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To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
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NATIONAL COUNCIL OF EEOC LOCALS NO. 216
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL - CIO

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Via email

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Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
New executive OfficeBuilding
Room 9013
Washington, D.C.20503

Re: Proposed Changes to A-76 Circular

Dear Mr. Shields:

In response to the proposed changes to the A-756 Circular, I provide the following comments:

If the goal is to improve agency performance, a change in the A-76 process should not be effective until at least two years after the implementation of the changes. More agencies should have this flexibility. The performance goals provided to agencies should be negotiated based on the experience of the agency officials, given the agency mission and budget factors.

The revised process represents a major departure from the past and there are a number of agencies with a limited number of employees with contracting experience. The designation of a particular individual in the Human Resources department of each agency may eventually prove useful. However, given the current situation in which agencies lack extensive experience in the contracting out process, the government risks having determinations made by employees less skilled than contractors at bidding for work. So the process may be improved at great harm to government missions. A more flexible phase-in would ensure that training is funded, that the appropriate employees are trained and that the playing field in this regard truly is level.

In attempting to expand competition, a presumption that government work is commercial in nature endangers the government and places programs at risk. Many times, the issue is not only whether the activity is so intimately related to the public interest, but the cost of start-up time, and the fact that the government is so understaffed that employees in certain positions perform more technical duties than the title itself suggests. For example, employees in many positions titled clerical or office support provide additional services to the agency. To say to those employees that the work is important enough that it must be done, and to offer a right of refusal, but to then pay the employee at a lower rate of pay without comparable benefits will seriously impact the morale of employees whose jobs are not subject to the process.

There is great risk that there will be great loss of institutional knowledge. This will diminish the effectiveness of the agency. As an example, where there is a great deal of program knowledge that resides in the employees, and the work is contracted out, if insufficient numbers of employees accept a position with a contractor, the program will suffer. Moreover, one look at defense contractors with very long term contract shows that competition works best on single project contracts and is not a long term solution to performance management. Otherwise, we simply have created "shadow" government employees - government employees, yet not government employees. So, leeway must be given to the agency officials in designating positions as inherently governmental.

A related factor is the requirement for review of the competitive process. For some basic services in a factory setting, it might be prudent to constantly review and monitor the contract for both compliance and competitive costing, but in highly specialized programs, the program cannot be effective if cost becomes the common denominator without consideration of the mission related aspects of the contract. Finally, to provide bonuses for meeting certain margins generally will increase the overall cost, obviating both the cost and enhanced performance effects of competition.

The appeals process should be helpful for those who make a challenge, without unduly encumbering the ability to proceed. However, the process should be a two phase one, with a longer time frame for the initial phase and a shorter phase after about three years.

Removing the conflict of interest should create a sense of fairness.

The twelve month time frame is unduly short and restrictive. Again, a phase-in period with longer time frames should be employed. Eighteen to twenty months is more realistic given the front end work and analyses required to place functions out for bid.

The justification process for providing government equipment must be streamlined. There should be a presumption that the agency equipment will be used. For example, given the administration's recent requirements in the technology arena, many agencies have heavily invested in meeting those requirements. To require a presumption assures that recent agency expenditures are utilized, where appropriate. Part of the solicitation should advise potential competitors of the agency systems and require that all tenders address why existing equipment and systems should not be used.

The process for revising agency solicitations should be revised. When the private sector fails or refuses to respond, and the agency has provided its tender, there should be a presumption that the agency tender is cost effective and efficient. Otherwise, the process is weighted in favor of the private contractor. This is the antithesis of the fair and transparent process, and one that avoids conflicts of interest. What would prevent contractors from banding together to manipulate the process?

Accountability for results should not be measured by cost alone, nor should cost be a controlling factor in making a selection under this process. The factors should be evenly weighted to ensure that all performance aspects in the solicitation are met. The centralized oversight process also should assist with the performance review process and tie the analysis to agency mission, rather than cost alone. Nor should making a determination that continued performance is advantageous to the agency be based on cost alone. Again, such a determination should be made based on a review of all factors, including impact on agency mission.

No process should be complete without an agency tender. There should be a requirement that the agency submit a timely bid. The message to employees when the agency does not or is not required to submit a bid is that the employees are not useful, qualified or valued in performing the agency's overall mission. For an agency not to submit a bid reinforces the "throw away" employee syndrome. Likewise, employees should retain the right of first refusal whenever a private contractor is selected.

There should be a greater role for employee representatives to submit tenders separate from the agency tender. This supports the notion of fair competition and protects the institutional knowledge of the mission related programs.

Respectfully submitted:

Gabrielle Martin
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