

Bruce Bowland <bbowland@infointl.com>
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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
TELEPHONE: (865) 481-0388 ♦ FACSIMILE: (865) 481-0390 ♦ E-MAIL: INQUIRY@INFOINTL.COM

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%.