



Communications During Acquisition Planning to Better Support the Requirement and the Mission

How Communication Among the Full Acquisition Team Including Industry Can Result in Clear, Effective Contract Requirements

Tidewater Government Industry Council

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Notable Quotes from Very Famous Acquisition Professionals

- “The single biggest problem in communications is the illusion that it has taken place.”
- “Lack of communication is the key to any successful relationship going wrong.”
- “Let’s not and say we did.”

Why does anyone or any organization buy anything?

- “Desirement”
- Requirement
- Lack of Capacity
- Lack of Capability



FAR 1.102 - Guiding Principles for the Federal Acquisition System

- The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, *and the contractors who provide the products and services.*

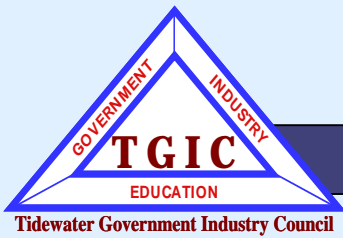


FAR 1.102 - Guiding Principles for the Federal Acquisition System

- The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

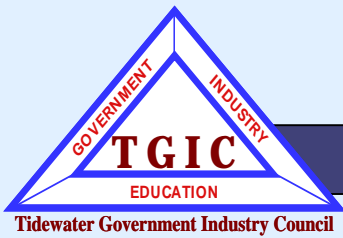
Let's Go Fishing --- DAIWA or DAWIA

- The Government Members of the Acquisition Team
 - Who are they?
 - What acquisition career fields do they represent?
 - How are their billets and positions reviewed and classified? Who is responsible for doing this?
 - What's the difference between Acquisition and acquisition?
 - What is the difference between “A/a-cquisition” and “contracting?”



Some Questions for You....

- **From your experience, describe the level of communications the procurement office has with its customer and the associated level of responsibility assumed by each in meeting their respective responsibilities as Government members of the Acquisition Team?**
- **Again, from your experience, how have the Government members of the Acquisition Team engaged Industry to be part of the team?**
- **What has been the timing and value of any of the above communications relative to meeting the customer's mission requirement, i.e., price, quality, and delivery?**



FAR 7.102 Policy

- Agencies ***shall*** perform acquisition planning and conduct market research for ***all*** acquisitions in order to promote and provide for-
 - Acquisition of ***commercial items*** if suitable, and
 - ***Full and open competition*** or competition to the maximum extent practicable
- This planning shall integrate the efforts of ***all personnel*** responsible for significant aspects of the acquisition
 - Ensures needs are met effectively, economically, and timely



FAR Subpart 12.1 -- Acquisition of Commercial Items

- Agencies ***shall*** --
- (a) Conduct market research to determine whether commercial items or non-developmental items are available that could meet the agency's requirements;
- (b) Acquire commercial items or non-developmental items when they are available to meet the needs of the agency; and
- (c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or non-developmental items as components of items supplied to the agency.



Commercial Items

- **FAR 12.202 -- Market Research and Description of Agency Need**
- (a) Market research is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need the solicitation, and resulting contract.
- (b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

Plan and Save or React and Pay

- The risks of poor planning include--
 - Poorly defined requirements
 - Delays to mission support
 - Limited sources
 - Higher prices
 - Costly changes
 - Abbreviated contract life
 - Expensive contracting fees
 - Potential pre-proposal and post-award protests



GAO Protest - Matter of: Oracle America, Inc., B-416061

- DoD established the Defense Innovation Unit (Experimental) (DIUx) in Mountain View, CA in 2015 with the purpose of creating processes to carry out prototype projects in a more streamlined fashion and attract non-traditional companies into DoD contracts (i.e. Silicon Valley companies reticent to the cumbersome acquisition process). DIUx wanted to use existing TRANSCOM contract for \$65M.
- In 2017, after a computer network casualty, TRANSCOM partnered with DIUx to find solutions—namely cloud computing. DIUx along with TRANSCOM and the Army Contracting Command-New Jersey (ACC-NJ) issued a request for solution briefs “seeking prototyping of a robust and scalable software development environment to enable the modernization of DoD command control systems in a cloud infrastructure.”





GAO Protest - Matter of: Oracle America, Inc., B-416061

- DIUx, TRANSCOM, and ACC-NJ evaluated 21 solution briefs and ultimately awarded REAN with a Prototype OTA (after ACC-NJ's determination and findings to use its other transaction authority) and later a production-OTA (P-OTA) without competition
- Oracle America never submitted a solution brief.
- Oracle protested to the GAO the Army's decision to enter into a P-OTA with REAN.
- GAO's jurisdiction is only to review protests concerning alleged violations of procurement statutes and regulations for procurements—OTAs are not procurements therefore GAO generally does not have jurisdiction to review an OTA protest.



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- However, GAO does have jurisdiction to review whether agency's use of OTA is proper under the applicable authority
- The GAO had jurisdiction to review the P-OTA award to REAN
- Army and the intervener argued that Oracle was not an interested party because it did not submit a solution brief
- Oracle contended that the request for solution briefs was inadequate in that it did not provide notice of the agency's intent to award a P-OTA



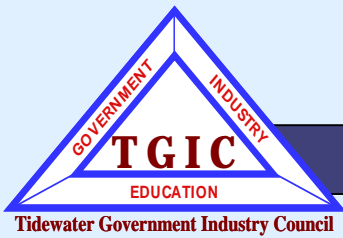
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- GAO agreed with Oracle finding the statement in the request regarding follow-on funding too vague to put potential bidders on notice of opportunity for follow-on P-OTAs
- Because Oracle would have submitted a brief, it had a direct economic interest and was an interested party
- The non-competitive P-OTA can only be awarded following the prototype-OTA if it was provided for in the transaction
- The initial solicitation for briefs did not count as the transaction and prototype-OTA did not provide for the follow-on P-OTA
- GAO sustained Oracle's protest that the Army did not have the authority to award the P-OTA without using competitive procedures.



GAO Protest - Matter of: Oracle America, Inc., B-416061

- What's the important back story beyond proper use of OTA versus a FAR based acquisition strategy?
 - Oracle America had an existing, viable commercial solution to meet the Government's requirement.



FAR 7.104 General Procedures

- Acquisition planning should begin as soon as the need is identified
- Avoid urgency and unrealistic delivery or performance schedules that limit competition and increase prices
- Secure the concurrence of the Contracting Officer in all acquisition planning



Published PALT Standards

Normally published by contracting activities for their customers each fiscal year

PALT expressed in numbers of days by various requirements, contract types, and estimated dollar value, and

By dates applicable to the particular fiscal year for any requirements utilizing annual/expiring funds, or for timely new/next fiscal year starts



It's About Time!

- Stepping back to go forward, please consider---
 - **C**omprehensive acquisition planning and strategizing
 - **A**ccurate content of all required documents
 - **L**oading of assembled documents into complete requisition/requirements packages
 - **T**ime for customer activity internal workflow reviews and approvals
 - Procurement Administrative Lead Time (PALT)
 - Varies by contract type and dollar value
 - Begins with complete and workable requirements packages



An Example of Overlapping PALT and Planning

- With the trend to Indefinite Delivery, Indefinite Quantity (IDIQ), Multiple-Award Contracts (MAC), plan and assemble initial competitive task order packages so they can be complete, workable, and task order proposals solicited immediately upon award of the MAC.
- Similarly, plan any follow-on task order requirements in sufficient time to preclude lapses in contract support (CALT, PALT, and potential turnover of contractors).
- Don't rely on sole source task orders or task order options



Getting Started – Market Research – FAR 10.001

- Agencies must...conduct market research appropriate to the circumstance—
 - Before developing new requirements documents for an acquisition by that agency;
 - Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;
 - Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost...



How Much Market Research Is Enough?

- FAR 10.002(b)(1) Procedures
 - The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The Contracting Officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant.
- FAR 17.207(d)(2) Exercise of options
 - An informal analysis of prices or an examination of the market indicates the option price is better than prices available in the market or that the option is the more advantageous offer.



Market Surveillance & Market Investigation

- Market Surveillance
 - The continual process of staying informed of general industry practices, technology, and trends
 - Trade journals; professional societies; personal contacts within other agencies and industry; conferences and symposia; Internet research and other automated databases
- Market Investigation
 - A narrower focus and specific timeframe for identified or semi-identified requirements that may have a commercial solution



The Investigation Process

- Develop a sufficient description of needs
 - Functions to be performed
 - Performance requirements
 - Physical characteristics and operating environment
 - Schedule and deliverables
- Identify potential sources
 - Market surveillance results
 - Previous procurements
 - “Sources-Sought” and “Requests for Information” (RFI) announcements in FedBizOps, etc.



Additional Market Research Techniques

- Requests for Information in technical, scientific, and business journals and publications
- Professional contacts in Government and Industry
- Source lists from other agencies or trade associations
- Catalogs and other literature, published or on-line
- Trade shows and symposia
- Market Research One on Ones



Communications with Industry

- Industry Days
- Focused Forums
- Industry Engagement Programs
- Draft Statements of Work
- Draft Requests for Proposals
- Pre-Solicitation Conferences

Myth Busting

- OFPP Administrator for Federal Procurement Policy
 - “Myth Busting”: Addressing Misconceptions to Improve Communication with Industry During the Acquisition Process (2 February 2011)
 - “Myth Busting 2”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process (May 2012)
 - Good things come in threes.



Using and Applying Market Research

- Use the results of your Market Research to—
 - Refine technical specifications and performance-based work statements including standards for performance
 - Determine useful deliverables and realistic delivery schedules
 - Determine appropriate technical evaluation factors and their relative importance and overall relationship to price

Using and Applying Market Research

- Maximize competition
- Assist in the development of the Independent Government Cost Estimate (IGCE)
- Determine optimum contract type
- Identify potential socio-economic set-asides