

- An agency tender official (ATO) with decision-making authority who is responsible for the agency tender (*i.e.*, the agency management plan submitted in response to a solicitation for a standard competition) and represents the agency tender during source selection;

- A contracting officer (CO) who is responsible for issuance of the solicitation and the source selection evaluation and participates on the team that develops the performance work statement (PWS);

- A PWS team leader who is responsible for developing the PWS and quality assurance surveillance plan, determines if the government will furnish property, and assists the CO with the solicitation;

- A human resource advisor (HRA) who is responsible for assisting the ATO in human resource-related matters related to the agency tender; and

- A source selection authority (SSA) who is responsible for source selection.

While the revised Circular imposes timeframes to ensure competitions are completed within a reasonable period, these periods will not begin until the agency completes its planning and announces the competition. *See* ¶ B. of Attachment B. This approach will ensure competitions are adequately and properly planned.

The revised Circular, like the proposed Circular, recognizes the talents of the federal workforce, the conditions under which it operates, and the importance of providing the workforce with adequate training and technical support during the competition process to ensure they are able to compete effectively. In this regard, the revised Circular requires that the ATO have access to available resources (*e.g.*, skilled manpower, funding) necessary to develop a competitive agency tender. *See* ¶ A.8.a. of Attachment B. In addition, if material deficiencies are found in an agency tender (*i.e.*, the agency management plan submitted to respond to a solicitation for a standard competition), OMB will expect the agency's CSO to take all necessary steps to identify the source of the problem and allow the ATO the opportunity to correct the deficiency.

d. More Manageable and Accommodating Source Selection Processes

As noted above, and discussed more extensively in the preamble to the proposed Circular, the competition processes provided for in the prior Circular have been criticized as time consuming, complex, and difficult to

manage. Many also believe that the prior Circular does not sufficiently accommodate agency needs to consider quality and innovation, especially where these needs may require complex and inter-related services.

The revised Circular's guidance on source selections is designed to be more manageable, more reliant on well-established FAR principles, and more accommodating than that which was developed over the years for the performance of cost comparisons—*i.e.*, the traditional cost-centric process for conducting public-private competitions.

The revised Circular, like the proposed Circular, provides several alternative procedures for conducting source selections, two of which give agencies leeway to take non-cost factors into account. Specifically:

- An agency may use sealed bidding where the award will be made strictly on the basis of price and price-related factors and the agency will not need to negotiate with sources. *See* ¶ D.5.a. of Attachment B.

- An agency may conduct a lowest price technically acceptable source selection where the performance decision is based on the lowest cost offer of all the offers that have been determined to be technically acceptable. This process permits exchanges between the parties. *See* ¶ D.5.b.(1). of Attachment B.

- An agency may conduct a phased evaluation source selection process to have the flexibility of considering alternative performance levels that sources may wish to propose. During the first phase, only technical factors are considered, and all prospective providers (the agency, public reimbursable sources, and private sector offerors) may propose performance standards different from those specified in the solicitation. If the agency determines that a proposed alternative performance standard is appropriate and within the agency's current budget, the agency must issue a formal amendment to the solicitation and request revised submissions. In the second phase, the SSA makes a performance decision after performing price and cost realism analyses to compare offers and tenders that were determined to be technically acceptable at the conclusion of the first phase. *See* ¶ D.5.b.(2). of Attachment B.

- An agency may conduct a tradeoff source selection process with cost-technical tradeoffs similar to those authorized by FAR Part 15, if non-cost factors are likely to play an important role in the selection decision. Like the FAR Part 15 process, all prospective providers (private sector offers, public

reimbursable sources, and the agency) may propose different performance standards than stated in the solicitation. The contracting officer is required to determine if any desired tradeoffs are affordable and document the rationale for these tradeoffs. The Circular limits use of tradeoffs to: (1) Information technology (IT) activities, (2) contracted commercial activities, (3) new requirements, (4) segregable expansions, or (5) activities approved by the CSO before public announcement, with notification to OMB. *See* ¶ D.5.b.(3). of Attachment B.

While the phased evaluation and tradeoff source selection give agencies greater leeway to take non-cost factors into account, OMB anticipates that cost will oftentimes be the most important factor when these processes are used. Either way, the Circular will continue to require the meaningful consideration of cost as a factor in all public-private competitions. For example, in a tradeoff source selection, the specific weight given to cost or price must be at least equal to all other evaluation factors combined unless quantifiable performance measures can be used to assess value and can be independently evaluated. (The solicitation for a tradeoff source selection must identify the specific weight given evaluation factors and sub-factors, including cost or price.) *See* ¶ D.3.a.(3)(b) of Attachment B.

In addition, the revised Circular will continue to require the calculation of a conversion differential for all source selections under standard competitions. The conversion differential is a cost that is the lesser of 10 percent of the MEO's personnel-related costs or \$10 million over all the performance periods stated in the solicitation. The conversion differential is added to the cost of performance by a non-incumbent source. If the incumbent provider is a private sector or public reimbursable source, the conversion differential is added to the cost of agency performance. If the agency is the incumbent provider, the conversion differential is added to the cost of private sector or public reimbursable performance. *See* ¶ D.5.c.(4)(c). of Attachment B and ¶ A.5. of Attachment C. For the tradeoff source selection, the conversion differential is added to the cost for a non-incumbent source. Consideration of the conversion differential in the tradeoff process is not intended to discourage agencies from selecting other than the lowest cost provider. Rather, application of the conversion differential is intended to ensure that cost is given meaningful consideration in trading off cost and