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Subject: Comments On Proposed Revisions To OMB Circular A-76

National Industries For The Blind

Comments On Proposed Revisions To OMB Circular A-76

Submitted By

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National Industries for the Blind (NIB) is one of two central nonprofit agencies designated by the Committee for Purchase from People who are Blind or Severely Disabled as authorized by the Javits-Wagner-O'Day (JWOD) Act. NIB supports the revisions proposed to OMB Circular A-76 and its attachments and is pleased to see included specific authorization for direct conversions to nonprofit agencies as sources for services under the JWOD program.

In response to the notice published **In the Federal Register: November 19, 2002 (Volume 67, Number 223)**, NIB respectfully submits the following three comments on the proposed revisions.

Comment #1

On page 2 of Attachment C, direct conversions to entities under the Javits-Wagner-O'Day Act should be exempted from the portions of documentation required in the last sentence of the following paragraph:

C. Competition Waiver

2. Competition Waiver Documentation. Competition Waivers shall include: (a) the commercial activity; (b) the scope and performance requirements of the work being converted; (c) location; (d) incumbent service provider; (e) a waiver certification statement; and (f) an explanation of how the direct conversion results in either (1) a significant financial improvement based on full costs calculated in accordance with this Circular or (2) a significant service quality improvement that cannot be achieved by the current service provider. Competition Waivers for conversion to a private sector or public reimbursable source (other than entities authorized under the Javits-Wagner-O'Day Act and exception 7. above) shall also include (a) an explanation that the conversion will not result in limiting future sources or competitions and (b) a statement that agency assistance will be provided to adversely affected civilian employees in accordance with 5 CFR Part 351 and that these employees will be provided the Right of First Refusal as required by FAR Part 52.207-3.

Comment #2 (Related to Comment #1)

In addition, direct conversions should be exempt from the provision on page 18-19 of Attachment B below:

D. SPECIAL CONSIDERATIONS.

1 Right-of-First-Refusal. Agencies shall afford adversely affected Federal civilian employees with the Right-of-First-Refusal by including FAR 52.203 in the solicitation for all Standard Competitions and Direct Conversions. Adversely affected Federal civilian employees are afforded the Right-of-First-Refusal to

non-management job vacancies created by a conversion of agency performed work to contract or public reimbursable performance as a result of either a Standard Competition or Direct Conversion. The Right-of-First-Refusal does not apply to: (1) conversions from public reimbursable sources to agency performance, (2) conversions from contract performance to agency or ISSA performance, or (3) to temporary employees, nonappropriated fund civilian employees, foreign nationals, military personnel, or civilian employees who voluntarily separate or take early retirement. The HRA shall provide the CO with a list of adversely affected Federal civilian employees when the Performance Decision is made. The CO shall provide this list to the selected contractor or public reimbursable and determine the compliance with the Right-of-First-Refusal. When job openings are created by a conversion to contract or public reimbursable performance and the employees on this list are deemed qualified by the HRA for these job openings, the selected source contractor or public reimbursable shall be required to offer employment to these employees before hiring new or transferring existing employees to fill these job openings. The clause at FAR 52.207-3, Right-of-First-Refusal, may be used to affect this requirement in the solicitation:

REASON: While the experience and skills of current federal employees typically is an excellent resource for personnel on a new contract, Under the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 46-48, nonprofit agencies must maintain a ratio of at least 75 percent of direct labor being performed by individuals who are blind or severely disabled.

Comment #3

There are some errors in the following paragraph, found on page 13 of attachment E:

4. (Line 9 of the SCF)

b. Nonprofit Agency Fees. When a Javits-Wagner-O'Day participating nonprofit agency (as defined by FAR Part 8 such as the National Institute for the Blind or NISH, participates in a Competition, the SCF shall include the 4% fee paid to the Committee for Purchase from People Who Are Blind or NISH. This is required to determine the total cost of contract performance to the Government for Competition purposes with the agency cost estimate. The SSA shall determine if the 4% is included in the contract price, and if so, this contract price is entered on

Line 7 of the SCF. If the 4% is excluded from the contract price, then the fee shall be entered separately on Line 9 of the SCF.

This paragraph should read as follows:

b. Nonprofit Agency Fees. When a Javits-Wagner-O'Day participating nonprofit agency (as defined by FAR Part 8) such as the National Industries for the Blind or NISH, participates in a Competition, the SCF shall include the 4% fee paid by authorized JWOD producing nonprofit agencies to a central nonprofit agency such as NIB or NISH under regulations of the Committee for Purchase from People Who Are Blind or Severely Disabled. This is required to determine the total cost of contract performance to the Government for Competition purposes with the agency cost estimate. The SSA shall determine if the 4% is included in the contract price, and if so, this contract price is entered on Line 7 of the SCF. If the 4% is excluded from the contract price, then the fee shall be entered separately on Line 9 of the SCF.

Reason for this third comment: The cited fees are paid by the authorized nonprofit agency to either National Industries for the Blind (NIB) or to NISH, the central nonprofit agencies designated by the Committee For Purchase From People Who Are Blind or Severely Disabled under the JWOD Act. These fees are part of the producing nonprofit agency's costs.