



January 16, 2024

Kristen H. Wilson
Office of Federal Procurement Policy
725 17th Street NW
Washington, DC 20006

Re: OFPP-2023-0001-0001 - Proposed new Office of Management and Budget Circular No. A-XXX, Strategic Management of Acquisition Data and Information

Dear Ms. Wilson:

The Coalition for Government Procurement (“Coalition”) appreciates the opportunity to comment on the above-referenced proposed circular, Office of Management and Budget (OMB) Circular No. A-XXX, “Strategic Management of Acquisition Data and Information.”

By way of background, the Coalition is a non-profit association of firms selling commercial services, products, and solutions 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 Schedules (FSS), the Government-wide Acquisition Contracts (GWAC), and agency specific multiple award contracts (MAC). Coalition members include small, medium, and large businesses that account for more than \$145 billion in Federal Government contracts. The Coalition is proud to have worked with Government officials for more than 40 years towards the mutual goal of common-sense acquisition.

The Coalition appreciates OMB’s efforts to improve agency access to reliable data and information with the issuance of the proposed circular. After reviewing the proposed circular, our comments center around the following areas:

- Data use
- Data protection
- Training
- Stakeholder burden/process improvement

These subjects are addressed below.

Data use: The proposed circular states that:

agencies must assume responsibility for making data-driven decisions and for providing their acquisition workforce with critical information needed to negotiate contracts in the best interest of taxpayers.

Although data-driven decision making comes with the promise of improving acquisition decisions, that promise of improvement can be achieved only if the decision making is based on the appropriate context underlying the data involved. For instance, in price evaluations, context is critically important. Pricing context is dependent on accurate, relevant data. Pricing comparisons utilizing irrelevant data, such as outdated pricing information or pricing that is not aligned with the terms and conditions being evaluated, risk undermining OMB's effort to implement market data-driven decision in acquisition. Further, it risks introducing distortions into the overarching market, in which the government is a significant participant. For these reasons, the successful implementation of the proposed circular will depend on, in part, ensuring that any data used is appropriate for the context being evaluated.

Data protection: It is heartening to see that the proposed circular recognizes that “[a]gencies that are responsible for collecting agency data must use appropriate protocols to prevent the unauthorized disclosure of data.” Over the course of decades, multiple blue-ribbon panels have identified data protection as a critical stakeholder concern driving market participation. Thus, OMB's threshold concern here is welcome.

At the same time, although the proposed circular states:

Data sharing agreements may be used to establish how information is accessed, used, and shared. Agencies should not agree to terms and conditions with their contractors that broadly prohibit the sharing of their acquisition data with other Government agencies, except where sharing is prohibited by law or where the **contract** identifies the data or information is proprietary.

[Emphasis added.]

It should be made clear that the contract will not allow the government to declare unilaterally to the owner of data or information, who created and paid for it, what is proprietary. The owner generates that data or information, not the government, and that data or information underlies what the owner is bringing to the overarching market. It would be unreasonable to allow the government to declare unilaterally what is or is not proprietary in connection with something it does not own and did not develop at its expense. Likewise, pricing strategies and technical approaches also represent proprietary information to contractors. Failure to acknowledge the foregoing risks reducing participation in the government space by those fearing the loss of their proprietary information (again, this point has been the subject of multiple panel reviews of the acquisition system). For this reason, it should be made clear that contractors will be permitted to mark their data or information as proprietary, consistent with their business needs and the law.

Along these lines, the proposed circular defines an Acquisition Data Sharing Agreement as:

a document that creates an understanding between two or more agencies on how acquisition data will be accessed, used, and shared, including an understanding of the overall requirements, permissions, procedures, and limitations on sharing to ensure compliance with applicable law.

Although such an Acquisition Data Sharing Agreement between agencies is a positive step to facilitate information sharing, beyond the direction “to ensure compliance with applicable law,”

given the significance of the data being shared and the fact that the sharing of data is envisioned to take place across government, more guidance is needed to assure that the data involved is protected from inadvertent disclosure. It is not clear, for instance, whether a Freedom of Information Act request will be fielded by the original agency receiving the data or information sought or the holding agency, and if the holding agency, how information will be mapped back to the recipient agency and information owner for the purposes of notice and reverse-FOIA resolution. Nor is it clear, in the event of a conflict between agency rules implementing FOIA, which rules will govern. Issues, such as these, need to be identified and addressed, and overall, OMB needs to make sure that, with the flow of data to various agencies, an auditable chain of custody is maintained to assure data is protected.

Training: The complexities associated with the transmission and leveraging of data analytically across government highlights the importance of training for the employees involved. For this reason, the Coalition appreciated OMB's statement that:

Agencies should work with GSA on the development and adoption of Government-wide data analytics tools and taking [sic] steps to ensure members of the workforce with responsibilities for managing common spending are trained in using these tools.

Training of the acquisition workforce must be part of the implementation of the proposed circular and is critical to its success. Because OMB seeks market data-driven decision making in acquisition, such training should include instruction in market theory and analysis; market negotiations and the fundamentals identified in FAR Part 15; and the understanding of the importance to the market of safeguarding data.

Stakeholder burden/process improvement: In implementing the policy underlying the proposed circular, OMB stated that it

will identify minimum transactional pricing data elements (e.g., CLIN standards) for collection and transmission that would minimize agency burden while providing insight at a government-wide level.

The PCE [Procurement Committee for E-Government]¹ will ensure that applicable regulations and policy are reflected in any technologies, processes, systems, and data to reduce agency burden and ensure quality data are available for downstream use.

Solutions identified by the agency workforce as the greatest opportunity for improving processes and leveraging technology to support innovation and reduce burden. Such ideas support agency operations and mission success by addressing

¹ The interagency advisory body advising OMB on acquisition data as it particularly relates to the procurement process.

issues, challenges, and best practices identified by those most impacted on a daily basis by access (or lack thereof) to data and information.

This focus on minimizing burden is positive, but OMB should be mindful of the fact that burden is experienced not only by the government, but also by the private sector seeking to do business with the government. Although, clearly, it is important for agency burden to be minimized to assure the successful implementation of the proposed circular and use of acquisition data, so too, contractor burden should be minimized to avoid the waste of administrative time and cost, and to mitigate and barriers to entry into the government market space. Reducing contractor burden facilitates increased market participation and competition, which promotes innovation and downward price pressure, to the benefit of agency buyers.

The Coalition appreciates the opportunity to provide comments on the proposed circular and hopes that you find the foregoing useful.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Waldron", written over a light gray rectangular background.

Roger Waldron
President