

"Linden, Amy" <Linden@pbworld.com>
12/19/2002 04:43:33 PM

Record Type: Record

To: David C. Childs A-76comments/OMB/EOP@EOP
cc: dcohen@CH2M.com
Subject: Comments on Revisions to OMB Circular A-76

The comments of the Design Professionals Coalition on the revisions to OMB Circular A-76 are contained in the attached signed letter from DPC Chairman, Tom O'Neill, as well as shown below in case there is a problem opening the attachment. Thank you for this opportunity to comment. If there are any questions, please do not hesitate to contact DPC through:

Debra S. Cohen
1250 H Street, NW, Suite 575
Washington, DC 20005
Office: 202/393-2426 Fax: 202/783-8410

Thank you.

Text of Letter follows:

Dear Mr. Childs:

The Design Professionals Coalition (DPC) strongly supports OMB's November 19, 2002 revisions to Circular A-76 and several related policy documents that govern how the Federal Government obtains goods and services.

DPC is a national organization created in 1983 to represent the governmental affairs and business interests of larger A-E firms. Its membership includes the nation's leading engineering, architectural, surveying and mapping firms. Member companies are multi-disciplined, multi-practice firms with both domestic and international practices, and employ alternative project delivery as well as design-bid-build approaches. We are the leading edge companies which provide the ideas, innovative approaches, designs, and related services without which there would be no infrastructure, environmental protection, or transportation projects. How well these services are performed directly, impact project life-cycle costs and customer satisfaction.

Our member companies enthusiastically applaud these revisions, and the underlying premise that activities which are not inherently governmental and therefore are presumed to be commercial in nature should be fairly competed.

Below are our specific comments on the following areas of the proposed revisions to OMB Circular A-76: 1) Alignment with the Federal Acquisition Regulations (FAR); 2) Circular A-76 and Architectural-Engineering (A-E) Services; 3) The Inventory Process; 4) Public-Private Competition Terminology; 5) Support Agreements (Work for Others); 6) Calculating Public-Private Competition Costs; and 7) Definition of "Agency Source".

1) Alignment with the Federal Acquisition Regulations (FAR)

Alignment of OMB Circular A-76 with the Federal Acquisition Regulations (FAR) is a sound and long over due decision. With the exception of procurement of Architectural-Engineering (A-E) services, which will be explained later in these comments, this revision will facilitate the Administration's competitive sourcing policy and ensure "apples to apples"

comparisons in any resulting competition between the private sector and government agencies for matters that are judged commercial in nature.

2) Circular A-76 and Architectural-Engineering (A-E) Services

There is a fundamental conflict between the revised Circular A-76 and the statutory requirements for the procurement of A-E services, including surveying and mapping. While use of Acquisition Planning principles to establish time frames and standard competition procedures as outlined in Part 7 of the FAR and the appointment of a Source Selection Authority (SSA) are consistent with FAR Part 15 and appropriate for obtaining most goods and services, such are not permitted for the procurement of “A-E services,” which are prescribed by different regulations and statutes.

The procurement of these unique services is done through “Qualifications Based Selection” (QBS) as prescribed under (40 USC Section 541 et seq.) and not on the basis of cost. If it is OMB’s intention to allow Federal agencies to compete for such service requirements, an approach must be crafted to enable Federal agencies to do so in a manner consistent with the statute. Alternatively, if this cannot be accomplished, consideration should be given to Direct Conversion.

Accordingly, it is recommended that the November 19, 2002 Circular A-76 revisions be modified using a Qualifications Based Selection (QBS) Process. This would set out that:

A-E services are to be procured through the QBS process as set forth in P.L. 92-582 as amended (40 U.S.C. 541) (aka “The Brooks Law”), and implemented by FAR Part 36.6. In accordance with this statutorily required process, Federal Agencies will be afforded all the same rights, responsibilities, and opportunities as the private sector.

If an Agency wishes to compete, it shall develop and submit Standard Forms 254 and 255 as would A-E firms. Such submissions shall include agency's past performance with regard to its qualifications (including professional licensure) of personnel, agency record on meeting delivery and completion schedules, and other data required for QBS submissions.

The selection criteria for these services, set forth in FAR Part 36.602.1, will be used to determine the most technically qualified firm, which could include a government agency, selected pursuant to FAR Part 36.602-2. QBS dictates that price shall not be considered until after the highest technically ranked firm has been determined and the scope of work has been negotiated. If the Federal agency is determined to be the most highly technically qualified and has negotiated the scope of work, it would then negotiate a price for the services to be provided in accordance with FAR Part 36.606.

3) Attachment A – The Inventory Process

DPC applauds a timely and rigorous Inventory Process to identify commercial activities. Historically, the Federal Government has classified functions performed by Government Architects and Engineers as inherently governmental. The revised inventory process should result in a more accurate classification of A-E positions for the purposes of the FAIR Act inventory.

4) Attachment B – Public-Private Competition Terminology

We recommend defining some terms to eliminate potential confusion and controversy. The terms “private sector source” and “private sector,” both used throughout the Circular, mean “a private, for profit individual, association, partnership or corporation.” Consistent with the thrust of the Circular A-76 revisions, state and local government units, universities, other tax exempt, or not for profit entities should not be eligible to compete for commercial activities unless they too are competing on the same basis, i.e., subject to FAR regulations, market-based rates and not subsidized by the Federal and/or state or local government.

5) Attachment D – Support Agreements (Work for Others)

DPC strongly applauds eliminating non-competed “work for others” activities such as Inter- and Intra-Services agreements (ISSA) as well as Inter-Governmental ones. The former two preclude the private sector from being considered and the later enables Federal agencies to aggressively market their services to our members’ clients – state, local, and tribal governments – on a subsidized basis. Requiring these to be competed is strongly endorsed.

6) Attachment E – Calculating Public-Private Competition Costs

We strongly believe that the 12 percent overhead factor established by OMB for Federal Agencies will understate their true costs. An A-E firm’s overhead costs are established by DCAA audits in accordance with the FAR. If Federal Agencies are to be permitted to compete for A-E services, OMB needs to develop comparable overhead factors that reflect the true costs incurred by Federal agencies, ones that are commensurate with all of those incurred by the private sector.

7) Attachment F – Definition of “Agency Source”

Insert after “Agency Source” the following new definition:

“Direct A-E Services. Activities of professional architects-engineers, as defined by applicable state law, which requires their work to be performed or approved by a registered architect or engineer and whose selection for Federal work is based on the competence and qualifications of the prospective contractors. A-E includes other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management of design execution, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.”

Conclusion

The Design Professionals Coalition applauds OMB’s initiative to revise OMB Circular A-76 and related policy documents and we thank you for this opportunity to comment on them.

Sincerely yours,

**Thomas J. O’Neill
Chairman**

- DPC-A-76 Letter.doc



**Parsons
Brinckerhoff Inc.**

One Penn Plaza
New York, NY 10119
212-465-5252
Fax: 212-465-5363
oneill@pbworld.com

Thomas J. O'Neill.
President and
Chief Executive Officer

December 19, 2002

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Childs:

Thank you for the opportunity to comment on the OMB Circular A-76 revisions as they pertain to the procurement of Architectural-Engineering services. My firm, Parsons Brinckerhoff Inc. (PB), is one of the largest consulting engineering firms in the country. We have over 9,200 employees worldwide including over 5,300 in the US. PB is a leader in planning, engineering, and program and construction management of transportation, power, telecommunication and education infrastructure projects.

We generally support the revisions that were made to OMB Circular A-76 and the related policy documents that govern how the Federal Government obtains goods and services. The alignment of OMB Circular A-76 with the Federal Acquisition Regulations (FAR) is a very sound decision as it will facilitate the Administration's competitive sourcing policy and ensures "apples to apples" comparisons in any resulting competition between the private sector and government agencies. The exception to this and the concern I have is how the revisions deal with the procurement of Architectural-Engineering (A-E) services.

I call to your attention a conflict between the revised Circular A-76 and the statutory requirements for the procurement of A-E services. The procurement of these unique services is done through "Qualifications Based Selection" (QBS) and not simply on the basis of cost, as prescribed under (40 USC Section 541 et seq.; aka the Brooks Act), but the revised Circular A76 has a Lowest Price Technically Available (LPTA) provision which provides in part that:

"During the source selection process, the Source Selection Authority (SSA) shall simultaneously evaluate private sector offers, public reimbursable tenders, and Agency tender to determine technical acceptability. The performance decision shall be based on the lowest cost of all offers and tenders determined to be technically acceptable."



The LPTA provision does not recognize the qualifications of the competing firm as a *primary criteria* for an award. It is overly broad and inconsistent with the Brooks Act source selection criteria. This could be detrimental to achieving the Administration's objective of an "apples to apples" comparison in competition, and thereby to the A-E industry.

Again, our company and its employees applaud this important initiative to revise OMB Circular A-76 and appreciate this opportunity to comment on them.

Very truly yours,

A handwritten signature in black ink that reads "Thomas J. O'Neill". The signature is written in a cursive, flowing style.

Thomas J. O'Neill