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To: David C. Childs A-76comments/OMB/EOP@EOP
cc: BMcNeal@cfo.usda.gov, JSmith@cfo.usda.gov
Subject: USDA Comments on A76 Proposed Revision

Attached are USDA's comments on the proposed circular.

We appreciate the opportunity to provide these comments.

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- A-76 Revision Comments.doc

USDA Comments on Proposed Revisions to A-76

1. Pg 1 – The presumption that all activities performed by the Government are commercial in nature unless justified as Inherently Governmental is a significant policy shift. Senior executives across the government should discuss this concept before it is universally adopted in the A-76 process. The government’s need for a federal workforce that serves only the public interest is a hard-earned and well-established principle.
2. Pg 1 - General comment on 4.e Official. Suggest OMB allow this Official to delegate all items deemed appropriate to a lower level official. Also, suggest OMB include a chart with all this officials responsibilities clearly indicating what can and cannot be delegated.
3. Pg 2 – The effective date of January 1, 2003 is too soon. There should be a grace period for current on-going direct conversions and cost comparisons, especially since OMB is eliminating Express Studies and radically changing the streamlined process.
4. Pg A-1, C.1.a. Will posting inventories on an agency website suffice as notification to the public? To Congress? If not, please specify how agencies are to accomplish this notification.
5. Pg A-2, C.4. Need to define an acceptable variance (+/- %) for the difference between authorized personnel requirements and the combined total FTEs on the three inventories.
6. Pg A-3, D.3 chart. The definition for reason code B is too restrictive. It requires all commercial activities coded B to be either directly converted or competed within a specified timeframe. What is the specified timeframe? Also, this definition goes well beyond the administration’s goal of 50% competition of commercial activities. This would seem to be 100% competition of commercial activities.
7. Pg A-3, E.1. The inherently governmental activity of “commission, appoint, direct or control officers or employees of the United States” contained in OMB Policy Letter 92-1 has been deleted. Does this mean that service providers can now perform these services?
8. Pg A-3, E. Since agencies are expected to justify inherently governmental activities, OMB should include a listing or samples of activities that it considers representative of inherently governmental activities.
9. Pg A-4, F.1. Are the Inventory Challenge Review and Appeal Authorities considered inherently governmental activities? If so, must they be justified since the revised Circular directs their creation?

10. Pg A-5, 2.c. For inventory changes as a result of the challenge and appeal process: how are the changes to be transmitted, to whom or what office at OMB, and in what timeframe?
11. Pg B-1, The standard competition process diagram needs to be re-sized so that the words are clear in all blocks.
12. Pg B-5.C.b. (3). A standard competition period of 12 months is very aggressive. The time limit of 4 months proposed for receipt of proposals and source selection is the critical item. Current solicitation using FAR processes can take 12 months from proposal receipt to contract award. Suggest the timeframe for a standard competition be extended to 16-20 months, or that Departments be directed to report the expected length of their competitions on a regular basis, with a time limit of no more than 16 months.
13. Pg B-5.C.b. (5). While agencies are expected to centralize oversight responsibility and allocate resources for direct conversions and competitions, no mention is made of funding or increased budget authority. At the same time, agencies are expected to identify savings resulting from completed standard competitions in budget submissions. Suggest OMB address funding issues and sources for competitive sourcing initiatives in this section.
14. Pg B-6, 2a. (3). Cited FAR clause 52.207-2 needs to be re-written to reflect new A-76 Cost Technical Trade Off processes.
15. Pg B-7.C.2.a. (13). References to paragraphs c.6.b. (2) and c.6.d. (s) need to be verified/clarified.
16. B-9. C.3.a.(7). Clarify where phase-in costs are included on the Standard Competition Form. Page B-9 states costs are to be included on Line 3. Page E-11, 5.b. states "The solicitation designates a phase-in period which shall be reflected as the first performance period and costs associated with converting from the agency's current organization to the MEO shall be included on Line 5. If the solicitation designates the first performance periods as a phase-in period, these costs may be entered on Lines 1 through 5 may be used to document these costs."
17. B-12. C.4.a.(3).(a).3. Suggest a title be given to the individual appointed to resolve SSA/ATO disagreements, Deficiencies Resolution Official. Also the positions roles and responsibilities should be clearly defined.
18. B-15, 5.a.(2). Correct reference to 4e. Official.
19. B-16, 5.a.(4). Correct paragraph reference should be C.5.(a) and C.5.b.(2).

20. B-17, 6a.(1). Private sector proposals should be subject to appeal. While contractor individual cost element information should be protected, in the event a private sector offeror wins the competition, the winning criteria should be revealed and subject to appeal.
21. B-18, 6.a.(4) (d) and (e). If the appeal process can be extended to 45 days the AAA 's suspension of performance authority should also be 45 days not 30 or less.
22. B-18. D.1. Correct right of first refusal FAR clause reference to 52.207-3.
23. B-20. 3. Correct paragraph reference from D.3 to. D.2.
24. C-2. A.7. Expand to include other procurement preferential programs.
25. C-3, D2b. Correct this section to show lines the ATO will complete. The ATO cannot complete certain lines of the adjusted cost of private sector or public reimbursable performance section of the Standard Competition Form i.e., lines 7, 8, 9, 12 & 13.
26. C-4, E.2.b. Please clarify. For conversions from private sector or ISSA performance, does the agency develop its tender offer based on existing contract/ISSA requirements and statement of work? Can a new or modified PWS be generated? If so, when is the PWS developed? Is a cost estimate prepared? By who? When?
27. C-4, E.2.b. Correct paragraph reference to C.5.
28. C-4, E.2.c. Correct paragraph reference to C.5.
29. E-4, B.b.(1). Correct spelling of overtime.
30. E-11, B.5.b. Suggest this paragraph be rewritten to clarify meaning and to better address the situation where the solicitation doe and does not have the Phase in included as the first performance period. See comment 15 above for exact wording.
31. E-13, contract Administration Factor and Grades chart, Remove reference to win.compare2, unless OMB is directing the use of win.compare2 to prepare this the SCF.
32. F-4, Competition Waiver definition. Correct attachment reference from Attachment C to Attachment D.
33. Attachment F – Add definition of SSA/ATO Dispute Resolution Official.