



TOOLKIT FOR COMMUNICATING COMPETITIVE SOURCING EXPRESS REVIEW STUDY RESULTS

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1. Study Results

The DOI Express Review Guide describes three possible outcomes of a competitive sourcing Express Review:

- If the comparison shows the estimated Government cost to be below the comparable range, * the function should remain in-house.
- If the estimated Government cost is above the comparable range, the function should be contracted.
- If the estimated Government cost falls within the comparable range, the decision to remain in-house or convert to contract is based upon pre-established, non-cost decision factors.

* The comparable range is the range of prices from four existing or recently expired contracts, or prices from interviews with private industry on comparable maintenance work.

Study results are official when the appropriate Decision Official has signed the revised Streamlined Competition Form, Figure C3, of OMB Circular No. A-76 dated May 29, 2003. This is generally accomplished during or immediately following the consultant's briefing on the study results. These study results are considered 'tentative' until the appeal timeframe has passed (see Appeals below).

➤ *See revised Streamlined Competition Form – Attachment 1*

The deciding official is the first level SES program manager (State or Center Director) when study results are based on existing market costs alone. However, when decisions are based on non-cost decision factors, the Head of the Contracting Activity (Assistant Director, Business & Fiscal Resources) will make the decision if the cost is estimated to be above \$2.5 million. The Bureau Procurement Chief will make the decision if the cost is estimated to be below \$2.5 million.

2. Communicating Study Results

Special Note: Offices with unions should identify whatever union notification requirements exist in negotiated agreements well in advance of the study result date for the competitive sourcing study. These offices should be prepared to follow notification requirements, keeping in mind that unions must be notified prior to notifying employees, but such requirements never preempt management-to-management communications.

2.1 Management Notification

Within one hour of finalizing the results of a competitive sourcing study, the State Director or Fire Center Director will notify BLM's Director and Deputy Director of the study results via email and call to their cell phones. The email should be simultaneously copied to the following: Larry Benna, Acting Assistant Director for Business and Fiscal Resources; WO-800; Bernie Hyde, Group Manager, WO-360; Joe Federline, Group Manager, WO-850; Linda Sedbrook, Director, NHRMC; Kathie Libby, Competitive Sourcing Project Manager; Selma Sierra, Assistant Director, Communications, WO-600; and Beverly Davis, Staff Assistant, WO-800. Appropriate local supervisory and management officials, including the local HR specialist supporting the Competitive Sourcing team, should also be notified immediately.

On the same day the study result is finalized, the revised Streamlined Competition Form, with appropriate signatures shall be faxed to 202-452-5046, ATTN: Kathie Libby.

2.2 Union Notification

Where they exist, the union is the sole representative of all bargaining unit employees impacted by competitive sourcing activities. In the offices with unions, employees cannot be officially notified of study results until the final results have been communicated, in writing, to the union. Your local Labor Relations Specialist can ensure appropriate notification to union officials.

2.3 Employee Notification

The key issues to keep in mind with regard to employee notification are Method and Timing and Message.

- **Method & Timing.** Given the stressful nature of the competitive sourcing study process, it is important that employees be notified of the results as soon as possible (see union notification above) and that the announcement not be limited to a written notification.

While written communications can be timely, face-to-face meetings are essential to fully respond to employee questions about next steps. When the study result is announced by email or memorandum, it should indicate when an employee meeting is scheduled to discuss the results. It is important to notify the union of any employee meetings so they can attend if they choose.

- **Message.** In addition to the actual study results, some general messages can be conveyed, such as:
 - The study was conducted in compliance with the requirements of the Department of the Interior Express Review Guide.
 - An appreciation for the people involved in the study.
 - What happens next.

Study results that keep the function **in-house** are relatively easy to convey. The key message is that the study reconfirms that our employees provide the best value to the American taxpayer. At a later date, employees will need to be informed about the requirements stemming from the Quality Assurance Surveillance Plan although this information would not be included in the original written notification.

Study results that show the function should be **contracted out** require both more information and more sensitivity in its transmission. Key messages include:

- The outcome in no way invalidates the efficiency and dedication of our workforce.
- ‘Losing’ a study is a trigger for the contracting process. It does not in and of itself result in a contract.
- **Only if** actual bids are 10 percent below our documented in-house costs and allowing one-half of an FTE for contract administration will the work be contracted out. If all bids are above that 10 percent threshold, we are allowed to cancel the solicitation and continue to use our in-house workforce to accomplish the work.

- Any contract issued as a result of this study would include the attached clause on Right of First Refusal for new work under the contract.
- Federal employees or their representatives affected by a competitive sourcing decision have the right to appeal to the DOI Hearings and Appeals Office.

➤ *See Sample language for Announcements - Attachment 2*

All study documentation is available to employees under FOIA. Even in Express Reviews, the documentation can be rather voluminous. The revised Streamlined Competition Form, Figure C3, of OMB Circular No. A-76 dated May 29, 2003, which documents the study findings, can be made available immediately upon request.

3. Employee Appeals

Employees or their representatives who would be affected by a decision to outsource can appeal competitive sourcing study results to the DOI Hearings and Appeals Office. In the case of an Express Review cost comparison study result, the appeal must:

- Be received by the contracting officer in writing within 20 calendar days after the date that all supporting documentation is made publicly available;
- Address specific questions regarding an agency's compliance with the requirements and procedures of the DOI Express Review Guide and A-76 Circular or address specific questions regarding the costs entered by the Government on the revised Streamlined Competition Form and set forth the rationale for questioning those items; and
- Demonstrate that the items appealed, individually or in aggregate, would reverse the tentative study result.

➤ *See CFR, Title 43, Vol.1, pg.161-2 and Supplemental Handbook, Part 1, Ch 3, Para K.- Attachment 3*

**Attachments to IM-2003-
Decision Toolkit
For
Competitive Sourcing Express Review Decisions**

- Attachment 1 Certifications for 2003 Express Review Studies
- Attachment 2 Sample Decision Letters
- Attachment 3 Appeals Procedures

Certifications for 2003 Express Review Studies

In compliance with the streamlined competition form in revised OMB Circular No. A-76, Attachment C, Figure C3, and the Department of the Interior Express Review Guide

State: _____

Study Function: _____

Location: _____

1. Agency Tender Certification: I certify, to the best of my knowledge, that this agency cost estimate on SLCF Lines 1, 2, 3, 4, and 6 is (1) based on the scope and requirements of the activity being competed, and (2) is calculated in accordance with OMB Circular A-76.

Manager of the maintenance activity or support contractor who prepared the agency cost estimate

Signature: _____ **Date:** _____

Printed Full Name: _____ Phone #: _____

Title: _____

2. Certification of Estimated Cost of Private Sector Performance: I certify, to the best of my knowledge, that the cost estimate on SLCF Line 7 is based on (1) documented market research or (2) soliciting cost proposals in accordance with the FAR.

Warranted Contracting Officer or support contractor official who conducted the market research

Signature: _____ **Date:** _____

Printed Full Name: _____ Phone #: _____

Title: _____

3. Performance Decision Certification of Adjusted Costs: I certify that to the best of my knowledge, the costs on SLCF Lines 8, 12, 13, and 17 are accurate and calculated in accordance with OMB Circular A-76 and that the performance decision reflected on SLCF Line 18, as adjusted, is cost effective.

- (a) Adjusted Total Cost of Contract Performance--HIGH
(Line 13 from SLCF) (a) _____
- (b) Adjusted Total Cost of Contract Performance
(Line 13 from SLCF)--LOW (b) _____
- (c) Minimum Conversion Differential
(10% of line 1 from SLCF) (c) _____
- (d) Adjusted Total Cost of In-house Performance
(Line 6 from SLCF minus conversion differential) (d) _____

Study Result (Circle One)

COMPARABLE RANGE High (3a) _____ Low (3b) _____

- 1. Government Estimate Below Comparable Range Keep In-House
- 2. Government Estimate Above Comparable Range- Convert to Contract/ ISSA

State Director or Fire Center Director

Signature: _____ **Date:** _____

Printed Full Name: _____ Phone #: _____

Title: _____

3. Government Estimate Within Comparable Range - Decision Based on predetermined non-cost factors.

Circle One

- Keep In- House
- Convert to Contract/ ISSA

Bureau Procurement Chief signature if < \$2.5 million

Signature: _____ **Date:** _____

Printed Full Name: Rachel Braden Title: HQ Senior Procurement Analyst, WO-850
Phone#: (202) 452-5177

Head of the Contracting Activity if > \$2.5 million

Signature: _____ **Date:** _____

Printed Full Name: Larry Benna Title: Assistant Director, Business & Fiscal Resources, WO-800 Phone#: (202) 208-4864

Sample Decision Letters

To: All Employees

From: State Director

Subject: Results of **XXX** Maintenance Competitive Sourcing Studies

I am pleased to announce that our study of the maintenance activities in **XXX** has resulted in a decision to maintain the function in-house. In March 2003, **XXX** announced that it would be conducting an Express Review Competitive Sourcing study involving **XXX** full-time equivalents (FTEs) performing hands-on maintenance functions in our field offices. The study, which considered "**maintenance, repair, alteration, and minor construction of real property**" functions, has now been completed. The comparison shows the estimated Government cost to be below the comparable private sector range, so the function will continue to be performed by our dedicated **XXX** work force.

I want to thank all who participated in this study, which subjected our maintenance employees to a most careful scrutiny of their day-to-day duties. Our decision to retain the maintenance functions in-house was based upon the rigorous application of analytical data in compliance with the requirements of the Department of the Interior Express Review Guide, which was approved by the Office of Management and Budget. The positive outcome validates the efficiency of our **XXX** work force, and reconfirms that our employees provide the best value to the American taxpayer.

If you have questions about the Competitive Sourcing Study process, you may call **XXX** at **XXX**.

This is to announce that our study of the maintenance activities in **XXX** has resulted in a decision to potentially outsource the work after soliciting bids or proposals for this function. This outcome in no way invalidates the efficiency and dedication of our **XXX** work force, but it does require us to allow private sector companies to bid for the work currently performed by BLM maintenance employees in **XXX**

As you may recall, in March 2003, **XXX** announced that it would be conducting an Express Review Competitive Sourcing study involving **XXX** full-time equivalents

(FTEs) performing hands-on maintenance functions in our field offices. The study, which considered "**maintenance, repair, alteration, and minor construction of real property**" functions, has now been completed. The cost comparison shows the estimated Government cost to be above the comparable contracts or prices from the private sector. We now need to verify the cost comparison decision by formally soliciting contract bids for the studied function.

I'd like to explain what we plan to do next. We will formally solicit contract bids for the activities covered by the **XXX** study. **Only if** actual bids are 10 percent below our documented in-house costs and allowing one-half of an FTE for contract administration will the work be contracted out. If all bids are above that 10 percent threshold, we are allowed to cancel the solicitation and continue to use our in-house workforce to accomplish the work. In other words, we do not know for sure that this work will be contracted out and the process could take about **YYY** months to complete. Additionally, any contract issued as a result of this study would include the attached clause on Right of First Refusal for new work under the contract.

I want to thank all who participated in this study, which subjected our maintenance employees to a most careful scrutiny of their day-to-day duties. Our decision to request formal bids for maintenance activities was based upon the rigorous application of analytical data in compliance with the requirements of the Department of the Interior Express Review Guide which was approved by the Office of Management and Budget.

If you have questions about the Competitive Sourcing Study process, you may call **XXX** at **XXX**.

**Attachment on Government Employees' Right of First Refusal for
Employment Openings under Contract Positions for Which They Are
Qualified**

The contracting officer must insert the following clause 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. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

Right of First Refusal of Employment (Nov 1991)

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

(End of clause)

TITLE 43--PUBLIC LANDS: INTERIOR

**PART 4--DEPARTMENT HEARINGS AND APPEALS PROCEDURES—
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Subpart M--Special Procedural Rules Applicable to Appeals of Decisions Made Under OMB Circular A-76

Sec. 4.1600 Purpose and nature of the appeal process.

Authority: 5 U.S.C. 301.

Source: 45 FR 75213, Nov. 14, 1980. Redesignated at 52 FR 39525, Oct. 22, 1987.

(a) This appeals procedure embodies an informal administrative review of agency decisions made under OMB Circular A-76, and is intended to assure that such decisions are fair, equitable, and in compliance with the provisions of the Circular. This procedure provides affected parties an opportunity to request that such decisions be objectively reviewed by a party independent of the A-76 decision process.

(b) This appeals procedure is administrative rather than judicial in nature, and does not provide for a judicial review or for further levels of appeal. The decisions of the appeals official are final.

(c) This procedure is intended to protect the rights of all affected parties and, therefore, neither the procedure nor agency determinations may be subject to negotiation, arbitration, or agreements with any one of the parties.

Sec. 4.1601 Basis for appeal.

(a) An appeal may be based only on a specific alleged material deviation (or deviations) by the agency from the provisions of OMB Circular A-76 or Supplement No. 1 thereto, the "Cost Comparison Handbook." Appeals may not be based on other factors, such as the economic impact of the agency's decision on a community, or other socioeconomic issues.

(b) This appeals procedure shall be used only to resolve questions of the determination between contract and in-house performance of a commercial or industrial type requirement, and shall not apply to questions concerning award to one contractor in preference to another.

Sec. 4.1602 Who may appeal under this procedure.

An appeal may be filed by any affected party, viz, employees of the Federal activity under review, authorized employee representative organizations, contractors, and potential contractors.

Sec. 4.1604 Method of filing an appeal.

An appeal must be in writing, and must be submitted to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, room 1111, Ballston Towers Building No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Sec. 4.1605 Action by the Office of Hearings and Appeals.

(a) Upon receipt of an appeal, the Director, Office of Hearings and Appeals shall designate an appeals official, who shall process the appeal.

(b) The appeals official shall promptly docket the appeal and send copies of the docketing notice to the appellant, the director or other appropriate official of the bureau or office involved, and the Solicitor of the Department.

Sec. 4.1606 Department representation.

(a) Upon receipt of the docketing notice, the Solicitor shall appoint counsel to represent the Department in the appeal action, and so notify the appellant and the appeals official.

(b) Within seven calendar days of his designation the Department Counsel shall assemble and transmit to the appeals official a file containing the appealed agency decision and all documents relevant thereto, including the detailed analysis upon which the agency decision was based. At the same time, the Department Counsel shall send to the appellant a copy of the transmittal document, containing a table of contents of the file.

Sec. 4.1607 Processing the appeal.

(a) The appeals official shall arrange such conferences with the concerned parties as are necessary, including (if requested by the appellant) an oral presentation.

(b) The appeals official may require either party to submit any additional documents, oral or written testimony, or other items of evidence which he considers necessary for a complete review of the agency decision.

(c) All documentary evidence submitted by one party to the appeal action shall be made available to the other party (or parties), except that availability of proprietary information may be restricted by the party holding the proprietary interest in such information.

Sec. 4.1608 Oral presentations.

(a) Upon request of the appellant, an opportunity for an oral presentation to the appeals official shall be granted. The purpose of an oral presentation shall be to permit the appellant to discuss or explain factual evidence supporting his allegations, and/or to obtain oral explanations of pertinent evidence. The time and place of each oral presentation shall be determined by the appeals official, after consultation with the appropriate parties.

(b) The appellant may, but is not required to, be represented by legal counsel at an oral presentation.

(c) The Department Counsel and the bureau/office involved shall be invited to attend any oral presentation. The appeals official may require the attendance and participation of an official or employee of the Department, whether or not requested by the appellant, if, in the appeals official's judgment, such official or employee may possess knowledge or information pertinent to the agency decision being appealed, and if this knowledge or information is unobtainable elsewhere.

(d) An oral presentation shall not constitute a judicial proceeding, and no such judicial proceeding or hearing shall be provided for in this appeals process. There shall be no requirement for legal briefs, sworn statements, interrogation under oath, official transcripts of testimony, etc., unless the appeals official determines such are necessary for effective disposition of the appeal.

Sec. 4.1609 Multiple appeals.

If two or more appellants submit appeals of the same agency decision, which are based on the same or similar allegations, the appeals official may, at his discretion, consider all such appeals concurrently and issue a single written decision resolving all of the several appeals.

Sec. 4.1610 Decision of the appeals official.

(a) Within 30 calendar days after receipt of an appeal by the Office of Hearings and Appeals, the appeals official shall issue a written decision, either affirming or denying the appeal. This decision shall be final, with no judicial review or further avenue of appeal.

(b) If the appeals official affirms the appeal, his decision regarding further action by the agency shall be binding upon the agency.

(c) If it proves impracticable to issue a decision within the prescribed 30 calendar days, the appeals official may extend this period, notifying all concerned parties of the anticipated decision date.

OMB Circular A-76, Supplemental Handbook, Part 1, Chapter 3:

K. Appeals of Tentative Waiver and Cost Comparison Decisions

1. Following a tentative waiver or A-76 cost comparison decision, the A-76 Administrative Appeals process is invoked. To be eligible for review under the A-76 Administrative Appeals process, appeals must:

- a. Be submitted by an eligible appellant.
- b. In the case of a waiver, be received by the official in paragraph 9.a. of the Circular, or designee. In the case of a tentative cost comparison decision, be received by the contracting officer. In either case, the appeal must be received in writing and within 20 calendar days after the date that all supporting documentation is made publicly available. The agency may extend the appeal period to a maximum of 30 days if the cost comparison is particularly complex.
- c. Address specific questions regarding an agency's compliance with the requirements and procedures of this Circular, factual questions regarding agency justifications to waive a cost comparison, or address specific questions regarding the costs entered by the Government on the applicable Cost Comparison Form and set forth the rationale for questioning those items.
- d. Identify specific instances of agency denials of information not otherwise protected by law or regulation.
- e. Demonstrate that the items appealed, individually or in aggregate, would reverse the tentative decision.

2. An eligible appellant is defined as;
- a. Federal employees (or their representatives) and existing Federal contractors affected by a tentative decision to waive a cost comparison;
 - b. Federal employees (or their representatives) and contractors that have submitted formal bids or offers who would be affected by a tentative decision to convert to or from in-house, contract performance or ISSA as a result of a cost comparison; or
 - c. agencies that have submitted formal offers to compete for the right to provide services through ISSAs.

3. With receipt of an eligible appeal, the official designated in paragraph 9.a. of the Circular, or designee, assigns an official(s) to serve as the A-76 Administrative Appeal Authority for that appeal. The individual(s) selected must be: (a) two levels above the official who signed the waiver, in the case of a cost comparison waiver authorized under Chapter 1, paragraph E, of this Part; or (b) independent of the activity under review or at least two organizational levels above the official who certified the Government's Management Plan and MEO, in the case of a tentative cost comparison appeal.

4. The Appeal Authority ensures that the cost items challenged in the appeal are properly accounted for in accordance with the procedures of Part II of this Supplement.

The Authority also ensures that all participants to the cost comparison process have appropriate access to the decision process.

5. If significant problems with the waiver justification or cost comparison estimates are found, such that the tentative decision may be unsupported or is in error, the Appeal Authority corrects the error and cost comparison, if applicable, and the agency proceeds according to the amended decision. The Authority will not review any item not formally challenged by an eligible appellant.

6. Agency A-76 Administrative Appeal procedures do not apply to questions concerning:

- a. the selection of one contract offeror or another for competition with the in-house cost estimate;
- b. award to one contractor in preference to another;
- c. Government management decisions involving the Government's certified in-house MEO, and
- d. the policies or procedures contained in the Circular and this Supplement.

7. The procedure does not authorize an appeal outside the agency or judicial review, nor does it authorize sequential appeals. The appeal process provides reasonable assurances that decisions to waive the cost comparison requirements of this Supplement are properly reviewed and that the cost comparison requirements of this Supplement are properly adhered to, when applicable. Therefore, all directly affected parties are expected to submit their appeals within the initial appeal period.

8. The appeals procedure should provide for a final decision within 30 days of receipt of the appeal by the Appeal Authority.