G A O
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

October 3, 2003

The Honorable George V. Voinovich
Chairman
The Honorable Richard J. Durbin
Ranking Member
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Governmental Affairs
United States Senate

Subject: Questions for Competitive Sourcing Hearing Record

It was a pleasure to appear before the subcommittee on July 24, 2003, to discuss various competitive sourcing issues, including the recent revisions made by the Office of Management and Budget (OMB) to its Circular A-76. This letter responds to your request for my views on the following questions for the record:

Q. The revised OMB Circular A-76 makes "best value" instead of "lowest cost" the factor that agencies must use in determining who will win a public-private competition. Some have alleged that this change is simply an effort to ensure that more private contractors win competitions. How do you see agencies benefiting from the change? How much of a factor do you see cost playing in determining which bidder is offering an agency the "best value?"

For many years, federal agencies conducting negotiated procurements under the Federal Acquisition Regulation (FAR) routinely have traded off cost and non-cost factors in making contract award decisions. The tradeoff process is often called "best value." Among the most common non-cost factors, all of which are required to be identified in the solicitation, are the contractor's technical approach, past performance, and management plan. Tradeoffs reflect a widespread practice used by other governments (state, local, and foreign) as well as by the private sector.

The tradeoff process moves the federal government past the "low bid" mentality of the past, with increasing consideration of factors such as quality and past performance. It entrusts federal employees acting as source selection officials with the authority to use their judgment in selecting among proposals offered. While concern sometimes has been expressed that the tradeoff process allows source selection officials very broad discretion, that discretion has boundaries. An award decision must comply with pre-established evaluation criteria, and is subject to challenge if it appears it did not. In this regard, GAO considers bid protests

challenging the way tradeoffs are conducted, and sustains protests where the process was unfair, unreasonable, or inconsistent with the terms of a solicitation.

The previous version of OMB Circular A-76 allowed the use of a "best value" tradeoff selection process among private-sector proposals. The process created in the March 1996 revisions to the Circular A-76 Supplemental Handbook endeavored to capture the benefits of the tradeoff process, while maintaining the perceived objectivity of a cost-only selection.

Under the new Circular A-76 issued in May, federal agencies will be able to use tradeoffs only under certain conditions. Under the terms of the new Circular, a tradeoff source selection is allowed in a standard competition for (a) information technology activities, (b) commercial activities performed by a private sector source, (c) new requirements, or (d) certain expansions of current work. An agency also may use a tradeoff source selection process for a specific standard competition if, prior to the public announcement of the competition, the agency's Competitive Sourcing Official approves use of the process in writing and notifies OMB.

The extent to which cost in tradeoff decisions will be a significant factor under the new Circular is unknown. But while the role of cost is important it must be balanced with the government's ability to obtain the technical capability and quality it needs to meet mission requirements. As I testified before the Subcommittee, although cost is important, it is not everything.

Q. Part of the administration's goal in revising A-76 was to increase the amount of work submitted to public-private competition. If that happens, are agencies capable of effectively managing competitions and overseeing contracts? If not, what level of resources will we need to dedicate to bolstering agency contracting offices? Should that effort have come before we revised A-76?

Agencies will face significant challenges in managing their competitive sourcing programs, and will be doing so while addressing high-risk areas, such as human capital and contract management. In this regard, GAO has listed contract management at the National Aeronautics and Space Administration and the Departments of Housing and Urban Development, Defense and Energy as high-risk areas. With a likely increase in the number of public-private competitions and the requirement to hold accountable whichever sector wins, agencies will need to ensure that they have an acquisition workforce sufficient in numbers and abilities to administer and oversee these arrangements effectively.

Conducting fair, effective and efficient competitions requires sufficient agency capacity—that is, a skilled workforce and adequate infrastructure and funding. Agencies will need to build and maintain capacity to manage competitions, to prepare the in-house most effective organization (MEO), and to oversee the work—regardless of whether the private sector or the MEO is selected. While the level of resources needed will vary among the agencies, building and maintaining this capacity will likely be a challenge for many agencies, particularly those that have not been heavily invested in competitive sourcing previously. As I mentioned during the hearing,

establishing a government-wide fund at OMB that agencies could access based on a sound business case would help to assure that the new process is both efficient and fair.

Q. The administration has said in the past that the 12-month time limit placed on competitions in the revised OMB Circular A-76 should be sufficient if agencies plan properly before the competition begins. However, most competitions conducted under the old rules took much longer than 12 months, often twice as long. Do you think the time limits are appropriate? In your estimation, how much of the time taken to conduct competitions in the past was used to do things that you believe could be handled before the competition begins?

A major challenge agencies will face will be meeting the 12-month limit for completing the standard competition process in the new Circular. This provision is intended to respond to complaints from all sides about the length of time historically taken to conduct A-76 cost comparisons—complaints that the Commercial Activities Panel repeatedly heard in the course of its review. OMB's new Circular states that standard competitions shall not exceed 12 months from the public announcement (start date) to performance decision (end date). Under certain conditions, there may be extensions of no more than 6 months. The new Circular also states that agencies shall complete certain preliminary planning steps before a pubic announcement. These steps are:

(1) Determining the activities and full time equivalent (FTE) positions to be competed.
(2) Conducting preliminary research to determine the appropriate grouping of activities as business units to be consistent with market and industry structures.
(3) Assessing the availability of workload data and data collection systems.
(4) Determining the activity baseline costs as performed by the incumbent.
(5) Determining whether a streamlined or standard competition will be used.
(6) Developing preliminary competition and completion schedules.
(7) Determining the roles, responsibilities, and availability of participants in the process.
(8) Appointing competition officials (agency tender official, contracting officer, performance work statement team leader, human resource advisor and source selection authority).
(9) Informing any incumbent service providers of the date of the public announcement.

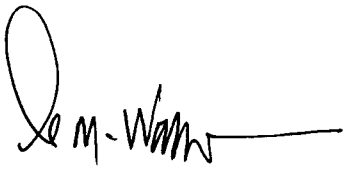
We welcome efforts to reduce the time required to complete these studies. Even so, our studies of competitive sourcing at the Department of Defense (DOD) have found that competitions can take much longer than the time frames outlined in the new Circular. Specifically, recent DOD data indicate that competitions take on average 25 months. It is not clear how much of this time was needed for any planning activities that may now be done outside the revised Circular's 12-month time frame. It appears, however, that a significant amount of the process—developing the performance work statement, preparing the agency tender offer and most efficient organization, and

conducting the source selection process—still needs to be done within the 12-month time limit.

In commenting on OMB's November 2002 draft proposal, we recommended that the time frame be extended to perhaps 15 to 18 months overall, and that OMB ensure that agencies provide sufficient resources to comply with the Circular. As such, we believe that additional financial and technical support and incentives will be needed for agencies as they attempt to meet the ambitious 12-month time frame. In this regard, we believe that implementation of the government-wide fund approach noted in my response to the prior question would help to assure that the needed resources are available.

I look forward to working with you on these and other issues in the future. If you have any further questions or would like to discuss any of the issues in more detail, please call me at (202) 512-5500; or Bill Woods, Director, Acquisition and Sourcing Management at (202) 512-8214.

Sincerely yours,



David M. Walker
Comptroller General
of the United States

(120285)

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to e-mail alerts" under the "Order GAO Products" heading.

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone:	Voice:	(202) 512-6000
	TDD:	(202) 512-2537
	Fax:	(202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Nelligan, Managing Director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

PRINTED ON RECYCLED PAPER