Subpart 7.3 - Contractor Versus Government Performance

Parent topic: Part 7 - Acquisition Planning

7.300 [Reserved]

7.301 Definitions.

Definitions of "inherently governmental activity" and other terms applicable to this subpart are set forth at Attachment D of the Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated *May* 29, 2003 (the Circular).

7.302 Policy.

(a) The Circular provides that it is the policy of the Government to-

(1) Perform inherently governmental activities with Government personnel; and

(2) Subject commercial activities to the forces of competition.

(b) As provided in the Circular, agencies *shall*-

(1) Not use contractors to perform inherently governmental activities;

(2) Conduct public-private competitions in accordance with the provisions of the Circular and, as applicable, these regulations;

(3) Give appropriate consideration relative to cost when making performance decisions between agency and contractor performance in public-private competitions;

(4) Consider the Agency Tender Official an interested party in accordance with 31 U.S.C. 3551 to 3553 for purposes of filing a protest at the Government Accountability Office; and

(5) Hear contests in accordance with OMB Circular A-76, Attachment B, Paragraph F.

(c) When using sealed bidding in public-private competitions under OMB Circular A-76, *contracting officers shall* not hold discussions to correct deficiencies.

7.303 [Reserved]

7.304 [Reserved]

7.305 Solicitation provisions and contract clause.

(a) The *contracting officer shall*, when soliciting *offers* and tenders, insert in *solicitations* issued for standard competitions the provision at 52.207-1, Notice of Standard Competition.

(b) The *contracting officer shall*, when soliciting *offers*, insert in *solicitations* issued for streamlined competitions the provision at 52.207-2, Notice of Streamlined Competition.

(c) The *contracting officer shall* insert the clause at 52.207-3, Right of First Refusal of Employment, in all *solicitations* which *may* result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the *solicitations*, whether or not a public-private competition is conducted. The 10-*day* period in the clause *may* be varied by the *contracting officer* up to a period of 90 days.