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12/17/2002 01:05:43 PM

Record Type: Record

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Subject: Review Comments from MEVATEC Corporation

**Subject:** MEVATEC Review Comments on Draft OMB A-76 Circular Re-write

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	Reference	Comment
1.	General	Is the ATO being given rights to submit a GAO protest?
2.	General	Recommend using terminology that distinguishes between the “initial” performance decision and “final” performance decision which would follow resolution of an appeal.
3.	Pg. A-1, ¶B.2.	Is this paragraph authorizing an Agency to tailor OMB codes to reflect agency unique definitions? If so, won’t this defeat the use of standard codes and definitions?
4.	Pg. A-3, ¶E.1.c	Recommend more precisely defining “private persons”. Does this term include U.S. Citizens or citizens of other countries?
5.	Pg. B-2, ¶A.1.a	Recommend changing “Competition announcement (start date)” to “public announcement (start date)” for consistency with ¶C.1.a, ¶C.1.b.(3), and figure B.1
6.	Pg. B-4, ¶C.1.b.(1)	We are concerned with the statement designating such a high level for the 4.e. official and his responsibility to hold Competition Officials accountable via performance evaluations. Is it expected that Competition Officials will be reassigned to report directly to the 4.e. official? What formal process is expected to appoint or designate Competition Officials? Is there an expected timeline prior to the public announcement that the Competition Officials are assigned?
7.	Pg. B-7, ¶C.2.a(13)	Recommend including official positions descriptions as an acceptable substitution for the Agency Tender when the solicitation requires the submittal of resumes.
8.	Pg. B-8, ¶C.3.a.(1)	The rules should allow the Agency Tender to offer a redacted copy of the Agency Tender Offer for public review so in-house competitive advantages are protected similar to how proprietary information is protected for contractor offers. Recommend that language be added that allows the Agency Tender to redact proprietary sections that reflect competitive approaches to accomplishing the solicitation requirements.
9.	Pg. B-9, ¶C.3.a.(7), (1) Pg. E-1, ¶A.6. (2) Pg. E-11, ¶B.5.b	Inconsistent guidance between cited paragraphs. Request clarification on whether a separate phase-in period is mandated and whether it is mandated to be a separate contract line item (CLIN). Recommend that phase-in costs be included on SCF Lines 1-5, verses restricted to Line 3. Neither SCF Lines 3 nor 5 within win.COMPARE <sup>2</sup> include the capability for personnel costs which generally is the major cost for phase-in period activities.
10.	Pg. B-11 to B-15	¶ C.4.b and C.4.a.(1).(c) do not exist in the Circular. Several references are made within Section C.4 to these paragraphs. Please correct paragraph references.
11.	Pg. B-12, ¶C.4.a.(3).(a).(3)	Recommend change to read “Mediator designee shall be external and independent of the function being competed.”
12.	Pg. B-14, ¶C.4.a.(3).(c).2	OMB should include a statement to whether the procedure described as the “Phased Evaluation Process” is acceptable to meet the requirements of the Brooks Act for acquiring Architecture and Engineering services.
13.	Pg. B-15, ¶C.4.a.(3).(c).2.b	Reference to Line 8 should read Line 7 of the SCF

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14.	Pg. B-15, ¶C.4.a.(3).(c).2.c	Recommend adding language that the performance decision documentation is made available to directly interested parties at the time of the decision announcement.
15.	Pg. B-17, ¶C.6.a.(2) and Pg. B-18, ¶C.6.a.(4).(e)	This statement could be interpreted to allow implementation of the performance decision even with a valid administrative appeal if final resolution of the appeal takes longer than 30 days. Recommend adding a provision that allows the 4.e official suspend implementation of the performance decision no longer than 60 days for a complex appeal.
16.	Pg. B-18, ¶D.1	Very concerned that the HRA determines for the contractor operation whether a government person is qualified for an open position which seems to <u>imply</u> that the person must then be hired by the contractor. Wouldn't this then make the government liable for the contractor's performance if the HRA had determined a person was qualified and then the same person's performance was unsatisfactory to meeting the contract terms? As an extreme example what if the government employee caused personal harm to someone in the contractor's organization and the government should have been aware of this person's mental problems, would the government then be liable for the person's actions? Recommend changed language so the HRA isn't given implied final authority to determine that a government employee is qualified.
17.	Pg. B-19, ¶D.2.b.(1)	Add to end of sentence "SSEB, or prepare any acquisition documents such as the Source Selection Plan, Source Selection Strategy, or Independent Government Estimate."
18.	Pg. C-3, ¶D.2.b.	Recommend changing the term "establishing" to "collecting" since the Business Case Analysis is based on existing contracts.
19.	Pg. C-3, D.2.a. and C-4, ¶E.2.b	Need to clarify if business case analysis only allows the use of SCF Line 3 to enter MEO subcontract costs or if all costs allowed on Line 3 are allowed for the business case analysis.
20.	Pg. E-1 ¶A.1	Recommend writing to state "Standard Competitions in excess of five years, <u>excluding a phase-in period</u> , are only..."
21.	Pg. E-1 ¶A.1	Recommend including a statement to explain prorating costs. Suggested statement "When a performance period, to include the phase-in period, is less than a full year, the costs should be prorated to reflect the shorter period."
22.	Pg. E-1 ¶A.5	Recommend changing the last sentence to read "Agencies shall then apply inflation factors for pay and non-pay categories through the end of the first performance period unless different escalation conditions are described in the solicitation. " This change accounts for ceiling costs and non-EPA costs which are inflated through the end of the last performance period.
23.	Pg. E-1, ¶A.5.	Recommend adding a statement that accounts for the situation where the phase-in period and first period are separately priced CLINs but the first period isn't treated as an option and the cost element has an EPA provision like FAR 52.222-43. In this described situation the first option period would be the second period. "When the solicitation includes escalation provisions on a cost element, the cost should be inflated through the end of the period proceeding the first option period." This change assumes that the contracting officer won't incorporate a new wage determination and adjust the contract price until the exercise of the first option which is the second period.
25.	Pg. E-3, ¶A.10.	Line 14 should read "Minimum Conversion Differential (Enter: The lesser of Line 1 Total x .10 or \$10,000,000."
26.	Pg. E-5, ¶B.1.d	Recommend adding a statement that "New salary/wage tables shall be implemented into the Agency Cost Estimate as soon as they are made available/published by OPM as long as the effective date of the salary/wage table does not follow the start of the phase-in or first performance period." If this recommend change does not occur we will need to determine a discounting calculation because inflation is applied based on the performance period dates. If the effective date of a salary/wage table occurs after the start of the first performance period, this would cause the Agency cost to discount the cost back to the beginning of the first period.
27.	Pg. E-5, ¶B.1.e, Pg. E-6, ¶B.1.g and Appendix F	Basic Pay is only defined with Severance Pay (Pg. E-14, ¶C.5.b.. Definition should be added to Appendix F since it applies to the cited paragraphs. Definition should read that "Basic Pay is the sum of base pay and other entitlement pay."
28.	Pg. E-5, ¶B.1.e.(2)	Only the social security portion (6.2%) of FICA has a limit; the Medicare portion (1.45%) does not have a salary limit. Recommend deleting the last sentence.

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29.	Pg. E-5, ¶B.1.e.(3)	Add sentence after the first sentence for clarification. “Seasonal employee positions can be designated as full-time, part-time, or temporary based on the number of hours scheduled to work and whether benefits are provided.”
30.	Pg. E-6, ¶B.1.f and Pg. E-5, ¶B.1.e.(1)(c)	Clarify existing sentence in B.1.f. to ensure that the Agency tender doesn’t duplicate annual performance awards covered by the miscellaneous fringe benefit cost factor. “...holiday, <u>awards and bonuses not covered by the Fringe Benefit factor, ...</u> ”
31.	Pg. E-7, ¶B.2.b	Clarify existing sentence to follow the solicitation instructions on whether material and supply ceiling cost will be included in the evaluated price. Some solicitations instruct offerors to include any ceiling costs in their price for the evaluation. “If the solicitation includes a material and supply cost ceiling <u>and the solicitation states that the ceiling cost are included in the evaluated price</u> , the agency cost estimate shall reflect this ceiling on Line 2.
32.	Pg. E-8, ¶B.3.a.	Include maintenance as a cost element. Recommended statement to ¶s 3.a.(2), (3), and (5) “If the MEO is responsible for maintenance, the agency cost estimate shall include the cost of maintaining the item (facility).”
33.	Pg. E-8, ¶B.3.a.(3)	Change sentence to read “Assets costing <u>\$5,000 or more</u> are major items for depreciation.” Current language for major and minor had omitted if something cost exactly \$5k.
34.	Pg. E-9, ¶B.3.b	The first sentence currently states that if an asset is not GFP <u>OR</u> purchased within the performance periods, the cost of capital applies. Shouldn’t the “or” be “and”?
35.	Pg. E-9, ¶B.3.f.	Same issue as described in item #27. Recommending “If the solicitation includes a ceiling cost for travel <u>and the solicitation states that the ceiling cost are included in the evaluated price</u> , the agency cost estimate shall reflect this ceiling on Line 3.
36.	Pg. E-10, ¶B.3.h.(1)	It is unclear how minor items are costed, i.e. at 10% of the value, the purchase price for each year of use, or the purchase price for the year of purchase only.
37.	Pg. E-11, ¶B.4	Are military personnel cost included in the calculation for overhead when the total of Line 1 is multiplied by the 12% factor? The current rule is that military personnel cost are excluded because the <u>military composite rate used for the salary is inclusive of overhead costs</u> .
38.	Pg. E-12 -14, ¶C.1, .3, .4b and .4c	It is unclear which competition official is responsible for entering the costs in Lines 7, 8, and 9. Recommend a statement in each cited paragraph that the SSA enters the costs on the specified line.
39.	Pg. E-14, ¶C.5	It isn’t clear if Line 10 costs are restricted to only the 4% severance pay and 1% “remaining ... costs” or if ¶a. allows for other cost to be included if justified.
40.	Pg. E-14, ¶C.6.a and b	¶a. Requires the ATO to “justify the type and calculation of asset disposal or transfer” but ¶b. states that “[t]his entry represents the gain ... at the net book value ... as of the start of the first performance period.” Since the value is set as prescribed in ¶b what is the ATO required to justify?
41.	Pg. E-15, ¶C.7	This paragraph should be changed to read “This table is organized by the North American Industry Classification System (NAICS) issued by the Department of Commerce. The tax rates are provided by the Internal Review Service based on business receipts by industry.” The correction we recommend is to avoid misleading someone to think that the IRS provides industry information that is an exact match to the NAICS codes. In some cases the IRS tax statistics combine multiple industries into a single industry classification and there is not an exact NAICS code match.
42.	Pg. E-16, ¶D.3.	“(3) allocate the minimum conversion attributed to the converting the contract work to Agency performance to Line 15, Adjusted Total Cost of Agency Performance.” This is an easier approach because Line 14 is always calculated the same way and only its allocation among Lines 15 or 16 changes depending on whether the Agency Tender has transferred contract work to in-house resources. Further, paragraph description incorrectly describes what should be included on Line 14 and doesn’t explain how the minimum conversion differential is added to Lines 6 or 13 for the adjusted amounts.

	<b>Reference</b>	<b>Comment</b>
43.	Pg. E-16, ¶D.2.b.(1 & 2)	<p>Recommended change for clarity:</p> <p>If a Standard Competition is performed only on the expanded work, all of Line 14 (minimum conversion differential) is added to Line 6 (total agency cost) to generate Line 15 (adjusted total cost of agency performance.)</p> <p>If a Standard Competition is performed on the entire commercial activity (existing work and expanded work), a portion of Line 14 (minimum conversion differential) is allocated to Line 6 (total agency cost) to generate Line 15 (adjusted total cost of agency performance). The allocated amount to Line 6 is based on Line 1 (personnel) which represents the expanded work. The remaining Line 1 (personnel) is applied to determine the Line 14 (minimum conversion differential) allocated to Line 13 (total contract/ISSA cost).</p>

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