

pressures to bear, as well as the type of even-handed environment that will result in performance by the best source. Mechanisms include the following:

a. Greater Uniformity in the Application of Basic Requirements

Various provisions in the revised Circular are designed to create greater equality in the application of requirements to agencies and private sector offerors. For example:

- The ATO must respond to a solicitation within the same timeframes required of private sector offerors. An agency may extend this timeframe for all offerors if it is in the best interest of the government. *See* ¶ D.4.a.(2). of Attachment B.

- An agency tender may be excluded from a standard competition without cancellation of the competition, if the SSA identifies a material deficiency and the CSO determines that the material deficiency cannot be corrected with a reasonable commitment of resources. *See* ¶ D.5.c.(3). of Attachment B.

- Once work has been competed under the Circular, agencies must recompile work being performed by government personnel or public reimbursable sources in accordance with the same time limitations imposed by the FAR on contracts with the private sector, unless the CSO grants a specific exemption for a high performing organization. *See* ¶ E.5.b. of Attachment B.

- Before exercising options for additional performance of work that has been competed under the Circular, agencies must determine that performance by the incumbent provider (MEO, public reimbursable source, or private sector provider) meets the requirements of the solicitation and that continued performance is advantageous to the agency. *See* ¶ E.5.a. of Attachment B.

Some commenters felt these changes will undo special considerations in the existing circular that ensure a level playing field between the sectors, especially when the government is the provider. By contrast, others suggested that procedural differences in the handling of agency tenders and private sector offers are still too great, even with the changes described above. For example, some asserted that the latitude given to the government to make a late tender submission is broader than that afforded to the private sector and creates an unfair advantage for the government.

To build confidence in the competitive sourcing process, OMB has minimized differences, wherever possible. At the same time, legitimate special considerations that need to be

addressed to ensure a level playing field have been taken into account. For example, when a material deficiency is discovered in an agency tender and a question arises as to whether the deficiency can be corrected, the agency must take all reasonable steps to enable corrective action. OMB expects the CSO to give consideration to all possibilities for addressing material deficiencies that cannot be easily corrected.

Considerations include the commitment of additional resources and, if necessary, a request to OMB to deviate from the Circular by extending the time for completing a competition—assuming such extension is within reason and the CSO can demonstrate the deficiency will be corrected.

b. Avoiding the Appearance of Conflicts of Interests

The revised Circular establishes new rules to avoid the appearance of a conflict of interest. In particular, the revised Circular separates the PWS team formed to write the PWS from the MEO team formed to develop the agency tender. In addition, the MEO team, directly affected personnel and their representatives, and any individual with knowledge of the MEO or agency cost estimate in the agency tender are not allowed to be advisors to, or members of, the source selection evaluation board. *See* ¶ D.2. of Attachment B.

c. Public Release of Tenders

The revised Circular adds a new provision requiring the release of the agency tender, public reimbursable tenders, and the certified SCF upon the resolution of any contest challenging the performance decision or the expiration of the time for filing such a contest. *See* ¶ D.6.e. of Attachment B. The SCF documents all costs calculated in the competition to make a performance decision. Several agencies asserted that this information should be treated as proprietary and not released—even after a performance decision—just as a private sector offer would not be released under similar circumstances. OMB believes that a tender should not be hidden from the taxpayer to whom we are ultimately accountable. At the same time, the Circular makes clear that proprietary information of private sector providers of subcontracts included in agency or public reimbursable tenders shall not be released.

d. Fairer and More Accurate Cost Estimates

As a general matter, Attachment C is intended to ensure that public-private competitions reflect the full cost of performance by the government so that

competitions are fair. Agencies will be expected to use the costing procedures in Attachment C combined with the COMPARE costing software to calculate and document the costs on the SCF or SLCF for a streamlined or a standard competition. Agencies may not use agency budgetary estimates to develop government cost estimates. *See* ¶ 4.h. of the revised Circular.

The revised Circular also makes adjustments to the handling of certain costs to eliminate unfair results. For example, based on contractor recommendations in the public comments, the revised Circular prohibits the government from including the cost of contractor security clearances as a one-time conversion cost that is added to the contractor's price. By removing this cost from the comparison, a more level playing field is created between the government and the private sector.

e. Improved Process for Contests

One agency commenter with significant experience in using A-76 recommended that the revised Circular rely on the agency protest process set forth in the FAR rather than perpetuating a separate administrative process. The commenter complained that the Circular's administrative process adds little value beyond that offered by relying upon the FAR.

The revised Circular replaces the prior Circular's administrative appeals process with the processes in the FAR at 33.103. As a result, challenges by directly interested parties and resolution of such challenges by the agency are governed by the procedures in FAR 33.103. A directly interested party may challenge any of the following actions taken in connection with a standard competition: (1) A solicitation; (2) the cancellation of a solicitation; (3) a determination to exclude a tender or offer from a standard competition; (4) a performance decision, including, but not limited to, compliance with the costing provisions of the Circular and other elements in an agency's evaluation of offers and tenders; or (5) a termination or cancellation of a contract or letter of obligation if the challenge contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the performance decision. No party may contest a streamlined competition. However, agencies will be held accountable for performance decisions made in connection with such competitions, as addressed in ¶ E. of Attachment B.