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To: David C. Childs A-76comments/OMB/EOP@EOP
cc: Scott Rawls <rawlss@abacusokc.com>
Subject: Review of draft OMB Circular A-76

REFERENCE: 19 November, 2002 Federal Register Notice - Proposed revision to Office of Management and Budget Circular No. A-76, Performance of Commercial Activities

Mr. Childs,

Although we were not specifically requested to review the new circular, we believe our extensive experience in the A-76 arena qualifies us to provide a thorough review and constructive comments.

As requested, our comments are attached and included in the body of this email.

Should you have any questions or wish to contact us regarding these comments, please do not hesitate to contact either myself or Mr. Rawls.

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Abacus Technology Corporation has been assisting the government in the Competitive Sourcing arena for almost five years and we consider A-76 to be one of our core competencies. Additionally, many of our analysts have personal A-76 experience well beyond that of the company. For these reasons, we believe you will find our comments both insightful and reasonable.

We applaud OMB for attempting to shorten the unduly long process of conducting these studies, although the proposed twelve months may be unreasonable given the current environment. We firmly believe that prior to implementation of the new circular, government agencies must revise their internal A-76 guidance to relax the requirements on the MEO Team, specifically the required documentation.

Sincerely,

Duane Curry

COMMENTS ON AND
PROPOSED REVISIONS
TO

OMB CIRCULAR (OMBC) A-76, PERFORMANCE OF COMMERCIAL ACTIVITIES
Federal Register Notice, November 19, 2002

Attachment B, paragraph B.1. Will the Agency's status as "directly interested" also allow the ATO to protest a decision through GAO, or simply appeal?

Attachment B, paragraph C.2.a.(12). Below are two examples of instances where the cost of security clearances could be significantly different for public and private competitors. While we understand the difficulty in determining the number of new clearances required, the cost of obtaining new security clearances can be high, and could easily swing the competition. We believe the costs should not be ignored. Using the philosophy "even the MEO is assumed to be an entirely new organization" is not sufficient, as this philosophy is not applied to other areas of the costing (e.g. severance pay calculations, etc.).

The differences in the cost of security clearances would be based largely on the makeup of the current organization - mostly military, mostly civilian, number of sub-contracts, or a good mix of the three. Again, we suggest OMB should develop an estimating procedure to determine these costs.

Attachment B, paragraph C.2.a.(13) References paragraphs C.6.b.(2) & C.6.d.(2). We cannot find these references. The reference to paragraph C.6.b.(2) might be C.5.b.(2), but the other reference (C.6.d.(2)) is totally unknown.

Attachment B, paragraph C.3.a.(2). This paragraph states that the in-house offer consists of the MEO, in-house cost estimate, etc. "MEO" is defined as the "staffing plan" for the new organization. Attachment B, paragraph C.3.a.(4) further states the MEO is not the current organization, but a product of reengineering, etc. Thus, the MEO itself is merely the end result of the changes, or, as stated above, the staffing plan. However, most agencies currently require a Management Plan built by defining the current organization, describing changes to it, and then describing the new MEO. To avoid confusion, please clarify that the entire Management Plan is not submitted to source selection, but merely the MEO (staffing). The rest of the Agency Tender (responses to Sections L, M, etc.), would clarify the MEO's ability to perform the work. Also, please see our comments regarding development of a Management Plan in light of the new time-frames.

Attachment B, paragraph C.6.a.(1). If the only information released is the SCF and the Agency Tender, on what basis can the in-house offer appeal a private sector's compliance? That is, what documentation will be made available for review on which to base the questions?

Attachment B, paragraph D.1. States, "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...". How can the HRA determine qualifications of employees for contractor positions? Will the contractors be required to submit position descriptions for every position and submit them with his/her offer? Doesn't this open the door for non-performance issues? For instance, the HRA determines an employee is eligible and through the ROFR forces the contractor to hire said employee. If that employee fails to perform, isn't the HRA (thus the government) responsible for the non-performance.

Attachment E, paragraph B.1.c. States the 1776 productive hours excludes "...administrative leave, training and other..". Do the "training" hours that are excluded include only common training (e.g. EEO, safety, etc.), or an average of all training (e.g. specific job related training like confined space training, refresher training on new equipment, etc.)?

Attachment E, paragraph B.2.d. It is unreasonable to force inflation to the end of the a performance period. It is not uncommon for the MEO to receive certified estimates from local vendors and to include those costs in the MEO. While we understand the rationale that the actual purchase date for materials/supplies is unknown, in this case, it is known. For instance, assume the MEO will require a new piece of equipment. A local vendor agrees that it will sell that piece of equipment to the government for \$1000 on the start date of the contract. If this price is inflated to the end of the performance period, the cost reflected against the MEO is more than \$1000 it will actually cost. Also, commercial bidders would not inflate their estimates under similar circumstances. We suggest adding the following comment, or something similar, to the paragraph. "If the MEO has a signed agreement for purchase of an item at a specific cost, the actual cost of the item may be used without inflation."

Attachment E, paragraph B.2.d. Suggest adding a note not to inflate "Plug Costs" from the solicitation. These are costs the contracting office designates, and all bidders use the same costs, not inflated. The current version of winCOMPARE does not inflate them, but a note should be added to clarify the point.

Attachment E, paragraph B.3.g.(2) There has been confusion recently over the term "Federal Employees". We understand it to mean "Civil Service Employees", but have been told by some installations that the term also covers Military Employees, which are in fact employees of the federal government, and thus are federal employees. Attachment B, paragraph C.3.a.(4) seems to preclude contracting work performed by any in-house resource. When these two references are taken together, the impression is that the term Federal Employee does indeed apply to military members as well. Please clarify.

Attachment E, paragraph C.5.b. & C.5.c. Why is the SSA calculating one-time costs? Currently, the in-house team computes these costs (for winCOMPARE users, severance pay is automatically computed). Also, is the one percent "Relocation, Retraining, and Other Costs" factor waiverable (reference paragraph Attachment E, paragraph B.4.b., which allows a waiver to the 12 % overhead factor)?

Attachment E, paragraph C.6.b. In the interest of fairness, the entire net book value of a sold or transferred asset should not be subtracted from the private sector's bid. If an item has 10 years left on it's useful life, and the competition is for a 5 year period, the MEO would only have had use of the asset for the first 5 years. Therefore, the final 5 years of depreciation and any residual value should not be subtracted from the offeror's bid.

Attachment E, paragraph D.2.a. While we understand the rationale that New Requirements and Expansions are considered as private sector operations, it is not reasonable to consider the conversion differential against the in-house bid. If looked at from a literal point of view (going from private sector performance to in-house performance by definition), it would first appear the conversion differential should be applied against the in-house offer. However, consider the purpose of the conversion differential (Attachment E, paragraph A.4.), which states that it "... precludes conversions based on marginal estimated savings and captures non-quantifiable costs related to a conversion such as disruption and decreased productivity". In the case of a new requirement, the reality is

no one is currently performing the function, so there is a conversion under both scenarios (either to contract or to the MEO). Thus, in this instance, the conversion differential should be a common cost. In the interest of keeping a level playing field, it is unfair to the in-house offer to consider a cost based solely on a definition and ignore the reality of the situation.

Milestones:

In order for the new timelines to be met, the criteria set forth in Attachment B, paragraph C must be followed. In the conduct of many studies, spanning many agencies, the single greatest cause of milestone slippage is the failure to properly plan the study prior to announcement. The addition/removal of functions from that originally announced, as well as changing rules of engagement, cause constant rework, which in turn causes milestones to slip. As an example, please reference Attachment E, paragraph B.3.g.(2) of the new Handbook. It states that functions can be removed from a study, and the solicitation modified, if an agency wishes to directly convert some the work in that function. This type of change requires rework of the PWS and the RFP, and since the MEO is likely underway from the beginning, the Management Plan also. It is imperative that proper up-front planning be done to avoid this situation.

Another related cause of milestone slippage is not releasing the draft RFP and PWS. Early release of these draft documents allows comments/questions to be addressed early in the process. Historically, the sheer volume of comments, as well as the nature of the comments, has caused delayed release of final documents, thus causing all subsequent milestones to slip. One method of helping ensure timely release of the PWS is have agencies begin workload data collection as soon as a function is identified on the FAIR Act Inventory as "studiable". Enough examples exist of proper workload, that most functions should have no trouble beginning data collection. This would allow the PWS team access to "good" workload data from the beginning.

Additionally, in order to fully comply with the new timelines, OMB and/or agencies must set policy in place regarding rules of conduct. For instance, what information is/is not releasable to the MEO Team and when. All bidders (both in-house and commercial) can start developing their proposals upon public announcement of the study; however, the MEO Team is responsible for documenting the current organization, and for describing changes to the current organization in order to implement the MEO, as well as developing a bid. This is a requirement not levied on commercial bidders, and requires access to information long before release of the RFP/PWS. However, many agencies, because of the GAO "Jones-Hill" ruling, are reluctant to share information with the in-house team prior to release of that information to the public. And typically, they will hold that information until release of the RFP/PWS. We strongly encourage agencies to publish all "current organization" information with the public announcement, thus allowing the MEO Team to begin the documentation process. The information required includes, at a minimum: current authorized and assigned staffing, organization charts, list of vehicles/equipment currently used (regardless of whether or not they'll be provided as GFP), historical overtime by position, historical travel and training requirements (regardless of whether they'll be required), activity based costing information, and sub-contracts currently in use (regardless of whether or not they'll be provided). This information is needed to justify the changes required to implement the MEO. Further, as mentioned above, we strongly encourage OMB/Agencies to release draft RFP/PWS documents well in advance of final release. This allows the MEO Team, as well as commercial bidders, to begin preparation of proposals, and to ask questions early enough in the process to get viable answers.

As stated above, the timeframe from release of the final RFP and PWS to Tentative Decision is 4 months. Source Selection, especially on a large study (for instance, large whole-base studies involving thousands of FTEs

and dozens of diverse functions), can take many months, but for these purposes let's assume it can be trimmed to 3 months. That leaves only 1 month to complete the Management Plan. The Management Study Team is tasked with tracking (in minute detail), the staffing required for the MEO. This includes a direct tie to the workload in the PWS (another task not levied on other bidders). It takes time to develop this direct link between the PWS and the MEO, leaving no time to use the tools listed in attachment B, paragraph C.3.a.(4), which in themselves take time to use. Bottom line: the in-house organization should not be required to develop a more detailed product than other bidders. Indeed, given the timeframes in the new Circular, it would be impossible for in-house teams to comply with current agency requirements for a detailed Management Plan that tracks the changes from the current organization to the new in such detail.

Can we assume from the lack of mention that the Independent Review process is no longer required? If not, that too must be considered in the 4-month timeframe from final PWS to Tentative Decision.

Finally, we contend, contrary to most government agencies, that is not so much the number of FTEs being studied that should dictate timeframes, but more the number of functions being studied. A Supply function with 100 FTEs involves little more than a Supply function with 20 FTEs. However, a study involving a Supply function of 20 FTEs, a Transportation function of 20 FTEs, and an Information Technology function of 20 FTEs is much more involved than any single function, regardless of size. We encourage OMB to consider this when establishing timeframes.

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