

**COMMERCIAL ACTIVITY PANEL -- PUBLIC HEARING**  
**AUGUST 15, 2001 -- LACKLAND AIR FORCE BASE,**  
**SAN ANTONIO, TX**

**SUMMARY OF ORAL STATEMENT**

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**SUBJECT:** ACCOUNTABILITY MEASURES FOR SELECTED CURRENT PROCESSES UNDER OFFICE OF MANAGEMENT AND BUDGET (OMB) CIRCULAR NO. A-76 AND THE REVISED SUPPLEMENTAL HANDBOOK AS AMENDED

**I. ACCOUNTABILITY IN THE OMB CIRCULAR NO. A-76 COST COMPARISON PROCESS BEGINS WITH DEVELOPMENT OF A SOLICITATION THAT IS EQUALLY SUITED TO THE DEVELOPMENT AND EVALUATION OF THE MOST EFFICIENT ORGANIZATION (MEO) AND PRIVATE SECTOR OFFERS.**

**A. A Dedicated Ombudsman Should Be Appointed to Address Solicitation Improprieties Related to Adherence to Cost Comparison Policy.**

1. Performance Work Statement (PWS) Should Be Performance Based in Accordance With Federal Acquisition Regulation (FAR) Subpart 37.6.
2. For Negotiated Procurements, the Evaluation Criteria Should Equally Apply to the MEO and Private Sector Offers.
3. Evaluation Criteria Must Be Developed in Compliance with FAR 15.304.
4. Solicitation Structures That Restrict Competition Must Be Avoided.

**II. THE APPEARANCE OF CONFLICTS OF INTEREST MUST BE AVOIDED.**

**A. New Policy Must Prohibit Self Conducted Cost Comparison Studies.**

- B. MEO/Proposal Evaluations Teams Must Be Organizationally Independent From the Commercial Activity Under Study and Contain Representation From the Private Sector.

III. EVALUATION OF THE MEO AND THE TECHNICAL PERFORMANCE PLAN (TPP) IN NEGOTIATED PROCUREMENTS MUST BE BASED ON THE SAME EVALUATION CRITERIA SET FORTH IN THE SOLICITATION.

- A. Current Processes Often Prevent a Meaningful Public Review Period and Meaningful Accountability Determinations.
- B. More Often Than Not, the MEO Is A Completely Transformed Organization.
- C. The MEO and TPP Must Be Structured As a Response to the Solicitation In the Same Manner As a Private Sector Offer.
  - 1. Proposal Evaluation Concepts Set Forth in FAR 15.305 Should Equally Apply to Private Sector Proposals and to the MEO and TPP.
  - 2. The Principles of Best Value Determinations and Source Selection Decisions in Negotiated Procurements Set Forth in FAR Subpart 15.1 and FAR 15.308 Should Apply Equally to Private Sector Offers and the MEO and TPP.
- D. The Cost of Government Performance Must Be Based on Actual and/or Reasonable Estimates of Costs.

IV. ACCOUNTABILITY DURING THE PUBLIC REVIEW PERIOD AND THE ADMINISTRATIVE APPEALS PROCESS.

- A. New Policy Must Dictate That Public Review Data Must be Made Available on the Internet Following Announcement of a Tentative Cost Comparison Decision.
  - 1. Restrictions Placed On Public Disclosure Have Thwarted Meaningful Public Review.
    - a. Restriction of access to a reading room, on site, during specified hours.
    - b. Refusal to provide documents.
    - c. Incomplete production of public review documents.
  - 2. Internet Access is Low Cost and Fair.

**B. New Policy Should Provide for an Enhanced Debriefing for the Selected Private Sector Offeror Following Announcement of a Tentative Cost Comparison Decision.**

1. The Debriefing Should Be Conducted in Accordance with FAR 15.506.
2. The Debriefing Should Contain the Minimum Contents of a Post Award Debriefing Set Forth in FAR 15.506(d).
3. The Evaluation of the MEO, Government Costing and the TPP Must Also Be Disclosed to An Unsuccessful Private Sector Offeror During This Debriefing.
4. An Offeror's Strengths and Evaluation of Same in the Context of the Source Selection Decision and Any Trade-Off Decision Must Be Disclosed to the Selected Private Sector Offeror.
5. Revise Current Policy to Reflect That the Time Period for Administrative Appeals Does Not Begin to Run Until the Day After All Supporting Documentation Is Made Publicly Available and This Enhanced Debriefing Occurs.

Respectfully submitted,

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