



March 2, 2017

General Services Administration
Regulatory Secretariat Division (MVCB)
ATTN: Ms. Hada Flowers
1800 F Street NW., 2nd Floor
Washington, DC 20405

Subject: FAR Case 2016-005: Effective Communication between Government and Industry

Dear Ms. Flowers,

The Coalition for Government Procurement appreciates the opportunity to submit the following comments on the Effective Communication between Government and Industry proposed rule.

The Coalition for Government Procurement (“The Coalition”) is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for tens of billions of dollars of the sales generated through the GSA Multiple Award Schedules (MAS) program, VA Federal Supply Schedule (FSS), the Government-wide Acquisition Contracts (GWAC), and agency-specific multiple award contracts (MAC). Coalition members include small, medium, and large business concerns. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

Proposed FAR Changes

The proposed rule would 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 environment. This change would implement Section 887 of the 2016 National Defense Authorization Act (NDAA).

Communication between Government and industry is crucial to crafting best value solutions that help meet agency missions. The Coalition believes that the amendment to FAR 1.102-2(a)(4) is a step in the right direction and that there are additional actions that could improve Government-industry communications, which the FAR Council should consider.

The State of Government-Industry Communications

Communication between Government and industry is crucial for ensuring an efficient and effective procurement process. Effective communications can lead to well-designed solicitations,

which in turn lead to better solutions for Federal agencies. In the first “Myth-busting” memo released in 2011, Dan Gordon, then Administrator for the Office of Federal Procurement Policy, noted that:

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.

In addition to ensuring that agency requirements are well-developed, effective communications can also lead to fewer bid protests. A July 2015 report from the Congressional Research Service noted that, “Analysts believe that protests are sometimes the result of poor communication between government and industry, poorly written requirements, and agencies not adequately debriefing losing bidders after an award.”

Government and industry agree that communication is essential, and the Government has made strides in improving the availability of information. For example, ten years ago, according to the Federal Procurement Data System, 14.25% of actions were posted to FedBizOpps. By FY2016 that number had risen to 66.95%. Moreover, GSA also has created systems such as GSA Interact and the Acquisition Gateway to ensure that information is available to Government buyers and industry.

In spite of recent progress, the Coalition and its members remain concerned that communications with industry has become a “check the box” exercise. Communication and information sharing are not enough—collaboration and partnership between Government and industry are essential to the success of the procurement process.

For example, when GSA’s Office Professional Services and Human Capital Category was making changes to the Identity Protection Services Special Item Number (SIN) in the Professional Services Schedule (PSS), a Request for Information (RFI) was released for industry feedback. The RFI asked for feedback on a 265 page attachment. However, the RFI limited industry feedback to two responses of 250 words each. The Coalition is concerned that such limitations indicate that the government is not open to industry’s recommendations on how to improve the delivery of complex services to agencies.

Soliciting industry feedback as a “check the box” exercise is not constructive or worthwhile for Government or industry. Doing so requires an investment of time and effort for both parties. Instances where industry has invested significant resources to provide input without result (or at least the appearance of consideration by the Government), in many cases, lessens industry’s incentive to provide feedback in the future. It would be helpful if the Government would adopt as a regular practice, sharing the input received (as appropriate) and the agency’s response. This

would provide more assurance to industry that their input has been duly considered, whether accepted or not.

GSA's Alliant program has demonstrated best practices for effective Government and industry communications. During the pre-solicitation process for the Alliant 2 GWAC, GSA released multiple draft RFPs and used both the GSA Interact website and multiple virtual industry days, as platforms to gather industry feedback on specific sections of the draft RFP. Instead of simply releasing a draft RFP for feedback on FedBizOpps, the Alliant team took the time to interact and collaborate with industry in virtual and in person meetings, which will ultimately lead to a more effective and well-designed vehicle.

Based on the current state of government-industry communications, there should be concern for two issues: first, increasing the amount of communications with industry, and second, ensuring that communications with industry result in better solutions and value to customer agencies and American taxpayers.

Supporting the Acquisition Workforce

Training

In addition to revising the FAR, it is critical that the training offered for the acquisition workforce is improved to increase government and industry communications during the procurement process.

In June 2015, the GSA Inspector General (IG) published a report titled, "FAS Needs to Strengthen its Training and Warranting Programs for Contracting Officers." The IG found that contracting officers are taking non acquisition-related courses to maintain their warrants. The report also noted that acquisition professionals prefer in-person to virtual training, but that in-person training opportunities were limited. Policies that improve the quantity and quality of training offered to the contracting workforce will help to develop the acquisition workforce and encourage meaningful communications with industry. We suggest that training for the acquisition workforce include best practices for government and industry communications during the procurement process, and allow for industry input into these best practices.

The Coalition also recommends that the Government encourage agencies to host and Federal employees to attend procurement-related training conferences and tradeshow. For example, GSA should bring back the GSA Expo – an event which operated at no cost to the government, but provided a great opportunity for government to receive significant in-person training and to interact with their industry partners. An event like the GSA Expo would be beneficial not only to GSA and industry employees, but also to the other Federal government employees who receive training on GSA's programs and contract vehicles. In 2016, GSA held the Federal Acquisition Symposium in Huntsville Alabama, which was attended by more than 1,100 government acquisition professionals who completed more than 5,800 hours of training. Smaller events, such as the Symposium, demonstrate that customer agencies have a pent-up demand for effective in-person training on the scale of a larger Expo, which in 2012 had more than 5,000 attendees.

Management Support

Beyond improving the quality and quantity of training opportunities, the FAR Council should also ensure that contracting professionals have management support to be innovative in their communications and collaborations with industry. Creating an atmosphere that encourages government-industry collaboration ultimately leads to better outcomes for the agency buyers. Ensuring that contracting personnel have management support to take risks is crucial to this process.

Which Phase of the Acquisition Process will Benefit from More Exchanges with Industry?

The FAR Council asked for specific feedback on which phase of the acquisition process (*i.e.* acquisition planning/market research; solicitation/award; post award) would benefit from more exchanges with industry, as well as what specific policies or procedures would enhance communications during these phases.

Communication is essential during all three phases of the acquisition process. Improved communication during the planning process will lead to better solicitations, which in turn will lead to better outcomes for customer agencies. Communications during the solicitation process will help to improve requirements development and ensure that the Government has access to innovative commercial products, services and solutions at a best value. Finally, post-award communications help to ensure that industry can improve and offer the best solutions possible to help agencies meet their missions. The FAR Council should look to improve communications during all three phases.

Is There a Current FAR Policy that may Inhibit Communication?

The Coalition supports the comments submitted to this proposed rule by Ralph C. Nash, Professor Emeritus of the George Washington University Law School. Professor Nash describes FAR 15.201 as flawed because the regulation governs communications that occur both before and after a solicitation is issued. The Coalition supports Professor Nash's suggestion that this regulation be split into two regulations: one governing communications before a solicitation is issued and one governing communications after a solicitation has been issued, but before the receipt of proposals.

The FAR Council should also consider updating FAR 15.201 to include more examples of effective communications with industry. The nine examples of techniques that can be used promote communications provided in FAR 15.201(c) may be outdated, as the list does not reference the various electronic tools that are now readily available to facilitate communications. Updating the list to include various electronic resources, as well as other innovative techniques, would help to encourage communication and collaboration.

Might it be Beneficial to Encourage, or Require, Contracting Officers to Conduct Discussions with Offerors after Establishing the Competitive Range for Contracts of a High Dollar Threshold?

Requiring contracting officers to conduct discussions for contracts of a certain high-dollar threshold is a “one-size fits all” approach. Certain contracts, such as performance-based contracts, will require significant industry engagement relative to other contracts, such as contracts for certain commercial items, even if the contracts have a similar value.

If the FAR Council does enact this requirement, the determining factor for requiring discussions should not be the dollar value of the contract, but the complexity of the contract. Blanket requirements without consideration for the underlying procurement could further impede the procurement process.

Summary of Recommendations

1. Improve training for the acquisition workforce to emphasize the importance of communication and collaboration with industry. Include best practices for government and industry communications in the training that are developed with industry input.
2. Encourage the Government to host and Federal employees to attend procurement-related training conferences and tradeshows like the GSA Expo which provides effective, low-cost, in-person training for both Government and industry.
3. Vest managers with the authority and backing to manage their procurement programs and develop innovative acquisition solutions.
4. Revise FAR 15.201 to provide clear guidance for communications throughout the entire contracting process.

The Coalition believes that the amendment to FAR 1.102-2(a)(4) is a step in the right direction and that the FAR Council should consider taking additional actions to improve Government-industry communications.

Thank you for considering the Coalition’s comments in response to the Effective Communication between Government and Industry proposed rule. If there are any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'RWaldron', with a long horizontal flourish extending to the right.

Roger Waldron
President