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SUBJECT: OMB Circular A-76

Following are comments from USDA's procurement community.

Attachment B, Public Private Competitions, Section C(2)(a)(3)

This section requires that solicitations for Direct Conversions or Standard Competitions contain the Right-Of-First-Refusal provision at FAR 52.207-3. This entire attachment pertains only to Standard Competitions. The reference to Direct Conversions should be deleted as simply a misplaced reference. The requirement for the provision is found in Attachment C, Section F for Direct Conversions.

Attachment B

If the MEO competes and wins the competition, shouldn't it thereafter be outside of the FTE totals and be responsible to remain competitive under whatever combination of people and equipment it deems most efficient?

The MEO should be allowed to create new subcontracts because it should have the ability to create the most efficient structure. It is not fair to limit the MEO in a way we would not limit competitors.

Attachment B, Section C(5)(c)(2)

This section is a discussion of the process following a decision to terminate a provider after a failure to perform. After termination, the choices available to the agency "4.e. official" are strictly limited to either a direct conversion based upon a Standard Competition Waiver or a new Standard Competition. Agencies should have the maximum flexibility in decision making. The full range of direct conversion options in Attachment C should be available to fulfill the agencies needs after termination.

Attachment C Section B

The "4.e. official" is charged in this section with the responsibility to certify that "the cost of obtaining the activity from another source is expected to be fair and reasonable in accordance with this Circular, OMB Circular A-25, when appropriate, and the FAR". This certification requirement applies when the activity is subject to a Direct Conversion using the Javits-Wagner-O'Day Act (JWOD) Program authority. A reference to the authority of the President's Committee to determine a price to be fair and reasonable should be added to the quoted list by including "41 CFR Subtitle A, Chapter 51."

Attachment C Section F

This section requires that solicitations contain the Right-Of-First-Refusal provision found in FAR Part 52.207-3. The provision is intended to protect the employment rights of the existing Federal employees. However, too few job opportunities are often found in the vendor's workforce to protect all of the existing Federal employees. Moreover, the jobs are perceived to be less satisfying. The Circular should include the requirement to offer job placement services in addition to or in the alternative to the right-of-first-refusal.