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ACQUISITION RESEARCH WORKING PAPER SERIES

**An Analysis of Industry's Perspective on the
Recent Changes to Circular A-76**

1 October 2004

by

LCDR Brett Stevens, SC, USN

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Prepared for: Naval Postgraduate School, Monterey, California 93943



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LCDR William Brett Stevens, SC, USN received the Naval Supply Systems Command Award for Academic Excellence in Management, December 2004.



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Introduction

The United States Federal Government spends greater than \$150 billion every year on services, making it one of the world's largest purchasers. Because of the large monetary value and the vast number of public- and private-sector jobs involved, the decision of who is the best provider of these services is an important and often highly-charged issue. This article intends to improve understanding of the significance of the recent changes made to the A-76 process, and to offer insight into industry's perspective—gained through a recently-conducted interview—on the revised process. Although empirical results of these recent changes are months, if not years away, several improvement recommendations will be offered towards fully achieving efficient and effective competition between public and private sources.

Much has been written on the processes contained in the Office of Management and Budget's Circular A-76 entitled, "Performance of Commercial Activities." Indeed, a recent database search at the Naval Postgraduate School library in Monterey, California revealed 19 Master's theses pertaining directly to the subject matter, and another bevy of information documented by various government officials and heads of agencies concerning recent changes to the process. Current events, too, have kept discussions surrounding commercial outsourcing in the forefront of many researchers' minds. As recently as February 2004, for example, debate swirled around the issue of whether or not private-sector companies under contract with the United States Government should be permitted to sub-contract with foreign countries. With these recent developments in mind, and in spite of the preexistence of voluminous content, there is still a prevalent need to "get the word out" regarding recent changes made to the Circular.

To gain full appreciation of the magnitude of these changes, it is important to completely understand the stimulus behind them. In the spring of 2001, President George W. Bush and his Administration focused their efforts on bold strategies for improving the management and performance of the federal government. What they came up with were five government-wide goals for improvement, of which number two



was an initiative on competitive sourcing. This initiative set the stage for others in government to rally behind their President, and institute changes of their own. Transformation within the Department of Defense, for instance, was set in motion by Secretary of Defense Donald H. Rumsfeld for, among other things, the purpose of introducing more efficient business-management practices.

Other changes stemming from the President's Management Agenda included reform of the decades-old Circular pertaining to the performance of commercial activities. Later that same year (2001), a Commercial Activities Panel chaired by the Comptroller General of the United States was commissioned to study concerns about the timeliness and fairness of the process for public/private competitions. The Panel was also charged with devising effective workforce practices to help ensure the successful implementation of competitive sourcing in the federal government. Following the recommendations of the Panel, sweeping changes were made to the A-76 process as the government sought to become more market-driven.

Determining whether to obtain services in-house or through commercial contracts is an important economic and strategic decision for agencies. According to Office of Management and Budget July 2003 estimates, 26 percent of the workforce from agencies being tracked under the President's Management Agenda are engaged in commercial activities that should be available for competition. In light of the fact that the Department of Defense has achieved greater than 30 percent savings on the roughly 3,000 competitions it has conducted since 1979, there appears to be plenty of room left for harvesting savings [Ref. 1]. Not surprisingly, use of Circular A-76 is expected to grow throughout the federal government.



Literature

Office of Management and Budget's Circular A-76 establishes federal policy for the competition of commercial activities. It embodies the longstanding policy of the federal government to rely on the private sector for needed commercial services in order to ensure the American people receive the maximum value for their tax dollars. Maximum value is attained through the introduction of competition; when forced to compete, government and commercial service providers streamline their operations and improve efficiency. It is this improved efficiency that has yielded significant savings and increased preparedness To gain a comprehensive understanding of the recent changes made to A-76, the "old" process (pre-May 2003) will be compared and contrasted to the "new" process (post-May 2003).

The origins of the A-76 process date back to the mid-1950s, to the Eisenhower Administration. During this time, the former Bureau of Budget introduced Bulletin 55-4. This bulletin stated, in part, that the "general policy of the federal government will be to not carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels" [Ref. 2]. In 1966, this policy was later codified in the adaptation of the Office of Management and Budget's Circular A-76. In this context, a "circular" refers to instruction or information issued by the Office of Management and Budget to the various federal agencies. Generally, these instructions and/or informational publications are expected to be of a lasting nature, typically two or more years. Circular A-76 was the 76th such issuance.

Since its original issuance in 1966, the Circular has been revised four times—in 1967, 1979, 1983 and, just recently, in May 2003. In 1979, the Office of Management and Budget issued a supplemental handbook to accompany the Circular, and subsequently revised the addition three times. In May, the handbook was rescinded, and its contents were revised and incorporated in attachments to the Circular as part of an effort to streamline guidance on public-private competitions.



Because the classification of an activity as commercial or inherently-governmental is a critical first step towards, or away from, outsourcing proceedings, it is important to draw the distinction between commercial activities and inherently-governmental functions. Commercial activities involve functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. Inherently-governmental functions, on the other hand, are functions so intimately related to the public interest as to mandate performance by government personnel. According to the Circular, inherently-governmental functions normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements [Ref. 3]. Our military forces, and the national security they provide, represent the best example of an inherently-governmental function.

In its early stages, and up until recently (May 2003), the Circular A-76 cost comparison process comprised a four-step process. In the first step, the government developed a performance/work statement that outlined the scope of work for the activity at issue, and then developed its estimate for in-house performance based on the requirements outlined in the performance/work statement. In the second step, industry-wide competition determined whose proposal would be selected for comparison to the government's in-house cost estimate. This step used "best value" evaluation criteria, such as the sophistication and quality of the technology employed. In the third step, the winning company from industry was compared to the government's in-house estimate to ensure both were based on the same scope of work and performance levels. In this step, the government's contracting officer was permitted to make adjustments to the government's proposal in order to make it more comparable to the private-sector proposal. The final step was a cost comparison between the industry's and the government's in-house estimate. Victory went to the entity with the least expensive, technically-acceptable proposal. As we will later see, this process gave rise to a number of complaints, and eventually was modified.



The new A-76 process became effective in May 2003. The revised Circular's standard competition process does away with the two-step process in which industry first conducts a "best value competition" among other industry hopefuls, and then conducts a cost comparison competition with the government. This change was in direct response to criticism of the old rules whereby an "apples to apples" comparison could not be achieved since industry's "best value approach" did not necessarily translate to the lowest cost alternative. Now, an agency may select one of four standard competition alternatives. In each competition, all offers, including the government's "agency tender," will be evaluated together. The four standard competition alternatives include a sealed bid acquisition conducted in accordance with the Federal Acquisition Regulation (FAR) Part 14, and three types of negotiated procurements conducted in accordance with FAR Part 15.

Now there will be a single competition, with the government employee organization generally being treated as if it were another commercial bidder. Moreover, the competition will be conducted using the framework of the FAR. According to the Commercial Activities Panel (the group chiefly responsible for many of the recent changes incorporated), the "new Circular permits a greater reliance on procedures contained in the Federal Acquisition Regulations, and should result in a more transparent, simpler and consistently applied process" [Ref. 4]. These revisions will also save time.

In fact, the Circular now requires agencies to conduct standard competitions within 12 months after announcement of the competition (announcement of the competition comprises formal public announcement at the local level and posting to the FedBizOpps.gov website). The Circular defines a competition as "standard" if a commercial activity is performed by more than 65 full-time equivalents (one full-time equivalent is equal to 1,776 productive hours per year), or if a private sector or public reimbursable source (Navy Working Capital Fund) and the agency tender will include an aggregate of more than 65 full-time equivalents. Certain competitions qualify as "streamlined," and can be completed in as little as 90 days. Either "standard" or



“streamlined” competition procedures may be used if a commercial activity is performed by an aggregate of 65 or fewer full-time equivalents and/or any number of military personnel, or if a private or public reimbursable source and the agency will include an aggregate of 65 or fewer full-time equivalents. In general, “streamlined” competitions are reserved for more informal actions [Ref. 5].

Adding to the improved timeliness was a reduction in the sheer volume of the Circular. Whereas pre-May 2003 “Performance of Commercial Activities” guidance was contained in four separate documents, including an 18-page definition of “inherently-governmental function,” the post-May 2003 is contained in only one document. The revision further refines the manner in which government officials (termed Competitive Sourcing Officials) declare activities commercial or inherently-governmental. Competitive Sourcing Officials, normally at the assistant-secretary level or equivalency within an agency, must choose one of six “reason codes” to explain why Government personnel are presently performing a commercial activity. As will be shown later, part of this consolidation and simplification was in response to strict guidelines that governed the team that conceived these changes. The members of that team deemed it necessary to inject fairness into the process.

Other changes incorporated into the new Circular address issues pertaining to conflicts of interest. Whereas under the old rules there were only a few prohibitions in place, the new rules are replete with guidance governing conflicts of interest. For example, in Attachment B, starting at subsection D(2), conflicts of interest inherent in the functions of various teams are addressed. The revised Circular now provides that members of the government team that develop the performance work statement may not also be members of the government team that develop the “most efficient organization,” removing any possibility of requirements tailoring. Moreover, an Agency Tender Official has been appointed under the new rules to independently champion the agency tender. The individual assigned as the Agency Tender Official cannot be the contracting officer, and must also be disassociated from the Source Selection Evaluation Board, Source Selection Authority, and the team developing the



performance work statement. Additionally, the revised rules contain provisions barring directly-affected government personnel, defined as personnel whose work is being competed, or any person who has previous knowledge of the agency tender from participating “in any manner” on the Source Selection Evaluation Board [Ref. 6]. As was the case in the old rules, the Source Selection Authority ultimately decides the winner of the competition.

Finally, the new Circular, at Attachment B, Section E, contains provisions for improved post-competition accountability. Among the new requirements is a database that tracks the execution of “streamlined” and “standard” competitions. Each agency must populate and keep up-to-date information on each competitive action, recording events as they occur (real-time) from the date of public announcement through either completion of the last performance period or cancellation of the competition. These rules formalize a process only the most conscientious agencies had been using up to this point. What’s more, software management tools and other techniques (such as Gantt charts) can now be better utilized to manage timelines, so each agency can be held accountable for competitions that take longer than they should to complete.

Research Method

To capture data relating to how industry views the latest changes to the A-76 process, the researcher interviewed a businessman from an industry familiar with the government’s outsourcing policies. The research method used was the semi-structured interview, whereby a series of both pre-determined and spontaneous questions were asked. The 40-minute interview was conducted via telephone, and a recording device was used. The interview transcript was scrubbed to remove actual names, and then studied using qualitative analysis techniques. What emerged were three themes revealing the interviewee’s opinion and attitude towards the revised A-76 process. The researcher acknowledges the limitations of this type of study, namely restricting the sample size to only one, but nonetheless offers the following analysis as one “data point.”



The individual selected for study is a Vice President for Business Development at a major corporation. According to their website, the company recorded over \$20 billion in sales last year, and employs over 100,000 people worldwide. It ranked among the top 100 largest corporations (in terms of revenue) on *Fortune Magazine's* listing of the 500 largest corporations [Ref. 7].

The company consists of two business groups, one of which supplies systems to control heating, ventilating, air conditioning, lighting, security and fire management for buildings. This group also provides integrated facility management, and performs facility management and consulting services for many Fortune 500 companies. According to the company's website, they are responsible for the management of more than one billion square feet worldwide.

The interviewee works within this group, and is responsible for developing new business for the company. His particular focus is on federal government clients, especially within the Navy and Marine Corps. He has been with this company for five years, and has been conducting this type of work for nearly two decades. He regularly interacts with government contracting officials, industry leaders, military officials and other stakeholders.

Findings

Careful analysis of the interview recording and transcript revealed three pervasive themes. For purposes of this research, the researcher considered "pervasive" to mean a substantive idea occurring more than once during the interview, or ideas that appeared to naturally cluster together. Interestingly, themes did not appear evident during the interview, but only became apparent during subsequent analysis. To assist in differentiating separate themes, a different color highlighter was used to mark up the transcript. The next section introduces each theme.



Despite significant recent revisions, problems still exist within the A-76 process.

The interviewee witnessed several unfortunate circumstances leading him to conclude that the A-76 process is still fundamentally problematic. He relayed the following perfect example of how not to entertain a commercial activities study. In the Fall of 2003, he recalled, he was on a site visit in New Jersey with several other representatives of industry. They were on a fact-finding mission, and were particularly interested in learning more about the commercial activity they would be performing should they win the job. As the tour progressed, it became apparent that the tour guide was less than forthcoming with needed information. In one instance, he disallowed a tour of a portion of the facilities, hastily citing some obscure regulation that prevented their entrance. Instead of pre-arranging the appropriate access authority, as would have been expected, the tour guide chose instead to stonewall the industry representatives. In the end, it was revealed that his obfuscation was for good cause: the tour guide was one of the people whose job was at stake in this particular commercial activities study!

Unfortunately, this case starkly illustrates the conflict of interest still inherent in the process. Add to this dilemma the increased pressure brought to bear by labor unions such as the American Federation of Government Employees, civil service representatives and local politicians, and you have as a result a highly-charged and impetuous environment in which to conduct business.

A second problem identified within the A-76 process is that of an apparent lack of accountability. The interviewee described it this way:

If I put myself in the place of a contracting official, and I realize that I'm getting enormous pressure on one side from labor unions and sometimes even from Congress to not allow anybody to take jobs away from the people who have them...but am not getting any support on the other side, nor any support to ensure accountability should I chose to stonewall the acquisition process, I am



going to take the path of least resistance. I'm not likely to push back too hard to ensure there is a fair competition.

What the interviewee aptly describes is his perception of a lack of accountability within the process.

A third problem, though less significant, represents more of the same incongruity between what is perceived to be happening, and what is actually happening in the context of the A-76 process. What the interviewee refers to as an “unintended consequence on industry” occurs when the government inattentively provides data to industry in a format that cannot be sorted or organized, such as a portable document file (commonly referred to as a pdf file), or data that has been “locked.” As a result, thousands of pages of data must be pored through manually, then sorted and organized so it is useful to industry in their proposal preparation. The result of this inattentiveness—combined with the protracted timeline of the process—has increased proposal costs; these, according to the interviewee, are ultimately passed on to the government in the form of increased general and administrative overhead rates.

Best value is not always being achieved.

“One of my greatest concerns is that I don't believe the Navy is getting best value, and it is important to our country that we spend our tax dollars wisely on national defense.”

Enterprise-wide, the interviewee is concerned that “billions of dollars” are being wasted on inefficient operations being wrongfully retained by the government, instead of being subjected to the cost-saving forces of competition.

The interviewee went on to describe the lack of confidence in the process felt by him and others in industry. He conceded this lack of confidence “lends itself very heavily to a ‘no go’ decision,” referring to the predetermination he personally makes as to whether a proposal will be worth the time and expense involved. Similar to the fellow introduced earlier who was apathetically leading a tour of industry representatives, often



the appearance of being less than forthcoming with information results in a company not bidding on a particular project. If the problem is pervasive enough, all of industry will choose not to bid on the job (as was the case in this situation). And if all of industry chooses not to submit a proposal for a particular job because of perceived impenetrable bureaucracy, then competition for commercial activities is not taking place to the fullest extent possible. Therefore, we have a situation where the Navy is not getting the best value.

As the interview continued, the researcher was asked, “You know what ‘best value procurement’ is, as defined by the Navy, right?” “Yes,” was the response. “Well, you are not getting that either.” Under the new rules, best value competitions may be conducted among all competitors (including the government) when it is in the best interest of the government to consider award other than to the lowest-cost/priced source. Unfortunately, the interviewee had witnessed competitions that were being promoted as best value procurements, when, in fact, they were not. “Too often we find that the real means of selection is not best value, but technically-acceptable low cost.” The interviewee added, “Best value has a very subjective definition. We find there is much less attention paid to efficiencies, and ultimately the decisions are made solely on the basis of low cost, even when they say it is a best-value procurement.” He concluded, “So, even when they advertise it as a so-called ‘best value procurement,’ industry knows full well that what they [the government] are really looking for is technically-acceptable low cost.”

Despite shortcomings, the Navy is genuinely concerned about improving the process.

“One of the reasons I like doing business with the Navy is because I’m convinced that at almost every level, there really is an honest desire to do a good job...I get awful mad at some people in some circumstances, but for the most part, I am convinced that these folks are doing the best job they can.”

A third theme revealed through analysis of the transcript was an assurance of the Navy’s best intentions to correct any misgivings. In fact, on the very day of the interview



for this article, the interviewee had attended a conference whose agenda included a discussion to address some of the problematic issues surrounding the A-76 process. According to him, many stakeholders were present, including the head of the contracting competency at one of the Navy's hardware systems commands. At several points throughout the interview, the interviewee made reference to several ongoing improvements, such as the formation of what he termed "The Navy Board of Directors" (formally known as the Department of the Navy Strategic Sourcing Acquisition Centers of Excellence Board of Directors, established in September 2003).

His satisfaction was clearly evident as he described the role of this newly-founded organization. "The Board will act as high cover for the contracting officers trying to run a 'level playing field'. [...] So, when you get push-back from the unions, Congressmen, or whomever is trying to move this off a 'level playing field,' there will be a Board of Directors within the Navy that will have enough clout to keep things fair." Thus, despite his earlier criticisms of the lack of accountability in the process, it appears as though he feels the Navy is, in fact, taking remedial action.

The researcher next asked the interviewee to characterize the recent changes to the A-76 process. His response indicated he was generally pleased with the direction in which the Navy was headed. "There is much greater potential for fairness," he concluded. Not completely absent from his remarks, however, was a small degree of skepticism. "Things can always be bent in such a way that the 'playing field' is not even...but the chances of an 'even playing field' under the new rules are much greater." He went on to say he would encourage the Navy to "embrace the new rules" in order to move ahead.

As the final question, the interviewee was asked whether or not his company had ever filed an appeal to a competitive outsourcing decision. "Yes," he replied. "We are not shy about appealing." He continued, "Sometimes we will appeal even though we know we will not win the job, but just to try and clean up the program." His response was consistent with a genuine desire to improve the process, albeit in a roundabout fashion.



Discussion

In the paragraphs that follow, each theme developed will be related to the literature previously discussed. In particular, the extent to which the revised A-76 process addresses the interviewee's concerns will be examined. Finally, several process improvements will be recommended.

The first theme chronicles several areas the informant feels are still beleaguering the A-76 process. Most notable among them is a lack of confidence in the fairness of the process. Interestingly, the Commercial Activities Panel which convened three years earlier targeted this very issue. In fact, a set of guiding principles was commissioned to temper any and/or all change recommendations. These "Guiding Principles for Sourcing Policy" comprised ten objectives, four of which made reference either directly or indirectly to the importance of the evenhandedness of the process. No other objective appears as often. See Figure 1 for a listing of all ten guiding principles.



Guiding Principles for Sourcing Policy

Federal sourcing policies should:

1. Support agency missions, goals, and objectives.
2. Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.
3. Recognize that inherently-governmental and certain other functions should be performed by federal workers.
4. Create incentives and processes to foster high performing, efficient, and effective organizations throughout the federal government.
5. Be based on a clear, transparent, and consistently-applied process.
6. Avoid arbitrary full-time equivalent or other arbitrary numerical goals.
7. Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.
8. Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.
9. Ensure that competitions involve a process that considers both quality and cost factors.
10. Provide for accountability in connection with all sourcing decisions.

Source: see [Ref. 8]

Figure 1

Evidently, the Panel understood the widespread misgivings surrounding the process, and intended to take overt action to correct the problem. Not surprisingly, many of the changes contained within the revised Circular deal directly with the “fairness” issue. For example, elimination of the four-step competitive process removed one major source of consternation. Under the new rules, the government will compete directly against industry, and will not compete unfairly against industry’s “best value” alternative. As discussed previously, the old document mandated a competition among industry hopefuls using “best value procurement” rules. Consistent with the best value approach, the lowest-cost alternative was not always selected to compete against the



government's "most efficient organization," and consequently was subjected to an unequal comparison. This no longer is the case.

The imposition of the time limits—90 days (simplified) and 12 months (standard)—and the simplification of the governing instruction are further significant improvements in the process. While such moves are a step in the right direction towards relieving the "impenetrable bureaucracy" surrounding the process, applying such audacious simplifications to some of the more complex outsourcing issues will be a challenge. While commendable, the researcher considers the shortened timeframes to be unrealistic.

Some government officials agree. According to the testimony of David M. Walker, Comptroller General of the United States, given before the Senate Subcommittee on Oversight of Government Management in July 2003, the Department of Defense will have "difficulties in meeting the time frames set out in the new Circular for completing the standard competition process." He points out that recent data within the Department of Defense "indicate that competitions have taken, on average, 25 months" (under the old document), and that "much work remains to be done" [Ref. 9].

Despite such reservations, however, one thing is for sure: preliminary planning will take on increased importance under the new Circular. The new rules state that prior to public announcement (start date) of a streamlined or standard competition, the agency must complete several preparative steps. These include evaluating the scope of activity and the number of full time equivalents involved, grouping business activities, assessing the availability of workload data, determining incumbent baseline costs, establishing schedules, and appointing the various competition officials. Whether or not competitions adhere to the stricter timelines will largely rest upon how well this up-front planning was performed in each case.

Other changes incorporated into the revised Circular address the problem of conflict of interest (as addressed in the literature section). However, this problem has not yet been completely resolved, as evidenced by the interviewee's experience last fall



(less than six months after adaptation of the revised rules). The government employee's refusal (referred to in the previous narrative) to disclose pertinent details to a team of industry personnel seeking information on the soon-to-be competed commercial activity smacks terribly of a potential conflict of interest. It appears as though one misguided employee was able to stymie the entire process. By doing so, he failed (succeeded?) to let the process work the way it was intended. Admittedly, this individual might have been unaware of the recently-revised rules which place greater emphasis on precluding conflicts of interest. But, for the woebegone group of industry representatives, perception was reality.

Related is the second theme of not achieving best value. This is particularly disturbing since it flies in the face of the intent of A-76. If the ultimate purpose of A-76 is to leverage the effects of competition in performing commercial activities, the government is coming up short. The Department of Defense recently reported that in 15% of the competitions, "no satisfactory source" was found in the private sector. Comments obtained from a board member of one of industry's contract associations tend to agree. According to him, when his company bids on an A-76 competition, there are always less private-sector competitors (sometimes none) in comparison to non-A-76 competitions; for the same type of work as in the former, there may be many other private-sector competitors in the latter.

The fact that industry has expressed a lack of confidence in the outsourcing process is understandable. For years there has been concern regarding whether or not the government was "playing fair" with respect to outsourcing its commercial activities. Clearly, however, this fundamental component of conducting outsourcing has been sufficiently addressed. Now, just about everywhere, one finds reference to the fact that President Bush's Competitive Sourcing Initiative has "leveled the playing field" between the government and industry in relation to commercial activity outsourcing. The Office of Management and Budget's press release announcing the revised A-76 read, "This revision marks the first major overhaul of the process, and works to level the playing field for all bidders" [Ref. 10].



Interestingly, this research revealed a role reversal of sorts. In the mid-1980s, a nationwide poll reported a large distrust and “lack of confidence”—not with the federal government, but with industry. It seems industry had developed a reputation for overpricing and underperforming on contracts, and it deteriorated to the point that President Reagan ultimately initiated a study to expose and correct these deficiencies (known as The President’s Blue Ribbon Commission on Defense Management, or, as it’s more commonly referred to, the Packard Commission). Currently, one could argue industry has a similar lack of confidence in the manner in which government conducts competitive sourcing.

The third theme is perhaps the most important. By all accounts, the government *is* taking the necessary steps to ensure its competitive sourcing policies are consistently applied across the board, that a “level playing field” exists. The Navy, for example, has established two Strategic Sourcing Acquisition Centers of Excellence in order to provide standardization and process control to the A-76 competition process. Overseeing these centers is a Board of Directors, comprised of high-ranking government officials such as the Deputy Assistant Secretary of the Navy for Acquisition Management, the Chief of Naval Operations and the Commandant of the Marine Corps. Their responsibilities are to ensure that the Centers of Excellence perform as honest brokers of the acquisition process, to provide a consistent approach to strategic sourcing policy, and to warrant independence from external influences [Ref. 11].

Other means to achieve a “level playing field” have been implemented as well. The revised Circular treats the government’s “agency tender” in a manner consistent with treatment afforded to offers submitted by the private sector. To be sure, agency tenders may now be excluded from a standard competition where they are materially deficient and where such deficiencies are not, or cannot be, timely corrected.

Excluding a technically-unacceptable in-house proposal from an A-76 competition represents a major departure from previous rules, whereby agencies were required to adjust otherwise unacceptable in-house proposals to include adequate staffing or other resources until all performance requirements were satisfied. This



researcher concludes this ability to “take many bites at the apple” was a particular source of frustration for the interviewee.

Conclusions

The federal government has indeed taken on a formidable challenge in attempting to make government more market-driven. Along the way, it has incorporated technology, streamlined regulations, increased accountability and elevated the importance of FAR-like principles in the competition for commercial activities. Furthermore, it has addressed some of its longstanding problems, such as perceived conflicts of interest and what some felt was a need for a “level playing field.” Clearly, the government has accomplished much improvement in the latest revision of Circular A-76.

But, as this research demonstrates, the full effects of the recent changes have not successfully penetrated the entire organization, nor have the changes fully addressed each of the interviewee’s concerns. The interviewee still reports cases of conflict of interest preventing competition within some organizations. Though his comments represent just one of the many perspectives of industry, the fact that some organizations are able to circumvent the process and shortchange the American taxpayer is nonetheless troubling. Moreover, there still exist several unintended consequences of the shortcomings of the system on industry—such as the government providing data in a format that cannot be sorted or organized—which tend to increase costs. An effort to curb such superfluous costs should be initiated.

Most importantly, there still exists a highly-charged and impetuous environment surrounding certain competitions which, if left unchecked, has the potential for preventing the process from working as it was intended. Obtained comments revealing industry’s trepidation in bidding on A-76 work are an indicator of a more widespread problem. This is tantamount to calling a party to which no one shows up a success.



This environment is to be expected, though. After all, jobs are at stake. The government, and in particular the Navy, has taken steps outside of Circular A-76 to attempt to assuage this contentious environment. One such attempt is the recent establishment of a Board of Directors, comprised of senior Navy leadership, whose function is to act as high cover within the process to ensure that the relentless pressures of Congress and the labor unions representing potentially-displaced workers are met head on.

Two additional measures are recommended to ensure efficient and effective use of competition. First, an ombudsman position should be established to stand in the gap between industry and government. This person could cultivate better governmental understanding of the factors making A-76 competitions undesirable for industry. Conversely, an ombudsman could enlighten industry as to why certain sourcing decisions, while valid, appear disparate. Practically speaking, an ombudsman could represent another avenue of alternate dispute resolution. In the earlier situation, where an uncooperative worker prevented all of industry from bidding on a job, an ombudsman could have potentially intervened and evoked a different outcome.

Secondly, the Navy is encouraged to *completely* embrace the recent changes made to the A-76 process. As this research reveals, there is still room for improvement. Consider how the interviewee described some so-called “best value procurements” as merely a subterfuge for “technically-acceptable, low cost” competitions. The rules state clearly how such competitions are to be conducted; yet, it is nonetheless disturbing to know that industry feels as though it is getting the wool pulled over its eyes.

For those federal employees that are unaccustomed to the uncertainty of competition, a change of mindset will certainly be necessary. As history demonstrates, competition breeds efficiency and cost savings. And during a time of war, every dollar counts.



List of References

1. Executive Office of the President, Office of Management and Budget, *Competitive Sourcing: Conducting Public-Private Competition in a Reasoned and Responsible Manner*. Washington, DC: Government Printing Office, July 2003.
2. Department of Defense. *Defense Reform Initiative Report*, Washington, D.C., Government Printing Office, November 1997.
3. Office of Management and Budget, *Circular No. A-76 (Revised)—Performance of Commercial Activities*, Government Printing Office, May 2003.
4. General Accounting Office, *Competitive Sourcing: Implementation will be Challenging for Federal Agencies*. Washington, DC: Government Printing Office (GAO-03-1022T), July 2003.
5. Office of Management and Budget, *Circular No. A-76 (Revised)—Performance of Commercial Activities*, Government Printing Office, May 2003.
6. McCullough, James J., et al., "The New A-76—OMB Adopts Familiar FAR Framework for Public-Private Competitions," *The Government Contractor* 45, no. 26 (2003): 6.
7. The 500 Largest U.S. Corporations. *Fortune*, April 14, 2003, 147.
8. General Accounting Office, *Competitive Sourcing: Implementation will be Challenging for Federal Agencies*. Washington, DC: Government Printing Office (GAO-03-1022T), July 2003.
9. General Accounting Office, *Competitive Sourcing: Implementation will be Challenging for Federal Agencies*. Washington, DC: Government Printing Office (GAO-03-1022T), July 2003.
10. Executive Office of the President, Office of Management and Budget, *Big Savings Expected from Competitive Sourcing Initiative*. Washington, DC: Government Printing Office, May 2003.
11. U.S. Department of the Navy, *Basic Considerations for Department of the Navy Strategic Sourcing Acquisition Centers of Excellence*. Washington, DC: Government Printing Office, September 2003.



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