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

cc:

Subject: A-76 comments

Enclosed please find SAIC's comments on the proposed revisions to OMB Policy A-76. We appreciate the opportunity to provide input on this important matter.
- OMB Circular A-76 - Comments on Draft.doc



December 18, 2002

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

Dear Mr. Childs:

SAIC appreciates the opportunity to provide our views on the proposed revisions to OMB Circular No. A-76, Performance of Commercial Activities, published in the Federal Register at 67 FR 69769 on November 19, 2002. We understand that providing clear and balanced guidelines for competitive sourcing is a very complex matter and believe the clarity of the language in the draft is an improvement over the current circular.

General Comments:

- 1) We believe the approach to improve fairness and provide consistency in evaluations is a step in the right direction but have concerns with some of the unnecessary complexity in evaluation and strongly disagree with any approach that ensures the Agency Tender must be given the opportunity, beyond a single round of deficiency notices to correct a materially deficient Tender, to remain in the competition. If the government uses technical leveling then it will drive out innovation and the improvements that can result from true competitive sourcing.
- 2) The Integrated Evaluation Process should not contain the limitation "(1) information technology activities (as defined in Attachment F) performed by agency personnel." SAIC is major provider of information technology (IT) services to the federal government and is certainly willing to compete for IT work. However, IT is so intertwined in many functional activities that it is often not separable and should not be used a determining factor for the use of the Integrated Evaluation Process.
- 3) It is important to provide more of an emphasis on development and implementation of an activity based costing system for the government similar to that required for contractors by Cost Accounting Standards.
- 4) OMB should promulgate a specific requirement and clear directions on how to implement a past performance database to record MEO performance after an initial Agency Tender Offer.

- 5) SAIC participated in a review of the comments that are being submitted by the Professional Services Council and the Contract Services Association of America and we fully agree with them.

Section: A-76 Circular Two-Page Letter Document

Comments:

- 1) The statement in 4.b. that presumes all activities are commercial in nature unless an activity is justified as inherently governmental will hopefully be effective in producing government agency inventories with greater accuracy and less bias.
- 2) The organization of the revised circular is very easy to follow.
- 3) The proposed implementation date of 1 Jan 03 demonstrates the desire of the OMB and the President to quickly execute changes that will foster a fair competition process and reduce the amount of time it takes to accomplish the process. This implementation date is very aggressive and we hope that any delay beyond this date would be short.
- 4) The private sector welcomes the opportunity to comply with the new streamlined process.

Section: Attachment A – Inventory Process

Comments:

- 1) None.

Section: Attachment B – Public-Private Competition

Comments:

- 1) The Standard Competition Process chart needs more work; it's difficult to follow and understand what happens within the 12-month timeline. The chart is a good idea, in fact, would also like to see charts in Attachment A & C to illustrate process.
- 2) Section B.3.a Human Resource Advisor (HRA), Employee and Labor-relations Requirements states that the HRA, working in conjunction with the CO shall determine compliance with the Right-of-First Refusal. If the contractor is awarded the work, and determines that a civilian employee does not meet their labor qualifications or employment criteria, will the contractor have the ultimate decision-making authority on whether the individual is hired? This statement makes it appear that the HRA and CO will have the ultimate decision-making authority in this scenario.
- 3) Section B.3.b HRA MEO Team Requirement, under the listing of activities that the HRA will assist the MEO team with, it should be added after item (c) that the HRA will provide assistance in conjunction with the Contracting Officer with determining the applicability of the Service Contract Act.
- 4) Section C.1.b.(1). Add to the last sentence before the comma “and, if circumstances warrant, the sanctions outlined in FAR Part 3”. This ensures the Competition Officials cannot escape the sanctions established in the Procurement Integrity Act and FAR Part 3 via an entry in an annual performance evaluation.
- 5) Section C.1.b.(3) Timeframes does not clearly state what will happen if the timelines are not met and no deviation is granted.

- 6) Section C.1.b.(4) should make a specific reference to the Procurement Integrity Act and to the protection of intellectual property.
- 7) Section C.2.a.(4) references for procurement procedures is incorrect – instead of references to Section B.4, should reference Section C.4. Section C.2.a.(13) Solicitation Exceptions for the Agency Tender – references in the last sentence where the Agency Tender’s MEO past performance will be included in the evaluation requirement, except as provided in paragraphs C.6.b.(2) and C.6.d.(2) – cannot find these references.
- 8) Section C.2.a.(14) Cancellation of a Solicitation After Performance Decision. Reference the second sentence starting “When a Performance Decision . . .” FAR Subpart 15.206 does not seem to fit this situation – a cancellation after selection of a private source bidder is hardly an amendment! The presence of this language suggests it is OK to cancel a solicitation if the agency doesn’t like the outcome, e.g., that a private bidder won. When a Performance Decision results in the selection of a private sector source and then the agency cancels the solicitation and does not award the contract then the agency should be required to pay the selected private source bidder their bid and proposal costs. Reference the last sentence following (4). If the agency determines at any time in the Standard Competition process that the agency no longer has a requirement for the services the process should be stopped and a report sent to the Director for Management, OMB. There is no reason for any of the parties to accrue costs once the requirement is cancelled any time *prior to* the Performance Decision.
- 9) Section C.3.a.(9) Delayed Delivery gives the ATO the ability to either extend the due date for the proposal or proceed without the Agency Tender; however, this can be done as late as the actual due date. Recommend rewording so that the ATO has to notify the CO at least three days (or reasonable timeframe) in advance if the Agency Tender will be delayed and request an extension with justification, so that the deadline decision can be made in advance of the actual deadline date, which is also the current process applicable to the private sector. The private sector is not allowed to wait until the actual due date to request an extension.
- 10) Section C.4.a.(3)(a)3. Deficiencies. Whenever an Agency Tender is materially deficient and the ATO is given an opportunity to correct the material deficiency that fact should be included in a report to the Director for Management, OMB. It is very important for the integrity of the process that the opportunity to correct Agency Tenders does not become the standard practice. As noted in our general comments we do not support the government being afforded unreasonable opportunities to correct material deficiencies or to a process that guarantees that the Agency Tender will make the competitive range.
- 11) Sections C.4.a.(2)(b), C.4.a.(3)(b), and C.4.a.(3)(c)1.b say “the SCF is certified in accordance with paragraph C.4.b. Please correct this reference as there is no paragraph with this number in Section C.
- 12) Section C.4.a.(3)(c)1. Integrated Evaluation Process – during the briefing given by OMB Policy Specialist David Childs on 2 Dec 02, he stated that Department of Defense cannot use the integrated process, yet it is not indicated in the wording in this section. Please add this information, along with a citation of the regulation or statute, which exempts or precludes DoD from this process.

- 13) Section C.4.a.(3).(c).1 in the 14th line cites C.4.a.(1)(c). The correct reference appears to be C.4.a.(3).(a).3.
- 14) Section C.4.a.(3).(c).1.b Other Than Low Cost Decision, last sentence, cites paragraph C.4.a.(3). This does not appear to be the correct citation.
- 15) Section C.4.a.(3).(c).2.a. Phase One 4th line from bottom cites paragraph C.4.a.(1). Believe this should cite paragraph C.4.a.(3).
- 16) Section C.5.a Post Competition Accountability – gives the requiring organization the ability to update the PWS at the end of each performance period to reflect requirements and scope changes made during that period. In addition the agency can adjust actual costs to compare to estimated costs submitted in the Agency Tender to allow for scope, inflation and wage rate adjustments. There doesn't appear to be a control factor, or system of checks and balances here which would prevent the requiring organization from changing its mind about the originally proposed MEO plan, and deciding it wants to increase manpower if the staffing was underbid to win the effort. Who would approve the organization's change in scope and determine if it was a real need, or just a way to increase staffing, and how would you assure that this approver is objective?
- 17) Section C.5.a.(2) says "with a copy to the 4.a. official. Is this supposed to be the 4.e official?"
- 18) Section C.5.a.(4) Requirements for the Letter of Obligation – doesn't address how existing in-house work awarded in the past few years under previous A-76 competitions will be affected – only those issued after 1 Jan 03. Activities that have been kept in-house under previous A-76 competitions should be documented, and also issued a Letter of Obligation, which would clearly identify the timeframe for completion and recompetition.
- 19) Section C.5.a.(4). The references to C.7.(a) should read C.5.(a) and the reference to C.7.b.(2) should read C.5.b.(2).
- 20) Section C.5.b.(1), last sentence. Restate to show that the Competition shall have been completed by the end of the last year of performance as is shown in the following paragraph. As currently structured this could be read as saying the competition has to start by the end of the last year of performance.
- 21) Section 6.a.(4)(d) Single Administrative Appeal Process Decision Document – allows 30 to 45 working days for completion and issuance of the decision document. We have experienced under one particular A-76 competition a situation where the Government issued four 30 –day extensions to their timeframe for issuance of the decision document. Since the interested parties are not granted any provision for extensions to the 10 – 15 working days to submit their appeal, the Appeal Authority should in turn not be given a provision for extending their timeframe for issuance of the decision document.
- 22) Section C.6.a.(4).(d), 7th line cites paragraph C.4.a.(1) above. This is too broad. For clarity request you include a more specific paragraph reference.
- 23) Section D.1 Right of First Refusal – gives the HRA the authority to determine whether the employees on the Right of First Refusal list are deemed qualified, and the contractor shall be required to offer employment to these employees before hiring new employees or transfer existing employees. If the Contractor and the HRA disagree on whether the employees are qualified, this statement gives the

HRA final authority. Contractors will feel strongly that they should have the final authority in who is hired for their awarded contract.

Section: Attachment C – Direct Conversion Process

Comments:

- 1) Section D.2.b. Business Case Analysis Documentation – the four comparable, existing, fixed price, Federal contracts of similar size, workload and scope are identified by the Contracting Officer to determine the basis of comparison to the agency tender; one additional criteria that should be considered is geographic location. If contracts selected are in areas with much higher cost of living than the area being studied, the comparison may not be accurate.
- 2) Section E.2.c. This section cites paragraph C.6. Believe this should read C.5.b.
- 3) Section F. This section cites paragraph D.2. Believe this should read D.1.

Section: Attachment D – Inter-Service Support Agreements (ISSA)

Comments:

- 1) Section A, first sentence. Please restructure to clarify the intent. Read literally this says each Commercial ISSA exceeding \$1M million annually must be competed each year. Given that the competition could take a year this becomes a continuous competition requirement (Or is that is the intent?).

Section: Attachment E – Calculating Public-Private Competitions Costs

Comments:

- 1) There was no reference to the A-76 Costing Manual issued under Interim Guidance dated 14 Mar 2001 to be used by all DoD components for A-76 pricing.
- 2) Section A.5 Inflation – gives agencies the ability to use agency unique inflation factors with prior written OMB approval rather than the annual inflation rates developed for the President’s Budget. If agency unique inflation factors are approved, they should be stated in the solicitation.
- 3) Section B.1.j. Administration and Inspection for MEO Subcontracts – add guidance on how this cost will be calculated by using the chart under Section C.3
- 4) Section B.3.g.(2) New MEO Subcontract. This paragraph discusses high-level policy, not Other Specifically Attributable Costs. Recommend this paragraph be moved to Appendix B, Section D, Special Considerations.
- 5) Section B.5.b. Phase-In Costs – should add the comment that the agency tender is not exempt from phase-in costs due to a misconception that they are the incumbent, and therefore not require recruiting, hiring or training costs.
- 6) Section B.5.c, starting at “Government facilities . . .” is a statement of policy, not the treatment of a cost item. Recommend this language be moved to Appendix B, Section D, Special Considerations.

Section: Attachment F – Glossary of Acronyms and Definition of Terms

Comments:

- 1) Quality Assurance Surveillance Plan (QASP). Second sentence needs to be restructured for clarity.

SAIC appreciates the opportunity to provide our views on the proposed revisions to OMB Circular No. A-76.

Sincerely,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

R. Stephen Ayers
Senior Vice President for
Contracts and Procurement