

On 27-28 April 1998, I attended a 2-day course on OMB Circular A-76 sponsored by ESI. A summary of key issues follows:

**Overview of the A-76 Process.** The session called "Commercial Activities Primer" provided a basic overview of the A-76 process. It was explained that by policy, commercial activities should be obtained from the private sector. OMB Circular A-76 provides a process for a cost comparison between the public and private sectors before converting from government performance of a function to contractor performance, or from contractor performance to government performance. Functions that cannot be contracted for include inherently governmental functions, core functions (technical or scientific requirements for emergencies and mission), legally exempt functions (guards, firefighters, Crane and McAlester), and gray areas (non-exempt but that cannot be clearly separated from exempt functions.) The basic steps in the process are: (1) determining availability of commercial sources; (2) preparing comprehensive performance work statement; (3) developing cost estimate for government performance and most efficient organization (MEO); (4) independent review of MEO (5) Issuing a solicitation, conducting an evaluating, and selecting the best commercial source; (6) conducting the cost comparison between the commercial winner and the MEO; (7) public review; (8) appeals.

**DRID # 20.** DOD explained the DRID # 20 inventory process from its perspective. DRID # 20 requires DOD to complete an inventory of all TDA positions to identify them as being inherently governmental, exempt, or available for competition. DOD provided guidance in the form of function and reason codes, but the individual departments can supplement the guidance on inherently governmental functions and core competencies. Any departmental supplemental guidance, as well as the actual inventories, will be reviewed by DOD for consistency and a sanity check. Exceptions to the codes can be justified on a case-by-case basis subject to OSD review. OSD wants to identify 200,000+ FTEs to study because that's what's in the budget. OSD expects to gain 20% savings gained by the A-76 competitions, but they don't care who wins the competitions.

**Revised OMB Circular A-97** is in final signature. This circular sets limits on what services the federal government can provide to state and local governments on a reimbursable basis. Such services must be highly technical or specialized (which would exclude IT or financial services), must be provided to its own agency, and must be done IAW a completed cost comparison under A-76. The federal government must periodically re-certify that the services are not available in the private sector.

**Applicability of A-76 to privatization and reinvention initiatives.** Per Dave Childs, A-76 is inapplicable to privatization and reinvention initiatives. However, he considers reinvention initiatives to be internal restructuring activities. He said that reinvention activities that involve restructuring business processes and then contracting out some of those reengineered processes could implicate A-76.

**Best Value A-76 Procedures.** The A-76 process is essentially that the government makes itself efficient (MEO), develops and in-house bid, and develops a performance work statement (PWS) describing the work performed by the MEO, which is used as the basis for the competition among private sources. After the best private source is selected, there is a competition between the private winner and the MEO. The 1996 revised supplemental handbook appears to permit best value selections for both the private-private competition and the public-private competition. However, based on the discussions at the course, while some organizations are doing best value private-private competitions, best-value public-private competitions appear to be untried.

**DOD A-76 studies.** Representatives from the services discussed their CA initiatives. The Army is currently studying 12,000 FTE with an expected annual savings of \$120M, and plans to have completed studies on 44,000 FTE by FY 03, with a projected annual savings of \$440M. The Navy is planning to studies 80,000+ FTE over the next 5 years at an expected \$2.5B savings over POM with \$1.2B savings annually thereafter. Navy has awarded an IDIQ contract for consulting services to use for A-76 studies, and has completed streamlined A-76 studies in 12 months. The Air Force has reduced over 28,500 FTE as a result of A-76 studies, and on average 60% of competitions go contract while 40% stay in house (overall government average is 50/50). On average they save 34% as a result of conducting the studies, and their average competition takes 19 months. DLA believes that 2/3 of its jobs are subject to A-76, and they are currently competing 16 of 18 distribution depots, and they will compete 70 DRMOs. They will begin a pilot depot A-76 study in July, in which they plan to: grandfather pay and benefits for government employees transitioned to the private sector, encourage the use of underutilized facilities, and incorporate the best value approach into the A-76 competitions by allowing revision of the MEO to incorporate ideas from the private competition.

**Competition in Commercial Activities Act of 1998.** Last year's Freedom From Government Competition Act has been redrafted as the "Competition in Commercial Activities Act of 1998 (House version) and the "Fair Competition Act of 1998" (Senate version). These bills would legislate the A-76 process. Under the new law, agencies would be required to annually publish a list of commercial activities which are not inherently governmental and which are currently performed by government employees. Omissions from the list could be challenged by interested parties in the Court of Federal Claims. Activities on the original list must be competed within five years, and new items must be competed within two years after publication. Public-private competitions would utilize current procurement laws and regulations, and would be subject to bid protests filed with GAO or the CFC. The House bill was scheduled to be in mark-up during the conference, but it has stalled.

**Electives and materials.** The course included several electives, such as: work statements and surveillance plans, in-house cost estimates, MEOs, independent reviews, acquisition strategy, union's view, and appeals and protest issues for lawyers. The value of the sessions varied greatly depending upon the instructor. Cassandra and I have materials from all sessions offered.