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

cc:

Subject: Comments - Draft Revised A-76 Circular

Rayleen Cruz, Manager, Property and Facilities, D-7910, Bureau of Reclamation, P. O. Box 25007, Denver, CO 80225-0007 with a telephone number of 303-445-2023 and an email address of recruz@do.usbr.gov submits the following:

D-7910

December 10, 2002

ADM-1.10

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street N.W.
New Executive Office Building, Room 9013
Washington, DC 20503

Subject: Bureau of Reclamation Comments on the Draft Revised A-76 Circular

Dear Mr. Childs:

The Bureau of Reclamation provides the following comments and concerns regarding the revised A-76 Circular:

- The 4.e. official is at the assistant secretary level. The Circular states certain responsibilities may be delegated “to comparable officials in the agency or agency components.” Delegations are usually downward—not across the organization. This delegation authority needs to be at the bureau level. The level currently permitted is not conducive to getting the competitions done in a timely and efficient manner.
- We recommend delaying implementation of these new procedures until OMB has had time to respond to comments and concerns. We further recommend that OMB implement these new procedures in a “pilot” environment at one or more test agencies to determine the feasibility and workability of these new processes. We have some concerns about timeframes and concepts, and feel some test results would improve the final implementation of these processes.
- We recommend more definition of “Non-FAIR Act Commercial Activities Inventory.” We are unclear as to what would be a “Non-FAIR Act Commercial Activity.”

- We have concerns about the timeframes mandated in the Circular. While we acknowledge the need for a faster competitive process, we do not endorse a rigid application of mandated timeframes for all studies. We recommend target dates with monitoring and explanation to the 4.e. official when timeframes cannot be met. We do not believe approval from OMB is necessary in most cases. Currently there are limited resources and trained staff. This seriously impacts our ability to meet these timeframes. We also recommend that the award process not be included in the 12-month timeframe.
- In Attachment B, page 3, Section B: Add a subheader of “Competition Officials” as this term is used further in the document and this addition would make that term easier to understand.
- Same section as above: We recommend that this Circular not dictate who does each step of the process, e.g., the HRA “will inform the incumbent service providers of the competition and make public announcements at the local level in the FedBizOpps and include in these announcements the agency, location, resources being competed and agency officials responsible for its completion.” In addition, the ATO has too many diverse roles (in some cases conflicting roles) where one person does not fit the bill. We recommend that the steps be listed but not mandate the specific person who must accomplish each step.
- Page B-3, B., 3., a., next to last sentence: The reference should be “(see paragraph D.1. below).”
- Page B-6, (7): The decision regarding government property should not be made at the 4.e. level. This is too high a level for such a decision.
- Page B-9, (4): The limitation on the MEO not to have the ability to use new subcontracts is unfair to the Government. Contractors always have the option to subcontract work depending on their skills and abilities—the Government should have this same option.
- There are two different definitions of the acronym QCP. On page B-8 it is referred to as a “quality control program” and on page B-9 it is referred to as a “quality control plan.” We recommend consistency.
- Page B-9, (7): This part states Phase-in costs shall be included on Line 3 of the SCF. In Attachment E it states it should be on Line 5 of the SCF.
- Page B-10, c.: The references are very hard to follow. This paragraph is a good example of that. It states “...in accordance with Attachment C and prepare tenders in accordance with paragraph C.3.a.” The paragraph reference is actually in Attachment B. Another example is on page B-13, the first sentence on the page. We recommend more clarification as far as attachment references.
- Page B-15, 5. a. (2): Change 4.a. official to 4.e. official.

- Page B-18, D. 1.: The wording in this paragraph causes us great concern. The way it is stated in this paragraph, nonappropriated fund civilian employees are not entitled to the Right of First Refusal. Many of our employees are not paid from appropriated funds. If this is referring only to those nonappropriated funded civilian employees as defined in 5 USC 2105(c), then this should be stated as such. If that is not the intent, then we suggest it be deleted as it is unfair treatment.
- Page B-19, 2.: We suggest these Team designations, responsibilities and restrictions be moved to Page B-3 with the other roles and responsibilities, as these are very important roles of the process.
- Page B-20, 3.: Paragraph D.3 above is an incorrect reference.
- Page C-1, A.: The intent is confusing for the activities meeting the criteria listed. We recommend OMB retain the language contained in the Exhibit 1 of the current Circular that authorizes retaining work in-house for these functions. The direct conversion language in this revised document does not reference retaining functions in-house that meet the criteria. It appears that, under a competition waiver and a business case analysis, retaining in-house is an option and yet it is never addressed in this attachment.
- Page C-3, D, 1. c.: Is the “no more than \$5,000 in asset purchase requirements” over a given period of time, e.g., daily, monthly, annually, or is it a unit price of one item? This is misleading and needs clarification.
- Page C-3, D, 1. e.: We again recommend deleting this rigid 15-working day timeframe. There could be circumstances that preclude attaining this.
- Page C-3, D, 1. i.: We recommend deleting this sentence. The use of market surveys is a viable alternative that demonstrates the market trend of costs for services without the undue expense of a solicitation.
- We recommend the streamlined approach be retained as an option. We disagree that the streamlined approach has been used only to retain functions in-house. Our streamlined studies were legitimate studies where we competed with legitimate on-going contracts of identical program areas. No predisposed outcome was known. There are situations where the streamlined method is an excellent approach to competition with less time and money expended in the process. We further recommend the Express Review process be incorporated into the Circular as an OMB approved alternative.
- Page C-4, first continuing paragraph: We recommend deleting the words “fixed price” as there are other types of contracts that also serve the same purpose in the cost comparison process.

- We are concerned about the additional workload associated with competing ISSA's. This will be difficult to accomplish in 5 years with the limited resources available. It will be very costly and time-consuming.
- There will be a learning curve for the Government to prepare their in-house cost estimates in CLIN's. This is somewhat confusing with how the CLIN estimates relate to the SCF line items.
- Page E-6, j.: We question if the CO should also certify SCA positions in addition to DBA.
- Page E-7, l.: We recommend expanding this category to include students and other types of labor sources. Interior specifically uses students to perform certain functions.
- Page E-8 a. (2), (3), and E-9, b.: We would suggest raising the asset value considered as capitalized. Agencies have raised their capitalization thresholds above \$5,000. OMB should also follow suit in this Circular. We recommend \$10,000 or \$15,000 based on Interior's current threshold.
- Page E-10, g. (2): We have the same comment here as above regarding limitations on the MEO to use contractors.
- Attachment F: We recommend this be included in the front of the Circular as the terms are new and this would help the reader understand the document better.

We strongly urge OMB to allow studies in process to continue completion under the current Circular provisions. We have invested a great deal of time and resources in our current studies. It would not be cost effective for us to start over at this point in time. It would also not be appropriate to apply the new mandated timeframes to these studies.

We appreciate the opportunity to comment on these significant process revisions. If you have any questions regarding our comments, please contact Rayleen Cruz at 303-445-2023.

Sincerely,

/s/ Rayleen Cruz

for Gary Palmeter
Manager, Property and Office Services Division

bc: D-7900, D-7910 (Reading/Cruz)

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