

OFPP Urges Contracting Officers to Communicate with Industry

Written by Nick Sanders
Thursday, 10 February 2011 00:00

In September 2010, DCAA published audit guidance that [encouraged](#) its auditors to support DCMA contracting officers during contractor negotiations. A week later, the audit agency published additional guidance (and a training presentation) to its auditors that spelled-out “

[Rules of Engagement](#)

” addressing communication with requestors as well as those being audited. Importantly, DCAA HQ told its auditors that “communicating with the contractor and requestor throughout all phases of an audit is necessary to comply with other GAGAS requirements.”

We were pleased (with some hesitations and concerns that we expressed in the articles linked in the above paragraph) with DCAA’s belated realization that communication reduced errors and led to increased quality in its audit reports. Similarly, we were pleased when Dan Gordon, Administrator for Federal Procurement Policy issued [guidance](#) to the Federal government’s acquisition community designed to encourage communication between Contracting Officers and private industry.

As a side note, the Office of Federal Procurement Policy ([OFPP](#)) is housed within the Office of Management and Budget. 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.” So when Mr. Gordon tells Contracting Officers to communicate with industry, we trust that they listen to him.

Why is OFPP so concerned with increasing communication? As the memo explains—

Access to current market information is critical for agency program managers as they define requirements and for contracting officers as they develop acquisition strategies, seek opportunities for small businesses, and negotiate contract terms. Our industry partners are often the best source of this information, so productive interactions between federal agencies and our industry partners should be encouraged to ensure that the government clearly understands the marketplace and can award a contract or order for an effective solution at a reasonable price. Early, frequent, and constructive engagement with industry is especially important for complex, high-risk procurements, including (but not limited to) those for large information technology (IT) projects.

The OFPP memo requires Executive Branch agencies to develop a “vendor communication

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plan” that will—

... discuss 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.

The memo lists 10 common “misperceptions” about government/industry communications and dispels each in turn. We’ll list the highlights but readers should refer to the memo for details.

The 10 Myths About Vendor Communication—BUSTED!

MYTH: “We can’t meet one-on-one with a potential offeror.” FACT: *Government officials can generally meet one-on-one with potential offerors as long as no vendor receives preferential treatment.*

MYTH: “Since communication with contractors is like communication with registered lobbyists, and since contact with lobbyists must be disclosed, additional communication with contractors will involve a substantial additional disclosure burden, so we should avoid these meetings.”

FACT: *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.*

MYTH: “A protest is something to be avoided at all costs - even if it means the government limits conversations with industry.” FACT: *Restricting communication won’t prevent a protest, and limiting communication might actually increase the chance of a protest – in addition to depriving the government of potentially useful information.*

MYTH: “Conducting discussions/negotiations after receipt of proposals will add too much time to the schedule.” FACT: *Whether discussions should be conducted is a key decision for contracting officers to make. Avoiding discussions solely because of schedule concerns may be counter-productive, and may cause delays and other problems during contract performance.*

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MYTH: “If the government meets with vendors, that may cause them to submit an unsolicited proposal and that will delay the procurement process.” FACT: *Submission of an unsolicited proposal should not affect the schedule. Generally, the unsolicited proposal process is separate from the process for a known agency requirement that can be acquired using competitive methods.*

MYTH: “When the government awards a task or delivery order using the Federal Supply Schedules, debriefing the offerors isn’t required so it shouldn’t be done.” FACT: *Providing feedback is important, both for offerors and the government, so agencies should generally provide feedback whenever possible.*

MYTH: “Industry days and similar events attended by multiple vendors are of low value to industry and the government because industry won’t provide useful information in front of competitors, and the government doesn’t release new information.” 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.*

MYTH: “The program manager already talked to industry to develop the technical requirements, so the contracting officer doesn’t need to do anything else before issuing the RFP.” FACT: *The technical requirements are only part of the acquisition; getting feedback on terms and conditions, pricing structure, performance metrics, evaluation criteria, and contract administration matters will improve the award and implementation process.*

MYTH: “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: *Providing only short response times may result in the government receiving fewer proposals and the ones received may not be as well-developed - which can lead to a flawed contract. This approach signals that the government isn’t really interested in competition.*

MYTH: “Getting broad participation by many different vendors is too difficult; we’re better off dealing with the established companies we know.” FACT: *The government loses when we limit ourselves to the companies we already work with. Instead, we need to look for opportunities to increase competition and ensure that all vendors, including small businesses,*

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get fair consideration.

Note to Readers: In what is *of course* a completely unrelated news story, GovExec.com has [reported](#) that bid protests “are on the rise at GAO, reaching a 15-year high in fiscal 2010.” Robert Brodsky told readers that—

During the past three years, GAO protest filings have skyrocketed 39 percent, reaching 2,220 in fiscal 2010, the highest point since 1995. There are several explanations for the increase, most notably the agency's expanded jurisdiction to task-and-delivery order protests of more than \$10 million. In 2010, 189 task order contracts were protested.

However, simply filing a protest is not enough to change the government's contract award decision. As Mr. Brodsky reported—

While protest filings are on the rise, the percentage of cases GAO sustained has remained flat at roughly 20 percent. Most cases never get to that point as contractors find other ways to settle disputes in their favor. Agencies often will eliminate the middleman and renegotiate directly with the contractor.

The article discussed fears of an even steeper increase in bid protests. It said—

With contract spending expected to decline in the coming years, particularly at Defense, and the larger economy still in slow recovery, some analysts believe the incentives for filing protests will only grow stronger. ‘Companies are concerned about being locked out of the market and may think it makes more sense to protest,’ says Rich Rector, chairman of the government contracts practice and partner at the Washington law firm DLA Piper. ‘With the decline in spending, these are tough economic times, and they are getting tighter in the government space. It could drive people not to be as sanguine when they lose a contract.’

The article discussed Mr. Gordon's efforts to stem the tide of bid protests. It reported—

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Some agencies, however, might be going overboard to protect against protests. Too often, contracting officers issue awards based on initial proposals without conducting further dialogue with bidders for fear that discussions are a 'protest-rich area,' Gordon says. The result, he says, is the government might be missing out on better or less expensive proposals. In recent months, OFPP has begun meeting with contracting officers in an attempt to 'myth bust' the idea that talking with vendors will lead to protests.

'We need to talk with vendors early and often in our acquisitions,' Gordon says. 'And not talking with them to avoid protests only hurts the government, particularly when more communication could help the agency better figure out what it needs and how to buy it.'

This brings us all back full-circle to the beginning of our article. 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.