

**THE AFGE ACTIVIST'S  
PERSONAL CONSULTANT  
TO  
A-76 POLICY IMPLEMENTATION**

# **A Self-Paced Guide to A-76 Policy and Procedures**

**AFGE Field Services Department**

## **INTRODUCTION**

*Welcome to the Activist's Personal Consultant to  
A-76 Policy Implementation!!*

This Consultant is going to guide you through all the "ins and outs" of A-76 policy. It will help you understand the rules which govern it, and will coach you on your rights, as well as the restrictions, to your involvement and participation in the A-76 competitive process.

### **Why the Consultant?**

*"If you're going to play the game, you better know every rule."*

**Congresswoman Barbara Jordan (D-TX)**

The Consultant is part of the National Office's program of building a fighting Union, and providing you, our Locals and our activists, with the tools you need to be effective in "playing the game". During the past two years, the National Office has sponsored a series of privatization and A-76 training events. These events have been very successful and well received. However, at AFGE we're never satisfied. The Consultant is our attempt to raise the training to the next step. We want to improve on success and make A-76 training better, accessible and more effective than it's been in the past. So we created the Consultant. It will augment the training you received in the past, or may get in the future. It will help you become a knowledgeable, credible, and effective champion for your Local regarding contracting out and the A-76 process. The Consultant is yours. It sits on your desk at work or home. It's available to you, ready to help you whenever you need it.

**There is a real need for the Consultant.** Most Activists (and managers) are totally unfamiliar with OMB Circular A-76, its revised Supplement, the policy contained in these two documents, or what they need to do to make the process work in their favor. Therefore, we put together this "consultant" to help you familiarize yourself with the process -- **so that you can be empowered to participate.**

An ounce of prevention is worth a pound of cure. For whatever reasons, many of our activists can't, or don't, attend the A-76 training offered by the National Office and their regional Districts. They (notice, we didn't say you!) wait until the last minute, or worse, until a study is already in progress before deciding to get smart about contracting out and the A-76 process. Once faced with an A-76 study, they go into a panic trying to learn about the process or, worse yet, they freeze -- like deer in a headlight -- and do nothing, getting run over in the process. So, with this in mind, we created the Consultant. **It's a teacher that will get you smart quickly -- before the event. It will help you "do unto" before you are "unto done."** It's designed to stand alone -- you don't need to travel anywhere, call anybody, or do anything else to

learn about A-76. It's your Local's personal, desk top reference to the commercial activities process. It will help you shape -- rather than be shaped -- by the process.

Many of you have attended privatization and A-76 Competitive Process Training. Good for you! But the Consultant is still your friend. It is **designed to reinforce, or review, what you may have already learned**. Nobody can learn, or become an expert on the policy guidelines regarding commercial activities performance (A-76) overnight, or after one class, or just one reading of the Supplement. That's why we're providing you the Consultant. It's a resource, right at your finger tips, that you can call on to refresh your memory, or use in your discussions with management.

Finally, **the Consultant is a training resource**. It is there on your desk, available to you at a moment's notice, whenever you want to train your members, or management, on the policies and procedures concerning A-76. You don't need to bring in outsiders to teach a course, and you don't need a lot of preparation time. The Consultant is there, ready for you. You provide it to the students. They do the lessons and learn the material. Hopefully, after they finish the Consultant, you can exploit their newly learned knowledge in developing your Local's response to a commercial activities (A-76) study.

Which brings up a good point! Nothing that you are going to read or learn is secret, hidden, illegal, or a "dirty trick." Don't be shy about sharing the Consultant with management. Remember, chances are they're just as much in the dark on A-76 as you are. AFGE believes strongly that in most cases, if the A-76 process is followed, federal employees, **teaming with management** can win a competition, and keep work in-house.

So, don't be afraid to use the Consultant to help them get up to speed on the process. If management and labor have a common understanding of the process, work together in a spirit of respect, trust and cooperation, the in-house bid produced by these two parties will be more competitive, and the chance of keeping the work in-house increases.

#### *Why is it called The Consultant, and not something else?*

This document is more than just a book, manual or a textbook that you read, and once read, set aside. The Consultant is different. It can be used as a teacher, a policy advisor, a counselor, a strategist, or a teaching assistant. It is also, as the title page says, self-paced guide to the policies and procedures which govern the A-76 process.

What's a self-paced guide? To answer that, we first have to acknowledge that learning A-76 is a lot like trying to drink water from a fire hydrant using a shot glass -- it's difficult, wasteful, and rather overwhelming to the uninitiated. The Consultant tries to help you control the flow of water streaming from this policy "hydrant." It divides A-76 process into "easy to swallow" lessons which correspond to sections of

the revised Supplemental Handbook to OMB Circular A-76. (As you'll see in later lessons in the Consultant the Supplemental Handbook, or "the Supplement," is an important document to you. It is the rulebook that ultimately determines what is permissible, or not permissible under A-76. But more on that later.)

Because the lessons are broken into "gulp-size" pieces, you can take your time, at your own pace, to do one, some or all of the lessons either at one sitting or over the course of several days. You can use it to learn not only the process, but the reasons behind the process. You can use the Consultant to review and refresh your memory regarding the A-76 process -- either in its entirety, or just one particular aspect -- prior to meeting with management, calling for outside help, or entering into negotiations.

The Consultant quizzes you repeatedly. Each lesson ends with either a multiple choice, true or false, or fill-in the blanks quiz. All quizzes are open-book. The Consultant uses quizzes so that you will know whether or not you're learning what you need to be learning. The Consultant's goal is for you to achieve a score of a 100% on the quiz before you move to the next lesson. However, don't be intimidated. If you get an answer wrong, you'll have the opportunity to reread the material, and correct your mistake.

Remember, the Consultant is your friend. We're not concerned, nor should you be, in evaluation. We are, however, terribly concerned that you're learning the material.

### **Coach's Comments**

In addition to the lessons which introduce you to the A-76 policy, at the conclusion of the Consultant there is also a section called, "Coach's Comments." This section devotes itself to providing you with insights on how non-A-76 policy matters (for example, Partnership and official time) may be applied in winning an A-76 competition. We also feature creative innovations employed by the field to keep the work in-house.

*Let's get started!*

## **GETTING STARTED**

### **What You'll Need**

#### **REFERENCE MATERIALS**

You need to assemble all the key references that you'll be reading during the individual lessons. You'll need copies of:

- OMB Circular No. A-76 (Revised) of August 4, 1983
- Circular No. A-76, Revised Supplemental Handbook, "Performance of Commercial Activities," of March, 1996
- **If you are a DoD Local**, you'll want to have a copy of Title 10, U.S.C. §2467, "Cost Comparisons: requirements with respect to retirement costs and consultation with DoD employees"

If you're attending National Office sponsored training, these materials will be provided during class. However, if you are using this guide at your Local -- and your Local doesn't have these references -- call the Field Services Department, National Office (202-639-6406) and ask that they be mailed to you.

You can get a copy of the Supplement, "right from the horse's mouth" by contacting The Executive Office of the President, Office of Administration, Publications Office, Washington, DC 20503 at (202) 395-7332. This document is also accessible on the OMB Home Page at <http://www.whitehouse.gov/WH/EOP/omb>.

#### **ALSO HAVE ON HAND**

- a pencil or pen for answering the quiz questions; and
- a highlighter, if you want to mark up the Consultant or any of the references.

#### **FINALLY**

Get away from the phone, kids, the TV, Union business, and the other interruptions and distractions in life. Be selfish with the time you spend learning. Make yourself comfortable, relax, and focus on the task at hand.

## **LESSON #1: How Each Lesson is Organized**

### **How this lesson applies to you**

*Question: How do you eat an elephant?*

*Answer: One bite at a time.*

In the Introduction, we explained why we created the Consultant, what we hope to achieve with it, and what you will need to get started. What we didn't do was to walk you through one of the lessons so that you'll understand what to expect.

We're going to do that right now!

Every lesson will begin with a section entitled, "How This Lesson Applies to You." It's easier to learn when the material you're studying is important to you. In this section, we'll be upfront so that you'll be motivated to pay attention.

In this particular lesson, it's important that we guide you through a sample lesson so that you understand what to expect.

### **Learning Objectives**

At the conclusion of this lesson, using the material presented in Lesson #1, you will be able to state correctly on a fill in the blank quiz with 100% accuracy that:

- each lesson of the consultant will consist of 5 sections.
- the sections are entitled "Why This Section is Important to You?"; "Learning Objectives"; "Read"; "Coach's Corner"; and "Quiz".
- the answers to each lesson's quizzes will be provided in the back of the Consultant.

Learning objectives are really important. They help you focus on the material that you will study, inform you to what standard you'll be expected to master this information, and finally how you will be evaluated -- i.e., either fill in the blank, multiple choice, true or false, or a combination of question types on the quizzes.

## **Read**

In this first lesson there are no references, so the only material you'll have to read is the following:

The secret to understanding A-76 is to read the references such as the Circular and its Supplement. The Consultant will give you background, color, and help you focus on what you need to know. But there is no substitute for reading the actual references.

Some people (notice, we didn't say you) will want to take a short cut, and just read the Consultant. However, if you cheat, you're only cheating yourself. Read the material; work to understand it. Understanding the references is the key to successfully participating in the A-76 process, and keeping the work in-house.

## **Coach's Corner**

It's time for you to meet the Coach.

The Coach is an imaginary figure. Think of the Coach as that teacher, uncle, aunt, or friend who not only explained something, but provided you the background and tips that you really needed to understand the subject.

Granted, the Coach may get windy at times. But when the Coach speaks, pay attention. The Coach gives you the straight scoop and really improves the depth of your understanding.

## **Quiz**

**"It's a poor carpenter who doesn't hit his fingers every now and then."  
General Al Gray, 27th Commandant of the Marine Corps.**

First and most important -- relax! The purpose of this section isn't to evaluate, humiliate, or belittle you. Scoring 100% on each quiz is much less important than understanding the material. Second, all tests are open book. You're free to go back and research the references before answering a question. In fact, we encourage it. That's what you'll do in real life when faced with an A-76 policy question, and that's what we encourage you to do here in training.

The questions will always be in one of three forms: multiple choice, fill in the blanks, or true/false.

If you get a question wrong, go back, reread the material, find out where you made your mistake. Once you understand why you made the error, move on to the next lesson.

Ready for your first quiz? O.K., here it comes.

## **Quiz #1**

Answer the following questions:

- 1) There are \_\_\_ sections in each lesson.
- 2) These sections are entitled \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_.
- 3) Answers to this quiz can be found in the back of the Consultant on the page entitled "**Answers to Quiz #1.**" (True or False?)

## **LESSON #2: Introduction to the Supplement**

### **How this lesson applies to you**

The Introduction to the OMB Circular No. A-76 -- Revised Supplemental Handbook describes the Handbook's purpose and its relationship to OMB Circular A-76. This is the stage-setter that puts everything that follows into context.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in the Introduction to OMB Circular No. A-76--Revised Supplemental Handbook, you will be able to state correctly that:

- The August, 1983 Office of Management and Budget (OMB) Circular No. A-76 "Performance of Commercial Activities" is a policy document.
- The OMB Circular No. A-76 -- Revised Supplemental Handbook provides the procedures and guidance on whether or not a commercial activity will be contracted out, continue in-house, or be performed through an Interservice Support Agreement (ISSA). (What's an ISSA? It's an agreement between one federal agency and another to provide each other certain services or functions. We'll go over ISSA's in Lesson #9 and Part I, Chapter 2 of the Supplement.)
- The scope of the Supplemental Handbook is limited to the policies and procedures governing contracting out, contracting in, or ISSA performance.
- The policy of the government is not contracting out. It's competition.
- There are no legal or procedural bases to challenge A-76 policy and procedures other than those provided in the appellate process contained in the Supplement.
- The Supplement is divided into two parts: Policy Implementation and Preparing the Cost Comparison Estimates.

You will also be able to identify the six appendices of the Supplement.

### **Read**

OMB Circular A-76 of August 4, 1983 in its entirety.

Read the Introduction to OMB Circular No. A-76 -- Revised Supplemental Handbook, March, 1996, pages *iii and iv*.

## Coach's Corner

Now that you've read the reference material, here are some tips to help you understand what you've read:

\* The August 1983 Office of Management and Budget (OMB) Circular No. A-76 is a policy document. It's usually referred to as "**the Circular.**" It provides the government's philosophy regarding how commercial activities are to be performed.

What are commercial activities?

Let's look it up. As you know from your reading, there's a Definition of Terms Appendix in *OMB Circular No. A-76 -- Revised Supplemental Handbook of March 1996* (The Supplement) starting on page 35. It is also defined in the Circular's paragraph 6.a.

What did you find? As you can see, a commercial activity is a product or service now performed by the government that could be done by contractors in the commercial sector.

Commercial activities are the flip side of inherently governmental activities. What's an inherently governmental activity? Hold on to your horses until we get to Lesson 3.

\* The OMB Circular No. A-76 -- Revised Supplemental Handbook of March 1996 describes the procedures and rules which govern how the government will go about putting its commercial activities program into action. The Revised Supplemental Handbook is usually referred to as "**the Supplement.**"

\* The Introduction to the Supplement makes an important point:

Circular A-76 isn't designed to contract out.

However, it is designed to create an **analytical framework** on which the government bases **a decision on who can best provide** the products and services (**commercial activities**) it needs.

This distinction is important because it means that you can't treat the announcement of an A-76 Cost Comparison (also known as a Commercial Activities or CA Study) as a decision to contract out. We can't tell you the number of times we've gotten frantic phone calls from activists screaming, "They're contracting us out!" After calming them down, we found out that what was really happening was that a study had been announced. So what, you say! Study or contracting out, it's all the same thing. Well, let the old Coach remind you of one of the greatest truths in sports and in the world of A-76:

## **"It ain't over 'til the fat lady sings!"**

An A-76 study isn't the same as a death sentence. You have a chance under the Supplement to be part of the process and to work with management to either keep the work in-house or, in some cases, to bring it back in-house by contracting-in.

You're not beat at this point unless you say you're beat. OMB statistics show that 50% of the time the in-house bid wins the A-76 competition (that means you, federal employee). The Coach and the Consultant are going to help you become competitive, show you the ropes, teach you what you need to know, and give you the tips you need to win -- fair and square -- and prove that you can do the work (commercial activity) faster, better, and more economically than a contractor.

**AN IMPORTANT POINT:** Throughout the Consultant you will be hearing about the in-house bid and the importance of your involvement in contributing, developing and reviewing it. But during your participation keep in mind:

### **Whose bid is it anyway?**

**The in-house bid is the government's bid -- management is ultimately responsible for the final form of this bid, and the contents of the documentation which supports the bid.**

**Why can't the Union bid on the work?** Because conflict of interest laws prohibit federal workers from bidding. Federal Acquisition Regulations (FAR) 3.601 states that contracts can't be awarded to an organization owned or substantially owned or controlled by one or more federal employees.

**If we don't own the bid, then what's the purpose of participating?** Because your participation gives you an avenue to **shape rather than be shaped** by the process. You have expertise and capabilities that management doesn't have. You, better than anyone else, know what is really required to perform the work under consideration. You know how many workers it takes to get the job done, and where the real cost savings are.

Management also knows that if you have your act together and understand the A-76 process, you could become a major barrier -- politically and procedurally -- preventing management from performing a successful commercial activities study. Therefore, for this reason it is in management's own self-interest to include you as a participant.

With this in mind, remember: **KNOWLEDGE IS POWER!** Your ability to shape the process is a direct reflection of your knowledge of the policy and procedures contained in the Circular and its Supplement. If you don't know what's going on, or where the process is going, your advisory role will be greatly diminished. On the other hand, if you know your "stuff," you'll be doing unto before your unto done! So study hard. This is no game.

O.K. team. Before we go to the quiz, I want to point out some things concerning the organization of the Supplement. It's divided into two parts:

- Part I, Policy Implementation; and
- Part II, Preparing the Cost Comparison Estimates.

The Consultant and the Coach will focus primarily on Part I of the Supplement. Pay attention, because Part I is the one piece that you really have to understand. If you do, everything else will fall into place -- including Part II.

Part II is a step-by-step guide to preparing the paperwork for the in-house bid, the contractor's bid, and the documentation supporting the award decision. If you understand Part I, you'll get your place "at the table" and with management be able to influence the final outcome of the study.

In addition to Parts I and II, there are six appendices in the Supplement. The most important of the six is the "Definition of Terms" Appendix. If you come across a term that you don't understand, go to this appendix and look it up. Don't be lazy. Remember, as the Coach always says:

**"What you know won't kill you. What you don't know will."**

## **Quiz #2**

Answer the following questions. Remember, all quizzes are open book.

1) The August 1983 Office of Management and Budget (OMB) Circular No. A-76 "Performance of Commercial Activities" is a \_\_\_\_\_ document. It is also referred to as the \_\_\_\_\_.

2) The OMB Circular No. A-76 -- Revised Supplemental Handbook provides the \_\_\_\_ and \_\_\_\_ whether or not a commercial activity will be contracted out, continue in-house, or be performed through an Interservice Support Agreement (ISSA). It's also referred to as the \_\_\_\_\_.

3) The scope of the Supplemental Handbook is limited to the policies and procedures governing (Select an answer):

- a. contracting out, contracting in, or ISSA performance
- b. privatization, conversion to contract, conversion from contract
- c. asset sales, outsourcing, corporations
- d. contracting out

4) The policy of the government is not contracting out. It's \_\_\_\_\_.

5) There are no legal or procedural basis to challenge A-76 policy and procedures other than those provided in the appellate process contained in Part I, Chapter 3, Paragraph K, of the Supplement. You can't go to court, or grieve and arbitrate A-76 policy and procedures. (True or False?)

6) The Supplement is divided into two parts: \_\_\_\_\_ and \_\_\_\_\_.

## **LESSON #3: Inherently Governmental Activities**

### **How this lesson applies to you**

We already know that the Supplement addresses the performance of commercial activities. We also know that commercial activities are goods and services which are currently provided by the government but which could conceivably be provided by contractors.

Now, we're going to learn the flip side of commercial activities: -- inherently government functions. This work is performed by the government which is so intimately involved with governing that it can only be performed in-house. Inherently governmental functions will not be contracted out.

Whether an activity is designated as commercial or inherently governmental ultimately determines whether or not it will be subject to review under A-76 and its Supplement, or be untouched and remain in-house.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in the Circular; the Supplement's Appendix 1, Definition of Terms; the Supplement's paragraph B of Chapter 1; and the Supplement's Appendix 5, OFPP Policy Letter 92-1, "Inherently Governmental Functions," you will be able to state correctly on a quiz with 100% accuracy:

- inherently governmental activities are not subject to A-76 or the Supplement.
- a definition of inherently governmental.
- that the government (i.e., management) decides what is and is not inherently governmental.
- identify, when provided a list of activities, those that could be considered inherently governmental and those that could be considered commercial activities.

### **Read**

Chapter 1 -- General Provisions, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph B. on page 3 and Paragraph F. on page 5.

The Supplement's Appendix 5, OFPP Policy Letter 92-1, "Inherently Governmental Functions" on pages 53 through 59.

The Supplement, Chapter 1, page 5, paragraph F, The Inventory, and

Paragraph 6.e.,7.c., and "Examples of Commercial Activities" in the back of the Circular.

### **Coach's Corner**

As you learned from your reading, inherently governmental functions are those which are so intimately involved with the act of governing that they mandate government performance. That seems pretty straightforward. For example, national defense and foreign policy are undeniably inherently governmental. On the other hand, photographic process is a commercial activity. (See the Circular, A-76, Examples of Commercial Activities.)

But wait a minute, what if photographic processing involves classified or national security sensitive materials. Is it commercial or inherently governmental? Is governmental performance mandated, or should it be subject to an A-76 analysis? These questions are often difficult to answer.

The key points regarding inherently governmental functions the Coach wants to make are:

-- Just because something "was and has always been" inherently governmental doesn't mean it will always be so. Interpretations and rulings change with political appointees and Administrations.

-- Management determines what is and is not commercial or inherently governmental. But this doesn't mean that you're totally left out in the cold.

-- Annually, all federal agencies are required to perform an annual inventory of their commercial activities and update this inventory. (See the Supplement, Chapter 1, page 5, paragraph F, and Appendix 2, "OMB No. A-76 Inventory.") You should approach management and seek to participate in the inventory at your installation or facility. This is also a great opportunity to get some early warning about possible plans to contract out. If management redefines work from inherently governmental to commercial activity, expect a commercial activities announcement in the near future.

### **Quiz #3**

Answer the following questions. Remember this is an open book test.

1) Inherently governmental activities are not subject to A-76 or the Supplement. (True or False?)

2) Inherently governmental activity is one which is so \_\_\_\_\_ related to the exercise of public interest as to \_\_\_\_\_ by federal employees.

3) A Committee consisting of management and labor representative designates which activities are commercial or inherently governmental. (True or False?)

4) Designate those activities that usually would be considered inherently governmental activities with an "I" and those usually considered commercial with a "C."

national defense                       systems engineering

automatic data processing             operation of cafeterias

tax collection                               foreign policy

## **LESSON #4: Government Performance of Commercial Activities**

### **How this lesson applies to you**

We just finished talking about work that must be performed by federal employees, i.e., inherently governmental activities.

This next lesson discusses the authority for federal performance of commercial activities in certain cases without a cost comparison.

This is important because it means that in some cases management will have the **authority to keep certain commercial activities in-house** without a cost comparison. This includes cases where work is brought back in-house (conversion from contract).

I know you'll be interested in this section.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in The Supplement's Paragraph C of Chapter 1, and paragraphs 9.a., and 7.c(7) of the Circular, you will be able to state correctly on a quiz with 100% accuracy the conditions under which the government may perform commercial activities.

### **Read**

Chapter 1 -- General Provisions, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph C. on page 3 and 4.

The Circular, A-76, paragraphs 8, 9.a. and 7.c(7).

### **Coach's Corner**

Hopefully, you did the reading first. In case you need a reminder, here are the conditions under which the government may perform commercial activities without a cost comparison:

1. When performance of a commercial activity is required by national defense.
2. When the commercial activity is needed to ensure the quality of direct patient care.
3. When that commercial activity is designated as core. These core capabilities are commercial activities that are performed in-house because there is no guarantee that contractors will be able to reliably provide the goods and services the government requires. The designation of commercial activities could also be designated core when the government needs this work to maintain a level of skills, knowledge or expertise

within the government, or to preserve an in-house capability to meet emergency requirements.

4. Research and Development is not subject to the Circular. However, the commercial activities supporting the research and development is subject to the cost comparison process.

5. If no one in the commercial sector can do the work.

6. Work involving 10 or fewer FTE's (Full Time Equivalent) federal employees may be brought in-house or contracted-in if the contracting officer finds the contractor's performance is unsatisfactory or the in-house provider can provide the service or product at a fair and reasonable price.

7. If the in-house activity meets or exceeds industry cost and performance standards.

8. When the in-house provider proves in a competition that it can provide the service or product at a better price than a contractor.

9. When a contractor defaults or is terminated for non-performance, in-house performance may be authorized on a temporary (interim) basis. In this case, the return of work is temporary, pending a recompetition between private and federal bidders.

#### **Quiz #4**

Answer the following questions. Remember all tests are open book.

Indicate which of these activities must be kept in-house, and which could be considered commercial activities. Use an "I" to indicate in-house. "C" to indicate Commercial Activity.

Photographic services involving classified material deemed important to national security.

Direct patient care, when no contractor will provide the service.

TRUE OR FALSE?

Research and Development is subject to the Circular and its Supplement.

Public works, installation maintenance, and facility maintenance activities supporting a Research and Development Activity are not subject to the Circular and its Supplement.

Functions with 10 or fewer FTE's may not be brought back in-house even if past contractor performance is unsatisfactory and reasonable prices can't be obtained elsewhere.

## **LESSON #5: Contract Performance of Commercial Activities**

### **How this lesson applies to you**

We learned in the last lesson that there are conditions which allow work to stay in-house when it's to the government's advantage such as in the case of national security, or when there's no commercial vendor, or when it's cheaper to have the work done in-house.

Now we're going to learn the flip-side. This section applies to the conditions under which it's permissible for the private sector (contractors) to do the work.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 1, paragraph D, you will be able to identify correctly on a quiz with 100% accuracy:

- the conditions which allow contractor performance.
- and you will be able to define in plain English the following terms: new requirement, severable expansion, and recurring and non-recurring commercial activity.

### **Read**

Chapter 1 -- General Provisions, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph D. on pages 4 and 5.

### **Coach's Corner**

As you learned in your reading:

\* It's been the government's policy since the time of Eisenhower's Presidency to rely primarily on the private sector for commercial activities. With this in mind, the Supplement, based on the Circular's guidance, states the government will acquire non-recurring commercial activities through contract.

\* What are **non-recurring** commercial activities? In plain English, it means commercial activities that are required for one time and one time only. Obtaining these goods and services isn't going to be a long term project. It's a one shot contract that will not have to be renewed.

\* On the other hand, there are **recurring** commercial activities which are long term service and product requirements. The requirements will be repetitive, and will have to be contracted for time and time again. Specifically, the policy says:

-- If an activity is under contract and the contract continues to be competitive, it will stay contract. (However, this doesn't mean that once gone, the work can never

be competed again. The government may call for a new commercial activities study if it believes doing so would be in its best interest.)

-- Any new requirement (i.e., a new need for a recurring commercial activity) will be performed by contract unless there is reason to believe that the contractor's cost and performance aren't reasonable.

-- **Severable Expansion** is an expansion of work that could be provided under an existing contract without undue administrative burden. An example of this would be a contract which is modified to increase the scope of work without increasing the cost of administering the contract. Severable contracts will be awarded by a competitive contract.

-- Work can be contracted out, or back in-house, without a cost comparison if 10 or fewer FTE's are involved and if a contracting officer believes he or she can get quality service at fair and reasonable prices. This is often referred to as a "**direct conversion.**"

Why does the government permit direct conversions? In all honesty, running a cost comparison is expensive, time consuming, and complex. Management, since Eisenhower's days, has said it needs this flexibility, and every Administration since then has supported them.

-- Activities with 11 or more FTE's may be contracted out without a cost comparison if all impacted federal employees are reassigned to comparable federal positions.

-- The Supplement also states that a commercial activity won't be reorganized, divided, or changed in order to get around the A-76 requirements. This last point is a real sore point with many federal employees. We often claim that activities are being downsized as a way of getting around A-76. If you have documented evidence that a reorganization occurred with the intent of getting around A-76, talk to your National Vice President or the National Office, and we'll see what we can do.

**O.K. Coach, what do we do?** If a function or activity is reorganized or downsized from eleven or more FTE's to 10 or fewer FTE's, you need to approach management in writing to ask:

- 1) What's the rationale behind downsizing to that staffing level? and
- 2) Is it management's intent to contract out the remaining jobs through a direct conversion?

This approach accomplishes several things. It's a way of keeping everyone honest. You're telling them that you're aware of what's going on, and secondly you're attempting to establish management's future plans for the activity. In an extremely rare instance you may get management to establish that the reorganization's intent

was to get around the policy and procedures of A-76. If you can establish that, cry "foul" and call for help from your District or the National Office.

## **Quiz #5**

Answer the following questions. Remember all quizzes are open book.

1) By federal policy, which of these commercial activities will be obtained by contract with the private sector? (Select one):

- a. non-recurring commercial activities
- b. recurring commercial activities, under certain conditions
- c. new requirements
- d. all of the above

2) Activities of 10 or fewer FTE's may be directly converted to contract without performing a cost comparison. (True or False?)

3) Activities of 11 or more FTE's may be directly converted providing that all affected federal workers are given a job some place else. (True or False?)

4) If the government believes that contractor quality is unacceptable and their prices unreasonable, it must still maintain a contract with the private sector because once the work leaves the federal sector it stays outside the federal sector. (True or False?)

## **LESSON #6: Agency Cost Comparison Waivers**

### **How this lesson applies to you**

While the government has given federal workers greater rights to be involved in the competitive process, it has also granted itself greater latitude to contract out or back in to federal performance without doing a cost comparison, i.e., waiving the requirement for a cost comparison.

This lesson covers the rules that govern granting this waiver.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 1, Paragraph E, you will be able to:

- generally describe waiver process
- understand the term "9.a. official of the Circular"
- state employee rights under the waiver process
- describe how the waiver process applies in a base closing situation

### **Read**

Chapter 1 -- General Provisions, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph E. on page 5.

Paragraph 9.(a) of the OMB No. A-76 Circular.

### **Coach's Corner**

\* The 9.(a) official is a high-level agency official (assistant secretary or equivalent) who has responsibility for implementing the Circular. Within DoD, this authority is delegated to the Service Secretaries (Army, Navy, and Air Force) or DoD Departmental Agency Heads.

\* A waiver will only be granted if:

- the conversion results in significant cost savings or efficiencies.
- the waiver won't reduce the prospects for future competition.
- the in-house or contract offer has no chance of winning under the Supplement's competitive guidelines.

This may look mighty easy to you and very simple. But the old Coach has got to tell you, these are mighty big hurdles for an Agency to jump over. This is why you see so few of these waivers.

- \* You have rights if an agency decides to request a waiver.

- A decision to grant a waiver is subject to the Appeals process contained in Chapter 3, Paragraph K. (We'll cover this in Lesson 20.)

- Federal workers will also have the right of first refusal as described in Chapter 1, Paragraph H, of the Supplement. (We'll cover this in Lesson 8.)

- \* Finally, DoD activities which are scheduled to close under Base Realignment and Closure (BRAC) are granted waivers of cost comparison requirements.

## **Quiz #6**

Answer the following questions. Remember all quizzes are open book.

1) What are the three things a 9.a. official must justify in order to be granted a waiver?

A.

B.

C.

2) Employees impacted by the decision to grant a waiver have the right to \_\_\_\_\_ and Paragraph H's \_\_\_\_\_ considerations.

3) Normally, the 9.a. official referred to in the Circular is at the \_\_\_\_\_ Secretary level.

4) Bases selected for closure or other federal installations slated for closure already have cost comparison waivers in place. (True or False?)

## **LESSON #7: Review of Documents**

### **How this lesson applies to you**

**For an AFGE activist, this section is probably one of the most important lessons you'll master.**

We know from experience that when Union activists are involved in developing the Performance Work Statement (PWS) and the Most Effective Organization (MEO) the chances of winning the bid and keeping the work in-house improve drastically.

This lesson describes your right to information. Access to information will spell the difference between active union involvement in the competition and getting left behind.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 1, Paragraph G. of the Revised Supplemental Handbook, you will be able to list correctly with 100% accuracy:

- the documents that you will have access to during the competition.
- the procurement and conflict of interest restrictions which may prevent your access to **final copies** of these documents.
- the reference that authorizes you to have access to documentation during the appellate process.

### **Read**

Chapter 1 -- General Provisions, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph G. on page 5.

Read Chapter 3, Paragraph B.3.a. and b. regarding Procurement Official restrictions.

If you are a DoD Local, read Title 10, USC §2467.

### **Coach's Corner**

The old Coach is going to cover a lot of ground here, but pay attention. First, understand that AFGE uses a multi-layered defense when it comes to contracting out.

\* **INFORM.** Our first line of defense is to educate ourselves our membership and the public through the media, our testimony before Congress, and discussions with Administration and agency officials. In all these areas, we

emphasize that contracting out is not in the best interest of the government or taxpayers who depend on federal services and products.

\* **COMPETE.** If we can't dissuade an agency from contracting, then we insist on A-76 cost comparisons. We believe that federal employees can do the work as well as any contractor, and that we will win competitions with the private sector if given a fair chance.

\* **APPEAL.** If a tentative decision is made to award the work to a contractor, we have the right to appeal.

\* **TAKE CARE OF ADVERSELY IMPACTED WORKERS.** If our appeal fails, we will ensure that adversely impacted workers receive all benefits available to them, such as the right-of-first refusal, job placement, retraining, etc.

\* **FOLLOW THE WORK.** Finally, under the right conditions, we will "follow the work" into the private sector. We will organize these workers so that they maintain their affiliation with AFGE despite the fact they are no longer federal employees.

And that's the reason this section is so important. Access to information and the ability to influence the development of key documents like the Performance Work Statement and the Management Plan with its Most Efficient Organization will ultimately determine whether or not we'll be able to work with management in drafting a competitive bid. Documentation also serves as the basis of your appeal. If you don't have access to the documents supporting management's decisions, you have no factual basis on which to file your appeal.

With this in mind, let's go over paragraph G. of the Revised Supplemental Handbook, Performance of Commercial Activities of March, 1996. It says "consistent with procurement and conflict of interest requirements," we will have "the opportunity to fully participate in the development of supporting documents and proposals including development of:

- \* performance standards
- \* performance work statements
- \* management plans (We'll cover this document in Lesson 14.)
- \* and in-house and contract cost estimates."

This section also gives you the right to review the solicitation for the work being considered for competition once it is issued.

Finally, Paragraph G says that you will have access to all relevant documents needed to prepare an appeal. At a minimum, this documentation will include the in-

house cost estimate with detailed supporting data, the completed cost comparison form, and the management plan.

**Important point to keep in mind:** The time you have available to file an appeal is twenty calendar days. (We'll cover this in Lesson #20.) The appeal period starts once all necessary documentation is made available for your appeal. Most people think it starts once the tentative announcement of award is made. They're wrong. The Supplement is clear -- it begins when you have access to the documentation.

**This is pretty straightforward stuff!**

However, problems occur because some managers, either from ignorance or, frankly, because they want to shut you Local out, will deny you access to these documents and to the entire process involving the development of these documents. The standard excuse is:

**"If we let you participate, it will violate conflict of interest rules, you will become a procurement official and lose your right-of-first refusal to work for the contractor if he wins."**

If they come at you with "we're doing this for your own good" line, here are some notes to help you set them straight.

**WHAT'S A PROCUREMENT OFFICIAL?**

Read Para. B. 3. of Part I, Chapter 3, which is on page 10. The language is rather straightforward:

B.3. states that if you are "*directly and substantially involved in preparing or approving the PWS, MEO, in-house, or the source selection process you are considered to be a procurement official.*" It would therefore logically follow, if a Union member becomes **directly and substantially involved** (in other words, a decision maker) he/she will be designated as a procurement official.

B.3.c. further defines a procurement official as, at a minimum, a certifying official for the PWS and MEO, the Independent Review Officer (IRO), and the officials signing the cost comparison form (CCF) or the Administrative Appeals Authority. Union representatives do not serve in these roles.

## **HOW THIS AFFECTS YOU**

Management often claims that the Union can't participate in the A-76 study because bargaining unit employees would lose their right of first refusal.

They're wrong in most cases!

## **WHY?**

Read Chapter 3, Paragraph 3.a. Employees who participate or provide data to support the development of various study elements, but who do not *review, approve or have direct knowledge of the final* PWS, MEO, in-house bid or cost estimates aren't considered procurement officials.

If for some reason a Union representative is designated as a procurement official, they may decline it in accordance with para. 3.b.

## **BOTTOM LINE**

Unless you have decision authority or have knowledge of the final PWS, MEO, and cost estimates, you aren't a procurement official.

If you are designated, you may accept (and lose your right of first refusal); or decline (and keep the right of first refusal).

Nothing prevents you from being involved in commenting and reviewing draft, as opposed to final work.

For those of you in DoD Locals, you have even more horsepower. 10 U.S.C. §2467 gives you authority to be involved in review of drafts.

## **What if they won't listen?**

If they continue to shut you out, contact your National Vice President or the National Office for help.

### **What if the Competition's Just been Announced?**

If a competition has already been announced, you should meet with the Commercial Activities (CA) Team Leader, and notify him or her of your intent to participate. Ask management how the agency intends to meet its obligations under the Circular and the Supplement.

By the way, take a respectful letter to the CA Team Leader's meeting. This letter should outline your expectations for Union involvement in the process. Leave it with the CA Team Leader when you depart. (We provide you a sample of such a letter in Lesson #11.)

## **Quiz #7**

Answer the following questions. Remember everything in A-76, even the quizzes, are open book.

1) List the documents that the Union can help develop in a Commercial Activities study:

- \*
- \*
- \*
- \*

2) You have the right, as does the contractor, to comment on the bid's solicitation once it's issued to the public. (True or False?)

3) At a minimum, you will have access to the following if you are going to file an appeal.

- \*
- \*
- \*

4) Procurement and conflict of interest restrictions may prevent your access to \_\_\_\_\_ versions of these documents.

## **LESSON #8: Safeguarding Employee Rights**

### **How this lesson applies to you**

Remember in the last lesson we covered AFGE's Defense in Depth response to Contracting Out.

- \* We first try to prevent contracting out through education and information.
- \* Secondly, if contracting out is being considered, we'll insist that management comply with the policy guidelines contained in the A-76 Circular and its Supplement. We want open competition, and we want to participate.
- \* If we lose, we'll appeal if we have the basis for an appeal.
- \* We'll ensure to the maximum extent possible that our impacted brothers and sisters are properly taken care of.
- \* We'll consider following the work if organizing conditions justify such an action.

In this lesson, we'll focus on some of the tools you have available to help you ensure that you'll be able to put this multi-layered defense in place. You'll also see how these tools can be used to look out for our members before, during, and after a commercial activities study. We'll discuss such innovations as:

- \* incorporating a Contracting Out Article in your Collective Bargaining Agreement. This article outlines the agreement between management and your Local regarding your involvement in a commercial activities study.
- \* how partnership can be used to create the relationships and communications you'll need to compete successfully.
- \* bargaining for the official time you and your members will need in order to perform your duties as study team participants, as well for other purposes.

In this lesson, we'll also cover the Supplement's policy guidance regarding the treatment of the workers who lose their jobs because of a decision to contract out.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in this lesson and Paragraph H of the Supplement, you will be able to:

- list some of the labor-relations and partnership considerations which should be taken into account when preparing for an A-76 study.
- understand that these labor-relations and partnership actions should, if possible, be taken before the study is announced.
- list the considerations contained in the Supplement's Paragraph H which provide for displaced federal workers.

## **Read**

Chapter 1 -- General Provisions, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph H., on pages 5 through 6.

## **Coach's Corner**

In the last lesson, Lesson #7 "Review of Documents," we stressed the importance of early involvement in the competition process. We also emphasized the importance of reaching an early understanding of the scope and restrictions of your involvement in the process. In this lesson, we're going to show you how to use your collective bargaining agreement, partnership, and A-76 policy to achieve these objectives, and ensure that the interests of your Local and its members are addressed before, during, and after a commercial activities study.

### **TIP #1: INCLUDE A CONTRACTING OUT ARTICLE IN YOUR COLLECTIVE BARGAINING AGREEMENT**

**The more you sweat in peace, the less you bleed in war.**

The time to reach an understanding about the scope of your involvement in a study or competition isn't when they announce the competition -- it's before. That's why we advise you to include a contracting out article in your collective bargaining agreement. It lays the groundwork so that there won't be any misunderstandings once a study is considered or announced.

What should this Collective Bargaining Agreement look like? Something like this:

#### **Article ## CONTRACTING OUT**

#### **Section 1 - General**

A. The Employer and the Union will cooperate and communicate to the maximum extent possible concerning Commercial Activities (CA) issues. The Employer shall provide the Union without charge a list of all Commercial Activities affecting the bargaining, and who is performing the work, which shall be current as of the effective date of this Agreement.

**DoD Local's Version of B:**

B. Management agrees to notify and consult with the Union regarding any anticipated review of a function for contracting out that could affect bargaining unit positions, as required or allowed by Title X, USC, section 2467 and other law; rule; regulation; OMB Circular A-76 and its Supplement; and this Agreement.

**Non-DoD Local's Version of B:**

B. Management agrees to notify and consult with the Union regarding any anticipated review of a function for contracting out that could affect bargaining unit positions, as required or allowed by law; rule; regulation; OMB Circular A-76 and its Supplement; and this Agreement.

C. The Employer's oversight or advisory group will include a Union Representative during the conduct of a cost study.

D. The Union shall have the opportunity to review and make comments on the Employer's submission to the annual "OMB Circular No. A-76 Inventory" as required by Part I, Chapter 1, paragraph F and Appendix 2 of the Circular's Supplement.

**Section 2 - Joint Participation**

A. At the earliest possible stages of development prior to the determination of whether to contract out, the Union will have the opportunity to consult and fully participate in the development of supporting documents and proposals, including the development of performance standards, performance work statements, management plans/management efficiency study, the milestone Chart governing the conduct of the CA study, the development of in-house and contract cost estimates, invitation for bid, request for quotation, and any other information used in the development of the above documents. The Union will have the opportunity to consult with management at least monthly.

B. The Employer shall notify the Union in writing when a contracting study is underway.

C. A Union representative will be permitted to participate in the "walk through" held for potential bidders.

### Section 3 - Information

A. The Employer will provide to the Union in a timely manner copies of pertinent information relative to the contracting out, to the extent permissible under law, rule, and regulation. Any questions regarding requests for information or access to documentation will be jointly addressed by labor and management as soon as they arise.

B. Upon issuance, a solicitation used in the conduct of a cost comparison will be made available to the Union for comment. The Union will be given the opportunity to review the document and submit comments before final receipt of offers from the private sector. Private sector offerors shall comment as provided by the federal acquisition regulations (FAR).

C. Briefings will be held with affected bargaining unit employees at least monthly, unless mutually agreed by Union and Management to postpone, for the purpose of timely providing information concerning CA studies. The Union will be given the opportunity to participate in such briefings.

D. Any questions about information under this agreement or requested by the Union will be discussed as soon as they arise.

### Section 4 - Bargaining

When the Employer determines that bargaining unit work will be contracted out, the Union shall be provided the opportunity to bargain concerning matters set forth in and consistent with 5 U.S.C., chapter 71.

### Section 5 - Appeals

A. The Employer and the Union recognize the right of first refusal required by OMB Circular No. A-76 and its Supplement. Declining to exercise the right of first refusal due to displacement by contracting out shall not be deemed to be a waiver of any appeal grievance rights by a bargaining unit employee he/she may have under applicable law, regulation, and this agreement.

B. The Employer agrees that, to minimize adverse effects on bargaining unit positions and employees affected by a contracting out decision, it will use attrition and restrict new hires and, to the maximum extent possible, will place affected employees in continuing positions.

C. The Employer recognizes the Union's right to file an Appeal of Tentative Waiver and Cost Comparison Decisions and to have necessary documentation for purposes of filing this Appeal. Additionally, consideration will be given to extending the appeal period to a maximum of thirty (30) calendar days, if the cost comparison is particularly complex.

## Section 6 - Performance Monitoring

Should the CA study result in a decision to convert to contract, the Union is encouraged during the period of contract performance to bring known contract discrepancies to the attention of the appropriate contract administrator or designee.

### **TIP #2: MAKE PARTNERSHIP WORK FOR YOU**

You've probably been asking yourself "What role does partnership play in this whole process?" When incorporated creatively, partnership can be an important building block in realizing and developing your strategy and putting into place the multi-layered defense we spoke of earlier in this lesson. Let me explain.

I keep telling you over and over: the way to win a competition is to be proactive, to get in front of the bow wave. Make them react to your agenda and needs rather than the other way around. In terms of an A-76 competition, partnership presents an excellent opportunity to lay the groundwork and establish the lines of communication within your local and with management you'll need to win. If properly employed, partnering can be used to:

- start building the relationships and the exchange of ideas that you'll need to successfully participate.
- help you work on a daily basis to make your workplace the most efficient it can be. This striving to be the best not only helps you become more competitive in the event a study begins, it also helps your credibility and influence by demonstrating that your Local and the employees you represent want to be a part of the solution.
- get early warning and run down rumors of an impending CA study.

In the process of extolling the virtues of partnering, I also want to caution you that A-76 studies aren't done by Partnership Councils, and while complementing the process, membership on a Partnership Council shouldn't be allowed to substitute for participation as members of the study team acting as functional experts.

Finally, to show you I'm not alone in coming up with creative ideas, I want to share with you Local 2324's Partnership Memorandum regarding Public Works CA studies at Fort Riley, Kansas.

What the Local did was use their partnership agreement as the basis of addressing (through a Memorandum of Understanding) the scope and restrictions of their involvement in any Public Works CA study well before any study was announced - a great idea! Read it and use it as you see fit.

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN  
DIRECTORATE OF PUBLIC WORKS  
AND  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2324

SUBJECT: Partnering Plan of Action for the Public Works Commercial Activities Study

This MOU is written in accordance with, and augments the MOU between the Commander, Headquarters Fort Riley and the American Federation of Government Employees, Local 2324 on Partnering Plan of Action for CA Studies.

In demonstration of successful partnership efforts to promote harmonious labor-management relations, and to pursue a course of direction for the Public Works (PW) Commercial Activities (CA) Studies at Fort Riley which provides the greatest security for the civilian workforce and promotes the best interests of Fort Riley and the Department of the Army, the undersigned parties hereby agree to the following:

1. PW Management will recognize that the Union is a partner in the PW CA process.
2. PW Management and Union will make every effort, in the good faith of partnership, to keep each other aware of and informed regarding status of the PW CA study.
3. The Union will provide assistance to the PW CA process and with intent to be a team player alongside PW Management.
4. PW Management and the Union, will discuss relevant CA rules and regulations prior to their application.
5. All CA-related documents considered procurement sensitive will only be provided to interested parties IAW applicable regulations when appropriate documentation has taken place and all parties involved are protected.
6. To the benefit of both PW Management and the Union, a Union representative (a PW employee with subject matter expertise) will be a full-time member of the PW Study Team. This will facilitate both expertise in the study itself along with providing Union input in accordance with the Collective Bargaining Agreement. Official time for Union activities will not be charged for Union representatives work on the PW Study Team. The Union representative's official time for Union activities away from the Study Team will be limited by the Union.
7. PW Management shall submit a SF52 for each PW employee assigned as a CA core team member detailing them to duties they will perform as a full-time CA team member if the assignment is expected to extend beyond 30 days. The PW CA Team

leader will provide supervisory oversight of core team members. The core team work site will be located in building 313.

8. PW Management will, on occasion, temporarily assign members of the PW workforce who are considered key functional experts as ad hoc members of the CA team. The duration of these assignments will be for periods of 30 days or less and will not require official personnel action. The signing of the agreement is considered to be formal Union notification of change of condition of employment as noted in Article 4, Section 2, paragraph b. of the Fort Riley CBA.

9. Both PW Management and the Union agree that membership on the PW CA team, either full-time or ad hoc, will not affect an employee's grade or pay.

10. Both PW Management and the Union agree to help enforce 10 USC 2467 which requires consultation with the affected work force at least monthly throughout the course of the study and to consider their views on the development and preparation of the PWS and Management Study.

11. PW Management and the Union will provide CA-related overview training to affected employees. Every effort will be made to provide CA refresher training and briefings on an as-needed basis.

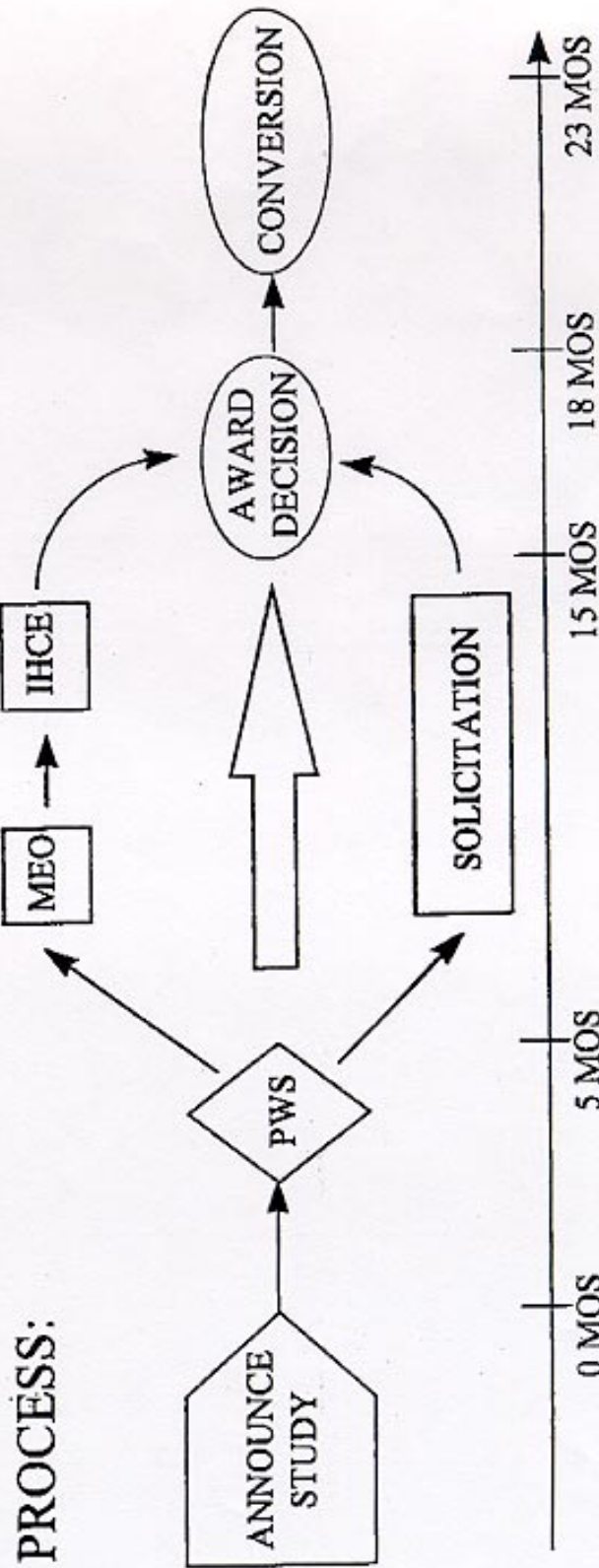
12. PW Management and the Union agree to fully support the designated PW CA Team Leader in executing and completing the assigned PW CA study.

### **TIP #3: NEGOTIATE TO GET OFFICIAL TIME**

In earlier lessons, I emphasized how demanding and time consuming a CA Study is. One of the questions you'll have to get answered early-on is how are we going to find time to participate? One answer may be by negotiating for official time. How do you do it? Let's use LP Mike Little's letter. It's a great example of a real-world official time negotiation.

As you read LP Little's letter, remember that the objective is to get the resource, in this case "time," needed to fully participate in the study. But an installation may be reluctant to grant more official time than was negotiated in the parties' contract well before there was knowledge of the CA study. That's why, as LP Little's letter demonstrates, it's important to emphasize the need for the official time to make the A-76 process work as it was intended, *to make the competition between government performance and contractor performance actually work in the way it is supposed to work*. Demonstrating your willingness to carry the load in the employees' interest will help convince your management that the official time you are discussing will be well-used and will pay much greater dividends in terms of the ultimate mission of the installation.

# A-76 COST COMPARISON STUDIES



If your contract calls for "reasonable" official time, it already anticipates that a significant additional commitment of official time has been provided for when a major event in the parties' relationship--like a CA study--arises. The parties' "reasonable time" provision is the basis for the official time you will need, but it is still necessary to discuss the need for additional time with management.

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
AFGE LOCAL #1867

May 07, 1997

National Office  
Attn: Coach  
80 F Street, NW  
Washington, DC 20001-1583

AFGE Local No. 1867  
9020 Husted Road  
USAF Academy, CO 80840-1502

RE: Full Time Representative During PWS

Dear Coach:

You asked that I provide you with input as to how we obtained 100% official time for 1st Vice President, Darrell W. Banks.

First, I started early with a Request To Bargain and Formal Proposals on the procedural aspects of A-76 circular, i.e., timeline, P.W.S., M.E.O., the who, what, where, and how's of all three. Also followed up by a Request to Bargain on negotiations an appropriate arrangements for adversely affected employees based on M.E.O. or contract. Such as, training dollars for re-education and R.I.F. retention rights and so on.

Our demand to bargain insisted that under the Partnership concept it was for the efficiency of the service and in the public's interest to have the Union's representative be involved in the M.E.O. and P.W.S.

I also capitalized on such interest of the Agency as not having the quality of service and or the control of the service. Such issues as cadet's health and safety in relationship to food poisoning and so on.

As usual, you were correct when you said in San Diego, CA that the Agency was just as unsure about A-76 competition as we were. So we set out to train them on the new A-76 supplement and 10 U.S.C. No. 2467.

It took some time, but the Base Commander did finally respond, but not to all of our proposals. He responded to two big ones, which are the M.E.O. and P.W.S.

Basically, he agreed that the employees' representative should be an advisor to both and that it would be in the Agency's and employee's interest to have a fair and equal competition.

What you really have to do is put yourself in their shoes and ask yourself about how to obtain tax dollars for a modern Air Force, if you are currently not an M.E.O. The political pressure is great!

We have to be more efficient in order to maintain control of at least 60% of our civilian work force. It is better to have some than nothing.

You must convince your Agency that you don't fear a fair and equal competition. It is also imperative that you convince them that you only want to enforce the procedures and help do things right.

Anyway, even though the Agency gave us a letter authorizing us to be a part of the P.W.S. and M.E.O., some lower level officials felt that our involvement was not needed. They started the P.W.S. team without us. After a month had gone by, we filed an Unfair Labor Practice for bargaining in bad faith.

The Agency's willingness to settle the Unfair Labor Practice was somewhat reluctant at first. We were insisting on starting the P.W.S. team over and having Brother Banks on it from the start. They agreed to having Mr. Banks on the P.W.S. team, but wouldn't start over.

We countered with a complete update for Brother Banks and 100% official time until the P.W.S. was over. This would change Mr. Bank's work hours to include the basic work week and the P.W.S. team meetings as well as to include official time for his other fiduciary responsibilities.

An active Steward or Officer needs to be able to communicate with such Agency officials, such as Colonels, Supervisors, EMR Specialists, EEO Officials, FLRA Representatives, and so on. If they can't work the same hours, then negotiations and time limits are hampered severely. This interference with the Fiduciary responsibilities of an exclusive representative is also an Unfair Labor Practice. You must articulate that your needs for official time are based on your work load for negotiations, settlements, discussions, grievances, Unfair Labor Practices, EEO Complaints, MSPB, Arbitrations, meetings, research, investigation, and preparations.

Also you must be prepared to show that no mission is subject to failure without one person, i.e., what if you were sick or had a legitimate emergency, the mission would function. Especially, if the Agency is already indicating a realignment, restructuring, downsizing, or A-76. It makes no sense to say your to fat, but you just keep on eating.

If you are able to articulate the basic request for official time towards your fiduciary responsibilities, then coupled with your right to be an advisor to the P.W.S. team, you have an insurmountable argument that 100% is necessary and reasonable.

A lack of time to do your fiduciary responsibilities is because of control by the Agency towards official time is setting you up to fail as an exclusive representative and denying your Bargaining Unit Employee's due process through fair and complete representation. I think this is an Unfair Labor Practice. It became an abuse of discretion by an Agency whether or not affording you a reasonable amount of time to perform those duties and at a time when your Agency counterparts are also most available.

It is also good to know that it is not in the public's interest to deny due process and to do so would violate public policy and law.

Most Agencies are reluctant to grant official time. But if you show them that you are serious about your job as a Steward and that you can take into consideration all aspects of an issue and make well-rounded decisions based on the facts and evidence of the issue, the Agency will reluctantly grant 100% because it is in their best interest, too.

Don't be hesitant to play the game. Be ready to show that you will go to the mat with everything, if you have to, but also show that you can play the politics. In most cases, the Agency will meet you halfway. If not then you can always agree to disagree and be prepared to put on the boxing gloves.

Don't be afraid to lose a battle because you will lose many, but you could win the war if you don't give up first.

Endurance, fortitude, persistence, patience, and respect for yourself as well as for others. There is no easier way to pull surveillance on an enemy than to be a friend of that enemy.

I hope this helps. If I can be of any further assistance, don't hesitate to ask.

Sincerely yours,

Michael R. Little, President  
AFGE Local No. 1867

MRL/lc

## **A-76 POLICY REGARDING THE RIGHTS OF IMPACTED EMPLOYEES**

**Sometimes you win. Sometimes you lose.  
But you still have to dress for the game.**

Despite your best efforts, sometimes things happen. In this section of this lesson, we discuss the A-76 policy guidance in the event we lose a competition, and the considerations provided to adversely impacted federal employees. The policy guidance is contained in the Supplement's Part I, Chapter 1, Paragraph H., on page 5 through 6.

In reading this material, keep the following in mind:

- \* adversely impacted federal employees aren't just those affected by a decision to contract out. They can include anyone who loses a job when the in-house bid wins and your organization transitions to the MEO.
- \* Paragraph H also applies to cases involving direct conversions, i.e., cases of 10 or fewer FTE's.
- \* Paragraph H also spends a lot of time on the Right of First Refusal. Although it's a good benefit, don't kid yourself into thinking it's a guaranteed job. Contractors are required to consider displaced federal employees for job openings, but they are not required to create new jobs. If no new jobs are created by converting to contract, or if the displaced workers are considered not qualified, there's no obligation to hire them. Bottom line: Ensure that the Right of First Refusal is contained in the solicitation, but don't count on it as a safety net.

## **Quiz #8**

Answer the following questions. As always, life and A-76 quizzes are open books:

1) Some of the things you need to consider in preparing for a possible commercial activities study is:

\* including a \_\_\_\_\_ article in your collective bargaining agreement.

\* use \_\_\_\_\_ to create the relationships and exchange of ideas you'll need to compete.

\* bargain for \_\_\_\_\_ so that you can effectively and credibly compete in a competition.

2) The time to begin negotiating a contracting out article or building a partnership is:

a) once the study is announced.

b) after your pet hound dog Betsy has her pups.

c) whenever.

d) As soon as possible

3) List the considerations contained in the Supplement's Paragraph H which are provided to displaced federal workers:

1)

2)

3)

4)

5)

6)

## **LESSON #9: Interservice Support Agreements (ISSA's)**

### **How this lesson applies to you**

Sometimes we focus too much on either contracting out or contracting in. There is another way for the government to obtain the commercial products and services it requires: through an Interservice Support Agreement (ISSA).

And that's what Chapter 2 of the Supplement is about, ISSA's and the policy that governs them.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in the Supplement's Chapter 2, you will:

- understand what an ISSA is; and
- know that ISSA's, as well as contracting out or contracting in, are alternatives that the government may consider when deciding how it will obtain its commercial activities.

### **Read**

Chapter 2 -- Interservice Support Agreements, OMB Circular No. A-76 -- Revised Supplemental Handbook, page 8 and 9.

### **Coach's Corner**

Before you started reading the Consultant, you knew, or thought you knew, about contracting out. Hopefully, you've learned that the government, under certain conditions, may also contract in. Now, we're going to examine another arrangement which may be new to you, the Interservice Support Agreement (ISSA).

It's not that hard to understand. An ISSA is an agreement between one agency or department and another agency or department. In this interservice or department agreement, one party agrees to provide a service or product to another governmental party. In other words, the work stays within the government. Examples of ISSA's are the Navy repairing Air Force airplanes, or the Army repairing Marine Corps tanks in-house or the Department of Agriculture providing financial services support to other agencies. You may know of other examples.

Look at it another way. When the government "contracts out," it does so through a contract with a private sector contractor. Under an ISSA, there is an agreement between two agencies, services, or departments that one will provide certain products or services to the other. The work stays inside the government. Clear on this? Good!

I know you're happy that the work addressed by the ISSA will stay in the federal sector. What you need to know is that an ISSA may mean the loss of jobs at the agency receiving the services and products under the ISSA. On the other hand, the agency or department providing the services may increase its employment in order to meet the increased work load. Bottom line: the ISSA work will stay in house. However, there may be some changes in the workload depending on whether or not the agencies or departments are service receivers or providers under the ISSA.

So, let the old Coach give you a tip. Understand that the Circular and its Supplement apply not only to contracting out or contracting in, but also to ISSA's.

If your agency or department decides to hold a commercial activities competition for an ISSA, remember: the same rules concerning access to documentation, Union participation, and conflict of interest restrictions apply.

## **Quiz #9**

You folks are working so hard that the Coach says to let you take a pass on doing a quiz.

Pat yourself on the back, and let's get fired up to learn about the cost comparison process.

## **LESSON #10: Cost Comparisons, General Policy**

### **How this lesson applies to you**

#### **It's showtime!**

In the Introduction, you had a chance to learn about the government's philosophy concerning the performance of commercial activities.

In Chapter 1, we covered the policy and procedures governing the A-76 competitive process.

Chapter 2 briefly covered Interservice Support Agreements (ISSA's)

And now, boys and girls, we're at the main event. This is what most of you came for: the cost comparison process.

#### **Let's start digging!**

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, Paragraph A, you will be able to list the major milestones under the cost comparison process, and be able to indicate those events which are of particular importance to a union representative involved in the process.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph A, page 10.

### **Coach's Corner**

By now, you should have already have read Paragraph A, so you know the six major milestones or events in the competition process. However, how can the Coach call himself a Coach if he doesn't draw you a diagram? Please turn the page and look at the chart showing the competition process.

insert chart here

Neat chart, huh! It's particularly helpful because it shows each of the study's major milestones and when they occur. Take some time to study it, but keep in mind some studies move faster or slower than others.

**While the chart is a nice piece of work, it might be helpful if we first gave you a thumbnail sketch of the competition process.**

Here's how the Federal Government accomplishes an A-76 competition:

1. Once a commercial activity or function is identified for competition, and the government announces its intention to perform a commercial activities study, an agency must develop a performance work statement (PWS). The PWS defines the government's requirements in terms of measurable performance standards. The PWS defines the "playing field" on which the government's in-house and the private contractors' bids will compete.

2. The agency performs an internal management review of the government's in-house operation to determine the most efficient organization (MEO) on which to base the government's bid. This review forms the basis for a cost comparison with private commercial firms and seeks to include innovative and less costly ways of accomplishing the PWS work standards.

3. Commercial firms and the government agency openly compete for the option to perform the function or activity. Note: To win the contract, private contractors must beat the government's bid by a factor (a "**conversion differential**") of at least 10% or \$10 million over the life of the contract -- whichever is less. (The Supplement, page 19, Part II, Chapter 2 --"Developing the Cost of Government Performance," Paragraph 8. *Minimum Cost Differentials*.) This provision was put in place to account for intangible costs from disruption and loss of productivity due to changeover.

The cost comparison is required to be completed in 18 months, but may take as long as 36 months for complex studies.

### **REMEMBER: THINGS HAPPEN!**

An important point to keep in mind: A Commercial Activities study isn't an orderly, model of efficiency -- things happen; schedules slip; aspects of the study may change. Get a seat at the table. Keep informed and stay flexible. If you do this you'll still be on top of the game. Let's turn our attention to the study's major events -- the Milestones.

### **COMMERCIAL STUDY MILESTONES**

What are the study's milestones and which ones are of particular interest to you? We've put a star next to those that the union should pay most attention to:

- ⊗ 1) the development of a Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP)
- ⊗ 2) the performance of a management study to determine the government's Most Efficient Organization (MEO)
- ⊗ 3) development of an in-house government cost estimate
- ⊗ 4) issuance of the Request for Proposal (RFP) or Invitation for Bid (IFB)
- 5) comparison of the in-house bid against a proposed contract or ISSA price
- ⊗ 6) the administrative appeals process

Why did we star everything except number 5? Because the Union can actively participate in milestones 1 through 4 and 6. The Supplement's policy allows Union involvement in the development phases of 1 through 3. You can be involved in phase 4 upon issuance of the RFP. Once it is issued, you're permitted to comment on the solicitation (also known as the RFP or IFB).

But you can't be involved in step 5 without becoming a procurement official. If you are involved here, you become a decision maker, and that jeopardizes your right of first refusal.

We'll talk about the administrative appeals process, (step 6), during Lesson 20. But for the time being, know that this is one of our lines of defense if we lose the competition.

None of this should be new or a mystery: we already covered it in Lesson 7, "Review of Documents." However, don't be bashful. There's no law against going back and reviewing the material. In fact, that's what we want you to do with the Consultant.

### **Let's Talk Strategy**

#### **Your Goal in the Competition Process**

Simply put, your goal is to:

**GET THE SOLICITATION CANCELLED OR WIN THE BID AND KEEP THE WORK IN-HOUSE.**

You'll accomplish this goal by:

- **organizing and activating** your Local; your Council, District, and the National Union, the public, and your elected officials; and

- **participating in the development and preparation** of the PWS, management plan and MEO, the Solicitation (RFP) once it's issued, and the cost elements contained in the in-house bid.

- **starting to think like business people with Union values** by working with management to make the function under consideration the most competitive (i.e., efficient, productive) possible. At the same time you are doing this, make plans for the employees who may be adversely impacted by a decision to contract out or convert to the MEO.

If the bid can't be stopped, or you lost the in-house bid, **you can appeal** (Lesson 20 will discuss appeals.)

## **Quiz #10**

Answer the following questions. Remember, this is open book.

List the six major components of a CA study. Check off those which are of particular importance to an activist and which permit Union involvement.

- 1)
- 2)
- 3)
- 4)
- 5)
- 6)

## **LESSON #11: The Cost Comparison Study Team**

### **How this lesson applies to you**

Lesson 10 told you what is going to happen and approximately when it would happen. It also stressed that the secret to competing is to start thinking like a businessperson with Union values and work to make the activity under consideration more efficient and productive -- i.e., competitive.

In this section, we'll talk about the main forum that you'll be involved in during your quest to make your activity more competitive and to keep the work in-house. We'll discuss what you need to be doing once a study is announced.

Oh, by the way! After you complete this lesson, you will have earned the title of "Functional Expert"! Won't Mama be proud of you.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, Paragraph B, you will be able to provide an action plan for involving your Local in the commercial activities study.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph B, page 10.

### **Coach's Corner**

How are all you Functional Experts doing? Let's roll up our sleeves and go to work.

We talked about the importance of being involved in the process. (Do with them, or they will do unto you.) Increasingly, the Coach is seeing managers who are taking a more enlightened approach to Union involvement in the CA study. Some have the right ideas -- they don't believe contracting out is sound policy, or they understand that the best organizations are based on empowerment and labor management cooperation. Others may be a bit more self-interested -- they've figured out no workers, no managers. They may not be as high minded, but they'll still be inclined to involve you. Finally, there are still those who will oppose you because they're ignorant of the commercial activities program, or they're still mired in the dark days of management rights and confrontation. The Coach is going to help you deal with all of them through the following gameplan.

The first thing you do once a competition is announced is to **Notify Management that You're Participating.**

To kick off your participation in the A-76 competition process, it is best to request a short meeting with the appropriate manager(s). This is usually the CA Team Leader and others. The tone of your presentation at this meeting should be cooperative, and you should make it clear that you are dedicated to keeping the work in-house.

At this meeting, you should present a letter. This letter requests participation of work center personnel and AFGE representatives in the development of the Performance Work Statement and any study team or oversight committee that is formed to review the A-76 competition. Be sure to address your expectations concerning the scope and restrictions of your involvement. Present your case in terms of the Supplement's Part I, Chapter 1, paragraph G, Chapter 3, paragraph B. If you are a DoD Local, mention that your involvement is required by 10 USC § 2467. Make the following points during your meeting:

- Highlight your Local's desire to be actively involved in the development of the Performance Work Statement (PWS) and management plan. Stress the valuable contribution that can be made by the people who actually do the work;

- Stress the benefits of the Local's involvement in other processes such as oversight and steering groups. The Local's participation will result in the creation of the most efficient organization (MEO) and the creation of a competitive in-house bid; and

- Emphasize that the Local will cooperate, in the event that the in-house bid is the winner, in implementing the most efficient organization. (Understand this cooperation may mean you'll have to cooperate in changes to jobs and work.)

You should also request the names and titles of the persons who will be serving as the Certifying Official for the MEO, the Independent Review Officer (IRO), the Contracting Officer, and the Appellate Authority for this study.

Why do you need to know who these people are? Because they're key personnel in the process, and as you will see when you study Lesson 18 and Lesson 20, these officials will figure prominently in the appellate process.

You should also inquire into whether or not management is willing to sponsor joint-labor management training. (See Chapter 3, B.2.) It gets people singing off the same sheet of music and creates a forum for labor and management to begin developing better working relationships and discussing the relevant issues. Take it from the Coach, locals that join with their managers in training, early on, are light years ahead in putting together a bid that wins.

Why do you deliver a letter -- isn't a meeting sufficient? No, especially if there's trouble down the tracks. A letter, hand delivered, establishes you as a credible, knowledgeable participant, who will play by the rules. It also starts a "paper trail." It

keeps everyone honest. Management will know where you're coming from, and they'll understand that you know the rules of the game.

**Hey, Coach, can you show me what a notification letter looks like?**

O.K. Team. Here's a sample. Use it and adjust it to your needs and situation.

**Sample Letter of Notification**

Name  
Title  
Address

Dear ( \_\_\_\_\_ )

On (Date) the American Federation of Government Employees, Local (\_\_\_\_), was notified that (name of agency) is planning to conduct a cost comparison analysis of (function) at (location of the facility or office).

It is the intention of this Local to participate, beginning in the earliest stages of the cost comparison process and subject to procurement integrity and conflict of interest restrictions, in the data gathering and development of recommendations surrounding the preparation of the in-house bid. The authority and the guidance governing our involvement is provided in the August 1983 Office of Management and Budget (OMB) Circular No. A-76, "Performance of Commercial Activities"; Circular No. A-76, Revised Supplemental Handbook, "Performance of Commercial Activities." **You also want to cite in this paragraph:**

- **If you are a DoD Local, cite 10 U.S.C. §2467 Cost Comparisons: Requirements with Respect to Retirement Costs and Consultation with DoD Employees**;
- Any agency/department directives that reference your right to participate;
- **If you have one**, the Contracting Out Article in your collective bargaining agreement;
- your Partnership Agreement.

The goal of our participation is to assist management in structuring in-house operations so as to make them as competitive as possible. To this end, we wish to participate fully in the exchange of data, ideas, identification of problems, concerns and solutions. We expect to be afforded appropriate access to documentation. We also expect to work constructively with management in the development of the Performance Work Statement (PWS), Technical Performance Plans (TPP), and the

Management Plan, including development of the Government's Most Efficient Organization (MEO).

To this end, and in order to enhance our contribution to the quality of the overall cost comparison, it is requested that representatives of the Cost Comparison Study Team and the Union meet at the earliest, mutually convenient time to establish the ground rules which will govern the Union's participation in this study.

The following tentative agenda is submitted as a framework for our meeting:

- Briefing concerning the study's planned objectives and milestones.
- Discussion of events and milestones requiring Union Participation.
- Identification of study committees and teams which will require Union representation.
- Initial discussions regarding access to draft documentation prior to management's final decision concerning these documents.
- Discussions regarding management's sponsorship of joint labor-management training in A-76 process and documentation preparation.
- Identification of management officials serving as: the Cost Comparison Study Team Leader; the PWS and Management Plan certification officers; Cost Comparison Form (CCF) signatories; the Contracting Officer; the Independent Review Officer; bid evaluators; as well as the Administrative Appeal Authority for this study.
- Discussions regarding any Management plans to employ a personal services contractor to assist them in the preparation of the study's supporting documentation. If such an arrangement is contemplated, ground rules regarding Union participation in the review of the contractor's submissions should be addressed.
- discussions concerning identification and access to documentation during the administrative appeals process.
- initial discussions regarding personnel considerations for federal employees adversely impacted by an award of contract or conversion to a Most Effective Organization.

Needless to say, this agenda is only tentative. It may be expanded to accommodate other items and issues which are of particular interest to the study team. I also want to take this opportunity to express my hope that this meeting will serve as the beginning of an ongoing dialogue through which we address during the course of the study other matters of mutual concern.

I eagerly await your response regarding the scheduling of the first meeting of this joint labor-management team. We look forward to working with you to demonstrate that (name of facility or office)'s federal workforce provides the best value and is the most responsive, efficient, and cost-effective.

Sincerely,

Name  
President, Local \_\_\_\_

cc:

\* Don't waste your time addressing the letter to Personnel, Human Resources, or Labor Relations. They can get a copy. Go directly to the top. The official whose attention you want is at the Directorate Level, the Cost Comparison Study Team Leader, or the individual convening the study.

O.K. team. You're ready to go. However, before we end this lesson let's take a moment to talk about an area which often leads to misunderstanding and misperception -- the use of "personal services" consultants.

### **"PERSONAL SERVICES" CONSULTANTS VS. CONTRACTORS**

Commercial Activities Studies are long, expensive, and labor intensive efforts. Many in management don't have the know-how or experience to do one properly. This is why they hire commercial services support contractors to help them prepare the documentation and to make recommendations concerning the study.

#### **Kowabonga, Buffalo Bob! You Mean They're Letting Contractors In?**

Yes and No. It is possible that a contractor will be contracted to advise and help prepare the study. However, these individuals can't do the study and also be bidders. That's why the Coach refers to them as Personal Services Consultants to differentiate them from contractors (who are your opponents), and your personal Consultant (which you are reading right now). There's nothing wrong with what management is doing, nor is it wrong for the real consultant to help management put together a study, as long as you keep the following in mind:

-- You work for the government, not the consultant. You should provide your comments on key documents and events only to management. The consultant may be present. But your discussions are labor-management matters, and should be treated as such.

-- Understand that until the contracting officer signs a document saying that the "deliverable" from the consultant is accepted, the documentation provided by the consultant is not official, nor is it the government's position. In other words, it's still on the table for discussion.

-- Consultants are advisors, not decision makers. Don't allow management to be lazy, and don't allow consultants to do management's thinking. Insist that labor and management, during In Progress Reviews (IPR's) scrutinize the materials and recommendations they receive from the consultant before they accept them.

**O.K., I understand the difference between a consultant and a contractor, but as far as I'm concerned, there are two types of snakes -- rattlers and copperheads -- and I don't trust either of them. The consultant will leak sensitive material to our contractor opposition and we'll be screwed.**

Thanks for the straight talk, partner, but keep that shootin' iron in the holster. Remember what I said: conflict of interest regulations prevent consultants from leaking competition-sensitive information. If they do, they may be taken to court and if found guilty, they may be fined. Also, understand that most consultants are advisors. They usually have nothing to do with providing commercial activities. In other words, they don't do this type of work and they won't consider bidding on it. Finally, consultants that do advisory work, like supporting A-76 studies, are like Swiss bankers. If they're caught leaking information, they're finished in the business. They'll be viewed as untrustworthy, unethical, and no one will hire them. Bottom Line: It's not worth it to them to help your opponents.

Whew! This is a lot of good stuff! You folks are making the Coach work for you now.

## **Quiz #11**

Answer the following questions. Remember, open book, take a look!

A Commercial Activities, CA Study, A-76 competition has been announced. Outline your strategy by filling in the blanks on how you'll become involved in the process.

The first thing you do once a competition is announced is to \_\_\_\_\_.

To kick off your participation in the A-76 competition process, it is best to \_\_\_\_\_ with the \_\_\_\_\_(s), most likely the \_\_\_\_\_. At this meeting, you should present a letter. This letter \_\_\_\_\_ in the development of the Performance Work Statement and any study team or oversight committee that is formed to review the A-76 competition. Be sure to address your expectations concerning the scope and restrictions of your involvement. Present your case in terms of the Supplement's Part I, \_\_\_\_\_. If you are a DoD Local, also cite the scope of your involvement as required by Title 10, \_\_\_\_\_. Make the following points during your meeting:

-- Highlight your Local's desire to be actively involved in the development of the \_\_\_\_\_ and \_\_\_\_\_. Stress the valuable contribution that can be made by the people who actually do the work;

-- Stress the benefits of the Local's involvement in other processes such as oversight and steering groups. The Local's participation will result in the creation of the \_\_\_\_\_ (MEO) and the creation of a competitive \_\_\_\_\_; and

-- Emphasize that the Local will cooperate, in the event that the in-house bid is the winner, in \_\_\_\_\_. (Understand this cooperation may mean you'll have to cooperate in changes to jobs and work.)

You should also request \_\_\_\_\_ and titles of the persons who will be the officials serving as the \_\_\_\_\_ for the MEO, the \_\_\_\_\_ (IRO), the \_\_\_\_\_ Officer, and the \_\_\_\_\_ Authority for this study.

You should also inquire into whether or not management is willing to sponsor joint-labor management \_\_\_\_\_. (See Chapter 3, B.2.)

The tone of your presentation should be \_\_\_\_\_, and you should make it clear that you are \_\_\_\_\_.

## **LESSON #12: Performance Work Statements (PWS)**

### **How this lesson applies to you**

The PWS defines the service or product that is provided, describes the expected level of performance, and sets the schedule for completing the work.

Performance drives cost. Cost is the major factor which will ultimately determine whether or not the work is contracted out or stays in-house.

If you want to be competitive and keep the work in-house, you'll have to be involved in the PWS.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, Paragraph C, you will be able to describe the purpose of the Performance Work Statement (PWS) with 100% accuracy.

--

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph C. page 10 and 11.

### **Coach's Corner**

Let the old Coach tell you what to look for in reviewing the PWS and what you need to do as you continue to build a "paper trail."

The PWS is the source document that sets the technical performance requirements of the Request for Proposal (RFP) and the Invitation to Bid (IFB) issued by the contracting officer. Your involvement in preparing the PWS is important. Why?:

Remember: performance will drive cost! And cost will be used to justify whether to keep a function in-house or to contract it out.

Even if you fail to keep the work in-house, you'll know the PWS's procedural and technical flaws, and, if needed, can use these as the basis for an appeal of the award decision.

The PWS establishes the competitive playing field for all players. Your involvement ensures that you will be able to compete against the private sector. In other words: you've got to be sure that what applies to the contractor in the PWS will also apply to you.

**There are two goals to your participation in developing the PWS:**

1. Create a PWS that is complete, accurate, understandable, and competitive.
2. Ensure that employee insights, comments, and recommendations regarding the work being analyzed are given consideration during the development of the PWS.

Refer to the A-76 Cost Comparison Studies diagram in Lesson 10. You'll see that the drafting of the PWS will occur in the first five months of the study. So you better address the use of Union participation up front, at the time of the competition's announcement. If there are problems with management following federal policy, or law in DoD's case, they had better be resolved early on before the process goes too far down the track. You can't be left on the sidelines regarding the PWS.

**A TIP:** Don't review the PWS in isolation -- work collaboratively with management to create the most accurate and competitive PWS possible. The Coach gets a lot of calls from the field saying, "we need training on how to write a PWS." My response to these calls is always the same -- What you really need is joint labor-management training on how to prepare a PWS. Remember, if you are going to win this one, you must work with management to jointly develop a competitive and accurate PWS. You need to exploit management's expertise and experience. They need to exploit your knowledge as the functional experts -- the people who know how things really work. Don't permit yourself to plan a PWS in isolation. You've got to sit at the table with management and figure out what your agency does and to what standards it expects it to be performed.

The following paragraphs give a feel for what to look for in evaluating the PWS:

**Is the PWS complete? Can you understand it?** The Performance Work Statement is the heart of the A-76 cost study process. It should express the service or product to be provided in clear, simple, concise, and legally enforceable terms. In developing the PWS, it is important to keep in mind that every word--especially unclear words--will be interpreted to the contractor's advantage.

**As you read the PWS, look to see if it expresses the work to be cost-compared in a systematic way.** When you finish reading the PWS, you should basically understand what the organization, process, requirements, and final product are. If you can't do this, the PWS is weak and needs to be rewritten.

**Look for unclear statements and generalizations.** A properly written PWS statement should specify what's to be done or provided; how many items or services are produced or provided; how often it's produced or provided; and when it's to be produced and provided. If the PWS doesn't give this information, it's too general. For example, should the PWS say "in accordance with Agency Reg XYZ," the PWS requirement is too general or unclear. Mark or underline these generalizations and refer to them when you prepare your comments on the PWS. (You'll be preparing the comments in the next step.)

**Analyze the governing directives.** Analyze the section of the PWS that lists the governing directives and note whether they are mandatory for the contractor. Check to see that there is a list; that the list is complete (ask an employee who works in the area that might get contracted out to review the list); and then review the "Mandatory" column. If it is checked "mandatory," confirm that this is also mandatory for the in-house bid. The point is: If the contractor doesn't have to comply with a directive, then your in-house bid shouldn't have to comply either.

**Once you've completed your review of the PWS, submit your comments in writing.** Your comments on the PWS should go to the official responsible for overseeing the A-76 competition. They should be sent as a letter. (Always keep a copy, because they will become part of your "paper trail" supporting your case in the event you appeal.) Try to meet with the CA Team Leader and the Study Team to discuss your comments and to be sure they're understood.

**What if we submit our comments and management totally or partially ignores our recommendations?** If this happens, you may want to consider this strategy:

- **Think!** Is the matter in contention serious enough to give the contractor a marked advantage over the in-house bid? Is it important enough "to go to the mat" or is it just something you don't like? If it does give them an advantage over the in-house, by all means you need to fight it. If the matter is minor, or of no impact, let it pass. Why argue over the placement of deck chairs if the Titanic is sinking?
- If this is a serious matter -- address your concerns when you submit your comments on the solicitation. See Lesson 16.
- If your comments and concerns aren't incorporated in the final solicitation, then submit a letter for the record to the CA Study Team Leader, the Contracting Officer, the official certifying the in-house MEO, the Independent Review Officer, and the Appellate Authority. (Who are they? You should have found that out shortly after the study was announced when you had your meeting with management. See Lesson #11.) In your letter you'll tell these officials that you have concern over elements of the PWS as they are currently written, explain why these concerns will put the in-house at a comparative disadvantage, or result in contractor-generated cost overruns if the work is contracted out.

This letter serves several objectives. It alerts officials in the study's chain of command that there is a problem -- a problem that will either weight the competition against the in-house bid, or serve as the basis of a future appeal. They must then respond in one of two ways:

-- correct the PWS and solicitation.

-- permit the PWS and solicitation to continue as written.

If the PWS and solicitation aren't modified you should begin preparing for the possibility of an appeal. At this point, you should start gathering supporting data on which you will, if needed, base your future appeal.

- If you lose the bid, and you can show that the unmodified PWS resulted in costing errors or non-compliance with A-76 policy which caused the in-house bid to lose, you should appeal. (See Lesson #20 for a discussion of the appellate procedure.)

### **ON A DIFFERENT SUBJECT**

**"Loose lips sink ships."**

**A TIP FROM THE COACH:** During the course of a study, contractors will inevitably try to get the "competitive edge" by learning more about the work that is to be done and the in-house bid. Tell your people in the activity under study not to talk to strangers about their work, the activity, or anything else that is work related. This goes for talking to retirees, too! Sometimes, they're used as spies by your opposition. Needless to say, this caution doesn't apply to the consultant who's hired to help the government prepare its study.

**"Let me be perfectly clear . . ."**

The Coach also wants all activists to understand that final decisions involving the in-house bid, PWS, MEO, and the solicitation are management's responsibility. They are the decision makers. You are an influential member of the team.

## **Quiz #12**

Answer the following questions. Open book, needless to say!

1) Fill in the blanks.

The PWS defines \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, and \_\_\_\_\_ required. It provides the \_\_\_\_\_ section of the RFP and IFB issued by the \_\_\_\_\_ officer.

2) If you don't like the current version of the PWS, you can demand that management write another one. (True or False?)

## **LESSON #13: Quality Assurance Surveillance Plans (QASP)**

### **How this lesson applies to you:**

The Quality Assurance Surveillance Plan (QASP, pronounced "kawasp") is a purely internal plan that provides the methods of inspecting the work, sets reporting requirements, and discusses how much time will be spent doing it. It's part of the Management Plan that we'll discuss in Lesson 14.

Bottom Line: from the standpoint of our goals and objectives, we need to know about it, but it's not a major Union concern.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph D, page 11.

### **Coach's Corner**

Do the reading. The team's doing well, so we'll pass on having you do a quiz. You're welcome!

## **LESSON #14: Management Plans and the MEO**

### **How this lesson applies to you**

The management plan provides the government's Most Efficient Organization (MEO) and is the basis of the government's in-house cost estimate.

It's important to you because this is the basis for the bid which will compete against the contractor's proposal.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, Paragraph E., you will be able to identify correctly on a quiz:

- the elements reflected in the management plan.
- the importance of identifying the individual who will serve as the MEO's certifying official.
- that the Management Plan describes the Government's Most Efficient Organization.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph E. page 11.

### **Coach's Corner**

Work on the Management Plan will begin usually at the same time as the PWS, about five months into the process. Like the PWS, you need to establish from "day one" the scope of the Union's involvement in the process of developing the Management Plan and MEO. In the next lesson, we'll discuss in greater depth the extent and restrictions of your involvement in developing the Management Plan.

As with the PWS, the Management Plan and the MEO which it reflects is the government's. We can recommend and advise. We cannot dictate and tell them how it will be structured.

Also, as with the PWS, provide your recommendations concerning the Management Plan in writing as part of your paper trail. Also meet with the team and team leader conducting the study after you submit your comments and recommendations on the Management plan. Be sure that they understand your comments, concerns, and recommendations.

In Lesson 11, I told you that as part of your initial meeting with the Commercial Activities Team you should identify who is the MEO's certifying official. I want to

remind you of this because this position, the Certifying Official, will figure prominently in determining who you will be submitting your appeal to, should that need arise.

In your review of the Management Plan, be sure that it:

- reflects the scope of the PWS (Remember: performance drives cost.)
- correctly identifies organizational structures (Too much management, or a top heavy management drives up your cost and makes your bid less competitive.)
- identifies staffing (People are a major cost driver. Too many and your costs will sky rocket. Too few and you may win the bid but not be unable to do the work.)
- describes operating procedures (Efficiency caused by better operating procedures means doing the job better, faster with fewer people, and at less cost.)
- avoids committing to buying unneeded or unnecessary new equipment. (The principle is to hold your cost down while keeping your performance up. Bringing on new equipment is an additional cost that makes you less competitive.)

The plan will also document the assumptions that are used in developing the MEO. Assumptions are dangerous things. If you use the wrong ones, your whole plan and its MEO are distorted. Question the assumptions, or at least understand them and use them to your advantage. For example, two of the more common assumptions involve the impact of budget and workload. These assumptions can have a negative or positive impact on the configuration of your MEO -- depending on management's projections for the future.

Finally, and at the risk of being repetitious, remember that this Management Plan is the basis of the in-house bid. Do a good job and create an effective, competitive MEO.

### **Quiz #14**

Answer the following questions. Use the Supplement to find the answers.

- 1) The Management Plan reflects \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ plans.
- 2) The Certifying Official is of no real importance to the activist. (True or False?)
- 3) The Management Plan describes the Government's (Choose one):
  - a. Most Efficient Organization
  - b. The basis of the in-house bid
  - c. Document the plans assumptions
  - d. All of the above

## **LESSON #15: Safeguarding the MEO**

### **How this lesson applies to you**

This paragraph of the Supplement is subject to more misinterpretation than any other, and is used to lock union activists out of the process.

In this lesson we'll tell you why the **final** MEO is a sensitive document and needs to be safeguarded. We'll also help you craft a response in the event that someone tries to keep you from participating in **developing** the MEO -- because of conflict of interest requirements.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, F, you will be able to state correctly at which point the Management Plan and MEO becomes competition-sensitive, and you will be able to identify what role the Union can play in developing the Management Plan and MEO.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph F, page 11.

### **Coach's Corner**

The Management Plan and the MEO are considered procurement sensitive documents until a tentative award decision is reached.

Pretty straight-forward stuff that almost anybody can understand. However, problems and confusion surround this statement. From AFGE's standpoint, the Management Plan and the MEO should be competition sensitive. These documents are the basis of the in-house bid. If one of our opponents had a copy of them, our competitor would know the in-house bid and could underbid the government. Do we want the Management Plan protected, out of the public's eye? You betcha'.

The problem occurs when some managers, acting "for our own good" and to protect the competition sensitivity of the **final** Plan and MEO try to exclude the Union from participating in **developing** the MEO and the Management Plan. How do you answer them? (The bold-face, underlined words in this paragraph should give you a broad hint.)

Remember when you completed Lesson 7, Review of Documents? If you don't, go back and review it now. The Paragraph in the Supplement that this Lesson addressed, Chapter 1, Paragraph G. 1. is the authorization to "**fully participate in the development**" of supporting documents and proposals, including the development of performance standards, performance work statements, **management plans** and the

development of **in-house and contract cost estimates**! Bottom Line: you have the right to participate in **developing** the MEO and Management Plan.

Additionally, Chapter 3. Paragraph B.1 supports our involvement in the developmental process.

"Employees who participate or provide data to support **development** of the various study elements, but do not **review, approve,** or have **direct knowledge** of the **final** PWS, **MEO**, or **in-house** or contract cost estimates are **not considered procurement officials and are not affected by this restriction.**"

DoD Locals have even more justification for their involvement. By law (10 USC §2467), DoD managers are required to consult monthly with the Union during the **preparation and development** of the PWS and management study, and to take into consideration the views of the Union.

### **PLAIN ENGLISH SUMMARY**

You may participate in developing, writing, reviewing, and commenting on In-Progress-Reviews of drafts without becoming a procurement official, compromising the MEO or Management Plan, or causing a conflict of interest for yourself.

**On the other hand:** Once Management starts drafting its **final** MEO and Management Plan, you are out of the loop. You can't have knowledge of or review the final drafts of these documents without violating either the competition sensitivity of the document or endangering your right of first refusal.

**Still not Clear? O.K., let me draw you a picture.**

**DIAGRAM SHOWING UNION INVOLVEMENT IN THE THREE PHASES OF THE STUDY**

<b>Milestone</b>	<b>1) From Time Study Announced to Drafting Final MEO</b>	<b>2) Evaluation of Bids</b>	<b>3) Appeals Process</b>
<b>Union Involvement?</b>	Yes	No	Yes
<b>What's Accomplished During This Milestone?</b>	Developing, Drafting, Reviewing, Data Gathering	Knowledge of Final MEO; Participation on Source Selection Boards; Evaluation resulting in Procurement Decisions	Access to Documents; Preparing Appeal
<b>Union's Role</b>	Active Participant	None. Procurement Official Activities	Appellant

The diagram simplifies the A-76 competition into three general **milestones**

- 1) **From the Time the Study is Announced Until the Start of the Drafting the Final MEO;**
- 2) **The Evaluation of Bids** which entails knowledge of the final MEO and participation on Source Selection Boards; and
- 3) **The Appeals Process.**

Each milestone sets conditions which permit or deny Union participation. For example, the diagram illustrates:

- \* It's O.K. for the Union to access documentation and participate as study team members or advisors from the time the study is announced until the start of drafting the final version of the MEO.
- \* The Union and its representatives may be denied access to the final version of the MEO, or participation on Source Selection Review Boards (SSRB's) or Source

Selection Evaluation Boards (SSEB's). Why? Because when you participate or have knowledge of the final MEO it would make you a Procurement Official.

\* It's O.K. for the Union and its representatives to have access to the final versions of the documentation they need in order to file an appeal such as the Final MEO, Cost Comparison Forms, and documentation supporting the in-house bid.

Got it? Good, Let's move on.

Finally, we keep stressing the importance of using an ounce of prevention. When you have your initial meeting with management, be sure that the issue of the Union's involvement in the process is the central topic discussed and that is addressed in your letter. The time to address a problem isn't when it's become a crisis. Resolve it on day one. If you don't, you'll be standing in the station while the train's leaving, arguing whether or not you have a ticket to get on.

## **Quiz #15**

Answer the following questions:

- 1) The Management Plan and MEO become competition sensitive once management begins drafting the \_\_\_\_\_ version.
- 2) You may participate in which aspects of the Management Plan and the MEO:
  - a. drafting, reviewing, commenting during the development
  - b. none, these documents are competition sensitive
  - c. none, it will jeopardize my right of first refusal
  - d. reviewing, commenting on the final versions

## **LESSON #16: Solicitations**

### **How this lesson applies to you**

This lesson is short. It's important to you because it shows the interrelationship between the solicitation, the contracting officer, and the PWS.

Remember, you have the right to comment on the solicitation once its issued. Use this right!

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, Paragraph G, you will be able to state correctly the interrelationship between the contracting officer, the PWS, and the solicitation.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph G, pages 11 and 12.

### **Coach's Corner**

Remember the PWS? You better, or old Coach will have you running laps after practice. To jog your memory a bit, you may want to go back to Lesson 12 and review it. Basically, the PWS is a key document that defines the performance standards and time and measures required. It's the basis of the technical performance section of the solicitation. (Don't believe old Coach? Shame on you. As punishment, read Chapter 3, Paragraph C. 2.)

What's the solicitation? Don't know? It's often referred as the RFP or IFB. Still don't know? Go to Chapter 3, Paragraph C.2.

You have the right to comment on the solicitation. Who says? Go back to Lesson 7 or reread Chapter 1, Paragraph G.1.b. This allows you not only to look at the solicitation once it's issued, but also provides you sufficient time to comment on it prior to the contracting officer receiving final bids from the contractors.

When you review the solicitation you should keep in mind the following:

\* The solicitation should reflect the PWS. If it doesn't, comment and identify this to the Contracting Officer as a discrepancy.

\* Be sure that the solicitation provides for a level playing field. In other words, what applies to the in-house bid, also applies to the private sector bidder.

\* the Solicitation contains a standard Right of First Refusal clause in accordance with Part I, Chapter 1, paragraph H.

Who's the contracting officer I keep referring to? The contracting officer is the one who reviews the PWS to ensure its adequate and appropriate, and he issues the solicitation based in part on the PWS. For this reason, as we discussed in Lesson 11, it's smart to find out who this individual is during your initial meeting with the CA Team Leader after the competition is announced.

**What if they totally or partially ignore your remarks?** At that point, go back to Lesson #12 and incorporate the strategy we discussed there.

**THE COACH IS MAKING SEVERAL POINTS HERE, SO PAY ATTENTION.**

First is the obvious one, the interrelationship among the PWS, solicitation, and the contracting officer.

But just as important is to drive home the point that nothing in this process is done by memory. You have the references. It's not so important that you can say from memory that a PWS stands for Performance Work Statement as to know where to find key terms like this in the Supplement and Circular.

## **Quiz #16**

Answer the following questions. Use the book, or get the hook!

- 1) The \_\_\_\_\_ issues the \_\_\_\_\_, also known as the \_\_\_\_\_ or \_\_\_\_\_. The \_\_\_\_\_'s technical performance sections are based on the \_\_\_\_\_.
- 2) Once the solicitation is issued, because of its competition sensitivity, you may not have access to it. (True or False?)

## **LESSON #17: Methods of Procurement**

### **How this lesson applies to you**

Usually you could write off methods of procurement as "management stuff." But there are a couple of key points we need to review:

- Management determines the methods of procurement.
- You need to understand how competitive offers, both in-house and contractor, are selected and evaluated.
- Activists, with reason, will more than likely be excluded from serving on a Source Selection panel such as a Source Selection Review Board (SSRB) or a Source Selection Evaluation Board (SSEB). In Lesson 20, we'll go over why you are excluded, and why you probably wouldn't want to serve even if you had the opportunity.
- While you may not be "driving the train" on this matter, it is worthwhile to gain a familiarity with some procurement concepts such as best-value competitions.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph H, page 12.

### **Coach's Corner**

The Coach is going to sit this one out, and because you're doing such a great job, there will be no quiz at the end of this lesson.

However, do read this material. As the Coach loves to say, "The stuff you don't know will kill you, so learn everything you can." With this in mind, it may be worth everyone's time (management and labor) to understand how management arrived at a particular procurement strategy. While this isn't a life and death matter, there's no such thing as useless information. Any new insights you gain will never hurt you, and in fact may actually help you become a more knowledgeable and credible participant in this and future competitions.

## **LESSON #18: The Independent Review**

### **How this lesson applies to you**

You're already familiar with the Independent Review Officer (IRO) through Lesson 7.

In this Lesson, we're going to tell you why the IRO is so important to the process, as well as to you.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3. Paragraph I, explain the role of the Independent Review Officer (IRO).

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph I, page 12.

### **Coach's Corner**

The Independent Review Officer (IRO) serves several important roles in the A-76 process:

- the IRO acts as an honest broker, independent of the activity under study, who certifies that the government's cost estimate are fully in compliance with the Supplement.
- the IRO reviews the PWS, Management Plan, QASP, and government cost estimates prior to the Cost Comparison Form (CCF) and its supporting data going to the contracting officer.
- the IRO also provides a "sanity check." He or she is expected to make a recommendation whether or not the government can actually perform the PWS with the resources described by the MEO.

You might think that you'll have no cause to deal with this official. Hopefully, you won't. But I'd like to describe a situation where you may want to put the IRO to work for you.

As you will see in Lesson 21, the Supplement's Appellate process, while better than its predecessor, is still no great shakes. The Coach compares winning an appeal under the A-76 process to throwing a "Hail Mary" pass in football, or shooting a basketball from mid-court and scoring. It can be done, but it's a long shot. Hopefully, the IRO can help improve your chances so you won't need to appeal.

If during the development of the PWS, MEO, management plan, or any of the cost element data, you encounter errors that work against the in-house bid's competitiveness, you will point this out in your written comments and review. Hopefully, you can dissuade the Team Leader to change the documentation in response to your recommendations.

However, if the Team Leader doesn't, there is nothing to prevent you from writing to the IRO to inform him of the factual errors. The IRO may not do anything. (You're no worse off than when you started.) This official may, in a serious case, send the in-house package back to the certifying officer recommending that it be changed. (You've won.) Or, the IRO may respond to you in writing why this individual doesn't support your contention. (Again, no worse off than before. In fact, you may be able to use the IRO's response as documentation in the event you appeal.)

Is this a "by the book" way to address a difference in positions? No. But this is the type of creativity you can use, **if you know the rules**, to make your case and to help achieve your objectives.

### **Quiz #18**

Answer the following questions. This is open book, so take a look.

- 1) The IRO or \_\_\_\_\_ certifies the government's \_\_\_\_\_ estimates and makes a judgement whether or not these estimates are in \_\_\_\_\_ with the Supplement's policy and procedures.
  
- 2) The IRO is a \_\_\_\_\_ person from an \_\_\_\_\_ activity organizationally independent of the commercial activity under study.

## **LESSON #19: Evaluation of Bids and Tentative Decisions**

### **How this lesson applies to you**

The evaluation of bids and tentative decisions to award a contract is one area of the process, because of procurement official and conflict of interest regulations, from which you will be excluded.

But you still need to review this lesson. It will tell you why you don't want to be part of the evaluation and tentative award decisions. It will also highlight the procedures that will, under certain circumstances, enable the work to be brought back in-house on a temporary basis after a contract starts if the contractor is found unresponsive or unable to perform the contract.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3. J, you will be able to state:

- why activists may be excluded from participating on the teams evaluating the bids or deciding tentative award decisions.
- when the appeal of a tentative decision begins.
- the actions that may be taken when a competition winner is found to be unresponsive.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph J, pages 12 and 13.

### **Coach's Corner**

At this stage of your involvement in the Consultant, based on what we discussed in Lessons 7, 11, and 15, you should pretty well have figured that you'll be excluded because of conflict of interest and procurement official issues. If you're thinking like this, I'm proud of you because you're right on target.

The old Coach, though, having served on several source selections, will tell you that you're not missing anything. In fact, he'll be the first to point out that if you thought about it, you might not want to serve on one. Why would he say that? First off, evaluating isn't an exercise in participatory democracy. It is a long, boring process of saying things like, "Competitor A says he'll do x for y dollars. On the other hand, Competitor B says he can do it for y dollars." From the standpoint of excitement and entertainment, this isn't exactly in the same league as a Clint Eastwood western.

Secondly, if you served as part of the evaluation, you could not do so as a Union representative. You would have to participate as an objective member of a management evaluation team representing the agency. If you're not helping the Union, why should you participate? In an evaluation, the board or panel is just like a jury. It can't show prejudice and is basically cut off from outside communications until a decision to make a tentative award is made.

As you've seen already, if you become a decision maker or evaluator, you'll be designated a procurement official and you'll lose your right of first refusal. This is a pretty high price to pay for doing something that really doesn't help your Union or make the in-house bid more competitive.

Finally, the realities of Union life should be taken into account. You and I know that as an evaluator you're supposed to be objective, like a referee. Unfortunately, your Union brothers and sisters may not look at it that way. To them, if you're on the evaluation team, your job is to ensure that the work stays in-house. If everything is fair and square and the decision goes against you, figure for some unpleasant times from those who'll be losing their jobs. Also, expect lots of petty gossip, such as "you were bought off by the contractors". I don't know about you, but I don't need that type of heartache.

I also need to clear up a misconception. **There is no requirement for you to be at the bid opening.** The bid opening's sole purpose is to announce who won the competition. Other than satisfying your curiosity and relieving some anxiety, there's not much reason for you to be there. (Although, come to think of it, that alone seems like a pretty good reason.) The bid opening and the announcement of the winner is only important in so far as the appeal period usually begins on the day the bids and the announcement of the tentative award are made, assuming that the Cost Comparison Form and other documentation are made available at that time.

Finally, I want to draw your attention to Paragraph J.4. in the Supplement. This is important, especially, if your bid loses the competition. It has provisions for throwing out the winner's bid and recalculating in cases of contract non-performance. Keep this one in mind.

## **Quiz #19**

Answer the following questions. Open book. Peeking permitted.

True or False?

- 1) Management may exclude Union member participation in the evaluation process in order to preserve the member's right-of-first refusal and to avoid possible conflict of interest and procurement official restrictions.
- 2) The appeal period begins always on the day that the tentative decision is announced.
- 3) If the winner of the competition is later incapable of executing its terms of the contract, federal employees will be required to do the work until another contractor can be found to do the work.

## **LESSON #20: Appeals of Tentative Waiver and Cost Comparison Decisions**

*Bananas are my favorite fruit because they have a peel.*

### **How this lesson applies to you**

Way back when, we started preaching a defense in depth. Well with this lesson, we're going to be putting in another line, a thin line, but a line none the less -- the appellate process.

If the in-house bid loses, and you have a basis for an appeal, you should appeal. This section will take you through the appellate process.

### **Learning Objectives**

At the conclusion of this lesson, using the material contained in Chapter 3, Paragraph K, you will be able to:

- provide a time line of key events in the appellate process
- list the issues that may be addressed in an appeal
- list issues that are not appealable
- understand that there is no administrative or judicial channel for consideration of an appeal other than that described in paragraph K.

### **Read**

Chapter 3 -- Cost Comparisons, OMB Circular No. A-76 -- Revised Supplemental Handbook, Paragraph K, pages 13 and 14.

### **Coach's Corner**

This is one section of the Supplement that I hope you'll never have need to use. Hopefully, you will have done everything you can to win the competition and keep the work in-house. If you win, you can let the contractor worry about whether or not to appeal.

There a couple of things I want to get straight with you from the outset:

An appeal is a real long shot. Your chance of getting a decision reversed is slim unless you really have your act together. And the only way you'll be able to have your act together is if you've been involved in the process since day one of the competition. Don't sit back, and let management do the study thinking that if you

lose you'll appeal and reverse the decision. It don't happen that way! To file an appeal, you have to understand the A-76 process, and you have to know how the underlying decisions were made in your particular study. The only way you'll get that "insider" information is through hard work, study, and being involved throughout the process to the maximum extent allowable.

If you lose an appeal, you have no other administrative or judicial avenues with which to make an appeal. See paragraph K.7. of the Supplement. Appeals aren't authorized outside the agency or judicial review. See the Introduction to the Supplement's last paragraph on page *iii*. It says the same thing.

What about grieving and arbitrating. Sorry, folks, it isn't going to work. Why? In the past, the Federal Labor Relations Authority had held that unions could use the grievance and arbitration process to appeal a contracting out decision. This position was reversed by the District of Columbia Court of Appeals in IRS v. FLRA, 996 F.2d 1246 (1993). In this decision, the Court ruled that:

- OMB Circular A-76 is a government-wide regulation
- A-76 contains an exclusive procedure to appeal contracting out actions
- agencies functioning under A-76 couldn't be required to negotiate over proposals such as a Contracting Out article which would conflict with A-76 procedures
- decisions to contract out can not be challenged through the negotiated grievance procedure

**Bottom line:** You can't appeal a decision to contract out except through the appellate procedures established by the agency. You can't appeal outside of the agency making the decision, and the decision to contract out is **not** grievable or arbitrable. This decision was adopted by the FLRA in the case AFGE Local 1345 and Fort Carson, 48 FLRA 168 at 205-206 (Proposal 17) (1993).

**TIP: How to improve your chances for success.** First off, during the course of the competition, before a decision to award the contract is made, if you encounter a matter that may be the basis of a future appeal, do the following:

- **Set the ground rules. Know the Chain of command.** When the competition is announced, establish that you'll be participating, be sure that management (and your Local!!!!) understand the full scope and limitations of this involvement. Have management identify the officials who will serve as the Contracting Officer, IRO, MEO Certifying Official, and the Appellate Authority.
- **When you encounter an appealable issue** send a letter to the CA Team Leader stating that a situation exists that if allowed to continue would

unfavorably bias the outcome of a tentative decision to award a contract against the in-house bid. Ask him or her to resolve this issue.

- Send a separate letter to the appellate authority, certifying officer, and IRO with a copy of your CA Team leader's letter enclosed. Inform them that if the situation isn't satisfactorily resolved and decision to contract out is made, you will use it as the basis to appeal.

What are you trying to accomplish? The same thing a rattlesnake tries to do when it rattles. You're first warning them, hoping the CA Team Leader will fix the problem so that you won't have to rely on the appellate system. You're also doing some indirect lobbying. The appellate authority, IRO, and certifying officer don't want any more problems that they already have. They may work behind the scenes to correct the situation. What if they do nothing? You're no worse off than before, and depending on the CA Team Leader's response, you may be able to get more ammo to prepare the appeal.

What is appealable?

- instances of agency denials of information not otherwise protected by law or regulation. (You better have that paper trail in place to prove this one.)
- questions regarding an agency's compliance with the requirements and procedures of the Circular and its Supplement
- factual questions regarding the justification for an agency waiving the requirement for a cost comparison. (Remember Lesson 6.)
- questions regarding the costs entered on the Cost Comparison Form (CCF). (You've got back up your questions with a reason why you consider them questionable.)

You can't appeal:

- selection of one bidder over another to compete against the in-house bid
- award of one contractor over another
- management decisions regarding the MEO
- policies or procedures contained in the Circular or its Supplement

What's the timeline for an appeal?

-- The appeal period begins once there is access to the CCF and all other supporting documentation. (See Lesson 7 for your rights in accessing documentation for an appeal.) This is usually the day the bid is opened and the tentative decision is announced.

-- Appeals must be received in writing within 20 **calendar** days after the start of the appeal period. For complex appeals, this appeal period may be extended to 30 days.

-- A final Decision should be made within 30 days of receipt of the appeal.

### **WHO IS THE APPELLATE AUTHORITY?**

**TIP:** There's a lot of confusion by management on this question. That's why I told you to have the CA Team Leader identify who the appellate authority is during your initial meeting after the study is announced. The time to state that the appellate authority has been improperly designated isn't while you're appealing. If you fight this one, do it in the earliest stages of the competition. By the Supplement, the Authority will be:

-- in the case of a waiver, two levels above the person signing the waiver. (See Lesson 6 to refresh yourself on this policy and procedure.)

-- in the case of a regular commercial activities competition, the authority must be independent of the activity under review, or at least two organizational levels above the official certifying the MEO.

## **Quiz #20**

Answer the following questions:

- 1) The appellate period starts when all supporting \_\_\_\_\_ becomes available. This is usually the day the bid is opened and the tentative decision to award is made. If you decide to appeal, you have \_\_\_ calendar days to submit your appeal.
- 2) Calendar days do not include Saturdays, Sundays, and Holidays. (True or False?)
- 3) Appeals are sure bets and favorable to the appellant. Therefore, you don't have to help with the study. If you lose the bid, you'll appeal and the decision will automatically be reversed. (True or false?)
- 4) You can go to court or grieve and arbitrate a decision to contract out. (True or False?)
- 5) Indicate with an "A" if an item is appealable, a "N/A" if it is not.
  - award of one contractor over another
  - instances of agency denials of information not otherwise protected by law or regulation. (You better have that paper trail in place to prove this one.)
  - policies or procedures contained in the Circular or its Supplement
  - management decisions regarding the MEO
  - questions regarding an agency's compliance with the requirements and procedures of the Circular and its Supplement
  - factual questions regarding the justification for an agency waiving the requirement for a cost comparison. (Remember Lesson 6.)
  - questions regarding the costs entered on the Cost Comparison Form (CCF). (You've got back up your questions with a reason why you consider them questionable.)
  - selection of one bidder over another to compete against the in-house bid

## **LESSON #21: Post-MEO Performance Review**

### **How this lesson applies to you**

This section addresses the final step in the process --- the Post-MEO Performance Review. It's important to you because it means, even if you win, there will be some organizational adjustments. Don't work on an MEO thinking that the changes in staffing, procedures, and organization are just for the bid. If you win, the MEO changes will be made, and outsiders will be checking up on you.

**Bottom Line:** Beware of what you bid with. It may come true.

### **Final Pep Talk from the Coach**

You all have been training real hard, so we'll pass on doing any more tests. Just a couple of things to keep in mind:

**Be pro-active.** If you get involved in the competitive process, your chances of winning the bid sky rocket. Do to them before they do to you.

**Get smart.** You've taken the course, but don't think the learning is over. Review, Review, and teach others.

**Build a better and stronger Union.** The employees we represent need to understand that privatization and contracting out are real threats, they're not going away and that AFGE is fighting against the wholesale give-away of federal jobs and services. But we can't afford people on the side lines. They've got to join our ranks. Organize! Organize! Organize!

Use this as an opportunity to **build a stronger, better relationship with management.** Be a creative, credible, and competent participant. If they know you're a straight shooter, they'll seek you out in the future, as a partner.

**Think like a businessman or woman with Union Values.** You can't win if your only objective is to save jobs. You and management must examine how your agency is going to be able to accomplish your mission better, faster, and more economically than your private sector opponents. This means looking at new and innovative ways of doing business -- and yes, it may mean trimming back some of the current workforce. This is a tough call, but unfortunately the only alternative to becoming competitive is to lose everything outright by continuing with business as usual. In the process of "rightsizing" and "reinventing" your work, also keep in mind that we must continue to care and provide for those workers adversely impacted by the MEO's final configuration.

Finally, **Remember: Honesty is the best policy!** In preparing your input to the cost comparison, you should stress accuracy and the importance of being truthful. If you fudge, or make outright lies in your estimates, you will be

challenged and probably found out. Being caught in a lie or an inept error damages, or may even destroy, your credibility as an effective player in the process, and hurts the Union's ability to fight for your cause.

*GOOD LUCK! LET'S BE SAFE OUT THERE.*

## **Answers to Quiz #1**

1) 5 (See subtitles in Lesson #1.)

2) The sections are entitled: "Why This Section is Important to You?"; "Learning Objectives"; "Read"; "Coach's Corner"; and "Quiz". (See the subtitles in the text of Lesson #1. Yes. You're right. There are 6 blocks for five pieces of information.)

3) True. (Obviously you got this one right, or you wouldn't be here, would you?)

You can see that this was a really simple and basic quiz. But we're trying to make several points regarding how you use the quizzes as a learning tool.

-- The point isn't to get 100% on each quiz. It's to learn the material. If you miss a question, go back and find out why you missed the material and make corrections.

-- Note that the quiz questions and the form the questions take will always be based on the learning objectives.

-- Sometimes, we'll throw in some simple tricks to make sure that you're thinking and not being lazy. For example, question 2) had six blocks for five answers. Hopefully, you didn't fall for this, and stuck with the material as it was presented.

-- Each answer will be followed by a set of parentheses which will tell you where to find the right answer in the reference.

-- Don't ever move on to the next lesson unless you mastered the current lesson. Learning A-76 is like building a house. If you cut corners, it will eventually catch up with you.

If you scored 100%, move to the next Lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #2**

- 1) policy, the Circular (See the Coach's Corner.)
- 2) procedures, guidance, Supplement (See paragraph 1 of the Introduction and the Coach's Corner.)
- 3) a. (See paragraph 2 of the Introduction.)
- 4) competition (See the Coach's Corner and paragraph 2.)
- 5) True. (See final paragraph on page iii.)
- 6) Policy Implementation, Preparing the Cost Comparison Estimate (p. iv of the Introduction.)

If you scored 100%, bravo!!! Move to the next Lesson.

If you didn't -- take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

### Answers to Quiz #3

1) True. (Paragraph B of the Supplement.)

2) Inherently, governmental activity is one which is so intimately related to the exercise of public interest as to mandate performance by federal employees. (Paragraph B of the Supplement. Also see the Definition Appendix on page 35 of the Supplement.)

3) False (Paragraph B of the Supplement.)

4)

National Defense                       Systems Engineering

Automatic Data Processing       operation of cafeterias

tax collection                               foreign policy

See Examples of Commercial Activities and paragraph 6.3 of the Circular.

How'd you do?

If you scored 100%, you're on target! Keep up the good work! Move on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## Answers to Quiz #4

I photographic services are performed in-house because they handle classified material deemed important to national security.

I No contractor will provide the service, and if it isn't provided, direct patient care will suffer.

TRUE OR FALSE?

F Research and Development activities are subject to the Circular and its Supplement.

F Public works, installation maintenance, and facility maintenance activities supporting a Research and Development Activity are not subject to the Circular and its Supplement.

F Functions with 10 or fewer FTE's may not be brought back in-house even if past contractor performance is unsatisfactory and reasonable prices can't be obtained elsewhere.

All answers are contained in Paragraph C.

If you scored 100%, Faaaan-taaaa-stic! Move on to the next Lesson.

If you didn't -- take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

### **Answers to Quiz #5**

- 1) d. All of the above. (See D.1. and D.2)
- 2) True. (See D.5)
- 3) False. (See D. 6. re: Comparable jobs which they are qualified for)
- 4) False. (See D.1.)

If you scored 100%, you've pretty well mastered this one! Move on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## Answers to Quiz #6

- 1) -- the conversion results in significant cost savings or efficiencies.
  - the waiver won't reduce the prospects for future competition.
  - must state why an in-house or contractor offer has no chance of winning under the Supplement's competitive guidelines. (See Paragraph E.3.)
- 2) Employees impacted by the decision to grant a waiver have the right to appeal and Paragraph H's personnel considerations. (See paragraph E.4. and E. 5)
- 3) Normally, the 9.a. official referred to in the Circular is at the Assistant Secretary level. (Refer to the Circular.)
- 4) True. Bases selected for closure or other federal installations slated for closure already have cost comparison waivers in place. (See Paragraph E.6.)

If you scored 100%, you're doing a wizard of a job. Pat yourself on the back! Move on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## Answers to Quiz #7

All answers can be found in paragraph G.

1) List the documents that you will access to during their development:

- \* performance standards
- \* performance work statements
- \* management plans (We'll cover this document in Lesson 14.)
- \* and in-house and contract cost estimates.

2) True. You have the right, as does the contractor, to comment on the bid's solicitation once its issued to the public.

3) At a minimum, you will have access to the following if you are going to file an appeal.

- \* in-house cost estimate with detailed supporting data,
- \* the completed cost comparison form, and
- \* the management plan.

4) Procurement and conflict of interest restrictions may prevent your access to commenting or having knowledge of **final versions** of these documents.

If you scored 100%, I applaud you! Move on to the next Lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## Answers to Quiz #8

Answer the following questions. As always, life and A-76 quizzes are open books:

1) Some of the things you need to consider in preparing for a possible commercial activities study is:

\* including a Contracting Out article in your collective bargaining agreement.

\* use partnership to create the relationships and exchange of ideas you'll need to compete.

\* bargain for official time so that you can effectively and credibly compete in a competition.

2) The time to begin negotiating a contracting out article or building a partnership is:

d) **AS SOON AS POSSIBLE!!!!**

3) List the considerations contained in the Supplement's Paragraph H which are provided to displaced federal workers:

1) right of first refusal

2) attempt to place workers within the agency through priority placement programs

3) creating reemployment priority lists

4) creating a placement program

5) paying reasonable costs for training and relocation associated with placement

6) providing employees access to OPM placement programs such as Displaced Employee Program (DEP) and Interagency Placement Assistance Program (IPAP).

If you scored 100%, bully for you! Move on to the next lesson.

If you didn't -- take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

**Answers to Quiz #10** (See Paragraph A on page 10 of the Supplement.)

- ⊗ 1) the development of a Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP).
- ⊗ 2) the performance of a management study to determine the government's Most Efficient Organization (MEO)
- ⊗ 3) development of an in-house government cost estimate
- ⊗ 4) issuance of the Request for Proposal (RFP) or Invitation for Bid (IFB)
  - 5) comparison of the in-house bid against a proposed contract or ISSA price
- ⊗ 6) the administrative appeals process

If you scored 100%, you're cooking with gas! Move on to the next Lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## Answers to Quiz #11

The first thing you do once a competition is announced is to **Notify Management that You're Participating**

To kick off your participation in the A-76 competition process, it is best to request a short meeting with the appropriate manager(s), most likely the CA Team Leader and others. At this meeting, you should present a letter. This letter requests participation of work center personnel and AFGE representatives in the development of the Performance Work Statement and any study team or oversight committee that is formed to review the A-76 competition. Be sure to address your expectations concerning the scope and restrictions of your involvement. Present your case in terms of the Supplement's Part I, Chapter 1, paragraph G, Chapter 3, paragraph B. If you are a DoD Local, also cite the scope of your involvement as required by Title 10, USC § 2467. Make the following points during your meeting:

- Highlight your Local's desire to be actively involved in the development of the Performance Work Statement (PWS) and management plan. Stress the valuable contribution that can be made by the people who actually do the work;
- Stress the benefits of the Local's involvement in other processes such as oversight and steering groups. The Local's participation will result in the creation of the most efficient organization (MEO) and the creation of a competitive in-house bid; and
- Emphasize that the Local will cooperate, in the event that the in-house bid is the winner, in implementing the most efficient organization. (Understand this cooperation may mean you'll have to cooperate in changes to jobs and work.)

You should also request the names and titles of the persons who will be the officials serving as the Certifying Official for the MEO, the Independent Review Officer (IRO), the Contracting Officer, and the Appellate Authority for this study.

You should also inquire into whether or not management is willing to sponsor joint-labor management training. (See Chapter 3, B.2.)

The tone of your presentation should be cooperative, and you should make it clear that you are dedicated to keeping the work in-house.

(See Lesson 11's Coach's Corner for the answers.)

If you scored 100%, you're the best! Move on to the next Lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #12**

(All answers are based on information contained in Paragraph C.2, unless otherwise stated.)

The PWS defines what is being requested, the performance standards and measures, and timeframes required. It provides the technical performance section of the RFP and IFB issued by the contracting officer.

2) False. If you don't like the current version of the PWS, you can't demand that management write another one. Remember, your role is advisory. (Reread the Coach's Corner.)

If you scored 100%, you're moving and grooving! So boogey on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #14**

1) The Management Plan reflects scope of the PWS, the organizational structures, staffing, and operating procedures, equipment, transition, and inspection plans. (See Paragraph E.1.)

2) False. (See the Coach's Corner.)

3) The Management Plan describes the Government's (choose one):

- a. Most Efficient Organization
- b. The basis of the in-house bid
- c. Document the plans assumptions
- d. All of the above

Answer: d. All of the above. (See Paragraph E. 1 and 4.)

If you scored 100%, good show! Move on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #15**

1) The Management Plan and MEO become competition sensitive once management begins drafting the final version.

2) Answer is A. (See Chapter 1. G and Chapter 3. B.3.a.)

If you scored 100%, you're one of my chosen friends for life! Endeavor to move on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #16**

1) The contracting officer issues the solicitation, also known as the RFP or IFP. The solicitation's technical performance sections are based on the PWS. (Chapter 3. G.)

2) False. Once the solicitation is issued, because of its competition sensitivity, activists may not have access to it. (Chapter 1. Paragraph G.1.B.)

If you scored 100%, you are a champion unto all generations! Strut on to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #18**

- 1) The IRO or Independent Review Officer certifies the government's cost estimates and makes a judgment whether or not these estimates are in full compliance with the Supplement's policy and procedures. (See Chapter 3, Paragraph I.)
- 2) The IRO is a qualified person from an impartial activity organizationally independent of the commercial activity under study. (See Chapter 3, Paragraph I.)

If you scored 100%, hats off and a hearty well done! March off to the next lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

## **Answers to Quiz #19**

1) True. (See Chapter 3, B.3.)

2) False. (See Chapter 3. J.1. "begins when access to Cost Comparison Form and all documentation" is provided for review.")

3) False. (See Chapter 3. J.)

If you scored 100%, you're rockin' and rollin'! Jitterbug on to the next Lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

**Answers to Quiz #20 (All answers are reference in paragraph K)**

1) The appellate period starts when all supporting documentation becomes available. This is usually the day the bid is opened and the tentative decision to award is made. If you decide to appeal, you have 20 calendar days to submit your appeal.

2) False.

3) False.

4) False.

5) Indicate with an "A" if an item is appealable, a "N/A" if it is not.

N/A -- award of one contractor over another

A -- instances of agency denials of information not otherwise protected by law or regulation.

N/A -- policies or procedures contained in the Circular or its Supplement

N/A -- management decisions regarding the MEO

A -- questions regarding an agency's compliance with the requirements and procedures of the Circular and its Supplement

A -- factual questions regarding the justification for an agency waiving the requirement for a cost comparison

A -- questions regarding the costs entered on the Cost Comparison Form (CCF). (You've got back up your questions with a reason why you consider them questionable.)

N/A -- selection of one bidder over another to compete against the in-house bid

If you scored 100%, you're an all-star! Dribble on to the next Lesson.

If you didn't, take some time to reread the material. Find out where you went wrong. Correct your answers, and then move on.

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