

On October 27, 2009 the OMB issued new guidance to Federal agencies designed to help them implement a [previously issued](#) directive to “reduce by at least 10 percent the combined share of dollars obligated through new contracts in FY 2010 that are: (1) awarded non-competitively and/or receive only one bid in response to a solicitation or a request for quote, (2) cost-reimbursement contracts, or (2) T&M/LH contracts.” The new guidance consists of “guidelines to help [agencies] evaluate the effectiveness of their competition practices and processes for selecting contract types.” The guidelines consist of three questions and a set of considerations for addressing each question.

Generally, the guidelines and considerations are a combination of common sense and fundamental best practices. For example, one consideration calls for agencies to “focus on requirements development and outreach to vendors” in order to maximize the effective use of competition. In order to choose the best contract type for an acquisition, agencies are encouraged to “determine the level of uncertainty” and to “use incentives to motivate lower costs with improved delivery or technical performance and to discourage contractor inefficiency and waste.”

That said, other aspects of the guidance are worth noting. For instance, contract risk can be limited in noncompetitive situations by limiting contract length and regularly assess contractor performance. The guidance encourages use of “contract review boards, peer reviews, or

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contract type advocates” to help transition from flexibly priced contract types to “lower risk” contract types.

An interesting (and perhaps controversial) aspect of the guidance encourages agencies to use “hybrid contracts” in order to better match requirements and pricing. Hybrid contracts contain Contract Line Item Numbers (CLINs) or Task Ordering procedures that permit different contract types to be used for different aspects of the work. As the guidance notes, “Work for which there is a basis for firm pricing can be awarded for a firm-fixed price while requirements for which there remains considerable uncertainty can be acquired on a cost or T&M/LH basis.” One potential problem with this approach is that the contract’s price is unknown at the time of award and, because the price is unknown it may be unclear whether the contract is subject to Cost Accounting Standards (CAS) or not. In addition, the potential for multiple contract types increases uncertainty—i.e., risk—and makes it difficult for a contractor to price.

The guidance offers an alternative approach: “an agency could competitively award a series of contracts addressing smaller increments or modules of work.” This alternative is not very appealing, given the cost and schedule impacts associated with the current contract award process.

In summary, we would file the guidance under “motherhood and apple pie” in the binder on the bookshelf. There are some small nuggets of wisdom, and a few clunkers—but the majority of the “guidance” breaks no new ground.

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See the new OMB guidance [here](#) .

Post Script: GovExec.com reported in [this story](#) that the Senate on Homeland Security and Governmental Affairs (from whom we heard

[much](#) on the DCAA audit quality issue) held a hearing on October 28, 2009 in which “lawmakers from both sides of the aisle expressed concerns about the Obama administration's new contracting guidance....” The article reported that Senator Claire McCaskill (D-MO) had “serious concerns” and “significant problems” with the OMB guidance, among which were “a lack of concrete direction on how agencies should achieve necessary reforms to improve procurement” and a failure “to hold agencies accountable for reforms by setting concrete deadlines.” The article quotes Senator McCaskill as saying that the guidance “lacks adequate analysis and substance in my view. It really is boiler plate -- it's standard material, it reiterates a list of human capital planning guidelines, it creates various interagency working groups. I'm tired of studies, I'm tired of working groups, I want to see action and in my view this plan simply delegates to each agency what the law required OFPP to do itself.”

Documents associated with the Senate [hearing](#) are linked. Senator McCaskill’s opening statement can be found at the hearing site, or [here](#)

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