

ALERT

OFPP Looks To Industry Practices and Responds to Industry Feedback in Crafting Reforms to the Acquisition Process

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On December 4, 2014, the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) issued a memorandum to chief acquisition officers and senior procurement executives on improving performance, driving innovation, and increasing savings in federal procurements. Among other things, the memorandum looks to industry practices and responds to industry feedback on ways to improve the acquisition process. The memorandum focuses on three initiatives: category management, deploying talent and tools across agencies, and vendor relationship management.

Category Management: Recognizing the inefficiencies when multiple agencies purchase the same or similar goods, often from the same contractor, category management seeks to coordinate and manage commonly purchased goods and services, such as information technology hardware and software, across federal agencies. To promote category management, the Strategic Sourcing Leadership Council (SSLC), see OMB Memorandum M-13-02, Improving Acquisition through Strategic Sourcing, will approve government-wide categories of spend, prioritize categories for management, establish guiding principles for category managers to use to identify best contracts and best practices within their category, and validate performance metrics for category management. OFPP will also review and update guidance on interagency and agency-wide vehicles, including a requirement for category managers to review new agency business cases and advise the SSLC on potential duplication and opportunities for strategic sourcing. Furthermore, the General Services

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Administration (GSA) is charged with developing guidance on consistent agency standards for category management, and agencies are charged with providing GSA or the designated category manager with price information for goods and services under category management, where available; contract performance assessments; best buying practices; and other contract information that allows for contract comparisons. GSA or the relevant category managers will make the information available government-wide through GSA's Common Acquisition Platform, a platform for government-wide acquisition support, including the sharing of information, decreasing redundancy, and category management.

Deploying Talent and Growing Agency Talent: To strengthen the capacity and capabilities of the acquisition workforce, OFPP plans to work with the Office of Science and Technology Policy (OSTP) within the White House and other agencies to develop a plan for increasing digital acquisition capabilities. As part of this effort, the U.S. Digital Services, a team of experts established by the White House to improve the "digital experience" with the federal government, will partner with OFPP to pilot a program to train agency personnel regarding IT acquisitions and then deploy these trained personnel to encourage innovative acquisitions across the Government. In addition, the Department of Defense (DOD) and GSA are instructed to develop training and tools for their acquisition personnel on "agile approaches" to technology acquisitions and provide the Administrator for Federal Procurement Policy and the Director of Defense Procurement and Acquisition Policy a joint plan for new and innovative approaches to workforce development training, which might include cross-functional training and rotational assignments as well as examples of training from the private sector.

Stronger Vendor Relationships: Because "[e]arly, frequent, and constructive engagement with industry leads to better [acquisition] outcomes," OFPP proposes to better manage vendor relationships. First, OFPP notes efforts ongoing by GSA to improve the IT interfaces that contractors use to identify procurement opportunities. As examples, OFPP cites improvements to the contractor registration process to make it easier and more user friendly, the building of "FBOpen," a tool to help small businesses find information on solicitations more easily, and the development of a single website for contractors to report regarding labor law compliance in accordance with the Fair Pay and Safe Workplaces Executive Order, E.O. 13673.

Second, OFPP notes that greater attention should be given to regulations related to commercial item acquisitions "as the Government is typically not a market driver in these cases and the burden of Government-unique practices and reporting requirements can be particularly problematic, especially for small businesses." Thus, within 180 days, OFPP in consultation with the Chief Acquisition Officers Council and the FAR Council will make recommendations on specific actions to reduce the burdens in commercial item acquisitions and increase the use of "effective commercial solutions and practices by the Government." As part of this effort, OFPP and GSA are also planning to identify actions to reduce barriers to entry for contractors and improve the efficiencies of the Multiple Award Schedules Program. In addition, the FAR Council is charged within 180 days to take steps to identify and remove or revise outdated regulations (e.g., "Y2K" type regulations). Agencies are likewise instructed to review their FAR supplements for similar examples of obsolescence. Furthermore, agencies are instructed to review their internal guidance on minimum corporate experience to ensure that such guidance is not operating as a barrier to entry.

Third, OFPP wishes to build on the feedback through the “Open Dialogue” sponsored by the Chief Acquisition Officers Council, in coordination with the FAR Council, the Chief Information Officers Council, and OFPP. Accordingly, OFPP will continue to hold open dialogues at least annually, and within 90 days it will develop, with agency and industry input, guidance that allows “frank, open assessment feedback by offerors and existing contractors for agencies to consider as part of their ongoing efforts to strengthen their acquisition processes and practices.”

Finally, OFPP proposes within 90 days to develop a plan to recruit the Government’s “first Vendor Manager for top IT commercial contractors.” This “vendor manager” initiative is intended to mirror the practices of other governments and industry, which manage vendor relationships as a single enterprise.

OFPP’s goals reflect other current reform-minded efforts. For example, improving and supporting the acquisition workforce and injecting more innovation into the acquisition process are goals shared by DOD as reflected in “Better Buying Power 3.0.” Yet, the best intentions of agency policy personnel can quickly become derailed by budgetary restrictions, uncertainties and vagaries as well as different congressional priorities. On this latter point, while both the OFPP memorandum and Better Buying Power encourage easing the regulatory burdens on commercial “innovators,” the trend over the past several years, often the result of legislative action, has been to levy more reporting and compliance obligations on commercial item contractors, leading to a near explosion of additional regulatory “burdens” on such contractors. The Coalition for Government Procurement, for example, estimates that there were 17 provisions of law or executive orders identified as potentially applicable to commercial item contracts in 1996 under FAR 52.212-5(b). In 2012, according to the Coalition, the number increased to 51, and review of the June 2014 version of FAR 52.212(b) reveals 56 potentially applicable provisions. Moreover, government acquisition personnel sometimes exhibit a “love/hate” relationship with commercial item contracting (embracing the “concept” of commercial item contracts, but chaffing under limitations on authority, such as the inability to modify contracts unilaterally).

Hopefully, as DOD and OFPP proceed with their reform initiatives, they will coordinate with each other, Congress, and agency acquisition personnel to address these types of issues. For example, drafts of the fiscal year 2015 National Defense Authorization Act include a modified version of the Federal Information Technology Acquisition Reform Act, which aims to improve federal IT acquisitions and empower agency Chief Information Officers. Given the momentum that has been generated to date, contractors with views on the OFPP and DOD reform efforts would be well served to take advantage of the open dialogue currently sought on these issues and make their views heard.