Long ago (but *not* in a galaxy far, far, away) we **wrote about** an OFPP initiative to get government contracting officers to communicate with industry. The OFPP, for those who may not know, is a small niche office within the White House's Office of Management and Budget (OMB). Allegedly, it plays a "central role in shaping the policies and practices federal agencies use to acquire the goods and services they need to carry out their responsibilities."

Why do we say "allegedly"? Hang on for a sec; we'll get to that in a moment.

In that prior article, we discussed OFPP's publication of an Executive Memo from then-OFPP Administrator Dan Gordon. (Mr. Gordon was replaced by Mr. Jordan who was replaced by Ms. Rung, for those keeping score.) Mr. Gordon's Memo required each Executive branch agency to develop a "vendor communication plan" to address "how the agency will reduce unnecessary barriers, publicize communication opportunities, and prioritize engagement opportunities for high-risk, complex programs or those that fail to attract new vendors during re-competitions." Mr. Gordon emphasized the importance of vendor communications by attaching a "mythbuster" memo that "busted" commonly held "misperceptions" about barriers that might impede government folk from, you know, talking with potential suppliers.

We ended our prior article with the following: "Whether it's auditors talking to those they audit or contracting officers talking to bidders, communication is a good thing. And that is the official policy of the U.S. Government."

But the OFPP memo and the policy emphasis and the long-winded mythbusting letter seemingly failed to change anything, at least as Congress saw things. Despite the official role of the OFPP and the alleged power it had to set acquisition policy, nothing changed. Or at least, not enough changed. Congress waited for a while and then determined that the status remained an unfortunate *quo*. So it decided to make a public law, as it is empowered to do by the U.S. Constitution.

Congress enacted a bill (HR 1735, the National Defense Authorization Act for 2016). In that bill, Section 887 required that –

Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall prescribe a regulation making clear that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms.

And then President Obama vetoed the bill.

And then it was revised and resubmitted, and it finally became a Public Law. We think. Because Bob Antonio at WIFCON doesn't have a P.L. number associated with it, which is unusual. Could be an oversight. Probably is. But maybe not. He usually doesn't make that kind of oversight.

Regardless of the murkiness of the legal status of the 2016 NDAA, the Section 887 language quoted above is being used as the basis of a **proposed FAR revision** that would clarify "that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry."

Maybe that is going to be a newsflash to some government contracting officers.

So why does the FAR need to be revised?

Because the Dan Gordon mythbusting memo was ineffective. Because the Executive branch agencies (apparently) ignored it. Because they (apparently) never developed any required vendor communications plans. Or, if they did all the things they were told to do, then Congress (and/or suppliers) never noticed anything had changed. But we think the most likely explanation is that all those Executive branch agencies basically just ignored the OFPP Administrator's Memo.

Why did they ignore it? Why did they feel free to ignore Mr. Gordon's Memo?

Maybe because it's a high-turnover position, and those agencies might have thought that the next OFPP Administrator was going to bring in a different set of priorities. And so they would never be held accountable for ignoring the direction they had received from the previous Administrator. To be clear: we don't *know* that this is the case; but we strongly suspect it is.

Their plan to ignore the Memo seems to have worked to some extent. They might have gotten away with it, too—except for those meddling Congress critters.

So here we are with FAR Case 2016-005 that proposes to amend FAR 1.102-2(a)(4) "to specifically state that Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing laws and regulations, and promote a fair competitive environment."

As with all proposed rules, you may submit a comment if you would like to. The contact info is in the link to the Federal Register notice (above).

But we pretty much think we've said all that needs to be said on the topic. If an Executive Memo from the OFPP Administrator won't get contracting officers communicating with industry, there is no reason to suspect that a FAR revision will. It will be nice to have, of course. And contractors will point to it when they whine that they are not getting their fair share of the public trough. But nothing is really going to change.

And yet Congress will continue to try to do *something*, because everybody knows it's too hard to enter into the defense marketplace. (See our many articles on that topic for details.)

Meanwhile, OFPP Administrator Rung, who brought into vogue the notion of "**category management**" as an important Federal acquisition priority, has left the OFPP to join Amazon, according to **reports**. Her replacement has not yet been named. It seems likely that the position will go unfilled until incoming President-elect Trump names his nominee.

It will be interesting to see what the next OFPP Administrator's priorities will be, and whether anybody will actually, you know, care.