

will not be released in these discussions. A deadline should be set for submitting comments and suggestions. Management officials should carefully consider comments and suggestions received by the deadline. The management study documentation will include a record of the employee and union participation in developing the PWS and the management study, addressing all comments and suggestions.

b. The invitation to comment (a above) is strictly to help management make decisions. It does not constitute permission to infringe upon management's reserved right to make decisions about contracting out (5 U.S.C. 7106(a)(2)(B)). Also, the invitation to comment on the PWS and management study does not extend to any other part of the CA study, such as the terms and conditions of the solicitation or the Government's in-house cost estimate.

Section IV. Acquisition Aspects of the Commercial Activities Study

3-18. Availability of Commercial Sources.

a. An assessment of the availability of commercial sources should be made at the beginning of the CA study. If review of bidders lists, inventories of contractors, and other information indicate contract sources are available, the CA study should proceed.

b. In accordance with FAR 5.204, 15.404 and 36.302, the Contracting Officer shall publicize presolicitation notices in the Commerce Business Daily. Solicitations will be synopsisized following the publication of these notices as prescribed in FAR 5.201 and 5.203.

c. If the availability of commercial sources is not certain, action must be taken early in the CA study to find potential contractors, especially small businesses and small businesses owned or controlled by minority and disadvantaged persons.

(1) Help should be sought from the General Services Administration (GSA), SBA, and the Domestic and International Business Administration in the Department of Commerce.

(2) The contracting office will place at least three notices of the requirement in the Commerce Business Daily over a 90-day period in accordance with FAR 5.205(d). When

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the requirement is urgent, publication in the Commerce Business Daily may be reduced to two notices over a 30-day period as specified in FAR 5.205(d).

d. Notices and formal requests for help from Government agencies will not be published until Congress has been notified of the intent to conduct a CA study or until HQUSACE has approved the study (see paragraph 3-12).

e. If a satisfactory commercial source cannot be found, FOA will submit a Decision Summary (RCS CSCOA-111) (paragraph 2-6) through channels to CDR USACE (CERM-MC) WASH DC 20314-1000 for approval. Upon approval from either ASA(CW) or ASA(I&L) (or both these ASAs if the study is mixed funded), the CA study will be cancelled and the activity retained in-house. If commercial sources are available in a later assessment, a new CA study will be programmed and initiated. (See paragraph 3-43 on maintaining the confidentiality of the Government's in-house cost estimate.)

3-19. Performance Work Statements.

a. The use of a PWS prepared according to OFPP Pamphlet No. 4 is required in all USACE CA studies. The PWS will describe all functional and performance characteristics of the work, the location of the work, the units of work, the quantity of work units, and the quality and timeliness of the work units.

b. The HQUSACE functional proponent may issue command-unique instructions for adapting a standard PWS for FOA use. Before preparing the CPAS (Figure 2-2 and paragraph 3-10), FOA will contact the HQUSACE functional proponent to determine the availability of a standard PWS and the current command instructions for adaptation.

c. Quality assurance (QA) plans will be developed in conjunction with the PWS and management study.

d. Contract administration will be assigned in accordance with FAR Subpart 42.2.

e. All PWS will be reviewed and approved one organizational level above the originating FOA.

3-20. Multiyear Contracting and Options. The solicitation in a CA study should provide for approximately five full years of contract performance. This may be accomplished by

either multiyear contracting (see FAR Subpart 17.1) or providing in the solicitation for a base contract period and priced options to total five full years of contract performance (see FAR Subpart 17.2). This is required for a valid cost comparison and to guard against "buy-ins." If the contract period would be concurrent with the FY because of annual funding, the solicitation should provide for five full FYs of contract performance. If the initial contract would not begin with the FY, CA study planning for annual funded activities will normally allow for an initial contract period of at least six months followed by four option years.

3-21. Solicitation Requirements.

a. Mobilization Requirements. Requirements for the contractor to plan for mobilization and take part in Army planning and exercises must be included in solicitations and contracts so that the requirements can be identified and quantified to permit proper pricing and funding. Proposed and existing contracts will be examined by functional managers to ensure contractor participation in mobilization planning and exercises. A contractor's participation in mobilization planning and exercises may require access to a higher level of classified information than is required in the day-to-day performance of the contract.

b. Security Requirements. The FOA Security and Law Enforcement Officer will determine when a CA requires access to classified information. He will identify the control procedures to be incorporated into the PWS and prepare the necessary documents specifying these requirements. Requirements for security clearances and special procedures to control the dissemination of secure information must be included in the contract. The FOA Security and Law Enforcement Officer will participate in the source selection process to ensure that prospective contractors have the capabilities required to safeguard secure information.

c. Strike Contingency. When a CA includes critical functions requiring continuous operation, the solicitation will require offerors to submit a labor strike contingency plan detailing the actions the contractor will take to assure no significant interruption of contract services because of labor disruptions.

d. The FOA may issue a solicitation at any time after receiving HQUSACE approval to conduct the CA study, including separate approvals required by paragraph 3-9. The approval to conduct a CA study is not acquisition approval if there are other acquisition requirements, such as those for ADP services in AR 18-1, that must be met. The solicitation may not be issued until the PWS has been reviewed by the work force and their union, if appropriate (paragraphs 3-17 and 3-19). In no event will the solicitation be issued if the PWS on which it is based is known to be inaccurate.

e. Solicitations will be issued according to applicable procurement regulations. Other acquisition requirements for CA studies are discussed in this chapter, Section IV.

f. The solicitation should state clearly that Government personnel will not be retained to help the contractor phase in to full performance after the conversion date; bidders are therefore informed of the performance requirements they must fulfill from the first date of contract operation. When the Government requires or desires a transition period, the solicitation will state that time will be made available for contractor indoctrination before the contract start date.

g. The solicitation will also specify that 15 working days will be allotted for review of the CA study by interested parties after announcement of the initial decision.

h. The solicitation will not include the work associated with excepted, excluded or exempted tasks nor the work to be performed by the residual organization if the function goes contract.

i. Space/workyear reductions for economy and efficiency-related programs such as ER and value engineering (VE) will not be initiated in the six months before the solicitation is issued.

j. Any contract proposal to be compared with the Government's in-house MEO cost estimate will be selected from a competitive solicitation.

3-22. Labor Considerations. Commercial activities contracts may require the application of the Service Contract Act (SCA) or the Davis-Bacon Act (DBA).

a. Service Contract Act. Contracts subject to the Service Contract Act of 1965 require minimum wage determinations from the Administrator, Wage and Hour Division, Department of Labor (DOL). The Contracting Officer will request a wage determination from DOL no earlier than 120 calendar days, and no later than 60 calendar days, before the solicitation release date. When a delay of 60 or more calendar days occurs in the solicitation process, the Contracting Officer will request an updated wage determination from DOL.

b. Davis-Bacon Act.

(1) Normally, construction projects are not included in CA studies and will be competed separately. However, requirements in a contract (subject to the SCA) calling for construction, alteration, renovation, and painting performed in response to a service call or work order in excess of \$2,000 are subject to the DBA.

(2) FOA support services such as building maintenance, grounds maintenance, plant operations, custodial services and snow removal are subject to the SCA. When the service call or work order is clearly for maintenance work, the SCA will apply regardless of dollar value.

(3) When the service call or work order is clearly for construction, alteration, renovation or painting, the DBA will apply unless the value of the work order is less than \$2,000, in which case the SCA will apply.

(4) Work will not be separated or aggregated to avoid the applicability of either the SCA or the DBA. Service call or work order estimates used to determine the applicability of either act will be based on the least cost alternative.

Section V. General Information on Management Studies

3-23. Requirement for Management Studies. A formal management study must be part of all CA studies involving an existing or proposed in-house CA. The staffing and the organizational and procedural recommendations included in the management study and approved by the FOA Commander ensure execution of the mission requirements in the PWS, establish the most efficient organization for performing that work, and form the basis for the estimation of the Government's in-house costs included in the cost comparison.