



# Procurement Alert Notice

March 2005

Volume 10, No. 1

from BUSINESS MANAGEMENT RESEARCH ASSOCIATES, INC.

1973

2005

## PRESIDENT'S MESSAGE

The Presidential election is over and regardless of which candidate we voted for, we must now look to the future. From the viewpoint of a small businessman, it appears that many elected officials look sympathetically on the challenges that small businesses currently face. We must ensure that others are aware of those challenges, especially those who represent us in Congress.

One of the biggest challenges facing our legislative body is resolving A-76 issue(s). The new OMB A-76 Circular appears to be much better than previous versions. Although a nonpartisan group prepared it, many Democrats and some Republicans opposed the new version during last November's election campaigns, maintaining that Federal jobs could be lost to the private sector. Yet, objective evaluations have concluded that implementing A-76 would result in large savings to the taxpayer and would not affect Federal employees as negatively as some people fear.

The Administration must also consider improving competitive procurement processes. It needs to examine abuses in task order contracting and their impact on full and open competition. It also needs to review the contracting officer's and the project officer's relationship to authorities and responsibilities in the procurement process. The Administration should also examine the procurement process in time of war. The press has reported that some contractors and their subcontractors have overcharged for their goods and services. Often these contracts were awarded on a sole source basis and the contractors had little or no incentive to control their costs. In my opinion, awarding contracts to firms without effective competition is wrong and needs to be addressed.

Competitive sourcing is under fire from members of Congress. Few people deny that competitive sourcing is beneficial to the Federal Government. Over the last twenty years, Presidents from both parties have encouraged the use of competitive sourcing, but unions representing government employees have pledged to fight it because they believe government jobs will be lost. Regardless of whether that's true, doing away with or reducing competitive sourcing measures would have a significant negative impact on the small business community, especially for service contracts.

In most cases, it is less expensive for commercial contractors to perform such work as mess attendance contracts, custodial contracts, guard contracts, operations and maintenance of government facilities, and preventative maintenance contracts in the area of Information Technology. (See the article below.) To ensure

## CONTENTS

PRESIDENT'S MESSAGE .....	1
REPORT CONFIRMS COMPETITIVE SOURCING REDUCES GOVERNMENT COSTS.....	2
T & M CONTRACTS.....	2
WOMAN-OWNED BUSINESS INCREASES.....	2
ANTI-BUNDLING RULE.....	2
NEW HEAD OF OFPP CONFIRMED .....	3
OMB CIRCULAR A-76 IMPLEMENTATION APPROVED.....	3
PROMPT PAYMENT INTEREST RATES.....	3
LOW BIDS AND CAIG PROJECTIONS .....	3
BMRA NEWS .....	3
BMRA OFFICE STAFF .....	3
FACs 01-26 AND 01-27 RELEASED .....	5



work is performed most economically, A-76 studies are conducted. Last fall, new guidance on the way we perform A-76 studies was published, and the majority of government and business community people endorsed it. The A-76 system we have today ensures that we will find cost effective ways to perform work. Industry and the government compete for the work and submit proposals that are evaluated objectively. Whoever offers the best value receives the award.

Feelings run deep on these issues, but not enough of us have voiced our opinions to those who represent us in Washington. As a result, we allow some members of congress to block changes that could or would be beneficial. As a small business, BMRA is deeply concerned about this issue. I encourage all of our associates to help us get the message to our representatives in Washington.

### **REPORT CONFIRMS COMPETITIVE SOURCING REDUCES GOVERNMENT COSTS**

Recently, OMB issued a report confirming that competitive sourcing helped the Government reduce its overall operating costs by over \$1 billion and increased efficiency by roughly 15 percent for competitions conducted in 2003. An October 2004 report of a study conducted by the University of Maryland's Center for Public Policy and Private Enterprise confirmed the OMB findings. The study found that only 5 percent of (DoD) jobs competed resulted in involuntary separation.

The University of Maryland study also found that A-76 competitions resulted in an average saving of 44 percent of baseline costs. The Contract Services Association (CSA), in its September 2004 newsletter, stated, "In competitions conducted under the revised Circular, Federal employees are winning almost 90%! With that win rate, and the findings by the University of Maryland, how could anyone claim that the procedures in the revised Circular are unfair to Federal employees?"

CSA also reported that during a U.S. House floor debate on September 21, 2004, Rep. Marsha Blackburn (R-TN) summed up the issue: "Contrary to statements of supporters of this amendment, competitive sourcing is not outsourcing or privatization. I do not know why supporters of this amendment oppose demanding the most for our

taxpayer dollars because that is what we are doing when we talk about competitive sourcing."

### **T & M CONTRACTS**

The Services Acquisition Reform Act (SARA) was passed in 2003. A key provision in SARA recognized that traditional commercial contract types such as time and material (T&M) and labor-hour (LH) contracts could be used more often in government contracting. The Federal Acquisition Regulatory Council is considering how to implement this provision.

Although the private sector uses these types of contracts frequently, they are vulnerable to abuse, particularly overcharges. Savings from using these contracts may be canceled out by the additional oversight necessary for managing and administering them. Still, many people claim that Congress did not intend the Federal Acquisition Regulation (FAR) to prohibit using such contracts for commercial items.

There are many advantages to using T&M and LH contracts. The assumption is that if we allow the Government to use traditionally commercial contracting tools, cost savings and efficiencies will be realized. Before we recommend using this type of contracting, we need to determine whether this is actually so. We should adopt these procedures not because they are used frequently but because they are more beneficial than current procedures.

### **WOMAN-OWNED BUSINESS INCREASES**

The Small Business Administration (SBA) recently released information showing the Federal Government has increased its business with woman-owned firms. For example, in FY 2003, woman-owned businesses received \$1.5 billion more in Federal contracts than in 2002. The total value of Federal contracts with woman-owned businesses went from \$6.8 billion to \$8.3 billion, an increase of 2.98%.

### **ANTI-BUNDLING RULE**

Under Section 801 of the Defense Authorization Act for FY 2004, DoD officials cannot consolidate contract requirements with a value of more than \$5 million unless market research is conducted and the



senior procurement official of the agency determines that the bundling will substantially exceed the benefits of any alternative.

The Defense Department has published an interim ruling to restrict the use of bundling when small contract requirements are combined for a single procurement.

### **NEW HEAD OF OFPP CONFIRMED**

The Senate confirmed the nomination of David Safavian to head the Office of Federal Procurement Policy (OFPP). Mr. Safavian has been the Chief of Staff at the General Services Administration.

### **OMB CIRCULAR A-76 IMPLEMENTATION APPROVED**

In a lame duck session of Congress, shortly after the election, Congress hurried to complete an omnibus appropriation bill to cover civilian agencies through fiscal year 2005. Measures to stop implementation of the revised OMB Circular A-76 were added to the bill, but in passing the bill, Congress dropped its anti-competitive sourcing elements.

Stopping implementation of A-76 would have had a devastating impact on firms that contract services to the Government, such as BMRA. We especially appreciate the efforts of the Contract Services Association of America (CSA), which lobbied Congress to pass the appropriation bill without including the anti-competitive language. BMRA is a member of CSA.

### **PROMPT PAYMENT INTEREST RATES**

The Department of the Treasury interest rate for the six-month period of January 1, to June 30, 2005 is 4.25 percent per year. This interest rate applies to claims under the Prompt Payment Act and the Contract Disputes Act.

### **LOW BIDS AND CAIG PROJECTIONS**

Contractors who submit bids lower than those projected by DoD's Cost Analysis Improvement Group (CAIG) will be required to justify the discrepancy or risk being thrown out of the competition, under a new emphasis on accurate cost estimating. Contracting Officers will take CAIG

estimates into account when determining the competitive range.

### **COMPETITIVE SOURCING IN THE DoD**

The DoD Office of Inspector General (IG) issued a report addressing the workforce employed to conduct public-private competitions under Office of Management and Budget Circular No. A-76. The report concludes that the DoD does not maintain a sufficient experienced workforce needed to satisfactorily conduct public-private competitions and, therefore, uses contractor support to augment its workforce. The report also observes that most DoD personnel assigned to work on a public-private competition only participate in the program after their positions are selected for a public-private competition. However, because the number of public-private competitions historically has fluctuated from year to year, the report concludes that maintaining a sufficient number of adequately trained Federal employees to conduct such competitions without contractor support would not be an effective use of DoD resources.

### **BMRA NEWS**

During the last few months BMRA has been very busy. We started our fall academic year with 17 courses in the first week! Thanks to the excellent support by our office staff and the faculty, we are well on our way to another successful year.

We have held several classes in our new classrooms, and students were very pleased with the facilities, commenting in particular on the spaciousness of the classrooms and the pleasant overall surroundings. The instructors said that they would prefer teaching in our classroom facilities to teaching in hotel(s) or many of the classrooms provided by our clients.

### **BMRA OFFICE STAFF**

Primarily because of the increase in business during the past 18 months, we are continuing BMRA's reorganization, which we discussed in our last PAN. In this issue, we will tell you more about our office staff members and their functions.



**Mary Ackerman, Executive Vice President, Vice President for Education and Training.** Mary is also our Program Director for the Foreign Service Institute Training. Prior to joining BMRA she was on the Staff of the Department of State Foreign Service Institute. Prior to that she was with the Department of Transportation, United States Coast Guard, and the United States Navy.

**Doris Carter, Administrative Assistant.** Doris has many duties including acting as receptionist, being responsible for managing the files, preparing reports that track our day-to-day operations. She has many years of private sector experience in performing similar duties and responsibilities.

**Jenn Cary, Course Administration.** Jenn is responsible for receiving and distributing instructor end of course reports. She also prepares end of course reports for clients and sees to the student accreditation with the American Council on Education.

**Robin Cary, Manager of Course Administration.** Robin's responsibilities include scheduling our course offerings, directing reproduction and delivery of educational materials, and coordinating and supporting the instructors who teach the courses.

**John Dove, Vice President of Operations.** John came to BMRA as our Director of Information Technology, a function he still holds today. With the increasing use of computers in the classroom and our venture into distance learning courses, we find his assistance invaluable. As Vice President of Operations, he functions as our General Enabler for Getting Things Done. John is also our Program Director for our Grants Training Courses.

**Marilyn Holland, Publication Manager.** As a member of the Publication team, Marilyn is responsible for production of major BMRA documents, including instructional materials, advertisements, consulting reports, newsletters, and proposals.

**Anne Palmer Johnson, Director of Web Based Training.** Anne has been instrumental in designing and developing our Web based training and has served as the course facilitator for our Web based Training courses.

**Edna Joyner, Director of Finance.** Edna has been with BMRA for more than ten years, holding many positions during her tenure. She has been our Office Manager, auditor of expense vouchers for travel, and Personnel Manager. Recently she became our Director of Finance.

**Peggy Kramer, Director of Publication.** Peggy is responsible for managing production of major documents. Her responsibilities include coordinating writers; editing, formatting, and proofreading documents; producing hardcopy originals; transmitting softcopies; and indexing, documenting, and tracking both hardcopies and electronic files. In addition she serves as Program Director for our Nuclear Regulatory Commission training contract.

**Annemarie Lynch, Board of Directors Chairperson and Vice President for Human Resources.** Annemarie has been at BMRA for a number of years. It was because of her direction and insight to our clients' need for classrooms that we are today in one of the nicest office facilities in Northern Virginia.

**Tom Mara, Program Director.** Tom has been with BMRA for ten years. He is in charge of our Department of Health and Human Services and the Federal Transit Administration Procurement Systems Review programs. Prior to joining BMRA he was Director of Contracting, Federal Transit Administration.

**Michael Miller, Vice President for Curriculum Development.** Before joining BMRA, Michael was the Director of the Federal Acquisition Institute, and was instrumental in developing many of the FAI courses. His professional expertise has been invaluable for the development and improvement of many of our courses.

**Alexandria Pierce, Course Administration.** Alexandria is the newest member of our staff and assists Jenn in course administration duties.

**Nancy Travis, Director of Marketing.** Nancy began her career at BMRA as our Course Administrator. She is now responsible for sales, marketing, and business development efforts. Prior to coming to BMRA, Nancy worked for one of the largest private education firms in the United States.



## FACs 01-26 AND 01-27 RELEASED

Updates to the FAR are released so often that it's hard to keep current. Be sure to consult the official FAR Home Page frequently at <http://www.arnet.gov/far/>. Following is a summary of FACs issued since the last issue of the PAN.

*FAC 2001-26 amends the FAR as specified below.*

**Item I—Electronic Representations and Certifications.** This final rule requires offerors to provide representations and certifications electronically via the BPN website; to update the representations and certifications as necessary, but at least annually, to keep them current, accurate and complete; and to make changes that affect only one solicitation by completing the appropriate sections of the FAR provisions included in the solicitation. This change represents a conversion of a paper-based process for obtaining offerors' representations and certifications to a more efficient electronic process. It will also significantly reduce the paperwork burden for both offerors and contracting officers. (Effective January 1, 2005.)

**Item II—Excluded Parties List System Enhancement.** This final rule amends the FAR to incorporate the Excluded Parties List System (EPLS), GSA's new searchable on-line electronic list of parties excluded from doing business with the Federal Government. The EPLS enables agencies to directly input data into this system and obviates the need for the hard copy List of Parties Excluded from Federal Procurement and Nonprocurement Programs. The EPLS will provide more up-to-date and readily accessible information to the contracting officer on parties excluded from doing business with the Federal Government. (Effective January 19, 2005.)

**Item III—Special Emergency Procurement Authority.** This rule finalizes the interim rule 2003-022 by including under FAR subpart 13.5 the acquisition of supplies and services that meet the definition of a commercial item, and which, as determined by the head of the agency, are to be used to support a contingency operation. This rule allows the contracting officer expanded use of Simplified Acquisition and Commercial Items procedures when acquiring supplies or services that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense

against or the recovery from nuclear, biological, chemical, or radiological attack. (Effective January 19, 2005.)

### **Item IV—Notification of Employee Rights Concerning Payment of Union Dues or Fees.**

This interim rule requires Government contractors and subcontractors to post notices informing their employees that, under Federal law, they cannot be required to join a union or maintain membership in a union to retain their jobs. The required notice also advises employees who are not union members that they can object to the use of their union dues for certain purposes. This rule applies to Federal contractors and subcontractors with contracts or subcontracts that exceed the simplified acquisition threshold, unless covered by an exemption granted by the Secretary of Labor. (Effective December 20, 2004.)

**Item V—Mentor Protégé Program—Delegation of Approval Authority for Mentor Protégé.** This final rule amends FAR 19.702, Statutory Requirements, to change the approval authority of the Mentor Protégé' Agreements to the DoD Military Departments or Defense Agencies and to make some minor changes for clarification. This change is being made in order for DoD to streamline and transform itself to more effectively achieve its mission. (Effective January 19, 2005.)

**Item VI—Applicability of the Cost Principles and Penalties for Unallowable Costs.** This final rule increases the threshold from \$500,000 to \$550,000 for contracts subject to penalties if a contractor includes expressly unallowable costs in a claim for reimbursement. The threshold was increased to reflect inflation. The rule is important to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with FAR Part 31 contract cost principles. (Effective January 19, 2005.)

**Item VII—Technical Amendments.**



*FAC 01-27 amends the FAR as follows.*

**Free Trade Agreements—Australia and Morocco.**

This interim rule allows contracting officers to purchase the products of Australia and Morocco without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which went into effect January 1, 2005. These Agreements join the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements

that are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is \$58,550 (the same as other Free Trade Agreements to date), but the threshold for applicability of the Morocco Free Trade Agreement is \$175,000. Also in this rule are changes in the list of Least Developed Countries, and changes in terminology on how the FAR uses the terms “designated country” and “Trade Agreements Act.” Some technical changes are also included.



**BUSINESS MANAGEMENT RESEARCH ASSOCIATES, INC.**  
3949 Pender Drive, Suite 300  
Fairfax, VA 22030-6044

