

"Noonan, Robert (HHS/OS)" <Robert.Noonan@hhs.gov>
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Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Official HHS Comments on Proposed revisions to Circular A-76

Please find HHS comments attached.

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> <<FedRegComments.doc>> <<HHScommentsA76R.doc>>
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- FedRegComments.doc
- HHScommentsA76R.doc

December 19, 2002

Office of Federal Procurement Policy
Office of Management and Budget
Attn: David C. Childs
725 17th Street NW
New Executive Building, Room 9013
Washington DC 20503

Dear Mr. Childs:

Pursuant to your request for comment, the Department of Health and Human Services (HHS) has reviewed the proposed revisions to OMB Circular No. A-76 and these are our consolidated official Department comments. The attached comments pertaining to Attachment C and Attachment D are the most important to the Department. In addition, several general, but overriding concerns follow:

1. We request HHS organizations undergoing review be permitted to continue with planned competitions and direct conversions reported in the Department's FY 03 Competitive Sourcing Plan, using current guidelines. We have a number of studies in progress, which are due to be complete by September 30, 2003.
2. Although comprehensive, the range of proposed Interservice Support Agreement reviews may have the unintended consequence of supplanting OMB and Department efforts to centralize and consolidate like services. Such a wide-scale review could lead to sub-optimal utilization of scarce resources and directly conflict with other objectives designed to achieve government economy.
3. Elimination of the present streamlined review process gives pause for concern. While the newly proposed Business Case Analysis (BCA) Process may be considered a substitute, it is not a viable alternative to either direct conversion or the proposed standard competition process. The thresholds for entry and process accomplishment substantially mitigate the credibility of the BCA as a meaningful streamlined methodology.

Thank you for the opportunity to comment. Your efforts to totally revamp the present circular and review all comments received is truly appreciated. Bob Noonan or myself are always available for your questions and comments. Bob may be reached at (202) 205-4650 and I may be reached at (202) 690-6901.

/s/

Marc R. Weisman
Acting Deputy Assistant Secretary for
Grants and Acquisition Management

Enclosures

**The Department of Health and Human Services (HHS)
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Section	Comments
Attachment B – Public-Private Competition	
Page B-6, paragraph C2.a. (6)	<p><u>Comment:</u> It is unclear as to what costs and activities are to be included in a Phase-Out Plan. A better illustration is important as it allows us to better communicate phase out plan requirements in the initial solicitation for offers.</p> <p><u>Recommended Language/Action:</u> For purposes of clarifying the proposal process, it would be helpful if OMB provided examples of what is included in the Phase-Out Plan.</p>
Page B-7, paragraph C2.a.13	<p><u>Comment:</u> Refers to paragraphs C.6.b. (2) and C6.d. (2), which do not exist.</p> <p><u>Recommended Language/Action:</u> Please clarify.</p>
Page B-8, paragraph C.3.a. (2)	<p><u>Comment:</u> This cite states, “The ATO shall develop an Agency Tender that responds to the requirements and bid structure stated in the solicitation.” What does the “and bid structure” mean? Is the Government’s In-house Cost Estimate to be subdivided in some manner, so that the Government can reflect its cost for each CLIN in Section B? Similar to the first comment, this is important as the additional explanation would serve to clarify the government’s expectations to all offerors.</p> <p><u>Recommended Language/Action:</u> Amplifying language illustrating the precise meaning of “bid structure” in the context of this paragraph would be appreciated.</p>
Page B-9, paragraph C3.a. (4)	<p><u>Comment:</u> Under the current circular, once an A-76 is announced, the MEO cannot assume contracting out of existing in-house work where adverse impact on employees would result. However, the new proposed revision states “New contracts shall not be created as part of MEO development,” appears overly restrictive, and limits the Government’s ability to reengineer. We believe that we should have the ability to create new contracts in the MEO (e.g., by combining existing contracts, or contracting out work which would be performed by currently vacant positions) so long as no current employees are adversely impacted. Particularly the ability to combine contracts is important, as it would serve to successively lower the costs of potential offers.</p> <p><u>Recommended Language/Action:</u> Delete the sentence, “New contracts shall not be created as part of MEO development.” Or, “Once the cost comparison study is announced, new contracts may not be created which adversely impact employees.”</p>
Comments on Time Frame	
Page B-5, paragraph (3)	<p><u>Comment:</u> Timeframes. The 4.e. official may grant a one-time six-month extension if approval by the Deputy Director of Management of OMB. We feel that this should be within the purview of the 4.e. official and is important as it would serve to facilitate the completion</p>

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	<p>of the study since it eliminates a step in the approval process.</p> <p><u>Recommended Language/Action:</u> Recommend deleting the phrase "... if approved by the Deputy Director of Management of OMB" and revising the sentence to read, "The 4.e. official may grant a one-time sixth month extension."</p>
	<p>Attachment C – Direct Conversion Process</p>
<p>Page C-3, paragraph D.1.a</p>	<p><u>Comment:</u> "The activity is or will be performed in aggregate by 50 or fewer agency civilians." Recommend raising the ceiling from the current 65 FTE limit to make the sourcing process more cost effective and timely. We would propose at least keeping the current 65 ceiling and possibly raising the ceiling for civilian agencies. This change would serve to substantially reduce the cost and time associated with competitively sourcing small numbers of FTEs.</p> <p><u>Recommended Language/Action (changes highlighted):</u> "The activity is or will be performed in aggregate by 65 (75 or 100) civilian agency FTE's."</p>
<p>Page C-3, paragraph D.1.e.</p>	<p><u>Comment:</u> "The time-frame . . . does not exceed fifteen working days." Experience has shown that this time frame, at least initially, is not realistic. When it is necessary to search for Federal contract information outside of the agency, we have had a great deal of difficulty getting expeditious responses, if we get responses at all. An on-line database of Federal contracts catalogued by type and with access restricted to CO's would go a long way toward achieving this goal. In the interim, we suggest modifying this language as suggested. The 15 working day limitation effectively eliminates the Business Case Analysis as a viable competitive sourcing option.</p> <p><u>Recommended Language/Action:</u> "The time-frame . . . will generally not exceed fifteen working days or, "The time-frame... does <i>not exceed</i> sixty (60) days."</p>
<p>Pages C-3 & C-4, paragraph D.2.b.</p>	<p><u>Comment:</u> "The CO . . . shall: (1) identify four comparable, existing, fixed price, Federal contracts of similar size, workload and scope but shall not issue a solicitation at this point in the process. Existing public reimbursable agreements may be used but all costs shall be adjusted to reflect the total cost to the taxpayer in accordance with the costing requirements of this Circular); (2) determine that selected contracts are reasonably grouped; (3) select the low contract price; and . . ."</p> <p>Limiting the CO's choice to existing contracts could be unnecessarily restrictive and preclude obtaining truly representative and comparable contracts for the analysis. At minimum recently expired contracts should be allowable. We also question the value of limiting the comparison to the lowest comparable contract price. The low price contract – especially if restricted to current only—may be one for which there has been demonstrable sub-par performance for that price. We recently received just such an assessment from another Federal agency when we received their contract information in doing an express cost comparison. If we were working under the proposed rule, and this had been one of the four contracts we were able to find, we would have been compelled to use it to compete with the actual in-house costs of Agency Tender. An average of the four contracts would yield a more equitable basis for the comparison, leveling out</p>

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	<p>any extremely low or high cost contracts. As this is not an actual solicitation and it is meant as a business case analysis, this is intended to improve the fairness associated with the comparison to all parties.</p> <p><u>Recommended Language/Action:</u> “The CO . . . shall: (1) identify four comparable, existing <i>or recently expired</i>, fixed price, federal contracts of similar size, workload and scope that have current performance history but shall not issue a solicitation at this point in the process. Existing public reimbursable agreements may be used but all costs shall be adjusted to reflect the total cost to the taxpayer in accordance with the costing requirements of this Circular); (2) determine that selected contracts are reasonably grouped; (3) <i>derive an average cost from the four contracts identified</i>; and . . .</p>
	<p>Attachment D – Inter-Service Support Agreements (ISSAs)</p>
Page D-1, paragraph B.1	<p><u>Comment:</u> The executability of competing all applicable existing commercial ISSAs within five years of the effective date of the proposed circular is doubtful. Due to the anticipated large number of ISSAs within the department, it would be difficult to compete all on this schedule without the addition of substantial resources. It would be more prudent to raise the threshold for review minimally in the near term to make the program executable and utilize the expected savings to finance ISSA sourcings in the out-years.</p> <p><u>Recommended Language/Action:</u> Raise the ISSA exemption value listed in paragraph A, (1) from \$1 million annually to \$3 million annually consistent with the Small and Disadvantaged Business 8(a) Set-aside Program rate.</p>
Page D-1, paragraph A	<p><u>Comment:</u> The requirement to compete all commercial ISSAs exceeding \$1 Million annually is contrary to the centralization and consolidation of like services initiatives presently ongoing in many Executive Departments. Sub-agencies may interpret such guidance as tacit approval to reestablish previously consolidated like services. Allowing agencies to competitively source centralized and consolidated services has the great potential to sub-optimize the utilization of scarce resources.</p> <p><u>Recommended Language/Action:</u> Add an exception category to paragraph A: (6) Those like services, which are a part of an OMB or Department, sponsored centralization and consolidation effort, for example, civilian payroll.</p>
	<p>Attachment F – Glossary of Acronyms and Definitions of Terms</p>
Page F-2, paragraph B	<p><u>Comment:</u> Define the term Interservice Support Agreement. Much confusion exists as to what is precisely meant by the term ‘interservice’. Does it mean between Departments, agencies or other. A definition is recommended as it would serve to clarify any misunderstandings.</p> <p><u>Recommended Language/Action:</u> Interservice Support Agreement Definition: The provision of a commercial activity between Executive Departments, in accordance with an interservice support agreement, on a reimbursable basis.</p>

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