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Subject: NFFE 1384 Comments Concerning the Draft of 14 Nov 02 Circular No. A-76 (Revised)

To: Office of Management and Budget, Executive Office of the President:

The following NFFE 1384 comments concern the draft of the 14 Nov 02 Circular No. A-76 (Revised). These comments are also provided as a separate attachment, in accordance with the Federal Register notice-instructions:

Comments for OMB
ON
PERFORMANCE of COMMERCIAL ACTIVITIES
DATED NOVEMBER 14,2002
CIRCULAR NO. A-76 (REVISED)

B-17, paragraph 6.a. the administrative Appeal Process, states that "the administrative appeal process provides directly interested parties and opportunity to have an independent agency review the Performance Decision." We recommend both the directly interested and other interested parties have an opportunity to file administrative appeals during the administrative appeal process.

There is no guidance provided to determine number of required QAS personnel.

The FAR states that in the fixed price contracts there is a greater burden on the contractor while in the Cost plus award fee contracts there is a greater burden on the government. There is no guidance to determine the required Federal Employees to determine the number of QAS personnel.

Are the Quality Assurance Surveillance Personnel inherently governmental positions? The definition states that "the method by which Federal agency personnel monitor agency private or public performance to determine if the performance output requirements of the solicitation are met by the service provider within the costs submitted to the Government."

The Definition and B-8 paragraph (Public-Private competition, C.2.15) for Quality Assurance Surveillance Plan (QASP) does not include identification of the resources to execute the Plan. Part I, Chapter 3, paragraph D. states that "The Quality Assurance Surveillance Plan (QASP) describes the methods of inspection to be used, the reports **required and the resources to be employed with estimated work hours.**" We recommend that this stay in the language.

Paragraph (Public-private competition) there is no statement to explain what constitutes a "fair competition". We recommend that specific paragraph to be added to discuss specific elements of "public and private competition". Also we recommend you add a definition for this term "Public-Private Fair Competition".

B-11, paragraph (b) 2., we recommend that the SSA shall conduct price or cost realism on private sector offers during source selection as provided by the FAR. The cost realism of the private sector's offer shall be evaluated based on the actual market research of the same commercial industry in the same market (city) and shall include actual commercial labor rates, material, benefits, etc.,

PART I, POLICY IMPLEMENTATION, Paragraph A, states that "This Part sets forth the principles and procedures for managing the Government's acquisition of **recurring** commercial support activities....."

PART I, POLICY IMPLEMENTATION, Paragraph D, states that "As matter of policy, the Government shall acquire **non-recurring** commercial activities through contracts with the private sector."

Part I, POLICY IMPLEMENTATION, Paragraph D.1. States that "Contract Activities- An activity obtained through a competitively awarded contract will continue to be obtained by contract as long as the quality of service is acceptable and competitive prices are fair and reasonable.

We recommend that a clear discussion and definitions of recurring commercial activities and non-recurring activities to be provided with clear examples.

We recommend as matters of policy discuss bundling requirements and inclusion of the small and or disadvantaged businesses and the impact.

We recommend discussion on inherently governmental positions (Contract management, inspection and progress reports, and contracting officers technical representatives) to ensure a full staff to support full and open competition among small business entities.

We recommend that a clear discussion and definitions of undefinitized work to be provided.

WE recommend that a clear discussion and definitions of single function and multifunction to be provided. Please provide guidance that for functions that their existing product (such as development of contract technical specifications and Contracting Officer, or inspection and progress reports and contracting officer) are developed and produced in two different organization (Civil Engineering and Contracting office in the Air Force) versus functions that their product (such as development of the contract technical specifications, inspections and progress report and the contracting officer) all are in the same organizations (such as Public works office in Navy, Army, or Army CORP of Engineers).

WE recommend that a clear definition of Contract management and Contract Administration to be provided.

Attachment E (CALCULATING PUBLIC-PRIVATE COMPETITION COSTS)

E-6, Paragraph i., we recommend a clear discussion and definition of "the agency's administration and inspection " to be provided.

E-10, Paragraph g., we recommend a clear discussion of definition of the "Government's administration and inspection" to be provided.

E-10, paragraph g(2)., we recommend that this paragraph to be modified to allow creativity and leave the door open for full and open competition. Removing this restriction will allow MEO to chose any mix of subcontractors and partnering with small businesses to present more competition and improve the MEO's ability to perform and configure their organization. However we do recommend as long as a requirement has been contracted by full and open competition that requirement should be contracted out to the small businesses.

We recommend that the fact the A-76 contractors do not have to utilize small and disadvantage business creates an inherent unfair competition in Public-private competitions. In addition it is in direct disregard for resident's agenda for small businesses.

E-11, Paragraph 4.b., we recommend a discussion and clear identification of the represented costs that are not visible, allocable, or quantifiable to the agency, activity or MEO.

E-12, Paragraph 3., we recommend that a 12 percent overhead to be added in line 8 to the Contract Administration costs. This is reasonable due to the fact that personnel cost overhead that are not visible, allocable, or quantifiable to the agency, activity exists regardless of MEO or contractor win. Therefore this is a burden on the taxpayers and it should be counted.

E-12, Paragraph C.1.b.(4) and (5). We recommend a discussion and clear definition provided for Contract with Award fee and Contract with Incentive Fee. Specifically define estimated contract price or cost. We recommend that the Contract with Award fee should state that "Enter 65 percent of the potential maximum of the award fee plus the estimated total contract price at award of the contract including all options and/additives.

E-15, paragraph D., Minimum conversion Differential (Line 14 of the SCF)

We recommend that the minimum conversion differential should be lesser of: 15 percent of personnel costs (Line 1) or (2) \$20 million over all performance periods. Our reasoning is based on the fact that this number has not been adjusted to reflect escalation, and overhead to present time and future years and it would be unfair to the taxpayers. Or if this number is not being changed it should be subject to annual escalations and overhead that would be issued by OMB.

We recommend a discussion and definition provided to explain a non-standard competition.

//SIGNED//

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