A-76 Contracting - Present and Future

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DLA A-76 Contracting Support Office
Agenda

• Who/what is the DLA A-76 Contracting Support Office

• What differentiates A-76 contracting from “normal” service contracting

• Navigating the process today and in the future (as based on the 11/14/02 draft)
  - Request for Proposals
  - “Agency Tender”
  - Decision
  - Appeals
  - Protests
Who/What Is the “DLA A-76 Contracting Support”?

• Created in 1998 to provide the acquisition support for DLA’s A-76 studies
• Located at DSCC
• Separate contracting office from activity under study
• Dedicated contracting, legal, and pricing support
• Ten studies completed to date; eight studies in process
• Acknowledged Center of Excellence
Expectations

Contractors
- Fairness
- Honesty

Organizations Studied
- Fairness
- Honesty
- Savings

A-76 Contracting

Taxpayers
- Efficiency

Congress
- Small Business
- Fairness
- Honesty
- Savings

Warfighters
- Performance
- Lower cost

DLA/OSD
- Performance
- Savings
- Fairness
- Honesty

Requiring Activities
- Performance
- Fairness
- Honesty
- Savings
Expectations

Contractors
- Performance
- Savings
- Fairness
- Honesty

Organizations studied
- Performance
- Efficiency
- Savings

Taxpayers
- Fairness
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Congress
- Performance
- Savings
- Fairness
- Honesty

Small Business
- Fairness
- Honesty
- Savings
- Performance
- Lower cost

Revised OMB Circular No. A-76

Performance
- Lower cost
The A-76 process is designed to:

- Allow the Government to determine if it’s more cost-effective to have a service performed by the Government or a contractor
- Level the playing field for public and private offerors
- Encourage competition and choice in the management and performance of commercial activities
FAR 52.207-2, Notice of Cost Comparison (Negotiated) (FEB 1993)

- The decision to award or cancel the solicitation depends on the result of the cost comparison
- The in-house cost estimate (IHCE) [Agency Cost Estimate/Standard Competition Form] *must be sealed and submitted to the KO before RFP closing*
- After selection of the best-value offeror (BVO), the KO *opens the IHCE in the presence of the preparer*
Per the [Current] Revised Supplemental Handbook:

In order to “ensure that the Government will not convert for marginal estimated savings”, a “Minimum Conversion Differential”, the lesser of $10 million or 10% of the MEO personnel costs, is added to the cost of contract performance.

No process change in November 14, 2002 Draft
FAR 52.207-3, Right of First Refusal of Employment (NOV 1991)

Federal employees adversely affected by a decision to convert to contract must be offered jobs

- for which they are qualified \textit{and}
- that are created by the award of the contract

- The \textit{contractor} decides who is qualified
What's Unique about an A-76 Acquisition

Proposed

FAR 52.207-3, Right of First Refusal of Employment (NOV 1991)

Federal employees adversely affected by a decision to convert to contract must be offered jobs
- for which they are qualified and
- that are created by the award of the contract

- The HRA decides who is qualified
What's Unique about an A-76 Acquisition

Conflict of Interest:

• Much information that would normally be subject to the Freedom of Information Act may be procurement-sensitive and not subject to disclosure

• Personnel involved in preparing the MEO [Agency Tender] are offerors under FAR Subpart 9.5, Conflicts of Interest; government employees (and consultants) must be assigned to PWS OR MEO

• Personnel personally and substantially involved are not afforded the Right-of-First-Refusal

• All personnel involved in A-76 studies or acquisitions are required to sign non-disclosure statements
Current Process Flow

- **Announce Study**
- **Develop PWS**
- **Issue RFP**
- **Pre-proposal Conference**
- **MEO Develop Proposal**
- **IRO Certification**
- **KRs Develop Proposals**

**Current Process Flow**

1. **Announce Study**
2. **Develop PWS**
3. **Issue RFP**
4. **Pre-proposal Conference**
5. **MEO Develop Proposal**
6. **IRO Certification**
7. **KRs Develop Proposals**

**Key Steps**

- **RFP Closing**
- **Evaluate KR Proposals:**
  - CEB
  - PRAG
  - SSEB
- **Discussions Needed?**
  - Yes
    - **KO Conduct Discussions**
  - No
    - **Evaluate Revisions**
      - Yes
        - **Select Best-Value Offer**
      - No
        - **Evaluate Revisions**

**Decision Points**

- **BVO/MEO Address Same PWS?**
  - Yes
    - **KO Open MEO TPP/MP**
  - No
    - **KO Open IHCE; Complete CCF**

**Announce Tentative Decision**

- **Certification**
  - Requiring Activity/Activity Under Study
  - Contracting Office
  - Major decision point
Future* Process Flow

1. Develop PWS
2. Announce Study
3. Issue RFP
4. Pre-proposal Conference
   - MEO Develop Proposal
   - IRO Certification
5. Develop Proposals
6. Evaluate ALL Proposals: CEB/IRO???, PRAG, SSEB
7. Discussions Needed?
   - Yes: KO Conduct Discussions
   - No: MEO Develop Proposal
8. Offerors Submit Revisions
9. Evaluate Revisions
   - Yes: KO/MEO Address Same PWS
     - No: MEO Revise TPP/MP; Re-certify
10. Select Lowest Priced Technically Acceptable Offer
11. KO/MEO Open MEO TPP/MP
12. KO Complete SCF
13. Announce Tentative Decision

* Based on November 14, 2002 draft

w/i 8 months
w/i 12 (or 18) months
• Performance-based - outputs and outcomes
• Formal source selection
• Section L applies primarily to private sector/public reimbursable offerors; MEO proposal governed first by Revised Supplemental Handbook
• Contractor selection based on best value considering price, past performance (subjective assessment of risk), technical, socioeconomic, JWOD, and the DLA MBA program

* How we do it today in DLA
Performance-based - outputs and outcomes
Formal source selection
Section L will specify what proposal requirements apply to private sector, public reimbursable, and Agency offers
Winner based on lowest priced (completed SCF) technically acceptable proposal
Technical acceptability includes past performance (objective based on stated criteria), socioeconomics, JWOD, and the DLA MBA program

* As based on the 11/14/02 draft
Agency Tender – Future

- Must adhere to Section L requirements
- Same evaluation process as private sector/public reimbursable offers/tenders
  - Address applicable proposal requirements
  - Oral presentation
  - Clear and understandable
  - Substance
- Clarifications
- Discussions (negotiations) and proposal revisions
Service Contract

- FAR 52.222-41, Service Contract Act of 1965, As Amended (MAY 1989)
  - Establishes minimum wage and fringe rates
  - Adjustments
- Collective bargaining agreements do not apply
- Wage determinations based on prevailing rates

Applies to private sector offers
FAR 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989)

Identifies classes of service employees expected to be employed and states equivalent government wages and fringe benefits

- WG: Step 2 for non-supervisory; Step 3 for supervisory
- GS: Divide Step 1 biweekly rate by 80
### Statement of Equivalent Rates

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Decision

• Based on the bottom line on the Cost Comparison [Standard Competition] Form
• Decision favoring a private sector source results in a contract award
• Decision favoring a public reimbursable source results in an Inter-service Support Agreement (ISSA) and cancellation of the solicitation
• Decision favoring the MEO [Agency Tender] results in a letter of obligation to the Agency Tender and cancellation of the solicitation
• Agency Tender released to interested parties
• Appeals must be filed within 30 days [10 or 15 workdays] of the date all supporting [decision] documentation is made available

• Optional comment period NTE 10 workdays

• Appeal authority provides final decision within 30 [or 45 work] days of receipt of appeal

• During public review period, directly affected parties may file appeals with the KO based on specific objections:
  – Compliance with the Circular
  – Calculation of the costs on the CCF [SCF]
  – Source selection
Protests

• If decision favors contract, unsuccessful offerors [to include the Agency Tender Official] must request a debriefing within three days and the KO must conduct promptly

• Protests must be filed within five days of debriefing

• If a timely protest is received, KO suspends performance pending resolution

• Agency shall make its best effort to resolve agency protests within 35 days
Questions?