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12/18/2002 07:32:20 PM

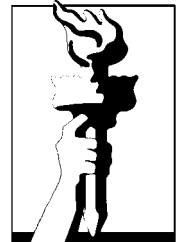
Record Type:Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc:
Subject: Comments on proposed revisions to A-76

Comments pasted below and also attached in a letter in Word.

January 10, 2003

Ms. Angela Styles
Administrator
Office of Federal Procurement Policy
Via Email: A-76comments@omb.eop.gov



RE: Comments on proposed revision to OMB Circular No. A-76, Performance of Commercial Activities (67 Fed. Reg. 69769-69774)

We appreciate the opportunity to provide comments on the proposed revisions to Circular A-76. We commend the OFPP for seeking to improve the competitive sourcing process which has fallen well behind best practices that have evolved from decades of experience at all levels of government and has become a barrier to bringing the benefits of competition to federal agencies.

An improved, effective, competitive sourcing process will improve the transparency, accountability, and performance of the services for taxpayers. To that end, we support your assumption that activities are commercial until some justification is shown that government needs to provide a given service. Likewise, it is commendable that you have addressed the challenge of making agency-to-agency arrangements under ISSAs subject to competition as well.

Reason Foundation and the Performance Institute have collaborated to provide two sets of joint comments. One, submitted separately, provides more general comments on the approach and methods in the revised circular. The comments you hold here provide our focused feedback on the proposed revisions, with one general observation and then some specific comments on parts of the proposed revised Circular.

Our general comment is that competitive sourcing needs to be driven by performance and outcomes, and the Circular should reinforce that. Given that competitive sourcing is now embedded in the President's Management Agenda, and the core of the PMA is performance integration into management decisions and processes, I suggest that the revised Circular should include considerably more focus on using performance to drive competitive sourcing decisions and implementation. As it stands, the revisions better *allow* for performance-driven competitive

sourcing, but do not adequately stress the centrality of performance, and the need for agencies to make performance the foundation of their competitive sourcing decisions.

Competitive sourcing is ultimately designed to improve the performance of the federal government. As such, competitive sourcing initiatives should yield *cost savings* (as defined by reduction in cost-per-unit output) and/or *improved performance* (as defined by improved service levels of outputs or enhanced impact on intermediate or end outcomes.) In past competitive sourcing initiatives, agencies have either failed to measure output and outcome performance or, in the handful of cases where performance was examined, used different performance measures for the managed competition than the program reported under the Government Performance and Results Act (GPRA). This practice must stop. Agencies must clearly define end, intermediate, and output performance measures up front to guide the competition. Specifically, the revised circular should shift away from an over-emphasis on cost containment and reductions and toward a focus on performance improvements, of which cost effectiveness is one criteria. The circular should clearly state that competitive sourcing should be used to enhance performance and achieve efficiencies and in doing so set the stage for an emphasis on best-value competitions.

Most important, though, discussions in the Circular of cost comparisons should be changed to discussions of cost and performance comparisons. The Circular should require that the contracts—with an MEO, with a private service provider, or inter-agency—that result from any of the procedures outlined in the circular be performance based. As highlighted recently by the GAO in *Contract Management: Guidance Needed for Using Performance-based Service Contracting* (GAO-02-1049, Sept. 2002), much more progress needs to be made in turning performance planning into performance results.

Page 1, 4.b.—Presuming that all activities are commercial unless justified as governmental is a sound principle. Our government was founded on the idea that most of life is commercial in nature and the government need provide services only in rare circumstance. Now, with government services accounting for nearly 40% of GDP we have clearly strayed far from that original concept. OMB should consider extending this principle to the FAIR Act by requiring that agencies list all employees, including inherently governmental ones, and provide reasons for why they are coded inherently governmental.

Page A-3, D.3.—Another improvement to the FAIR inventories could be added here by adding an additional Reason Code to reflect results of previous sourcing decisions. This would be part of a shift to have the FAIR inventories more fully reflect agency sourcing decisions and human resources allocation. The end result would be making the FAIR inventories a more robust human resources management tool. The Reason Codes already include “Agency Performance is a MEO as a result of a Standard Competition.” Another Reason Code should be added stating “Agency performance has been subjected to a Standard Competition or Direct Conversion, and the activity is being provided by a contractor.”

Page A-5, 2.a.1—Not allowing Challenges and Appeals of the application of Function and Reason codes is shortsighted. In the short term it may sensibly seem that OMB itself can police the use of Function and Reason codes, but the intent should rather be to create a process that will help ensure the proper use of Function and Reason codes in the long run, independent of changes in Administration, etc. Indeed, if anything the evolution should be towards more robust inventories and Function codes and richer Reason codes that become the real basis for confronting decisions about what functions should and should not be subject to competition.

Page B-2, A.2.(4)—The 30% threshold in this section is set too high. A 10% threshold would allow for agencies to make minor expansions of existing commercial activities in response to minor changes in conditions. The point of the threshold, and others in the proposed revised circular, is to balance maximizing the benefits of competition of commercial activities with reducing the transaction costs of procedures. A 30% threshold would encourage agencies to use incremental expansions to avoid the competition process. That many agencies will seek ways to avoid the competition process is abundantly clear. Indeed, any expansion of a commercial activity by more than 10% will in most cases be a significant management decision and should as a matter of course be subject to a sourcing analysis.

Page B-5, C.1.b.(6)—The biggest barrier to improved use of competitive sourcing is that agency managers have a hard time seeing any benefit in it for them. To them, the competition process is often just an unfounded mandate. Best practices in competitive sourcing in the private sector and in government indicate that allowing agencies to retain some of cost savings, when there are some, will dramatically improve buy-in for the process. Necessary changes should be made here and in OMB Circular A-11 to allow agencies to retain a modest—10 or 20%--of savings realized from competitive sourcing. As will all funds, they must have a performance-based plan for use of those funds, such as retraining personnel made redundant by the process. Such an investment can actually be a direct means of helping agencies cope with the human capital crisis.

Page B-7, 2.a.(13)—Since agency tenders are exempt, appropriately, from requirements to include a small business strategy and participation of small disadvantaged businesses. However, if it is deemed so important for the public good that these are included in private sector tenders, then they are clearly public goods that are sacrificed by accepting the agency tender. Some consideration of this cost should be added to the evaluation process in Attachment E, Section B.

Page B-7, 2.a.(13)—Excluding past performance criteria from agency tenders is a mistake on several levels. First, it defies common sense. It is a simple fact that past performance is the most significant indicator of future performance—in all things. We use past performance to make sourcing decisions every day of our ordinary lives, from where we buy our gasoline to what doctor we go to. To say we can't figure out how to use it in federal competitive sourcing evaluations is a cop out. Yes, we have been struggling with how to use past performance consistently, but difficulty is no reason to give up. If we want effective, performance-based evaluation of potential service providers, we simply must allow past performance to be one of

the factors. Second, by exempting agency tenders from past performance criteria, OMB is reinforcing the notion that agencies cannot and need not demonstrate what they have done in the past. The exemption will be a setback in the broader PMA goals of performance accountability.

Page B-8, 2.a.(15)—To reinforce the balance and accountability of the processes created in the proposed revised Circular, you should state clearly in this section that the QASP requirements apply to all service providers.

Page B-16, 5.c.—The guidance on Failure to Perform does not adequately account for reality in the event of agency service provision. Who monitors their service provision? In accordance with what standards? We well know from evaluations of post competition accountability in previous A-76 competitions that in the event the MEO wins the competition, there will in most cases be no further evaluation of performance. Even if the function is subject to competition again in the future, this proposed revised Circular excludes past performance from agency tenders, so that brings no accountability either. It is vital that this section be revised to create robust mechanisms of accountability for agency service provision.

Page B-16, 5.c.(2)—The Circular must set out specific requirement for agencies to collect and record performance data for all service providers as part of their post competition accountability requirements. The requirements should include that contracts specify performance criteria and means of measurement, create performance-monitoring procedures, record all performance data, and periodic evaluation of the adequacy of performance.

Page B-18, D.1—In keeping with the balance sought in the proposed revised circular, the right of first refusal requirements should be extended to private sector employees when a private service provider loses a competition to an agency.

Page C-5, H—The biggest barrier to improved use of competitive sourcing is that agency managers have a hard time seeing any benefit in it for them. To them, the competition process is often just an unfounded mandate. Best practices in competitive sourcing in the private sector and in government indicate that allowing agencies to retain some of cost savings, when there are some, will dramatically improve buy-in for the process. Necessary changes should be made here and in OMB Circular A-11 to allow agencies to retain a modest—10 or 20%--of savings realized from competitive sourcing. As will all funds, they must have a performance-based plan for use of those funds, such as retraining personnel made redundant by the process. Such an investment can actually be a direct means of helping agencies cope with the human capital crisis.

Page D-3, H.1.a.(5)—A requirement to publish the written request in *FedBizOpps* should be added. One overall goal of this proposed revised circular is to increase transparency in the sourcing decisions for commercial activities. The public will not know to seek access to these

written requests as there is know way of knowing they were ever created. A publishing requirement is a simple and uncontroversial method to improve the transparency of this process.

Page D-3, H.1.b.(3)—Similar to the comment immediately above, the best way to create transparency and a check on the designation of specialized training as inherently governmental is to require that such needs be published in *FedBizOpps* so that private providers may be revealed and certain specialized training be revealed to be commercial in nature. We cannot assume we always know how markets and services evolve and that what is available today is what will be available tomorrow.

Page E-1—This attachment is a good place to reinforce the relevance of competitions to improve performance vs. competition to realize cost savings. It is very easy for agency personnel reading this proposed revised Circular to think the focus of the whole exercise is cost savings. It is not made clear that competitions that dramatically improve performance, even if they do not reduce costs, are still desirable. Here a statement putting cost savings into the broader performance context would be very valuable.

Page F-1—A definition of “private service provider” is needed.

Signed

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