Planners & Land Surveyors
> 186 Lincoln Street Suite 200
> Boston MA 02111

> T: 617-338-0063 x212
> F: 617-338-6472
> E: jnitsch@jnei.com
> W: www.jnei.com
>

"Mark A. Casso" <mcasso@cirt.org>
12/18/2002 12:46:14 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: CIRT's A-76 Comments

Dear OFPP/OMB:

Please find below the official comments of the Construction Industry Round Table (CIRT) to the Office of Management and Budget announcement in the Federal Register (67 Fed. Reg. 69769, November 19, 2002) on "Performance of Commercial Activities" which proposed revisions to the OMB Circular No. A-76.

Per the OMB announcement the following information is provided as requested:

NAME: Mark A. Casso, Esq.
TITLE: President
GROUP: The Construction Industry Round Table (CIRT)
ADDRESS: 1101 17th Street, NW, Suite 608, Washington, DC 20036
PHONE #: 202.466.6777
E-MAIL: mcasso@cirt.org

CIRT's comments follow:

December 18, 2002

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

RE: Proposed revision to Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities."
Federal Register/Vol. 67, No. 223 (November 19, 2002), pp. 69769-69774

Dear Mr. Childs:

On behalf of the Construction Industry Round Table (CIRT),¹ I would like to provide comments with respect to the Office of Management and Budget (OMB) proposed major revisions to Circular A-76 to improve the management of commercial activities that are needed to conduct the business of the federal government. (67 Fed.Reg. 69769, Nov. 19, 2002).

We commend the Office of Federal Procurement Policy for undertaking this massive effort to revise, revisit, and reexamine A-76 to insure its continued validity, use, and effectiveness. Management policy that is ignored or circumvented because of its complexity or lack of support is worse than having no policy on the given issue. If nothing else, this effort reinvigorates the role and importance of A-76, and hopefully its application and goals.

Given the nature of the undertaking, there are numerous areas in which to comment and to offer revisions or suggestions. It is CIRT's intent to concentrate on those areas that most impact the overall purpose of the Circular and more precisely on matters that directly relate to the design and construction community.

General Comments

As noted above the Round Table commends OFPP for its efforts and the general philosophy and direction taken in the revisions to A-76. In particular, we are most supportive of expanding the application of private-public competitions to **all activities performed in-house** and to both commercial inter-service support agreements (ISSAs) as well as "work for others." Moreover, incorporation of the Federal Acquisition Regulations (FAR) into the competitive process helps to create uniformity as well as familiarity.

Finally, the Circular's revision is well grounded in viewing **all** government activities as commercial in nature *unless otherwise established as inherently governmental*. **This places the burden in the proper place, namely on the government agencies to establish clear and convincing evidence** as to why certain activities cannot or should not be supplied by the private sector.

To support these general observations, certain matters that warrant clarification and possible modification:

- *Changed Circular Policy:* The shift from the "longstanding policy of the federal government . . . to rely on the private sector for needed commercial services" must be carefully balanced under the new approach with a clear and unambiguous understanding that "all government activities are commercial in nature," and that the burden is on the agencies to establish otherwise. To drive this point home, CIRT would recommend language be added to Attachment A, at A-2, section D.2, first line, to read: "2. Agencies shall use the following reason codes *and must carry the burden of proof* to indicate the rationale for agency performance of a commercial activity." (Added language in *italics*).
- *Application of Circular:* To expand the rationale of the Circular to include federal funds expended by state and local governments, the principles in A-76 should be incorporated in OMB Circular A-102.

¹ *The Round Table is exclusively composed of approximately 100 CEOs from the leading architectural, engineering, and construction firms doing business in the United States. These firms represent a large portion of the approximately 8-10 percent of the United States GDP done annually by the industry, including billions of dollars a year in federal infrastructure projects.*

A&E Statutory Compliance

As proposed, the Circular is currently in conflict with statutory requirements related to Architectural and Engineering (A&E) Services. The statute (40 USC 541 et. seq.) requires contracts for A&E services to be awarded on the basis of demonstrated competence and qualifications, not price competitions. The Circular's standard competition process includes cost/price competitions. Therefore, the Circular must be revised in order to be in compliance with the statute and the use of FAR Part 36. There are two alternatives to address this statutory compliance issue:

- *Direct Conversion*: Given the complexity of integrating A&E services into the Circular the most effective, efficient, and complete means to address the compliance requirement, as we see it, is use of the direct conversion process. To accomplish this, a new provision can be added to Attachment C, page C2, after subsection 33 (research and development) for "Architectural & Engineering Services." Given the A&E procurements are a very small portion of the overall federal contracting it is much more appropriate to simply use direct conversion rather than attempt to convert the A-76 procedures to accommodate the quality based selection process.²
- *Private-Public Competition in Accordance with A-76*: The less desirable and more complex approach is to conform the new Circular's competition process to the qualifications-based procurement requirements of 40 USC 541 et. seq. This process could be limited to A&E activities that exceed \$100,000. To achieve this conformity would include, among other things, the following changes or additions:
 - *Page D.3&4, section H.1.b.3*: Include "architecture and engineering services (including surveying, mapping, and geospatial services)" to the end of the section on "specialized or technical services" to clarify that A&E services are commercial services.
 - *Page B.9, section 3.a.5*: As noted above, for A&E services neither an agency nor a private sector cost estimate is permitted by law to be used during the selection process. Thus, in this section 3, as in all subsequent sections of the Circular, all references to bids, costs, and tenders should include a footnote that states it does not apply to A&E services. [E.g., In section 3, a paragraph on past performance should be inserted for A&E services, such as "Past Performance. The ATO shall develop a Standard Form 254 and 255 submission (or any successor to such form(s) outlining the past performance of the agency. Such submission shall include the agency's past performance with regard to qualifications (including professional licensure) of personnel, agency record on meeting delivery and completion schedules and the agency's record on meeting budget."]
 - *Page E.9&10, section 3.a.5.e*: While insurance, etc. should not be considered a subset of facilities, it is worth noting that the draft proposal does not specifically address professional liability insurance, nor does it take into account continuing and prior education, experience and skills, innovation and technique, nor knowledge of local site conditions as part of the qualifications-based selection process mandated by law. Thus, to have the A-76 private-public competition conform with the statute, it must use these recognized quality and performance measures *for selection before negotiating costs with the winning team*. [NOTE: in the case of professional licenses, it seems inconceivable that the federal government would not take into consideration the significance of such a licensure procedure. The

² The new language in Attachment C could read. "3. **A&E** An activity provides direct professional services of an architect-engineer nature, as defined by state law. Commercial activities providing A&E support would be subject to the qualifications-based selection (QBS) procedures of the FAR Part 36 included in this Circular."

requirements it imposes on the private sector tender with respect to *public health and safety is paramount* – not to give it value and weight when considering it against a non-licensed public tender is paramount to discounting safety and health qualifications].

Fairness and Balance Comments

When reviewing the revisions to A-76, the following specific issues or concerns arise which warrant consideration, clarification and/or modification to further the goals of fairness, balance, and transparency:

- *Agency Price Differential*: It is inherently unfair to give the agency tender a 10% price differential as current policy – this is only compounded and made more exacerbated by increasing it to 12%.
- *Cost Comparisons*: Critical to the success of the new A-76 process is the full and fair accounting of all private **and public** costs. The simplest and most efficient means to achieve this complete comparison is for the agency tender to account for every single cost put forth by the private sector tender. In other words, there should be a side-by-side ledger that has an entry for every cost identified (even if the public side of the ledger reads “N/A” or “No Cost” such as for taxes!)
- *Define “Private Sector Source”*: The “private sector” as used in the Circular should be defined to mean a private, for profit individual, association, partnership, corporation, and/or like entities; but, it does not include state and local government units, universities, and/or other tax exempt or not for profit entities.
- *Expansion of Commercial Activities*: An expansion of commercial activity should be subject to Direct Conversion or Standard Competition when the increase in operating cost is 10% not 30% as proposed. [The lower 10% number is more in line with the traditional differential price break the agencies receive.]
- *Failure to Perform*: Section 5.c, page B.16, should be revised to include in evaluations of agency performance, after an agency wins a standard competition – some recourse or penalty equivalent to that which the private sector firm is subject *if it fails to perform*..
- *Right of First Refusal*: Section D.1, page B-18, should be revised to provide private sector employees the right of first refusal for government positions if an agency is awarded previously out-sourced work, just as the federal agency employee is granted.
- *Notice of Request*: Section H.1, page D.3, should strike the current language that reads “available to OMB and the public upon request” and insert in lieu thereof “*available to OMB and made public in FedBizOpps.*” This is only fair, since as currently written the draft presupposes the private sector would even know of the state or local need in order to request the information from OMB. Most often that is not the case – thus, the notice provision should be included in the final draft.
- *Inmate Labor*: Section 1.1, page E-7, should be removed from the Circular since the private sector is prohibited from utilizing inmate labor under federal law.

Conclusion

The Construction Industry Round Table commends OFPP and OMB for undertaking the rewrite and revitalization of A-76. It is critically important for the management office of the federal government to revisit this important document – given it had lost some of its currency and application.

We applaud the approach of including ISSA and “work for others” within the bounds of the new Circular, and will watch with interest the shift of burden to the agencies to establish why a given activity should be considered inherently governmental.

This change from earlier A-76 policy to rely on the private sector for commercial activity creates a new *two-step process* that must be fair and transparent. To assure that this process is above reproach, **CIRT recommends that consideration be given to the creation of single clearing house to run all private-public sector competitions authorized under A-76.** (Whether that should be housed in OMB, OMP, or even GAO, can best be determined by OMB itself).

Given the Circular must conform with current law regarding A&E service procurements, CIRT strongly supports the application of Attachment C of the draft Circular so as to use the Direct Conversion approach.

Finally, as noted above creation of a level playing field that provides fair, balanced, and transparent application, including the correct and complete accounting of *all applicable government costs* to a given competition is critical to the success of A-76. Moreover, this commitment must withstand the test of time, as administrations change and new personnel arrive to manage the process.

Sincerely,

Mark A. Casso, Esq.
President

- Copy Document II.doc

DENNIS MCINTYRE <grand_01@msn.com>
12/18/2002 01:08:19 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: public comment

I oppose the president's plan to privatize federal jobs. The GAO has not been able to prove or disprove that privatizing federal jobs saves money or is efficient. Also, I fear that federal jobs will go to politically well-connected contractors who either won't get the job done, won't do it very well, will overcharge the taxpayers or all three. In my community the biggest federal presence is the US Forest Service which provides temporary and seasonal jobs to local citizens. If some of these jobs were privatized I fear that these local wages will leave the community and go to an out-of-area or worse, an out-of-country contractor who will not be held accountable. Thank you for the opportunity to comment.
Carlotta Grandstaff
844 Sleeping Child Rd.
Hamilton, MT 59840
406-363-4054

Duane Curry <curryd@abacusokc.com>

12/18/2002 01:16:24 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: Scott Rawls <rawlss@abacusokc.com>
Subject: Review of draft OMB Circular A-76

REFERENCE: 19 November, 2002 Federal Register Notice - Proposed revision to Office of Management and Budget Circular No. A-76, Performance of Commercial Activities

Mr. Childs,

Although we were not specifically requested to review the new circular, we believe our extensive experience in the A-76 arena qualifies us to provide a thorough review and constructive comments.

As requested, our comments are attached and included in the body of this email.

Should you have any questions or wish to contact us regarding these comments, please do not hesitate to contact either myself or Mr. Rawls.

Duane Curry
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Abacus Technology Corporation has been assisting the government in the Competitive Sourcing arena for almost five years and we consider A-76 to be one of our core competencies. Additionally, many of our analysts have personal A-76 experience well beyond that of the company. For these reasons, we believe you will find our comments both insightful and reasonable.

We applaud OMB for attempting to shorten the unduly long process of conducting these studies, although the proposed twelve months may be unreasonable given the current environment. We firmly believe that prior to implementation of the new circular, government agencies must revise their internal A-76 guidance to relax the requirements on the MEO Team, specifically the required documentation.

Sincerely,

Duane Curry

COMMENTS ON AND
PROPOSED REVISIONS
TO

OMB CIRCULAR (OMBC) A-76, PERFORMANCE OF COMMERCIAL ACTIVITIES
Federal Register Notice, November 19, 2002

Attachment B, paragraph B.1. Will the Agency's status as "directly interested" also allow the ATO to protest a decision through GAO, or simply appeal?

Attachment B, paragraph C.2.a.(12). Below are two examples of instances where the cost of security clearances could be significantly different for public and private competitors. While we understand the difficulty in determining the number of new clearances required, the cost of obtaining new security clearances can be high, and could easily swing the competition. We believe the costs should not be ignored. Using the philosophy "even the MEO is assumed to be an entirely new organization" is not sufficient, as this philosophy is not applied to other areas of the costing (e.g. severance pay calculations, etc.).

The differences in the cost of security clearances would be based largely on the makeup of the current organization - mostly military, mostly civilian, number of sub-contracts, or a good mix of the three. Again, we suggest OMB should develop an estimating procedure to determine these costs.

Attachment B, paragraph C.2.a.(13) References paragraphs C.6.b.(2) & C.6.d.(2). We cannot find these references. The reference to paragraph C.6.b.(2) might be C.5.b.(2), but the other reference (C.6.d.(2)) is totally unknown.

Attachment B, paragraph C.3.a.(2). This paragraph states that the in-house offer consists of the MEO, in-house cost estimate, etc. "MEO" is defined as the "staffing plan" for the new organization. Attachment B, paragraph C.3.a.(4) further states the MEO is not the current organization, but a product of reengineering, etc. Thus, the MEO itself is merely the end result of the changes, or, as stated above, the staffing plan. However, most agencies currently require a Management Plan built by defining the current organization, describing changes to it, and then describing the new MEO. To avoid confusion, please clarify that the entire Management Plan is not submitted to source selection, but merely the MEO (staffing). The rest of the Agency Tender (responses to Sections L, M, etc.), would clarify the MEO's ability to perform the work. Also, please see our comments regarding development of a Management Plan in light of the new time-frames.

Attachment B, paragraph C.6.a.(1). If the only information released is the SCF and the Agency Tender, on what basis can the in-house offer appeal a private sector's compliance? That is, what documentation will be made available for review on which to base the questions?

Attachment B, paragraph D.1. States, "When job openings are created by a conversion to contract or public reimbursable performance and the employees on this list are deemed qualified by the HRA for these job openings, the selected source contractor or public reimbursable shall be required to offer employment to these employees...". How can the HRA determine qualifications of employees for contractor positions? Will the contractors be required to submit position descriptions for every position and submit them with his/her offer? Doesn't this open the door for non-performance issues? For instance, the HRA determines an employee is eligible and through the ROFR forces the contractor to hire said employee. If that employee fails to perform, isn't the HRA (thus the government) responsible for the non-performance.

Attachment E, paragraph B.1.c. States the 1776 productive hours excludes "...administrative leave, training and other..". Do the "training" hours that are excluded include only common training (e.g. EEO, safety, etc.), or an average of all training (e.g. specific job related training like confined space training, refresher training on new equipment, etc.)?

Attachment E, paragraph B.2.d. It is unreasonable to force inflation to the end of the a performance period. It is not uncommon for the MEO to receive certified estimates from local vendors and to include those costs in the MEO. While we understand the rationale that the actual purchase date for materials/supplies is unknown, in this case, it is known. For instance, assume the MEO will require a new piece of equipment. A local vendor agrees that it will sell that piece of equipment to the government for \$1000 on the start date of the contract. If this price is inflated to the end of the performance period, the cost reflected against the MEO is more than \$1000 it will actually cost. Also, commercial bidders would not inflate their estimates under similar circumstances. We suggest adding the following comment, or something similar, to the paragraph. "If the MEO has a signed agreement for purchase of an item at a specific cost, the actual cost of the item may be used without inflation."

Attachment E, paragraph B.2.d. Suggest adding a note not to inflate "Plug Costs" from the solicitation. These are costs the contracting office designates, and all bidders use the same costs, not inflated. The current version of winCOMPARE does not inflate them, but a note should be added to clarify the point.

Attachment E, paragraph B.3.g.(2) There has been confusion recently over the term "Federal Employees". We understand it to mean "Civil Service Employees", but have been told by some installations that the term also covers Military Employees, which are in fact employees of the federal government, and thus are federal employees. Attachment B, paragraph C.3.a.(4) seems to preclude contracting work performed by any in-house resource. When these two references are taken together, the impression is that the term Federal Employee does indeed apply to military members as well. Please clarify.

Attachment E, paragraph C.5.b. & C.5.c. Why is the SSA calculating one-time costs? Currently, the in-house team computes these costs (for winCOMPARE users, severance pay is automatically computed). Also, is the one percent "Relocation, Retraining, and Other Costs" factor waiverable (reference paragraph Attachment E, paragraph B.4.b., which allows a waiver to the 12 % overhead factor)?

Attachment E, paragraph C.6.b. In the interest of fairness, the entire net book value of a sold or transferred asset should not be subtracted from the private sector's bid. If an item has 10 years left on it's useful life, and the competition is for a 5 year period, the MEO would only have had use of the asset for the first 5 years. Therefore, the final 5 years of depreciation and any residual value should not be subtracted from the offeror's bid.

Attachment E, paragraph D.2.a. While we understand the rationale that New Requirements and Expansions are considered as private sector operations, it is not reasonable to consider the conversion differential against the in-house bid. If looked at from a literal point of view (going from private sector performance to in-house performance by definition), it would first appear the conversion differential should be applied against the in-house offer. However, consider the purpose of the conversion differential (Attachment E, paragraph A.4.), which states that it "... precludes conversions based on marginal estimated savings and captures non-quantifiable costs related to a conversion such as disruption and decreased productivity". In the case of a new requirement, the reality is

no one is currently performing the function, so there is a conversion under both scenarios (either to contract or to the MEO). Thus, in this instance, the conversion differential should be a common cost. In the interest of keeping a level playing field, it is unfair to the in-house offer to consider a cost based solely on a definition and ignore the reality of the situation.

Milestones:

In order for the new timelines to be met, the criteria set forth in Attachment B, paragraph C must be followed. In the conduct of many studies, spanning many agencies, the single greatest cause of milestone slippage is the failure to properly plan the study prior to announcement. The addition/removal of functions from that originally announced, as well as changing rules of engagement, cause constant rework, which in turn causes milestones to slip. As an example, please reference Attachment E, paragraph B.3.g.(2) of the new Handbook. It states that functions can be removed from a study, and the solicitation modified, if an agency wishes to directly convert some the work in that function. This type of change requires rework of the PWS and the RFP, and since the MEO is likely underway from the beginning, the Management Plan also. It is imperative that proper up-front planning be done to avoid this situation.

Another related cause of milestone slippage is not releasing the draft RFP and PWS. Early release of these draft documents allows comments/questions to be addressed early in the process. Historically, the sheer volume of comments, as well as the nature of the comments, has caused delayed release of final documents, thus causing all subsequent milestones to slip. One method of helping ensure timely release of the PWS is have agencies begin workload data collection as soon as a function is identified on the FAIR Act Inventory as "studiable". Enough examples exist of proper workload, that most functions should have no trouble beginning data collection. This would allow the PWS team access to "good" workload data from the beginning.

Additionally, in order to fully comply with the new timelines, OMB and/or agencies must set policy in place regarding rules of conduct. For instance, what information is/is not releasable to the MEO Team and when. All bidders (both in-house and commercial) can start developing their proposals upon public announcement of the study; however, the MEO Team is responsible for documenting the current organization, and for describing changes to the current organization in order to implement the MEO, as well as developing a bid. This is a requirement not levied on commercial bidders, and requires access to information long before release of the RFP/PWS. However, many agencies, because of the GAO "Jones-Hill" ruling, are reluctant to share information with the in-house team prior to release of that information to the public. And typically, they will hold that information until release of the RFP/PWS. We strongly encourage agencies to publish all "current organization" information with the public announcement, thus allowing the MEO Team to begin the documentation process. The information required includes, at a minimum: current authorized and assigned staffing, organization charts, list of vehicles/equipment currently used (regardless of whether or not they'll be provided as GFP), historical overtime by position, historical travel and training requirements (regardless of whether they'll be required), activity based costing information, and sub-contracts currently in use (regardless of whether or not they'll be provided). This information is needed to justify the changes required to implement the MEO. Further, as mentioned above, we strongly encourage OMB/Agencies to release draft RFP/PWS documents well in advance of final release. This allows the MEO Team, as well as commercial bidders, to begin preparation of proposals, and to ask questions early enough in the process to get viable answers.

As stated above, the timeframe from release of the final RFP and PWS to Tentative Decision is 4 months. Source Selection, especially on a large study (for instance, large whole-base studies involving thousands of FTEs

and dozens of diverse functions), can take many months, but for these purposes let's assume it can be trimmed to 3 months. That leaves only 1 month to complete the Management Plan. The Management Study Team is tasked with tracking (in minute detail), the staffing required for the MEO. This includes a direct tie to the workload in the PWS (another task not levied on other bidders). It takes time to develop this direct link between the PWS and the MEO, leaving no time to use the tools listed in attachment B, paragraph C.3.a.(4), which in themselves take time to use. Bottom line: the in-house organization should not be required to develop a more detailed product than other bidders. Indeed, given the timeframes in the new Circular, it would be impossible for in-house teams to comply with current agency requirements for a detailed Management Plan that tracks the changes from the current organization to the new in such detail.

Can we assume from the lack of mention that the Independent Review process is no longer required? If not, that too must be considered in the 4-month timeframe from final PWS to Tentative Decision.

Finally, we contend, contrary to most government agencies, that is not so much the number of FTEs being studied that should dictate timeframes, but more the number of functions being studied. A Supply function with 100 FTEs involves little more than a Supply function with 20 FTEs. However, a study involving a Supply function of 20 FTEs, a Transportation function of 20 FTEs, and an Information Technology function of 20 FTEs is much more involved than any single function, regardless of size. We encourage OMB to consider this when establishing timeframes.

- winmail.dat

Barbara Boyd <Barbara_Boyd@wdc.usda.gov>
12/18/2002 01:29:26 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Comments on Revised OMB Circular A-76 (draft of 11/14/02):

The Department of Agriculture (USDA) Farm Service Agency (FSA) appreciates that OMB has made an effort to create a faster, easier and more level playing field for the cost comparison process by issuing a revision to the Circular A-76. We believe you have succeeded in incorporating many improvements, however, we have some concerns about the revised circular and offer the following comments and recommendations.

Effective Date:

Item 7 of the cover letter states that "This Circular is effective upon publication in the Federal Register and shall apply to all direct Conversions and for Standard competitions where the solicitation date is on or after January 1, 2003.

While we understand OMB's point of view that time limits are needed for the conclusion of a comparison we feel the 12-month timetable for competition and award will be very difficult to accomplish in all cases for a standard competition. FSA proposes that the time frame be expanded from 12 months to 18 months.

We also believe that a grandfather clause is needed for current ongoing competitive studies. The current proposal makes the new rules effective for all competitions where the solicitation date is on or after January 1, 2003. Solicitations are not issued until the end of the process. A current study, which has been abiding by the current A-76 provisions, could be well past 8 months from the public announcement start date but not yet ready to issue a solicitation. Upon implementation of the new rules that study would immediately be in violation of the regulations.

FSA proposes that the Circular become effective upon publication in the Federal Register and shall apply to all Direct Conversions and for Standard Competitions where the public announcement date is on or after January 1, 2003. For Standard Competitions that had a public announcement prior to January 1, 2003, a solicitation must be issued within 12 months of January 1, 2003.

Timeframes:

Agencies were on track under the President's initiatives to compete 50 percent of the commercial activities by 2007. Item 4 on the cover letter states that "all commercial activities performed by Government personnel should be subject to the forces of competition, as provided by this Circular. This requirement would double our cost comparison activities and requires extensive resources to conduct cost comparison and to administer contracts.

With the increase in the number of comparisons that agencies will be required to conduct this is an additional cost to the tax payers that would not be borne otherwise and it is entirely possible that the cost of competition may exceed any savings to be obtained from the competition. If the goal is to make the most business sense the number of competitions should remain limited so significant costs will not be incurred by agencies in implementing competitive sourcing,

FSA proposes that this requirement not exceed the 50 percent goal as outlined in the President's management initiatives.

Non-FAIR Act Inventory:

Attachment A, paragraph B.1 requires agencies to inventory commercial positions not subject to the FAIR Act. This is a considerable additional burden on our shrinking resources and adds a minimal benefit. We believe the focus should be on complying with the FAIR Act and, therefore, agencies should not be required to conduct an additional inventory of positions that, by definition, are not subject to the primary focus of this Circular, namely, implementing the FAIR Act.

Impact on Workforce:

The requirement in Attachment B, section 5 b (2) to re-compete a successful in-house MEO after the contract performance period (3 to 5 years) will change the nature of the Federal civil service workforce. This comes at a time when the Federal sector is under fire to attract, hire and retain the best and the brightest and to manage human capital in a proactive manner. In order to meet those goals consideration should be given to continuing an MEO's performance after the performance period provided: (a) the activity continues to be an existing government requirement; (b) the activity continues to be furnished at a cost that is most cost effective; (c) the MEO is meeting requirements of the PWS as demonstrated by the QCP and QASP; and (d) continuation of the MEO performance is advantageous to the Government.

Thank you for your consideration of our comments. If you have any questions, please contact my office at (202) 720-3438.

John Williams,
Deputy Administrator of Management,
Farm Service Agency
United States Department of Agriculture

Message Copied To:

Jo Ann Verhaeghe <JAVERHAEGHE@kcc.usda.gov>

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John Williams-DAM <John_Williams@wdc.usda.gov>----- Forwarded by David C.
Childs/OMB/EOP on 01/09/2003 11:32 AM -----

GALE BLACK <GALE.BLACK@EEOC.GOV>

12/18/2002 01:36:28 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: Comments on OMB A-76

Statement of Interested Party

As a federal employee, taxpayer and attorney, I thank you for the opportunity to provide the following electronic comments on the proposed revisions to OMB Circular A-76. For the reasons that follow, Federal Sector EEO should be designated an inherently governmental activity. Gale Barron Black, Washington, D.C. December 18, 2002

"The American people do not and should not expect government to do everything. However, when it comes to those functions which are inherently government in nature, Americans need to have the confidence that their government will serve them and will serve them well". Speech by Kay Coles James, Director, Office of Personnel Management, at the John Whitehead Forum, Excellence in Government, November 15, 2001.

Comments on OMB Circular A-76

Certain functions are reserved to the Government. Federal Sector equal employment opportunity policy, coordination, and enforcement of the equal employment opportunity (EEO) laws are governmental in nature. They should not be presumptively deemed "commercial". Since they serve an important national goal, they should never be subject to the lowest contract bid.

Inherent Presumption of Competition as the Norm

The directive proposes to make an inherent assumption that everything is commercial. The proposed revision to Circular A-76 would require agencies to presume that all activities are commercial in nature unless an activity is justified as inherently governmental. Using OMB as an example, this would mean that the presumption would be that all of its 500+ positions are commercial, rather than the 2 percent of positions now deemed commercial. It is difficult to respond to this proposal in a vacuum. It would be helpful to know which positions, by series number, title, locations and grades are being seriously considered for outsourcing.

The enforcement of federal sector equal employment opportunity laws (such as Section 717 of Title VII of the Civil Rights Act of 1964 as amended in 1972, the Age Act, the Rehabilitation Act or the Merit System Principles at 5 USC 2301) are inherently governmental in nature for the following reasons:

1. Congress, by statute, gave EEOC certain responsibilities that carry out the public interest: federal sector EEO policy, coordination, enforcement and compliance accountability are inherently governmental in nature and expressly reserved as a government function, by statutes.
 2. The Federal EEO activities bind the United States to take, or not take, action by statute, regulation, EEOC final order or in accordance with EEOC instructions.
 3. A focus on costs / benefit analysis could compromise the national interest on EEO.
 4. A focus on accountability by quantifiable results could have the unintended consequence of fostering quotas. This would be antithetical to the spirit and letter of the law which measures good faith efforts to provide equal opportunities, rather than the achievement of numerical results.
1. Federal EEO is governmental in nature.

The functions of federal EEO policy, coordination, enforcement and performance accountability (including federal sector compliance) are all "governmental in nature," as expressly defined by our governing laws. These functions also serve an important national interest, equal opportunity for all. It is a long standing "policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, disability, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to, and must be an integral part of, every aspect of . . . policy and practice in the employment, development,

advancement, and treatment of civilian employees in the Federal Government." Executive Order 11478, incorporated by Executive Order 12106, December 26, 1978. In accordance with the Section 1-2 of the President's Reorganization Plan Number 1 of 1978 (43 FR 19807) (effective July 1, 1978) (set out at Title VII section 2000e-4 and in the Appendix to Title 5 of the United States Code, Government Organizations and Employees), the Equal Employment Opportunity Commission was given the responsibility to provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or disability. To that end, Congress directed EEOC to "strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies."

In the legislation that transferred the enforcement authority for federal sector EEO enforcement to EEOC, in 1978, from the former Civil Service Commission, Congress said that the Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees and applicants for employment and to prohibit discrimination in employment because of race, color, religion, sex, national origin, disability, or age. Section 4 gave EEOC the authority to issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order. (Emphasis added).

2. EEOC Office of Federal Operations can bind agencies and require compliance by Federal agencies.

Since EEOC has the authority to require compliance and impose relief against the Sovereign (federal government agencies) its functions should be considered governmental in nature. This extends to EEO policy, Enforcement, enforcement performance audits, Performance Accountability and federal legal support for EEO compliance. Similarly, federal data security and integrity are inherently governmental functions.

3. Costs

Cost comparisons have been the traditional focal point of Circular A-76; and cost comparisons may be the most important consideration, but EEO is not amenable to cost determinations. It does not lend itself well to cost / benefit analysis because the benefit is an intangible. Certain functions are so important to the national interest that they should not be a matter of contract cost or subject to the lowest bid.

4. Measurable Results

Similarly it is hard to quantify success with regard to EEO. If the ultimate measure of success is strengthening accountability for delivering results and an emphasis of best value, agencies are likely to jettison EEO for activities that provide quantifiable results. This creates a tension between the goal of generating equal employment opportunities, versus quantifiable results. You may have an equal and fair chance to compete. There is no guarantee of results. To the extent that agencies will be held accountable for delivering quantifiable results, we may be creating a problem.

Federal EEO can be distinguished from administrative support functions like investigations, software services, financial audits, ADP, and certain record keeping work that may be properly contracted. A grey area would be Library Services, Information services (where government records could be copyrighted marketed), or data maintenance, especially over data subject to the Privacy Act. The government, however, has not historically contracted out matters that are inherently governmental.

Bruce Bowland <bbowland@infointl.com>
12/18/2002 02:02:56 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: soloway@pscouncil.org
Subject: Comments to Proposed Revision of OMB Circular No. A-76

Attached please find Information International Associates, Inc.'s comments to the proposed revision of OMB Circular No. A-76.
- a-76 Response R1.doc



INFORMATION INTERNATIONAL ASSOCIATES, INC.

1009 COMMERCE PARK DR., SUITE 150 ♦ P.O. BOX 4219 ♦ OAK RIDGE, TENNESSEE ♦ 37831-4219
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Bonnie C. Carroll, President
December 17, 2002
76comments@omb.eop.gov

via e-mail to A-

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, D.C. 20503

Subject: Comments to Proposed Revision of OMB Circular No. A-76

Dear Mr. Childs:

Information International Associates, Inc. (IIA) is pleased to comment on the proposed revisions to OMB Circular A-76. IIA applauds your office for its positive efforts to restructure Circular A-76 in order to better align it with the Federal Acquisition Regulations (FAR). The proposed revisions will begin to pave the way in support of the current Administration's competitive sourcing policy, thus allowing the private sector to compete on a level playing field for contracts with overall benefit to the American citizen and tax payer.

IIA also applauds your office's recognition of the importance of restricting Federal agencies from displacing private sector firms by providing services to state or local governments. Many Federal agencies continue to aggressively market their services to state, local and tribal governments, often by providing matching funds. Private sector firms simply cannot compete with agencies that offer partial project funding. The irony of using our taxpayers' dollars to compete with free enterprise should not be overlooked!

We are also particularly concerned that the loopholes for using NAF be closed and that the playing field is leveled. NAF should be required to meet minimum wage standards of the Department of Labor and not allow the Government to marginalize the American worker. NAF should compete along with the Government and the private sector for best value services.

IIa urges OMB to fully recognize qualifications-based selection procedures described in FAR Part 15 when writing the final rule for the A-76 revisions. For many years there has been a conflict between Circular A-76 procedures and Federal statute that mandates such procedures. This conflict should be addressed in the revised circular to ensure that the Government selects the entity that is most qualified to meet a project's needs with the objective being overall best value to the Government. Since the proposed A-76 revisions are largely based on the FAR, inclusion of an exemption for direct conversion of services would align the new A-76 process more closely with FAR Part 15.

IIa offers the following observations on the revised A-76 Circular based on extensive experience in both bidding, winning, and losing A-76 Studies, both direct conversions and full studies.

Again, Information International Associates, Inc. commends OMB for the clarity with which these revisions to Circular A-76 were developed and appreciates the opportunity to submit these comments.

Sincerely,



Bruce P. Bowland
Chief Operating Officer

Comments to Proposed Revision of OMB Circular A-76

As a generic comment, there still remains a considerable amount of subjectivity left in the entire process. Unless the A-76 oversight builds some accountability standards into the process, private sector contractors are left with a significant disadvantage. The performance of the Government or NAF should be publicly documented just like the private sector.

ATTACHMENT A: INVENTORY PROCESS

C. TYPES OF INVENTORIES

1. a. Requirements: What are missing are the specific methods for making inventories available to the public. Agencies could publish on their own websites or otherwise make the information available and update it frequently.

D. COMMERCIAL ACTIVITIES

2. This paragraph states, in part, that the *4.e. official* has unilateral discretion to exempt agency performed commercial activities from private sector performance using Reason Code "A". Reason Code A states, "Agency performance is not appropriate for outsourcing pursuant to a written determination of the *4.e. official*". Furthermore, this authority is not exempt from delegation by the *4.e. official* to comparable officials in the agency or agency components, because it is not expressly stated. This authority appears to be in direct conflict with stated Policy (Item 4) of A-76, and in particular, subparagraphs b. and c. of Item 4, Policy.

E. INHERENTLY GOVERNMENTAL ACTIVITIES

2. If this criterion is applied as written, it opens the door to many more positions being considered for outsourcing. We do not see this intent being applied currently when identifying positions which will be a part of a study. Furthermore, what will be the impetus to meet the intent of the criteria?

F. FAIR ACT CHALLENGE AND APPEAL PROCESS

1. Appointment of FAIR Act Challenge and Appeal Authorities: Subparagraphs a. and b. appear to present a conflict of interest with the appointment from within the agency.

2. The FAIR Act Inventory Challenge and Appeal Process:

a. Challenges

1. Submissions: Application and definitions of Reason Codes “A – F” in D.2. above are not subject to this Challenge and Appeal Process. This severely limits the Challenge and Appeal Process, with particular concern for Reason Code A in D.2 where unilateral discretion can be delegated within the agency.

ATTACHMENT B: PUBLIC-PRIVATE COMPETITION

Page B-1: Based on our specific past experience, the MEO at times has had as much as 24 months lead time to gather information related to work to be outsourced. This potential presents a competitive advantage to the MEO, and at a minimum, a disadvantage to the private sector.

Also, should there be a definitive timetable within the 12 month process to accomplish the lower portion of the chart?

A. LIMITATIONS AND CRITERIA

1. Limitation When Performing a Standard Competition:

b Reorganization: Implementation and accountability of this intent is critical to the integrity of the process. This clause states that agencies shall not reorganize or restructure a commercial activity to circumvent the competition requirements of this Circular. The direct conversion from a Government activity to NAF management is the same as reorganizing to prevent competition. A recent example of this occurred in the Hurlburt Field A-76 Study. The library was given a choice – be part of the MEO or convert to NAF. They chose to convert to NAF. As it turns out, the MEO won the competition for the piece of work left in the SOW (unless our appeal is accepted). The MEO had to have a certain cost savings as a result of this. The two GS managers went to other jobs. The library changed from a full service facility to maintaining only four services that are basically now managed by lower level GS personnel. This cannibalized the library and reduced basic services (i.e. restructured and reorganized) – simply to prevent the contract from being potentially a commercial activity. This particular instance casts significant doubt as to whether this was a best value approach.

C. STANDARD COMPETITION PROCEDURES

2. The Solicitation and Quality Assurance Surveillance Plan (QASP)

a. Solicitation

(13) Solicitation Exceptions for the Agency Tender: Requirement (6), past performance criteria, to be excluded from the solicitation requirement for Agency Tenders, does not support the concept of a level playing field or the FAR. Why would not licensing and other certifications apply to the Agency Tender?

3. The Agency Tender, Private Sector Offers, and Public Reimbursable Tenders

a. Agency Tender

(2) Developing the Agency Tender: The playing field is again not level. The word “may” in the last sentence of this paragraph should be changed to “shall” to read, “Failure to submit the Agency tender on or before the due date established in the solicitation shall result in the Agency tender not being considered.

Also, exceptions to required submittals by Agency Tenders are referenced back to C.2.a.(13).

(3) Changes to the Agency Tender: The Agency Tender should be able to be revised in a BAFO just like the private sector.

(4) Most Efficient Organization (MEO): In general, how does the MEO account for such G&A functions as human resources recruiting, hiring, benefits administration, payroll, etc. if it is a shared resource?

(9) Delayed Delivery: What conditions justify (1) return of received offers to...allow time for resubmission?

4. The Source Selection Process and Performance Decision

a. The Source Selection Process

(2) Sealed Bid Acquisition: There is an apparent need for an evaluation to determine that the agency tender is responsive AND responsible. It is a mistake to assume that the MEO is technically qualified in the absence of such an evaluation.

(3) Negotiated Acquisition

(a) Exchanges with Offerors or Tenders During Negotiated Acquisitions

3. Deficiencies: The playing field is not level when the Agency Tender is found by the SSA’s initial review to be “materially” deficient and automatically afforded multiple opportunities to

correct, up to and including the *4.e official* unilaterally appointing an individual to resolve any disagreements.

(c) Cost/Technical Tradeoff (CTTO) Source Selection

2. Phased Evaluation Process: This again has the effect of not leveling the playing field (and is in conflict with FAR) when the Phase Two, cost evaluation cannot even commence until the Agency Tender has been MADE technically acceptable, by whatever means, and also is REQUIRED to participate in Phase Two. How would this process criteria best serve the American taxpayer and the nation?

5. Post Competition Accountability

There should be a defined accountability process if an MEO wins the bid...just as with the contractor. The MEO should be held to the same level of monitoring that the contractor would

have been, including regular evaluations that can be examined publicly through acceptable mechanisms such as FOIA.

There should also be tangible penalties such as limitations on any bonuses and grade increases if performance does not meet standards. Accountability needs “teeth”, just like in the private sector, if it is going to be effective.

In an A-76 bid, there is cost added to the contractor bid to cover the quality oversight required. This should be an additional cost to the MEO bid as well now that oversight and accountability are to be somehow assured.

b. Years of Performance and Follow-up Competition

(1) Private Sector Source Decision: This has the effect of say that once an A-76 has been awarded and performed by the private sector, it cannot be directed to NAF. It must be re-competed. This is a positive step in support of the current administration’s policy.

This, however, is currently not the situation occurring at the Eglin AFB Library, where the Library services are being performed by the private sector in an “exceptional” manner, and the Service Squadron has unilaterally decided to apply a “reverse” direct conversion to non-appropriated funds (NAF) on the basis of “cost saving” and the “*ability to have more control over staff*” without re-competing. “Reverse” Direct Conversion to NAF defeats the purpose of the initial A-76 Study and negates the effect of “best value” procurement. Furthermore, there is no basis on which a cost saving can be assumed without formal bids from all interested parties.

(2) Agency or Public Reimbursable Source Decision: This section is very important in terms of ensuring that, once an A-76 has been conducted and the Agency Tender or Reimbursable Source wins, that contractors again have an opportunity to compete for the work again.

Also, the head of the requiring agency should be held accountable that they actually prepared written communication annually to allow continued performance by the agency if the agency wins as a result of the A-76 Study.

Attachment E: Calculating Public-Private Competition Costs

C. 3. Table

The MEO staffing for 10 or “fewer” reflects a 0.5 FTE for contract administration, yet the Grade Columns indicate 1 FTE at a GS 12 grade. This is inconsistent. In general, 0.5 FTE is excessive for a contract of only 10 people. It should not be more than 10%.

Dan Everest <dan_everest@csi.com>
12/18/2002 01:55:05 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: Steve_Blancq@compuserve.com, elaine_everest@csi.com
Subject: ASC Gp, Inc. Review of Revised OMB Circular A-76 submitted 12-18-02

FROM: Daniel L. Everest
TITLE: Partner
ORG: ASC Gp, Inc.
ADD1: 1869 37th Ave., San Francisco, CA 94122
TEL1: (415) 661-1192

ADD2: 8804 Ross Court, Raleigh, NC 27613
TEL2: (919) 847-6686

NOTE: Mr. Childs (or to whom it may concern) - Attached are two files containing the ASC responses to the new OMB Circular A-76. One file has been saved as an Acrobat file, and should prove the easiest for you to use (printing and reading on-screen). In case you do not have acrobat, we have also attached the same file saved as MS Word. If neither file works for you, please contact me at the above number (TEL1) so that we can make sure you have a working copy. If you cannot access the information in the attached files, we have, per your request, copied the text from the files into the content of this email (below). As it lacks the formatting from the Acrobat and Word versions that makes reading easier, it is recommended that this information be used only in the even the files are inaccessible. Thank you, -dan everest

Dan Everest <dan_everest@csi.com>
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www.ascginc.com

- ASC Gp, Inc. Review of OMB Circular A-76 submitted 12-18-02 (Acrobat).PDF



ASC Gp, Inc. Review of OMB Circular A-76 submitted 12-18-02 (MS 1

danandsandy <danandsandy@tds.net>
12/18/2002 02:23:15 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: "Dan Duefrene/R5/USDAFS" <dduefrene@fs.fed.us>
Subject: A76 Comment

December 18, 2002

Dear Mr. Daniels

I am a Forest Service employee that lives and works in a remote station. The Hayfork, Yolla Bolla, and Big Bar Ranger Stations (comprising 50% of the Shasta-Trinity National Forests) are all over 50 miles from the nearest sheriff's office. All Forest Service employees are level one law enforcement officers. The local population as well as visitors rely on the Forest Service for law, fire, and emergency medical response. In addition to cooperating with law enforcement officers, Forest Service personnel have an excellent record of cooperation between the various disciplines of resource management. For example, just last season as a wildlife technician I also reported the locations of salvage timber to the small sales officer, the condition of the riparian rehabilitation project to the hydrologist, road and culvert conditions to the watershed monitoring team, and the absence of campground maintenance at specific sites to the recreation technician. A private contractor in any of these disciplines can not operate in this most efficient manner.

Hunting is an integral part of our economy. The local businesses experience their highest profits during hunting season. As a field technician I have frequently been asked about the condition of the deer herd and forage while on the job. As a level one law enforcement officer I report fire and/or fish and game violations to the proper authorities. Although most field technicians are available to work overtime for hunter patrol, I have had more interactions with the public en route to my regular project work.

The town of Hayfork (Hayfork Ranger District) is still dealing with the economic downturn the area took with the closing of the Sierra Pacific Mill and the continual loss of local federal positions. The local economy cannot withstand the loss of even more local jobs. Already 50% of the businesses are closed and boarded up. The substantial downsizing and reorganization programs (resulting in local job loss) that have been occurring in the Forest Service since I joined the organization in 1986 have also decimated the economy of the Platina (Yolla Bolla Ranger District). Platina used to have 30+ students in the K-8 local school. Currently, there are seven students. When it drops to six the school will close. There is also talk of closing the Platina Post Office.

The number of persons actually out patrolling the forest has continually gone down while the number of managers, especially at the Supervisor's and Regional Offices continues to go up. A private contractor will have neither the obligation, time, or knowledge to deal with integrated resource management or visitors. The American people, the owners of the National Forest lands, deserve more responsible stewardship of the resource. It will negatively impact the resources and visitor trade if Smokey's representatives are not available to inform, direct, advise, and if necessary, rescue visitors or enforce federal regulations.

Sincerely,
Sandra Fleming

"Domsch, Ron" <rdomsch@mjharden.com>
12/18/2002 03:02:09 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: In Support of the Revision of OMB Circular A-76

"Geospatial activities" such as surveying, mapping, charting, geodesy, image acquisition, and geospatial information acquisition and production are all commercial activities. We strongly believe that these activities should be performed by the private sector.

We urge a clarification in the Circular that any public-private standard competitions under A-76 for architecture, engineering, surveying and mapping services be in compliance with the Brooks Act's qualifications based

selection (QBS) process, as required in 40 United State Code, section 541-544 and part 36 of the Federal Acquisition Regulation (FAR).

We particularly support the provisions that eliminate unfair competition under Agency-to-Agency arrangements. We strongly support the provisions in the Circular that eliminate the current practice that permits agencies to do work for other Federal agencies, and particularly for state and local government.

Ronald E. Domsch, President
M.J. Harden Associates, Inc.
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"Phillips, Melanie" <MPHILLIPS@WadeTrim.com>
12/18/2002 03:34:48 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: DPC A-76

December 17, 2002

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Childs:

On behalf of Wade-Trim, I am writing in support of several revisions to OMB Circular A-76 and several related policy documents that govern how the Federal Government obtains goods and services. Our company and its employees applaud the underlying premise behind these revisions, which is that all activities currently performed by the Federal government are presumed to be commercial in nature unless they are justified as inherently governmental.

Alignment of OMB Circular A-76 with the Federal Acquisition Regulations (FAR) is a very sound decision. With the exception of dealing with the procurement of Architectural-Engineering services that will be discussed later in this document, it will facilitate the Administration's competitive sourcing policy and ensure "apples to apples" comparisons in any resulting competition between the private sector and government agencies that are commercial in nature.

Leading edge companies such as ours provide the ideas, innovations, studies, designs, and related services upon which projects are based. These significantly impact life-cycle costs and ability to satisfy customers. We applaud the decisions to end "back door" inter- and intra-service agreements (ISSAS) that preclude our being considered and to restrict Federal agencies from aggressively marketing their services to our clients – state, local, and tribal governments – often using the gambit of partial funding at taxpayer expense.

I call to your attention, however, a conflict between the revised Circular A-76 and the statutory requirements for the procurement of Architectural-Engineering services. Since the procurement of these unique services is done through "Qualifications Based Selection" (QBS) and not simply on the basis of cost, as prescribed under (40 USC Section 541 et seq.), an approach needs to be crafted to enable Federal agencies to compete in a manner consistent with the statute.

We strongly support the suggestions that are being made by our various industry organizations to address this matter consistent with statutory requirements. Alternatively, since there is no

justification for the Federal government to have this costly and redundant capability when such are readily available from a more efficient and innovative private sector, we respectfully urge that these be Directly Converted.

Our company and its employees applaud this courageous initiative to issue a revised OMB Circular A-76 and appreciate this opportunity to comment on them.

Wade-Trim is a professional services consultant that serves the infrastructure and related needs of government and corporations. Disciplines include engineering surveying planning, landscape architecture and environmental science. We have a staff of over 500, with offices in Michigan, Florida, Ohio, and Pennsylvania.

Very truly yours,

WADE-TRIM GROUP, INC.

Douglas M. Watson, PE
President/CEO

DMW:map
H:\DWATSON6\LETTER\DPC A-76-LETTER.DOC

Douglas M. Watson, PE
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- DPC A-76-Letter.doc

"Benson, Robert F" <Robert.Benson@dsc.dla.mil>
12/18/2002 03:46:32 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Draft (private-private, not public-private)

Mr. Childs:

I have just one problem with your draft, but it is a large one. "Public-private" occurs throughout the text, as in "public-private competitions." It appears that if work is not strictly Governmental in nature, then it kind of doesn't matter who does it, as long as it gets done, at a good price, etc.

I submit to you that consistent logic dictates that activities that are not Governmental in nature... SHOULD NOT BE CARRIED OUT BY THE GOVERNMENT AT ALL, NOT EVEN IF THE GOVERNMENT CAN DO IT FOR LESS.

In other words, the "competition" should be among contractors, ONLY, and the Government should not be involved. Why should Government employees do commercial work? When they DO do commercial work, then it seems to me the meaning of genuine Government work is diluted.

The above is just eight sentences in length, but I believe that if it were to be incorporated into the new policy, then it would go a long way toward cleaning up the current outsourcing mess. (At the same time, the number of Government employees would drop sharply.)

Thank you.

Robert F. Benson
614 692-4183

Mary Costabile <mcostabile@alawash.org>
12/18/2002 03:48:52 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Comments Notice 11/19/02,FRv.67, No. 223

The American Library Association has a long history of interest in and concern about the issuance of Circular A-76 and its revisions, therefore we are commenting on the November 19, 2002 Federal Register notice in Vol. 67, No. 223, Proposed revision to Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities."

The American Library Association is a nonprofit educational organization of 65,000 school, public, academic and special librarians, library trustees, library and information science educators and friends of libraries. We have members who are federal employees working in federal libraries and members who work for contractors in federal libraries.

In today's post 9/11 world, it is critical for the federal government to consider overall information and knowledge management strategy. Communication and accurate information are issues that various governmental agencies are struggling with anew. With the creation of the Homeland Security Agency, new challenges have arisen for managers in terms of accuracy and security of information as well as coordination of information and research services. Librarians are trained to develop information and knowledge management strategies. In addition, federal librarians are expert at retrieving information within and outside of government and have developed valuable depth of knowledge of agency mission and goals.

We would re-iterate our statement of March 21, 1994, to the Office of Management and Budget, that operation and maintenance of library resources and provision of research services are core library functions and are inherently governmental. We are concerned that in an attempt to streamline the process by these new requirements, OMB may be undermining basic sound management principles. The library and library professionals make substantive contributions to the efficient and effective functioning of each federal department. There is significant risk in destroying the management of the information and information resource function of the library, with subsequent effect on the information-seeking abilities of the user community.

Businesses and non-profit organizations across the country know and understand the value of knowledge management; in these organizations the library plays a central role in development of overall strategy. Not only does this ensure a successful information exchange but sets up a standard of management and protects proprietary information.

The presumption that an activity is commercial in the key substantive changes on p. 69772, would directly discard the expertise developed by federal librarians in developing resources and providing direct support for the specific mandates and goals of each department of government, and in addition would create for management an annual re-listing burden and would undermine employee confidence.

Emily Sheketoff
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12/18/02

January 23, 2002
(Council Document 20.3)

- commentsomb.doc