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

Please find attached A-76 comments from ACS. This document has also been faxed.

Kind regards,

Sarah.

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- ACS A-76 Comments.doc



December 19, 2002

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

Dear Mr. Childs,

ACS Government Services is pleased to be able to make a contribution toward the revision of OMB Circular A-76. We have reviewed the draft document and are providing the following comments in light of our own experience with the current A-76 process. The presumption in the draft that all agency activities are "presumed to be commercial" supports the long-standing policy that the Federal government rely on the private sector for goods and services.

We wish to commend the Office of Federal Procurement Policy for its actions toward improving the A-76 process. The revised draft circular goes far toward eliminating unfair government competition and establishes equitable conditions for true competitive sourcing. This is especially true for the included provisions of best value competitions, holding MEOs accountable for performance, and the elimination of unfair competition under Agency to Agency arrangements.

Additionally, we believe you will find our suggestions concerning insuring adequate due diligence, and the staffing of Quality Assurance Surveillance Plans with neutral personnel useful as the revision process moves forward.

Should you have any questions concerning this submission, or care to explore further our suggestions, please call me at 301.921.7004, or e-mail at merv.forney@acs-inc.com. I will be pleased to discuss our comments at any time.

Yours sincerely,

Merv Forney
Managing Director

ACS Government Services, Inc.
One Curie Court , Rockville, MD 20850

ACS Government Services Comments on DRAFT OMB Circular A-76 (revised)

Reference: Attachment A Inventory Process – General comment on section.

Comment: FAIR Act inventories provide interested parties with very little information about actual functions being performed. As a result, it is not clear until an actual competition has begun just what is being competed. The work being done must be known and understood in order to get the best cost reducing ideas and innovations from the private sector.

Recommendation: Some agencies have published a competitive sourcing project listing which lays out their plans and the work being considered for competitive sourcing. Extending this beneficial practice to all parts of government as applicable would provide a consistent method for interested parties to understand the Federal government's competitive sourcing plans.

Reference: Pg B-3, Sect B.3.a.

Comment: The use of the term "adversely affected" appears to be misapplied here. Our experience indicates that employees who transition to the private sector are very pleased with their new circumstances. Characterizing them as "adversely affected" seems to be unnecessarily unsettling.

Recommendation: We believe the term "affected" would be sufficient to characterize the employees.

Reference: Page B-5, C.1.b. (5)

Comment: A-76 is applied with differing levels of diligence in different parts of government.

Recommendation: OMB may wish to consider establishing a corps of trained, dedicated competitive sourcing executives to oversee competitive sourcing activities across the Federal government. This would go far toward insuring the equitable and consistent application of A-76 policies in competitive sourcing activities. Alternatively, OMB may want to establish a certification program for private sector A-76 consulting services providers. Once a company had been certified it could retained by any federal entity to run its competitive sourcing program. It would also eliminate potential conflicts of interest by removing public employees from the competition oversight process.

Reference: Pg. B-5 Section C.1.b. (5)

Comment: Agencies can within their bounds establish process-based methods to implement best practices for competitive sourcing. However, establishing this at the Federal level would permit a much broader sharing of these processes and contribute significantly to ensuring consistent application of competitive sourcing practices across the entire government.

Recommendation: OMB should consider establishing a centralized Federal database of lessons learned and associated training for agency A-76 planners to minimize costs and repetitive mistakes. A centralized database of this type of lessons learned and associated training for agency A-76 planners would supplement the A-76 executive corps to minimize costs and repetitive mistakes.

Reference: Pg. B-6, Section C.2.a. (3)

Comment: The draft document does not provide guidance with respect to additional solicitation detail required when evaluating government service tasks. This additional guidance is necessary to assure that all bids are developed in a manner that will allow a fair comparison against a set of common groundrules. The identification of those

categories of labor that are covered by the Service Contract Act is crucial to assuring a consistent basis for evaluation.

Suggestion: Add the following language at the end of Section C.2.a. (3): "...Whenever a Direct Conversion or Standard Competition is performed, the agency is the incumbent service provider, and the Service Contract Act applies, the CO shall insert into the solicitation the clauses specified in FAR Part 22.

Reference: Pg. B-8, Sect C.2.a. (15)

Comment: We agree that QASP personnel should not come from the providing organization. Further, our experience indicates that personnel assigned to implement a QASP if from the affected organization have established prejudices, do not take a neutral approach to decision making and cannot objectively oversee the implementation of the QASP.

Recommendation: If the award goes to the private sector, personnel assigned to the QASP should not come from the affected government organization. Knowledgeable personnel from other parts of the agency not affected by the competitive sourcing should be assigned to this function.

Reference: Pg. B-8, C.3.a. (3)

Comment: This section permits agencies to change their tenders after submission and makes no provision to permit other offerors to do likewise.

Recommendation: The second key substantive change of the revised A-76 is titled Ensuring Fairness, Integrity and Transparency. Accordingly, to support these tenets, an agency should not be allowed to change its tender unless all offerors are permitted to do so.

Reference: Pg. B-9, C.3.a. (9)

Comment: Agencies should be held to the same delivery and timeliness standards as private sector. Permitting an agency to cancel or delay a procurement because the agency tender is submitted late is an unfair advantage to the government, costly to industry and potentially harmful to the competitive sourcing process. Perhaps the title of the section should be changed to "Missed Deadline."

Recommendation: Hold agencies to the same submission standards as the private sector, or ISSAs.

Reference: Pg. B-10, C.3.d.

Comment: The FAR permits a number of interest generating activities that government can institute to make the private sector aware of upcoming solicitation activities. Some federal agencies are currently using these methods very effectively. Others are not. A proactive approach here will produce positive results.

Recommendation: Agencies should conduct presolicitation activities such as issuing draft solicitations and presolicitation conferences to encourage and ensure adequate interest and thorough understanding of the work involved. Industry needs adequate opportunity to perform due diligence of the work being considered for bid and only industry can determine what the due diligence needs to be.

Reference: Pg. E-1, A.5.

Comment: The last sentence suggests that application of inflation factors (escalation) for pay and non-pay items need only be applied through the end of the first performance period. This is not always true and varies by cost element.

Suggestion: Add the following sentence at the end of A.5: "These inflation factors may also be applied to future periods beyond the first in accordance with Section B of this part."

Reference: Pg. E-6, B.1.,j.

Comment: Significant variances may occur in multi-year evaluations of cost proposals, if different labor escalation bases are used in the comparison.

Suggestion: Following: "The CO shall certify that the positions are DBA." Insert: "Positions that are SCA covered should match those identified under the FAR 52.222-42 clause provided with the solicitation."

Reference: Pg. E-10, B.3.g.

Comment: The cost of labor to administer MEO subcontracts is entirely appropriate for inclusion in the government's administration and inspection costs.

Recommendation: To add strength to this requirement we suggest changing the word "should" to "shall" in the first sentence of this paragraph.

Reference: Pg. E-11, B.5.b.

Comment: This discussion of phase-in costs does not define its components. As such, various interested parties may define this very differently with significantly different results.

Recommendation: Provide a list of activities and costs that can be used by all interested parties.