



This document is scheduled to be published in the Federal Register on 02/15/2013 and available online at <http://federalregister.gov/a/2013-03581>, and on FDsys.gov

OFFICE OF MANAGEMENT AND BUDGET

Notification of a Public Meeting on the Use of Cost Comparisons in Federal Procurement

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of a public meeting and request for comments.

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) seeks input from the public on the practice of comparing the relative cost of performance by Federal employees versus contract performance in order to identify the most cost-effective source. OFPP intends to consider feedback received in response to this notice as it evaluates existing policies addressing cost comparisons and considers new ones to help agencies save money and drive better results. Feedback will also be considered in connection with the development of guidance required by section 1655 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239. Section 1655 requires OMB to publish guidance addressing the conversion of a function being performed by a small business concern to performance by a Federal employee.

Interested parties may offer oral and/or written comments at a public meeting to be held on March 5, 2013. Parties are also encouraged to provide all written comments directly to www.regulations.gov.

DATES: A public meeting will be conducted on Tuesday March 5, 2013 at 2 p.m. eastern time and is expected to conclude not later than 5 p.m. eastern time.

Procedures for the public meeting:

The public is asked to pre-register by Friday March 1, 2013, due to security limitations.

To pre-register, please send an email to Ms. Aisha Hasan of OFPP at

ahasan@omb.eop.gov. Registration check-in will begin at 1 p.m. eastern time and the meeting will start at 2 p.m. eastern time.

Oral Public Comments: Parties wishing to make formal oral presentations at the public meeting must contact Ms. Aisha Hasan by electronic mail at ahasan@omb.eop.gov no later than Friday March 1, 2013, to be placed on the public speaker list. Time allocations for oral presentations will be limited to five minutes. All formal oral public comments should also be followed-up in writing and submitted to www.regulations.gov. When submitting your comments, reference “Public Comments on the Use of Cost Comparisons.” **Note:** Requests made after the deadline for formal oral presentations will be permitted as time permits and assigned based on the order the requests are received.

Written Comments/Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to www.regulations.gov by April 15, 2013. When submitting your comments, reference “Public Comments on the Use of Cost Comparisons.” Parties wishing to share written statements at the public meeting must submit such statements to Ms. Hasan at ahasan@omb.eop.gov by March 1, 2013.

ADDRESSES: The public meeting will be held at the General Services Administration Auditorium located at 1800 F Street, NW, Washington, DC, 20405.

Meeting Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ms. Lague at deborah.lague@gsa.gov or 202-694-8149 by February 25, 2013. The TTY number for further information is: 1-800-877-8339. When the operator answers the call, let them know the agency is the General Services Administration; the point-of-contact is Deborah Lague at 202-694-8149.

FOR FURTHER INFORMATION CONTACT: *For clarification of the subject matter related to the memorandum:* Mr. Mathew Blum, OFPP, (202) 395-4953 or mblum@omb.eop.gov or Mr. Jim Wade, OFPP, (202) 395-2181 or jwade@omb.eop.gov. *For public meeting information and submission of comment:* Ms. Aisha Hasan, OFPP, (202) 395-6811 or ahasan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: From the start of the Administration, it has been a priority to make sure agencies apply fiscally responsible acquisition practices that cut contracting costs and better protect taxpayers from cost overruns and poor performance. In response, agencies have been taking steps to buy less and buy smarter. These steps include cutting unnecessary contract spending and launching new efforts to pool the government's buying power. These efforts are paying off. FY 2012's total spending on contracts was \$35 billion less than the amount spent in FY 2009, marking

the largest three-year decline in Federal contract spending on record. (For additional information on the Federal government-wide contracting achievements, go to <http://www.whitehouse.gov/blog/2012/12/06/historic-savings-contracting-and-plans-more>.)

To build on these efforts, OFPP has kicked off an initiative to consider how agencies may achieve further savings and drive even better results through the use of cost comparisons in appropriate circumstances. Cost comparison is the term used to describe the practice of comparing the cost of a private sector contractor performing a defined task, or set of tasks, to the cost of having Federal employees perform the same task(s) where the work is suitable for performance by either sector. This tool offers a number of benefits. A cost comparison can help the agency validate whether the current sector performing the work is the more cost-effective source. Where this is not the case, the cost comparison may be used to encourage the sector currently performing the work to adopt more efficient practices. Where the difference in cost between the public and private sectors for performance of the same task is significant, the comparison may support conversion of work from one sector to the other, in accordance with law, including any limitations imposed thereon.

OFPP seeks public comment on how agencies can best incorporate cost comparisons into their management practices and especially welcomes public comment on the following three issues: (1) when cost comparisons are likely to be beneficial, (2) what principles should guide the conduct of a cost comparison, and (3) what special considerations should be involved when work is currently being performed by a small business contractor. Additional explanation and discussion questions are set forth below.

A. Suitability

Like most management practices, cost comparisons are not a “one-size-fits-all” tool. A number of factors need to be considered to identify when a cost comparison may be appropriate and, when appropriate, where the agency is likely to derive benefit from using a cost comparison. For example, a cost comparison would not be appropriate if an agency decides that a particular requirement is no longer needed, or no longer affordable, no matter who performs the work. A cost comparison would also not be appropriate if only one sector is suitable for performing a given requirement. For example, performance of work by the private sector would not be suitable if the work to be performed involves (i) an inherently governmental function, (ii) a critical function to the extent that human capital and/or risk analysis shows that there is not a sufficient number of Federal employees performing, or managing, the function so that the agency can maintain control of its mission and operations, or (iii) an unauthorized personal service. These limitations are explained in OFPP Policy Letter 11-1, *Performance of Inherently Governmental and Critical Functions*, available at <http://www.whitehouse.gov/omb/>

procurement_index_work_performance/, and OMB Memorandum M-09-26, *Managing the Multi-Sector Workforce*, available at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m-09-26.pdf.

At the same time, as explained in Policy Letter 11-01 and Memorandum M-09-26, there are many requirements that may be suitable for performance by either the public or private sector, such as positions within critical functions where the agency has determined it has the internal capacity to maintain control over its operations and work that is not inherently governmental, closely associated to an inherently governmental function, or critical.

1. In situations where either sector may be suitable to perform the work, what factors should an agency take into account to determine if a cost comparison is likely to be beneficial?
2. What considerations would be helpful in prioritizing which functions are studied first?

B. Procedures

When an agency determines that a cost comparison may be beneficial, it must have principles and procedures to support the conduct of a cost comparison.

Guiding principles. OMB Memorandum M-09-26 provides two overarching principles for a cost analysis, namely, it must (a) provide “like comparisons” of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization and (b) address the full costs of government and private sector performance.

1. What additional guiding principles and/or clarification of the above principles would be helpful?
2. What guidance might be provided regarding tracking of results to ensure expected benefits identified in the cost comparison have been realized?

Cost principles. For many years, costing principles to facilitate the comparison of costs between the public and private sectors have been provided in Appendix C of OMB Circular A-76, available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a076/a76_incl_tech_correction.pdf. These factors were developed to support the use of public-private competition but also can be used to compare the relative cost of each sector’s performance without conducting a competition.

3. What changes and/or clarifications might be considered to improve the effectiveness of these principles in the conduct of a cost comparison?

4. In 2010, the Department of Defense established business rules for use in estimating and comparing the full costs of military and civilian manpower and contract support. See Directive-Type Memorandum (DTM) 09-007, “Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support,” available at <http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-007.pdf>. What, if any, principles might be considered for adoption government-wide?

C. Small business considerations

Section 1655 of the NDAA for FY 2013 requires OMB to publish procedures and methodologies to be used by Federal agencies with respect to decisions to convert a function being performed by a small business concern to performance by a Federal employee, including procedures and methodologies for determining which contracts will be studied for potential conversion.

Section 5-3 of Policy Letter 11-01 includes management guidance in connection with small business contracting. Specifically, section 5-3:

- instructs agencies to place a lower priority on reviewing work performed by small businesses where the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission

or operations, especially if the agency has not recently met, or currently is having difficulty meeting, its small business goals;

- encourages agencies to involve their small business advocates if considering the insourcing of work currently being performed by small businesses; and
 - instructs agencies that make a management decision to insource work that is currently being performed by both small and large businesses, to apply the “rule of two” to the work that will continue to be performed by contractors (the rule of two calls for a contract to be set aside for small businesses when at least two small businesses can do the work for a fair market price).
1. What additional factors might be considered, if any, in addition to those identified in Policy Letter 11-01, to determine where it may be appropriate to insource work that is otherwise suitable for performance by a small business contractor?
 2. Section 1655 also requires OMB’s guidance to address procedures and methodologies for estimating and comparing costs. If a situation arises where it is appropriate to consider a cost-based insourcing of work currently being performed by a small business, to what extent, if any, should costing procedures and methodologies differ from those used to evaluate the cost effectiveness of other than small businesses?

Joseph G. Jordan

Administrator for Federal Procurement Policy

[FR Doc. 2013-03581 Filed 02/14/2013 at 8:45 am; Publication Date: 02/15/2013]