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To: David C. Childs A-76comments/OMB/EOP@EOP

cc:

Subject: A76 Comments

<PRE>Attached.

- comments on revision to a76.doc

National Association of Air Traffic Specialists (NAATS)
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The National Association of Air Traffic Specialists (NAATS) is pleased to provide the following comments to the Office of Management and Budget (OMB) on your proposed changes to the OMB Circular A-76.

It is the position of NAATS that while improvements in the current circular are certainly overdue, these revisions go too far and add undue burdens to the taxpayers of the United States. Beginning from the initial presumption that all activities are presumed to be commercial, and ending with the confusing and poorly organized options for “best-value” procurements. This revision puts too many restrictions on the federal agencies competing to retain their own work, especially considering that they are competing against industry firms well experienced in the development of proposals.

Specific Comments:

Page 1

4. b. This is much like a person now being presumed guilty until proven innocent. The loyal, hard working employees of government jobs should remain inherently governmental unless it’s proven that their jobs are commercial in nature. This is destructive to employee morale and forces their jobs to go through the process without any added justification to ensure that the jobs really are commercial in nature.

Page 2

6. Attachments – There should be a separate attachment addressing the extent of participation allowed by law and this circular for employee representatives. This would define it in one section and make it more of a “level playing field” for said representatives.

Page A-2

D. 1. The guidance to presume all activities are commercial in nature will cause the Government to err on the side of outsourcing. In areas affecting national security and public safety such as Air Traffic Control including Flight Service this places an unreasonable risk on the flying public and needlessly endangers our national security.

D. 2. The 4.e. official may exempt, in writing with sufficient justification, agency performed commercial activities from private sector performance using Reason Code A. What is sufficient justification, this is very subjective.

Page A-3

D. 3. The public should be informed about all categories and justifications.

E. Inherently Governmental Activities-In order for an activity to be considered inherently governmental does it have to fall under one of the sub-definitions, two of the sub-definitions, or all of the definitions in 1. a,b,c,d? This doesn't seem like a "level playing field" if that 4.e. official can arbitrarily pick and choose. If a job category falls under just one of those definitions, it should be considered inherently governmental.

Page A-5

F. 2. a. 1. 30 working days is an excessively short period of time to prepare and submit challenges on issues of public safety and national security. The period should be extended to 180 days.

Page B-5

C. 2. a.1-A PWS that is developed in aand may encourage innovation. This again gives the contractors an advantage if the MEO's hands are tied as far as resources and equipment go.

Page B-6

C.2.a.4. -There is no time frame as to when the CO will identify which procedure will be used to select the source. This should be stated at the beginning of the competition so all parties involved know whether they are competing using the LPTA, CTTO, or phased evaluation process.

C.2.a.9. -Innovation-The MEO is restricted in equipment they can use, as opposed to that of a contractor.

Page B-16

C.5.b.1-By the end of the last year of performance used in the competition, a recompetition shall be performed in accordance with the FAR and this circular. If the contractor wins the initial competition, how is the government supposed to compete to take the job back if all of the FTE's have been dispersed?

Page B-17

C.5.c.3-Temporary Remedies-This “not to exceed one year” is unrealistic. If the service provider is terminated, it would take over one year to hire and train capable people.

C.6.a.2.-10 working days is an excessively short period of time to prepare and submit appeals on issues of public safety and national security. The period should be extended to 180 days.

Page B-20

D.3. Nonsensical - directly affected employees and their representatives may participate in the Standard Competition process in accordance with paragraph D.3. above. Where is D.3? All employee and representative participation should be identified in a separate appendix.

Page E-1

A.1.-A period of performance of 3 years (extendable to 5) risked churning and re-awarding a contract early. With a 12-month procurement cycle (unrealistic for complex programs like Air Traffic Control) there will be distractions of a procurement 1/3rd of the time. Additional option years (7-10 years) or award term contracts should be allowed. Again, whom does the private contractor compete with if the government workforce has been dis-banded as a result of the initial competition?

A.3. -Common costs should be identified at the very beginning of the process not held until the solicitation. In order to keep that “level playing field” alive.

A.4. - Specific guidance on how to ensure the minimum conversion differential is evaluated under best value procurements is missing and should be added.

Page E-4

B.1.c.-Using 1776 hours to determine FTEs places the government at an unfair disadvantage. The federal government contracting industry norm is 1920 hours and should be used.

Page E-9

B.3.e.3-Mandating the cost to provide liability insurance without specifying the amounts is inappropriate. In the event high-risk public safety functions like Air Traffic Control are outsourced, industry’s exposure is substantially more and liability insurance amounts must be specified. The MEO having to include this cost puts them at an unfair advantage.

Page E-11

B.3.h.2-On Cost type contracts the award fee represents the profit the company makes. The government is non-profit and the MEO should not be burdened with profit. It is inappropriate and ineffective.

Page E-12

C.1.b.4+5-On cost type contracts the award fee represents the profit the company makes. The government is non-profit and the MEO should not be burdened with profit. It is inappropriate and ineffective.

Page E-14

C.5.b.-If the contract is awarded to Industry, separation incentive pays (VERA, VSIP) are real costs to the government and should be reflected in the industry-evaluated price.

Feel free to contact me with any questions or comments on this document.

Sincerely,

Walter W. Pike
President