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To: David C. Childs A-76comments/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Comments on A-76 Revision

Attached please find comments on the proposed A-76 revision from:

William R. Sweeney
Corporate Vice President of Global Government Affairs
EDS Corporation

On behalf of:

EDS Corporation
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For additional information or clarification, please contact:

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The comments are enclosed in the body of this message and as an attachment.

Thank you for the opportunity to comment.

Stephen Ward

<<Final EDS Comments on A 76 12 19 02.doc>>
December 19, 2002

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

IN RE: PROPOSED REVISIONS TO OMB CIRCULAR A-76, Published November 19, 2002
(67 FR 69769)

Dear Mr. Childs:

EDS has a long and successful history of providing Information Technology (IT) and business process outsourcing services to federal agencies, when those agencies have determined their needs can best be provided through the private sector. EDS utilizes the GSA schedule, several GWAC vehicles, and bids actively for contracts with federal agencies.

Historically, however, EDS has chosen to bid on very few A-76 competitions. Our reluctance comes from a number of issues, most prominent among them:

- The current A-76 process is too lengthy and unwieldy – a procurement lasting 18 months to 3 years simply involves too much risk, too long a period of investment, and can entail a cycle of technology change from inception to award.
- The current rules include a number of inherent biases that advantage the public sector.
- The lack of a best value approach to the competition, forcing both private and public bidders to offer bare bones approaches rather than innovative offers that provide increased capabilities, efficiencies and long-term budgetary savings is also a detriment.

EDS applauds the Administration for its proposal to revise the A-76 process, and for the very intensive work required to prepare such an ambitious overhaul. In general we find the proposed revision has strong merits, including the introduction of FAR-based elements into the competition, the dramatic reduction in time frames, the “teeth” to enforce those reductions, the fair treatment of federal employees affected by the competitions, and the option to apply FAR-based competitions to IT services.

That said, any major undertaking involving this degree of revision requires careful examination and fine-tuning to ensure the final product meets the expected benefits. Toward that end, EDS associates itself with the comments provided by one of its industry associations, the Professional Services Council (PSC). We believe its critique identifies many important areas that should be addressed before the rule becomes final.

Additionally, EDS would like to highlight our specific concerns and elaborate our views on three major concerns, also mentioned in the PSC comments.

Best Value and the Application of a 10% Savings Differential:

Best Value competitions have been conducted for years in the federal marketplace and have become fully accepted as objective and legally defensible competitions for the better part of the last decade. Best Value competitions involve well-articulated evaluation criteria that have stood the test of challenge in administrative review procedures and court. Best Value competitions also provide the federal government the possibility of innovative solutions that can provide dramatically increased capabilities and/or long-term savings.

Part of our concern arises from the confusion over how the 10% requirement would work within best value competitions. We have heard multiple interpretations and have yet to

hear a definitive explanation that provides confidence that this differential requirement will not undercut the benefits of the best value approach.

Accordingly, we applaud OMB's efforts to provide approaches to utilize best value within the new A-76 procedures. Unfortunately, the continuing application of the 10% savings differential in this proposed A-76 revision has the real possibility of distorting best value competitions and losing much of what they have to offer to both the government and taxpayer alike.

Technical Competence and Quality:

The requirements within two of the proposed approaches to competition essentially guarantee the government bidder will be technically capable, either through the opportunity to revise the government's technical approach, or through a technical leveling that will discourage commercial bidders from offering technically sophisticated and innovative approaches. We fundamentally disagree with this approach; we believe it runs counter to the spirit and interest of fair and open competition, could prove costly to the government, and will produce unintended consequences that lessen the quality of bids the government will receive.

Accordingly, we encourage the adoption wherever possible of FAR-based approaches that reflect competition without this type of market distortion. In the end, if a needed capability to fulfill a "commercial function" does not currently reside in the government, then it isn't in the public's interest to require the government to develop that capability in-house. Quite to the contrary, this is one of the ideal reasons for outsourcing.

In fair and open competition, only those bidders (government and private sector) that have the prerequisite capability should have a seat at the table in the final competition. All approaches provided under the proposed A-76 revision should implement that principle, rather than implement a compensatory approach to leveling that distorts competition and produces negative consequences.

Definition of Information Technology:

Since the establishment of the A-76 process, an increasing percentage of government functions involve an integral role for information technology. Unfortunately, the definition of IT in the proposed rule is too narrow to encompass these functions that are not purely IT, but involve IT in their very foundations. (We refer you to the example at Lakeland AFB cited in the PSC comments). Without a broader definition, government agencies will not be permitted to utilize the Integrated CTTO process in these cases.

We recommend a redrafting of the definition that reflects the changing functions and the central nature of IT within them so that agencies can take advantage of the benefits of utilizing the Integrated CTTO approach to competition.

In conclusion, we compliment OFPP for the huge improvements in this proposed major overhaul of A-76. The proposal goes a long way toward addressing many of the components of the current process that all parties involved described as broken. We believe some elements of the revision contain flaws that will prove to be unnecessarily problematic. We support the full set of recommendations put forth by our trade association, PSC, and ask that special attention be given to the specific concerns raised within our letter.

We applaud your efforts to improve this process and look forward to working with you in the future to continue to improve federal procurement.

Sincerely,

William R. Sweeney
Corporate Vice President of Global Government Affairs
EDS

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