

Air Force Materiel Command



Communicating with Industry

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Overview

- **Small Business Perspective**
 - Feedback from Industry
 - Industry Days
 - Contract Vehicles
 - Miscellaneous Concerns
- **Legal/Policy Guidance**
 - Encouraging/Requiring Communication
 - Legal Caveats
- **Conclusion**



Feedback from Industry

- **Request for Information/Sources Sought (RFI/SS)/Draft Request for Proposals (dRFP)**
 - Don't wait until the RFI/SS to dialogue w/ industry
 - RFIs require quick response (i.e., 5 days)
 - RFIs require proposal level detail
 - RFIs request “Experience” vs. “Capability”
 - Industry comments on dRFPs are not adjudicated
 - Government feedback to industry missing
 - Missing information that only incumbent would know
 - RFIs/ “draft” RFPs released-PMs/PCOs will not engage after release



Industry Days

- **Industry days**
 - **Need to occur early to focus on desired end state & allow for industry dialogue prior to finalizing requirements.**
 - **We send wrong SMEs to industry days**
- **Industry indicated that PMs do not incorporate Senior Leader intentions about new strategies to industry**
 - **SLs looking for innovation, cost efficiencies**
 - **Final requirements articulate Status Quo**



Contract Vehicles

- **Enterprise/Consolidation efforts do not provide future opportunities for SB that are not in the Multiple Award pool**
 - No example of “On Ramp”
 - Gov will not post TO RFP or Draft for industry review
 - Does not facilitate SB teaming and subcontract opportunities
- **Mandatory Use Contracts impact SBA’s 8a program**
 - “New” 8a opportunities are not considered
 - Business Development Opportunities missing



Miscellaneous Concerns

- **Acquisition Schedules**
 - Too long – SBs cannot resource appropriately
- **Tiny increments of budget allocation**
 - Creates havoc when funding is weekly/quarterly
- **Gov't unwilling to share information such as:**
 - CMEs on current contract
 - Budget Information
- **Gov't communicating w/ large corps -- not SBs**
- **Information Technology (IT)**
 - DoD 5000 is WS Focused not IT
 - Technology outdated at the point of contract award



Legal / Policy Overview

- **Encouraging / Requiring Communication**
 - FAR 10.002 & 15.201
 - OFPP “Myth-Busting”
 - DoD Policy for Communicating w/ Industry
 - DoD Vendor Communication Plan
- **Legal Caveats**
 - Competition In Contracting Act (CICA)
 - Procurement Integrity Act (PIA)
 - Conflicts of Interest Prohibition
 - Trade Secrets Act
 - Federal Advisories Committee Act (FACA)



FAR Provisions

- **Market Research (FAR Part 10) Techniques**
 - “Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements” FAR 10.002(b)(2)
 - “Participating in interactive, on-line communication among industry, acquisition personnel, and customers”
 - “Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process”

Note: *Do “not request potential sources to submit more than the minimum information necessary.” FAR 10.001(b)*



FAR Provisions, Cont.

- **Exchanges With Industry (FAR 15.201)**
 - “Agencies are encouraged to promote early exchanges of information about future acquisitions.” FAR 15.201(c)
- **Techniques**
 - Industry or small business conferences
 - Public hearings
 - Market Research, as described in Part 10
 - “One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer)”
 - Presolicitation or preproposal conferences



Myth-Busting

- Access to current market info is critical for program managers as they define requirements and for contracting officers as they develop acquisition strategies, seek opportunities for small businesses, and negotiate contract terms...productive interactions between federal agencies and industry partners should be encouraged to ensure the government understands the marketplace and can award a contract for an effective solution at a reasonable price.
OFPP “Myth-Busting”, 2 Feb 11
- Required Vendor Communication Plans
 - How to reduce unnecessary barriers, publicize communication ops, & prioritize engagement ops for high-risk/complex programs or those that fail to attract new vendors during re-competes



Misconceptions vs. Facts

Misconception

- “We can’t meet one-on-one with a potential offeror.”
- “Since communication w/ contractors is like communication w/ registered lobbyists, & since contact w/ lobbyists must be disclosed, additional communication w/ contractors will involve a substantial additional disclosure burden, so we should avoid these meetings.”

Fact

- Gov’t officials can generally meet one-on-one w/ potential offerors as long as no vendor receives preferential treatment.
- Disclosure is required only in certain circumstances, such as for meetings with registered lobbyists. Many contractors do not fall into this category, and even when disclosure is required, it is normally a minimal burden that should not prevent a useful meeting from taking place.



Misconceptions vs. Facts, Cont.

Misconception

- “Industry days ... are of low value ... b/c industry won't provide useful information in front of competitors, and the government doesn't release new information.”
- “Conducting discussions / negotiations after receipt of proposals will add too much time to the schedule.”

Fact

- Well-organized industry days, as well as pre-solicitation and pre-proposal conferences, are valuable opportunities for the government and for potential vendors – both prime contractors and subcontractors, many of whom are small businesses.
- Avoiding discussions solely b/c of schedule may be counter-productive, and may cause delays & other problems during contract performance.



Misconceptions vs. Facts, Cont.

Misconception

- “A protest is something to be avoided at all costs - even if it means the gov’t limits conversations w/ industry.”
- “Giving industry only a few days to respond to an RFP is OK since the government has been talking to industry about this procurement for over a year.”

Fact

- Restricting comm won’t prevent a protest, and limiting comm might actually increase the chance of a protest – in addition to depriving the gov’t of useful info.
- Providing only short response times may result in the gov’t receiving fewer proposals & the ones received may not be as well-developed - which can lead to a flawed contract. This approach signals that the gov’t isn’t really interested in competition.



DoD Policy

- Issued 21 Jun 10 (Pre-dates Myth-Busters)
- “The Dept’s policy is for reps at all levels of the Dept to have frequent, fair, even and transparent dialogue with the commercial base on matters of mutual interest, as appropriate, in a manner which protects sensitive info, operation, sources, methods, and technologies.”
- Matters of Mutual Interest: business practices & policies; removal of barriers to competition; tech trends & development objectives; security challenges; and the performance of orgs, contracts, projects & programs
- “Such dialogue helps industry make informed investment and business decisions necessary to meet near- & long-term requirements of the Dept.”



DoD Vendor Communication Plan

- **Drafted in response to “Myth-Buster”**
- **Focus on pre-solicitation phase**
- **Exchanges w/ public result in:**
 - Greater clarity of requirements
 - Increased awareness of industry products & services
 - Better decisions made by vendors about investments in products or services available to DoD
 - Increased competition, including greater use of SB in subcontracting opportunities
 - Greater use of SB set-asides
 - More favorable pricing
 - Increased cost savings
 - More realistic expectations about market capabilities
 - Higher quality contract deliverables
 - Fewer performance problems
- **Describes roles of keys players**



However, Gov't Officials May Not ...

CICA

- ❖ Give unauthorized preferential treatment to one firm but must treat all firms equally.

Trade Secrets Act

- ❖ Disclose trade secrets / proprietary info w/o permission of owner. Must protect

Federal Advisories Committee Act

- ❖ Violate the FACA when seeking advice / recommendations from groups that include non-Gov't employees

PIA

- ❖ Disclose proprietary or source selection information. *FAR 3.104*

Conflict of Interest Prohibition

- ❖ Participate in a matter that presents an actual or apparent conflict of interest



Conclusion

- **DoD encourages communication w/ industry**
- **Laws *per se* do not prohibit communications w/ industry reps; they do mandate fair & even treatment such that communication w/ DoD officials must be made available to all interested outside parties (including SB)**
- **Interaction promotes common understanding of procurement requirements, terms and conditions, and evaluation criteria**
- **Risk of protest should not limit proper communications**



Legal References

- [Procurement Integrity Act \(41 U.S.C. § 423\)](#)
- [Conflict of Interest Prohibition \(18 U.S.C. § 208\)](#)
- [Competition in Contracting Act \(10 U.S.C. § 2304\)](#)
- [Trade Secrets Act \(18 U.S.C. § 1905\)](#)
- [Federal Advisory Committee Act \(5 U.S.C. Appendix 2\)](#)
- [FAR Part 10 \(Market Research\)](#)
- [FAR 15.201 \(Exchanges w/ Industry\)](#)
- [OFPP Memo, “Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process \(2 Feb 11\)](#)
- [OFPP Memo, “Myth-Busting 2” \(7 May 12\)](#)
- DoD “Policy for Communication with Industry” (21 Jun 10)
- [DoD Vendor Communication Plan](#)



Questions/Contact Info

QUESTIONS???

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