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

cc:

Subject: Personal Comments - Revision to OMB Circular A-76 ["Watchdog": Virus checked]

Attached are personal comments submitted for your consideration. Many of these comments are likely to be repeated in the Department's official response.

(See attached file: A76-Rev121902.wpd)

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- A76-Rev121902.wpd

COMMENTS DRAFT REVISION TO OMB CIRCULAR A-76

Submitted By Jennings L. Wong - December 19, 2002

General Comments

1. We find the revision a meaningful attempt to incorporate various recommendations cited in the Commercial Activities Panel (CAP) Report. Unfortunately the efforts to rewrite OMB Circular A-76 are far from making it easier for those involved in competition sourcing. The proposed revision contemplates an agency use of an abundance of staff and resources that does not exist in most Federal agencies. It prescribes using a number of senior level management officials (assistant secretary or equivalent level), separate teams of professional and administrative support staff, skilled and knowledgeable in all aspects of competitive sourcing and OMB Circular A-76. In order to implement the Federal Activities Inventory Reform (FAIR) Act and to achieve the Administration's competitive sourcing objectives, agency's scarce resources are being diverted from mission requirements to focus on competitive sourcing. In the mean time, we are making significant progress in implementing an effective competitive sourcing program considering where we were previously.
2. We requests that Interior commercial activities be permitted to use the existing Circular streamlined cost comparison process for performing scheduled competitive sourcing reviews and direct conversions identified in the Department's FY 2002-2003 Competitive Sourcing Plan. We have a number of studies in progress in which we will need to complete and avoid starting over as a result of changed procedures.
3. We strongly recommend retention of the streamlined cost comparison and the OMB approved Express Review methods as viable options for performing competitive sourcing studies and conversions.
4. The lengthy list of 4.e. official responsibilities will become a major bottleneck in the competitive sourcing process. We recommend that many of these responsibilities be delegated to other lower level responsible organization officials.
- 5 We agree with the CAP report that recommends the new FAR-based competitive process be pilot tested prior to government-wide implementation.
6. We recommend that this Circular not be so prescriptive in defining the process steps. We suggest that the process requirements be stated in a results oriented manner similar to the methodology used for performance based contracting.

Specific Comments

1. Page 1 - Compliance to FAR Chapter 1 covers too broad a myriad of procurement rules and regulations that do not apply to competitive sourcing. To prescribe compliance with the entire set of government-wide acquisition regulations is inappropriate when the pertinent parts, sections, and paragraph numbers should be identified to reduce confusion and keep the document simple.

2. Attachment A, paragraph B.1. will require agencies to inventory commercial and inherently governmental positions not subject to the FAIR Act. The FAIR Act is explicit and clear in reporting commercial activities performed by Federal employees. To inventory other positions is beyond the legislative intent of the FAIR Act, and offers little in return on effort expended. Clearly this is not a cost-effective use of agency's resources nor taxpayer dollars.

3. A discrepancy appears in paragraph C.1.b. of Attachment A as to whether or not military personnel should be inventoried according to the proposed revision. Paragraph B.1. specifies reporting of inherently governmental activities performed by military personnel. On the following page in paragraph C.1.b. it says that the FAIR Act does not apply to military personnel in "(d)". Clarification is needed.

4. The requirement in paragraph C.3. of Attachment A to provide written justifications for inherently governmental activities is deemed unnecessary in light of sound management processes and initiatives advanced by this Administration. Prescribing such a requirement for senior agency official to provide a written justification for an internal management decision is viewed as micro-managing the agency's activities and not allowing managers to be more accountable.

5. Under Attachment A, paragraph D.1.- We do not agree that all activities are presumed commercial in nature unless justified as inherently governmental by the 4.e. official. Such a requirement is contrary to the concept of basic good management practices and holding managers accountable. Documenting designated activities inherently governmental or core positions is an unnecessary paperwork burden that increases administrative staff workload expending scarce agency resources. This burden on an assistant secretary or equivalent senior level official is not required in the private sector.

6. Page B-2, paragraph A.1.a - Deviation coverage is viewed as overly constraining and micro-managing the competitive process. Based on lessons learned and GAO case studies, it is evident that the current A-76 process will require more than the prescribed time frame contemplated in this revision.

7. Page B-2, Paragraph A.1.c. requires a public reimbursable source to obtain OMB approval prior to considering proposing to perform work as a contractor or subcontractor on any competition of private sector work. One would conclude that a public reimbursable source would be required to obtain OMB approval prior to submitting a competitive contract/subcontract offer. Can or will OMB respond timely to the agency's request?

8. It is unclear whether the successful public reimbursable sources of the Federal payroll program competition will have to continually compete with other public reimbursable sources or be exempt for a specific time frame? There needs to be greater clarification on Economy Act applicability in this instance and in other types of reimbursable agreements.

9. Page B-3, paragraph B.2 states that the contracting officer (CO) shall designate PWS Team membership when in fact this official does not have actual authority and control over program

and other administrative support staff offices. The 4.e. official or equivalent level or head of the requiring activity should designate the Team members.

10. Page B-3, paragraph B.3.a. - FedBizOpps public announcement is generally a contracting office responsibility and reference to “(see paragraph D.2.below)” should refer to paragraph “D.1.” instead.

11. Page B-4, paragraph C.1.a.- Unclear what is the purpose of the reference to “Paragraph D”.

12. Page B-5, paragraph C.2.a.(1) refers to violation of “industry service or service grouping norms”. Clarify or explain what these norms are and how is a CO expected to know they exist and must comply with.

13. Page B-7, paragraph C.2.a.(7) – The decision regarding government property should not be made by the 4.e. official but at the head of requiring activity or equivalent level where such administrative matters are routinely made.

14. Page B-7, paragraph C.2.a.(13) refers to paragraph C.6.b.(2) which does not exist.

15. There are two definitions of the acronym QCP. Page B-8, paragraph C.2.a.(15) refers to the QCP as the “quality control program” and later in C.3.a.(2) as the “quality control plan”.

16. Page B-8, paragraph C.3.a.(3) the 4.e. official is misspelled.

17. Page B-9, paragraph C.3.a.(4) lists of requirements should be provided in a table or chart format for ease in identifying separate tasks to be performed.

18. Page B-9, paragraph C.3.a.(4) states that no new contracts are to be created as part of MEO development. This limits MEO’s ability to submit an innovated and competitive priced offer (agency tender) in a standard competition, when contractors are permitted to do so without limitation.

19. Page B-9, paragraph C.3.a.(7) states that phase-in cost shall be included on Line 3 of the Standard Comparison Form (SCF). In Attachment E it states it should be on Line 5 of the SCF.

20. Page B-10, paragraph C.3.b. The references are difficult to follow. This paragraph is a good example of that. It states “... in accordance with Attachment C and prepare tenders in accordance with C.3.a.”. The paragraph reference is actually in Attachment B.

21. Page B-10, paragraph C.3.d.(2)(b) refers to paragraphs C.6.b.(1)(a) and (b) which do not exist.

22. Page B-11, paragraph C.4.a.(2) refers to paragraph C.4.b. which does not exist.

23. Page B-12, paragraph C.4.a.(3)(a)3. - Line 4 reference to “deficiency notices issued” should be changed to reflect the recognized FAR terminology “technical discussions (or clarifications) raised”.
24. Page B-13, paragraph C.4.a.(3)(b) refers to paragraph C.4.b. which does not exist.
25. Page B-13, paragraph C.4.a.(3)(c) - The third full sentence states the use of “CTTO process shall comply with FAR Part 15 unless otherwise noted in the Circular”. Identify the Circular paragraph that applies, otherwise remove latter portion of sentence that does not apply.
26. Page B-13, paragraph C.4.a.(3)(c)1. - The second sentence infers that a performance decision may be based on factors other than lowest cost contrary to paragraph “a. Low Cost Decision” which a decision is based on low cost. Clarify.
27. Page B-13, paragraph C.4.a.(3)(c)1. refers to paragraph C.4.a.(1)(c) which does not exist.
28. Page B-15, paragraph C.5.a.(2) refers 4.a. official instead of the correct 4.e. official.
29. Page B-16, paragraph C.5.a.(4) refers to paragraphs C.7.a. and C.7.b.(2) which do not exist.
30. Page B-16, paragraph C.5.b.(2) specifies that the head of the requiring activity to provide written recommendation for exercising option years. It is unnecessary to require this individual for such tasks when in most instances a project/program manager of a lower grade generally authorizes the exercise an option term.
31. Page B-17, paragraph C.6.a.(1) states that “private sector proposals shall not be subject to appeal” is incorrect, especially when it has been selected as the apparent competition winner.
32. Page B-17, paragraph C.6.a.(2) time-frame specified is likely to be inadequate when the private sector’s redacted offer is made available for release. Processing the private sector winning proposal generally takes much longer than allotted response time.
33. Page B-18, D.1. - FAR clause cited is incorrect. Should read FAR 52.207-3. The wording in this paragraph causes considerable concern for Interior’s Bureau of Reclamation. The way it is stated in the paragraph, non-appropriated fund civilian employees are not entitled to the Right of First Refusal. Many of the bureau’s employees are not paid from appropriated funds. If the intent is really those non-appropriated funded civilian employees as defined in 5 USC 2105(c), then this should be stated as such. If that is not the intent then we suggest it be deleted as it is unfair treatment.
34. Page B-19, D.2. – We suggest these team designations, responsibilities and restrictions be moved to page B-3 with the other roles and responsibilities.
35. Page B-19, D.2. calls for the CO to provide list of adversely affected Federal employees to selected contractor or public reimbursable. Public reimbursable source is under no obligation to comply with FAR clause 52.207-3.

36. Page C-1 - The direct conversion language in this revision does not reference retaining functions in-house that meet the criteria.
37. Page C-2, paragraphs B and C requires direct conversion certification and competition waiver shall be made and approved by the 4.e. official. The 4.e. official action is an unnecessary administrative burden when deciding on the direct conversion of 10 or fewer FTE would limit the exercise of management discretion.
38. Page C-3, paragraph D.1 imposes overly restrictive time limits for completing business case analysis and complying with certification requirements that are counterproductive to senior official exercise of management flexibility and discretion.
39. Page C-3, paragraph D.1.i - Use of market surveys is a viable alternative that demonstrates the market trend of costs for services without the undue expense of expense of a solicitation.
40. Page C-4, paragraph D.2.b. does not identify the use of other contract types that may be use in the competitive sourcing process.
41. Page C-4, paragraph E.2.b. refers to paragraph C.6. of Attachment B which does not exist. Coverage on Letter of Obligation is found in C.5.a.
42. Page D-1 - Delete the first arrow. This is inappropriate in the Attachment since the topic focus is on ISSA use and reference to private sector performance of commercial activity does not apply in this category.
43. Page D-1, B. Competitive Requirements will result in increased workload associated with competing ISSA's. We recommend the exclusion of intra-agency ISSA's and other internal funding transfers used for reimbursement of shared agency expenses. Greater clarity is needed in distinguishing which ISSA-type agreements the proposed revision applies or exempt.
44. Page D-2, paragraph B.4. specify ISSA plan to be submitted by June 30. Is plan to be submitted with the annual FAIR Act inventory? Concerned that there is insufficient time after final rule-making occurs to prepare such a detailed plan. This Plan should be incorporated as a requirement in the OMB Circular A-11 annual budget process separate from the FAIR Act reporting requirement.
45. Page D-3, paragraph H.1.a. refer to "other applicable law" that should be specified or delete text if none to be cited.
46. Page D-3, paragraph H.1.a.(4) follows with "and" which infers that all previous conditions must also apply. Is this a correct assumption?
47. Confusion exist on page D-4, paragraph H.1.e. that addresses acquiring specialized or technical services from state and local government on a reimbursable basis when it mentions Circular A-25 applicability for services the Federal agency receives from a state/local

government. Circular A-25 user charges are fees billed to state/local governments for Federal agency provided services, not the reverse.

48. Page E-7, Paragraph B.1.1 should include students and other types of labor sources to the list of categories.