Department of Commerce

VENDOR COMMUNICATION PLAN

OCTOBER 19, 2011

PREFACE

Historically, the Department of Commerce (Department) spends roughly a third of its annual budget through contracts. 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.

Industry is often the best source for this information, so productive interaction between the Department 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.

Understanding the marketplace through effective market research, including early, frequent, and constructive engagement with industry, is especially important for complex, high-risk procurements, such as large information technology (IT) projects. Increasing communication is a key tenet of the Office of Management Budget's (OMB) 25 Point Implementation Plan to Reform Federal IT Management, which is further addressed in the Office of Federal Procurement Policy's (OFPP) "Myth-Busting" Memorandum of February 2, 2011. The OFPP memorandum addresses both the myths and the facts about communicating with industry, provides strategies for removing barriers to communication and expanding agency-industry engagement, and sets criteria for agency vendor communication plans.

We are pleased to share this Vendor Communication Plan with Commerce stakeholders both inside and outside of the Department. The Plan will be a "living" document and we encourage you to visit http://www.osec.doc.gov/oam/ (under construction) for updated information and to share your feedback and suggestions for improvement.

Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

19 Oct 11
Date

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VENDOR COMMUNICATION PLAN

1. OVERVIEW

1.1 Background

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. This is why increasing communication, in the form of the "myth-busters" educational campaign, is a key tenet of the Office of Management and Budget's (OMB) 25 Point Implementation Plan to Reform Federal IT Management.

In support of OMB's 25 Point Implementation Plan, the Office of Federal Procurement Policy (OFPP) issued its memorandum on February 2, 2011 entitled *"Myth-Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process*, which addresses both the myths and the facts about communicating with industry; provides strategies for removing barriers to communication and expanding agency-industry engagement; and sets the criteria for agencies' vendor communication plans. A copy of the memorandum is included as Attachment A.

The *"Myth-Busting"* memorandum requires Chief Financial Officer (CFO) Act agencies to develop vendor communication plans and make them available to their workforce and the public, as appropriate. The objective of the communication plan is to improve communication between government and industry by educating the workforce on communication opportunities, encouraging more communication, and taking advantage of existing authorities. Strengthened communication between the Department and industry partners will improve market research, leading to more clearly understood and defined requirements, and help new entrants to the federal technology market better understand how to do business with the government, help the Government understand how companies can support mission needs, and deliver the best results at the best price for the American public.

1.2 Purpose

The purpose of this Vendor Communication Plan (Plan) is to provide clear, consistent direction to the Department's workforce about how to engage with industry prior to the award of contracts, including task and delivery orders under the Federal Supply Schedule, government wide acquisition contracts, and other indefinite delivery/indefinite quantity contracts. It is intended to dispel misperceptions surrounding acceptable conversations between contracting officers and vendors during the pre-award phase of the acquisition process.

1.3 Policy

It is the policy of the Department of Commerce to promote fair, frequent and constructive dialogue with the vendor community on matters of mutual interest, as appropriate, and in a manner which protects sensitive information, operation, sources, methods, and technologies. Matters of mutual interest may include, but are not limited to: DOC and industry business practices and policies; removal of barriers to competition; technology

trends and development objectives; security challenges; promotion of socio-economic goals, such as small business and sustainability; and the performance of organizations, contracts, projects and programs.

1.4 Statement of Commitment

In implementing this Vendor Communication Plan, the Department of Commerce is committed to:

a. Communicating early, frequently, and constructively with industry;

b. Including small businesses and subgroups of small businesses in communications with industry;

c. Including vendors that the agency has not worked with in the past;

d. Using acquisition forecasting to identify procurements which are likely to involve opportunity for additional communication with industry; and

e. Protecting non-public information, including the vendor's confidential information and the agency's source selection information.

2. ROLES AND RESPONSIBILITIES

2.1 Senior Procurement Executive (SPE)

The Senior Procurement Executive has overall responsibility for the following:

a. Promoting vendor engagement to improve communication with large and small business
b. Increasing awareness of the need to communicate with industry
c. Seeking feedback on vendor engagements to improve outreach effort on a regular basis
d. Issuing and revising acquisition policy as required to implement vendor communication plan

2.2 Chief Information Officer (CIO)

The Chief Information Officer is responsible for keeping the SPE advised of new technology and platforms supporting acquisition (e.g., tools, technologies, and social media for increasing outreach, communication, etc.).

2.3 Senior Bureau Procurement Official (BPO)

The Senior Bureau Procurement Official is responsible for:

a. Maintaining internal communication with program offices to identify and ensure a portfolio-based perspective of planned acquisitions
b. Ensuring Contracting Officers (CO) employ vendor communication as appropriate, including using the "comprehensive vendor engagement strategy" for acquisitions identified in Section 4.2
c. Ensuring Program Officials (PO)s are entering all planned acquisition forecasts above the Simplified Acquisition Threshold (SAT) into the Advanced Acquisition Planning System
d. Ensuring COs and Contract Specialists understand what is in the Advanced Acquisition Planning System in cases where they receive inquiries

2.4 Program Official (PO)

Program Officials (including program managers and project managers) are responsible for:

a. Conferring early with the CO--as soon as a need is identified, on how best to engage with industry and evaluate how to accomplish the need/requirement, and establishing the level of vendor engagement needed to help the PO and acquisition team conduct effective market research; and, as permitted in accordance with DOC policies, considering the use of innovative technological solutions, such as the use of a wiki to solicit comments during the pre-Request for Proposal phases (such as market research) to better tap the understanding of industry partners; using a government-wide online platform to issue a draft statement of work and solicit comments; or possibly using social media as may be appropriate
b. Applying a portfolio perspective for acquisition planning to capitalize on market research efforts

c. Preparing and maintaining acquisition plans, including identifying and entering all planned acquisitions individually in the Advanced Acquisition Planning System for review by the servicing contracting office
d. Addressing the level of planned vendor engagement in the Acquisition Plan and factoring it into acquisition lead times
e. Evaluating the expected level of competition, assessing the need for introducing new entrants to the market, and recommending ways to the CO to do this
e. Notifying and discussing vendor engagement activities with the CO prior to the meetings—as the CO may not attend/conduct every engagement, but should be aware of all communications
f. Knowing the agency procurement forecast and ensuring that data in the Advanced Acquisition Planning System is updated. (The forecast is used by many small businesses to determine where to invest bid and proposal costs so it important to be as knowledgeable and complete as possible about the content)
g. Taking training (e.g., the planned Federal Acquisition Institute (FAI) hosted Acquisition Learning Seminar)

2.5 Contracting Officer (CO)

The Contracting Officer is responsible for:

a. Working with the PO and the acquisition team to determine the vendor communication plan, including the timing, frequency, manner, and degree of vendor engagement necessary to appropriately develop requirements, acquisition strategy, and performance metrics
b. Recommending and identifying the means of communication (e.g., one-on-one meetings, vendor days, draft requests for proposals (RFPs), teleconferences, combinations of these methods, etc.) and, as appropriate, innovative technologies (see 2.4.a) which may be appropriate
    i. Considering methods that would generate new entrants to the market to increase competition
    ii. Working with OSDBU and their small business specialist to identify the best way to reach out to small business
c. Communicating to the agency team and setting expectations with the PO and Contracting Officers Representative (COR), if appropriate, about who will conduct vendor engagement efforts and how these sessions will be conducted
    i. Encourage the Program Official and COR to communicate appropriately for pre-solicitation efforts
    ii. Be the focal point for vendor communication after the solicitation is issued
d. Documenting the file as appropriate
e. Knowing the agency procurement forecast and ensuring that data in the Advanced Acquisition Planning System is updated. (The forecast is used by many small businesses to determine where to invest bid and proposal costs so it important to be as knowledgeable and complete as possible about the content)
f. Using the Small Business Central Event Listing on FedBizOpps to publicize opportunities. This functionality, recently released, helps small businesses find outreach events and promotes competition
g. Taking training (e.g., the planned FAI hosted Acquisition Learning Seminar)

2.6 Contracting Officer Representative (COR)

The Contracting Officer's Representative is responsible for:

a. Participating with the acquisition team in pre-award vendor communication strategies
b. Focusing on post-award opportunities, including ways to improve communication after award, such as contract kick-off events and meetings
c. Notifying the CO, keeping the CO informed, and documenting as appropriate
d. Being cautious and not letting communications with the contractor evolve into a constructive change to the contract--which costs money and time
d. Taking training (e.g., the planned FAI hosted Acquisition Learning Seminar)

2.7 Office of General Counsel (OGC)

The Office of General Counsel (Contract Law Division) is responsible for:

a. Advising the CO and team on permissible and appropriate communication in terms of content, delivery, methodology, etc.
b. Providing legal advice and support as part of the acquisition team

2.8 Ethics Counsel

The Office of General Counsel (Ethics Counsel) is responsible for:

a. Including vendor communication in annual ethics training
b. Ensuring ethics training explains what is permissible as well as what is prohibited

2.9 Office of Small and Disadvantaged Business Utilization (OSDBU)

The Office of Small and Disadvantaged Business Utilization is responsible for:

a. Focusing on the agency procurement forecast
b. Using the Small Business Central Event Listing on FedBizOpps to publicize opportunities. This functionality, recently released, helps small businesses find outreach events and promotes competition
c. Working with COs, Contract Specialists, POs, and Small Business Specialists to identify the best way to reach out to small business

2.10 Acquisition Career Manager

The Acquisition Career Manager is responsible for providing COs, Contract Specialist, Program Officials, CORs, and others with information on relevant training and awareness activities to improve vendor engagement.

3. EFFORTS TO REDUCE BARRIERS AND PROMOTE ENGAGEMENT

3.1 Related Policies and Guidance

In addition to the efforts to reduce barriers and promote vendor engagement articulated throughout this draft Plan, the Department has recently issued the following policies that promote vendor engagement through effective acquisition planning and competitive strategies:

a. Commerce Acquisition Manual (CAM) Chapter 1307.1, Acquisition Planning, (May 2011) at http://oam.eas.commerce.gov/docs/CAM%201307.1%20-%20Acq%20Planning%20(Oct2010).pdf . This CAM chapter provides policy for comprehensive acquisition planning and emphasizes market research and competition.

b. Commerce Acquisition Manual (CAM) Chapter 1306.70, Competition Requirements, (January 2011), at http://oam.eas.commerce.gov/docs/CAM%201306%2070%20Competition%20Requirements%20-%20Final.pdf . This CAM chapter provides policy promoting full and open competition, including strategies to migrate to more competitive contracts, and requirements to use market research to identify and mitigate barriers to competition.

Once approved by OMB, the Department will review and update as necessary the above policies to ensure they address all elements of the Vendor Communication Plan.

3.2 Training and Awareness

The Department will internally and externally publicize upcoming training and awareness events including the planned FAI hosted Acquisition Learning Seminar in July 2011. Multiple modes of communication will be used to alert employees and contractors to such events (acquisition community listserves, FedBizOpps, etc).

The Department will also design a Vendor Engagement webpage that will provide a place to publicize: training opportunities; educational and awareness events and opportunities about communication; and an invitation for voluntary feedback and recommendation on our vendor communication efforts. By promoting opportunities for training and awareness, employees and contractors will become increasingly familiar and comfortable engaging with each other.

4. VENDOR ENGAGEMENT STRATEGY

4.1 Vendor Communication and Engagement

Vendor communication and engagement is encouraged as appropriate. Contracting Officers should work with their Program Officials to develop a vendor communication plan commensurate with the size, complexity, and nature of the acquisition, and any related or interdependent requirements and associated market research. Use of the Market Research Report Template provided in Attachment E (or an equivalent) is a best practice and is recommended.

4.2 Acquisitions Requiring Comprehensive Vendor Engagement Strategy

A comprehensive vendor engagement strategy is required for the following acquisitions:

a. All contracts and orders with an estimated total value (base and all options) of $25 million or greater;

b. "Special Interest" acquisitions as identified by the Department, regardless of dollar threshold; and

c. Contracts and orders with an estimated total value (base and all options) of $1 million or greater which previously failed to attract competition (i.e., 2 or more offers).

4.2.1 Comprehensive Vendor Engagement Strategy Requirements

Acquisition plans for acquisitions as outlined in Section 4.2 shall require, as a condition of approval, a comprehensive vendor engagement strategy that:

a. Includes at least one (1) industry day or (1) a pre-solicitation or pre-proposal conference;

b. Allows for a reasonable amount of one-on-one engagement;

c. Allows time for discussion, as needed, and in accordance with FAR Part 15, during the proposal evaluation process;

d. Addresses how engagement events, such as an acquisition-specific industry days, small business outreach sessions, pre-solicitation conferences, RFP question and answer sessions, etc., will be publicized and updated using the "special notices" function on www.fedbizopps.gov or other sites as identified by the agency, and other modes as necessary; **and**

e. Addresses how planned and conducted comprehensive vendor communication activity will be documented and summarized. Use of the Market Research Report Template provided in Attachment E is a best practice and shall be used as a summary reporting tool in Acquisitions requiring a Comprehensive Vendor Engagement Strategy unless an equivalent template is used by the Operating Unit.

4.2.2 Waiver of Requirement for Comprehensive Vendor Engagement Strategy

If the Contracting Officer determines that a comprehensive vendor engagement strategy is not appropriate for an acquisition described in Section 4.2, a written justification shall be prepared clearly delineating and supporting the rationale. The written justification must be submitted with the acquisition plan for approval.

5. PUBLICATION OF VENDOR ENGAGEMENT EVENTS

The Department will post and regularly update vendor engagement events on the Federal Business Opportunities website at www.fedbizopps.gov using the "special notices" function. Posted events will include industry days, small business outreach sessions, pre-solicitation conferences, request for proposal question and answer sessions, etc. The Department will use web collaboration tools such as wikis to communicate with industry, as appropriate.

In addition, the Department will develop a Vendor Engagement webpage that will provide information to employees and industry on training and awareness opportunities and obtain feedback and suggestions from industry.

6. ACCOUNTABILITY

Effective communication with industry is a high priority for the Department of Commerce. Strengthened communication with industry is expected to result in more clearly defined requirements, producing better solutions at the best possible price.

Determining the success of the Vendor Communication Plan will be measured by assessing feedback from Department employees and industry representatives. Feedback and suggestions will be used to further refine the Plan and improve communication as necessary.

Within 6 months of implementing the Plan, the Department will obtain feedback from employees and industry representatives. Contracting and program officials, industry, and the public, will be invited to provide feedback and suggestions through use of a voluntary "feedback" feature of the Plan. Other avenues for eliciting feedback will include events such as acquisition council meetings and quarterly acquisition conferences. In addition, vendor communication will be incorporated into the Department's Acquisition Management Review process, to determine if it is being appropriately conducted and to obtain additional feedback and recommendations for improvements.

7. RESOURCES AND GUIDANCE

Department employees should operate in accordance with the "rules of the road" governing industry communication. To that end, they may be guided by the following resources and guidelines.

a. Misconceptions and Facts about Vendor Communication. The Office of Federal Procurement Policy has identified 10 common misconceptions and facts about vendor communication and provides strategies for optimizing communication opportunities in its "Myth-busting" memorandum. The memorandum cites applicable sections of the Federal Acquisition Regulation. (See Attachment A)

b. Statutory Limitations. Subject to sound business judgment and statutory limitations on the government's ability to exchange information, employees are encouraged to communicate with industry as necessary to conduct official business. Ethics laws and rules *per se* do not prohibit communications with industry representatives; they do mandate fair and even treatment. A list of the primary statutes and related principles governing exchanges of information are provided in Attachment B.

c. Acquisition Regulations and Policy. The Federal Acquisition Regulation (FAR) provides regulatory policy on the exchange, marking, treatment and protection of information. The FAR may be accessed at https://www.acquisition.gov/far/ or http://farsite.hill.af.mil/ . In addition, the Department's FAR Supplement, the Commerce Acquisition Regulation (CAR), and the Commerce Acquisition Manual (CAM), and other acquisition guidance, are available on the OAM website at http://www.osec.doc.gov/oam/ (under construction)

d. "Rules" for Meeting with Industry. Attachment C identifies "rules" that program officials and other staff involved in the acquisition process should know before they meet with industry representatives.

e. Guidelines for One-on-One Communication. Attachment D provides guidelines that apply to vendor communications conducted by the Contracting Officer and Acquisition Team before the requirements definition phase is finalized for a specific procurement and before the acquisition strategy is defined.

f. Market Research Report Template. A Market Research Report documents the market research, and can be tailored as appropriate to the size, complexity, and urgency of an acquisition. In consultation with the Contracting Officer, the Market Research Report Template provided in Attachment E may be used and tailored to suit the market research needs of a particular requirement--including related vendor exchanges or engagements.

g. Additional Guidance. The Office of General Counsel (Contract Law Division and Ethics Law Division) is available to provide additional guidance and advice regarding industry communication and vendor engagement. Questions about the Vendor Communication Plan may be addressed to the Office of Acquisition Management.

ATTACHMENT A – OFPP "Myth-Busting" Memorandum

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

February 2, 2011

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
CHIEF INFORMATION OFFICERS

FROM: Daniel I. Gordon
Administrator for Federal Procurement Policy

SUBJECT: "Myth-Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process

With expenditures of over $500 billion annually on contracts and orders for goods and services, the federal government has an obligation to conduct our procurements in the most effective, responsible, and efficient manner possible. 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. This is why increasing communication, in the form of a "myth-busters" educational campaign, is one of the key tenets of the Office of Management and Budget's 25 Point Implementation Plan to Reform Federal IT Management.[1]

The Federal Acquisition Regulation (FAR) authorizes a broad range of opportunities for vendor communication[2], but agencies often do not take full advantage of these existing flexibilities. Some agency officials may be reluctant to engage in these exchanges out of fear of protests or fear of binding the agency in an unauthorized manner; others may be unaware of effective strategies that can help the acquisition workforce and industry make the best use of their time and resources. Similarly, industry may be concerned that talking with an agency may create a conflict of interest that will preclude them from competing on future requirements, or industry may be apprehensive about engaging in meaningful conversations in the presence of other vendors.

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[1] 25 Point Implementation Plan to Reform Federal Information Technology Management available at http://cio.gov/documents/25-Point-Implementation-Plan-to-Reform-Federal%20IT.pdf

[2] For example, FAR 10.002(b)(2) authorizes a wide range of techniques for conducting market research, including participation in interactive, online communications with industry.

In light of these challenges, the purposes of this memorandum are to:

1) identify common misconceptions about vendor engagement that may be unnecessarily hindering agencies' appropriate use of the existing flexibilities, and provide facts and strategies to help acquisition professionals benefit from industry's knowledge and insight;

2) direct agencies to remove unnecessary barriers to reasonable communication and develop vendor communications plans, consistent with existing law and regulation, that promote responsible and constructive exchanges; and

3) outline steps for continued engagement with agencies and industry to increase awareness and education.

Nothing in this memorandum should be read to alter, or authorize violations of, applicable ethics rules, procurement integrity requirements, or other statutes or regulations that govern communication and information sharing. However, all methods of communication that are not prohibited, either by those rules or otherwise, should be considered, if they would be helpful.[3] In addition, contracting officers, program managers, and other acquisition officials should continue to exercise appropriate discretion to balance the practical limitations of frequent vendor engagement, including the demand such engagement places on the time of the acquisition workforce, with the need to better understand the market and make decisions in the best interest of the government.

Top 10 Misconceptions and Facts

The Office of Federal Procurement Policy (OFPP) held a series of outreach sessions with industry representatives, acquisition professionals, agency procurement attorneys, and others to identify and address core misconceptions about communication between the government and industry during the pre-award acquisition process. While these conversations will continue, as discussed later, ten misconceptions were mentioned frequently, and so are addressed by this memorandum. Attachment 1 lists these issues, and provides additional information and strategies to help agencies promote fair and appropriate engagement during various acquisition phases.

Vendor Communication Plan

Some agencies have developed policies for communicating with industry while others have not, resulting in disparate practices and confusion. To provide better direction to the workforce and to clarify the nature and schedule of engagement opportunities for industry, each agency should develop a high-level vendor communication plan. The plan should discuss how the agency will reduce unnecessary barriers, publicize communication opportunities, and prioritize engagement

[3] See FAR Part 1.102(d) stating that 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, then the strategy, practice, policy or procedure is a permissible exercise of authority.

opportunities for high-risk, complex programs or those that fail to attract new vendors during re-competitions. Details on the required elements of this plan are included in Attachment 2.

The 24 Chief Financial Officer (CFO) Act agencies are required to develop a vendor communication plan; to make these plans available to their workforce and the public, as appropriate; and to update them at least annually. These agencies shall submit their draft plans, by June 30, 2011, for review by the Office of Management and Budget. The draft plans will be reviewed by the Administrator for Federal Procurement Policy and the Federal Chief Information Officer (CIO) to ensure that agencies are encouraging more communication, taking advantage of existing authorities, and educating their workforce on communication opportunities. Based on this review, the agencies will finalize their plans and make them available to their workforce and to the public, as appropriate, no later than 30 days after the completion of OMB's review. Small agencies are encouraged to review their existing vendor communication guidance in light of the principles discussed in this memorandum and make appropriate modifications to encourage more communication, or develop guidance if none exists.

Increasing Awareness

Throughout 2011, OFPP will work with the Federal Acquisition Institute (FAI), the Defense Acquisition University (DAU), and agency training practitioners to conduct an awareness campaign to eliminate unnecessary barriers to engagement. As agencies work to develop and refine their vendor communications plans, they will be supported by a number of efforts:

Continued Discussion

Expansion of the conversation between industry and government and the education on both sides must continue in an open, transparent forum. To support this discussion, agencies and industry are invited to join a moderated, online dialogue starting in mid-February to help identify additional misconceptions, concerns, perceived conflicts in policies, and success stories that will help improve communications between government and industry. Additional information on how to participate in this and other discussions will be made available on www.caoc.gov and www.cioc.gov.

Community of Practice (COP)

To help agencies increase and improve vendor engagement, OFPP and E-Gov will launch an online COP no later than June 2011 that will provide additional strategies, do's and don'ts for agencies and for vendors, frequently asked questions, agency and industry success stories, case studies, and other tools to improve engagement. Next month, OFPP will convene a working group of federal acquisition professionals to help define the requirements of this site. If you are interested in participating in this working group, please identify your agency's point of contact by February 14 to Mindy Connolly of OFPP at mconnolly@omb.eop.gov.

Training and Outreach

FAI will develop a continuous learning module that contracting officers, program managers, procurement attorneys, and others can utilize to develop a better understanding of the types of permissible communication. This is scheduled to be available early in the third quarter of FY 2011 on the FAI website – www.fai.gov. Additionally, FAI and OFPP will provide sessions at widely-attended procurement conferences throughout 2011 to increase awareness of the need for more industry engagement. Agencies should provide similar training or outreach efforts, especially to their front line acquisition and program personnel.

Acquisition Communication Platform

In accordance with the 25 Point Implementation Plan to Reform Federal IT Management, the General Services Administration is seeking input from agencies, industry, and other stakeholders on developing a communication platform that would facilitate exchanges for specific planned acquisitions. This platform will allow the government to more easily engage the vendor community during the pre-solicitation stage, and may be further developed to facilitate communication during other stages of the acquisition. Development of the requirements will consider existing platforms and functionality and will be developed in collaboration with the Integrated Acquisition Environment. Additional details will be communicated to the community as they become available.

Conclusion

While agencies do not have the resources, and are not required, to meet with every vendor at every step of the acquisition process, information gathered from industry sources plays an invaluable role in the acquisition process. For this reason, agencies must develop practices that will ensure early, frequent, and constructive communication during key phases of the process. The federal government's ability to achieve successful program outcomes, effectively and efficiently, depends upon agencies establishing effective strategies for industry engagement and supporting those strategies with senior-level commitment.

Thank you for your commitment to this important matter. Please contact Mindy Connolly on (202) 395-7724 or mconnolly@omb.eop.gov if you have any questions.

Attachments
Attachment 1 –Misconceptions and Facts about Vendor Communication
Attachment 2 - Vendor Communication Plans

cc:

Agency General Counsels and Solicitors
Agency Ethics Officers

Attachment 1

Misconceptions and Facts about Vendor Communication

1.	**Misconception – "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.

Prior to issuance of the solicitation, government officials – including the program manager, users, or contracting officer – may meet with potential offerors to exchange general information and conduct market research related to an acquisition. In fact, the FAR, in Part 15, encourages exchanges of information with interested parties during the solicitation process, ending with the receipt of proposals. There is no requirement that the meetings include all possible offerors, nor is there a prohibition on one-on-one meetings. Any information that is shared in a meeting that could directly affect proposal preparation must be shared in a timely manner with all potential offerors to avoid providing any offeror with an unfair advantage (FAR 15.201(f)).

The government ethics rules and Competition in Contracting Act, (10 U.S.C. § 2304), prohibit preferential treatment of one vendor over another. Where vendor interaction is expected to include contract terms and conditions, any one-on-one meetings should include, or at least be coordinated with, the contracting officer (FAR 15.201).[4] After the solicitation is issued, the contracting officer shall be the focal point for these exchanges. (Special rules govern communications with offerors after receipt of proposals; that situation is not addressed here.)

Some vendors have expressed concern that involvement in pre-solicitation discussions might lead to exclusion resulting from organizational conflict of interest (OCI) concerns. This should not be the case. While a vendor who, as part of contract performance, drafts the specification for a future procurement will almost certainly be barred by OCI rules from competing for that future procurement, pre-solicitation communications are generally less structured, less binding, and much less problematic. When a vendor, in its role supporting the government, is drafting specifications for a future acquisition, the government is relying on the vendor to provide impartial advice regarding the requirements needed to meet the government's future needs. Ensuring that the vendor will not be motivated by a desire to win the future contract is the way we try to ensure that this advice will be impartial. This differs dramatically from the pre-solicitation context. In the latter context, the government is not looking for impartial advice from one source, but is instead looking for a variety of options from a variety of sources, each one understandably, and reasonably, attempting to demonstrate the value of its own approach. These marketing efforts, in themselves, do not raise OCI concerns.

[4] Under sealed bidding procedures, in accordance with FAR Part 14, only the contracting officer, superior, or other authorized individual can transmit this information.

2.	**Misconception – "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.

Disclosure is an important tool that ensures public trust in our contracting process, but it should not be an impediment to meeting with contractors and is not required in every circumstance. In the case of meetings where registered lobbyists are employed, contractors are required to track the costs and activities of their lobbying activities, as required by FAR Part 31, but that obligation places the disclosure burden on the contractor and does not require the government to take any steps. In this "standard" case, additional communication with contractors will not involve an additional disclosure burden, though conduct of all communications should be consistent with the principles of fairness and accountability. Moreover, this rule only applies in those circumstances where a contractor or one or more of its employees are registered lobbyists, which will not be the case in every meeting.

There have been additional requirements for disclosure regarding spending under the American Recovery and Reinvestment Act (ARRA). Government officials are required by the March 2009 Presidential memorandum on "Ensuring Responsible Spending of Recovery Act Funds"[5] to disclose discussions with registered lobbyists related to ARRA procurements. Any ARRA procurement that was conducted with involvement from registered lobbyists does carry this additional disclosure requirement (only a small number of all procurements during this period were obligated using funding from ARRA).

Another source of concern might be the additional ethical commitments required of political appointees by Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." While the ethics pledge required by this Executive Order does extend and strengthen certain limitations on actions by government personnel, most notably with respect to pre- and post-employment restrictions, the pledge does not create general barriers to meeting with industry to discuss procurements. The pledge prohibits some contact with former clients and former employers for two years, which might create a specific limitation in some circumstances, but it does not establish a general prohibition on meeting with registered lobbyists, even in one-on-one circumstances.

Finally, even in the special situations where disclosure is required, that should not be a reason for avoiding communication in situations where the communication will improve the procurement and provide better value to the taxpayer.

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[5] Available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/.

3.	**Misconception – "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.

Protests are, in fact, quite rare. At least 99 percent of procurements are never protested, although high dollar procurements, of course, are more likely to be protested. The overriding goal of the agency and its program managers, contracting officers, and attorneys should be the best procurement solution, and industry engagement can improve the supplies or services received or can reduce the price paid by the government. If contracting officers conduct responsible, meaningful, and constructive communications during the course of a procurement, issues that could give rise to a bid protest are likely eliminated. Trying to make a procurement 'protest-proof' is rarely a good use of agency resources, and it may lead to decisions that aren't in the interest of the government. Moreover, restricting communication for fear of protests may actually increase the likelihood of a protest – for example, by a vendor that hopes to get more information through 'discovery' during the protest.

4.	**Misconception – "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.

Although the government often states it intends to award without discussions/negotiations, the clause at FAR 52.215-1[6] reserves the government's option to conduct discussions and it is usually a good practice to retain that option.

While discussions may add time to the acquisition schedule, the contracting officer should make a thoughtful decision as to whether to conduct discussions and, if so, what the scope and extent of discussions required should be. Schedule pressures should generally not be the primary, or even a strong, driver in the contracting officer's decision on whether or not to hold discussions. One consideration the contracting officer should take into account is that conducting robust pre-solicitation communications with industry may actually minimize the need for discussions and result in a better technical solution and improved contract performance. Other considerations include the complexity of the procurement, and the history of change orders on previous or related contracts that were due to lack of a clear understanding of the requirements and contract terms and conditions by the parties. In situations where discussions are not held, post-award contract

[6] When preparing solicitations, contracting officers should carefully evaluate whether to include the clause at 52.215-1 or its Alternate 1.

modifications that increase the government's costs are often required. These costly changes are negotiated after the government has lost the benefits of a competitive environment.

When discussions are considered helpful to obtaining the best outcome in a procurement, the schedule should be developed accordingly. Contracting officers should be empowered by their management to make these judgment calls on a case-by-case basis and should have the full support of their customers.

5.	**Misconception – "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.

All acquisition officials should be familiar with FAR Subpart 15.6 and their agency's procedures for receiving and evaluating an unsolicited proposal. Receipt of unsolicited proposals should not cause delay in an acquisition.

6.	**Misconception – "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.

Although debriefings are not required when using the Federal Supply Schedules (FSS) under FAR Part 8.4 procedures, even in those situations, agencies are instructed to "provide a brief explanation of the basis for the award decision" where the award was based upon factors other than price (FAR 8.405-2(d)). Agencies that order from FSS contracts regularly are missing an important feedback opportunity if they do not take time to explain to FSS offerors how to improve their offers in the future. For newer contracting officers, the less structured explanation required for FSS offerors can be a valuable learning opportunity to prepare for structured debriefings. In both FSS and FAR Part 15 procurements, agencies are encouraged to provide the maximum amount of relevant information to offerors, rather than focusing on sharing only the minimum that is legally required.

7.	**Misconception – "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.

Industry days, as well as pre-solicitation and pre-proposal conferences, directly benefit the government by promoting a common understanding of the procurement requirements, the solicitation terms and conditions, and the evaluation criteria. These events also benefit industry – especially small businesses – by providing prime contractors and subcontractors an opportunity to meet and develop relationships or teaming agreements that benefit contract performance. However, the value of these events derives from the government providing the maximum information to potential offerors on its requirements, answering questions, and improving the solicitation based on feedback from the potential offerors. In that way, the requirements can be made as clear as possible to assist potential offerors in providing the best solution to the government.

Strategy - where appropriate, use interactive web-based technology to expand the reach of the exchange, such as a live webinar with streaming video to immediately address questions from stakeholders. Consider combining this with immediate one-on-one meetings with vendors to make these engagements more useful, especially for large, complex requirements.

8.	**Misconception – "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.

Issuing a high quality solicitation requires engaging with industry on issues that go beyond the government's technical requirements. In order to appropriately price proposals and reduce the number of potential change orders, industry needs information about any unique terms and conditions, small business set-aside requirements, subcontracting goals, and other matters about which the contracting officer is the expert. Although industry may have had their best technical representatives engaged with the program manager, the contracting officer should communicate to vendors as much information as possible about the government's needs as early as possible. As a result of early communication, the contracting officer may learn some things that suggest that an

approach somewhat different than planned may cause increased competition, more small business participation, lower prices, or even a better definition of the government's technical requirements.

Strategy – Issue an RFI to make sure the government not only understands the capabilities of industry, but can develop or improve its acquisition strategy regarding contract type, performance requirements, performance work statements/statements of work, and performance metrics. Release a draft request for proposal, including sections L and M, to be sure the solicitation instructions are clear.

9.	**Misconception – "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.

While the FAR does contain some requirements on the length of time between issuance of solicitations and proposal due dates, often task and delivery orders do not have these requirements. Contracting officers should consider that allowing offerors additional time to prepare their proposals will likely yield better proposals, streamlined evaluations, and a reduction in the need for (or scope of) discussions. While the workforce is stretched thin and requirements often arise unexpectedly, shortcutting the proposal development process often results in fewer proposals, and/or proposals that are more difficult to evaluate. This situation can lead to expensive outcomes. Providing adequate time for vendor communication throughout the procurement process – including adequate time for proposals – indicates that the government is interested in obtaining the best outcomes. Contracting officers should have the full support of their customers in determining the right amount of time for receipt of proposals.

10.	**Misconception – "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, get fair consideration.

FAR Section 10.002 expressly allows for participation in interactive, online communications among industry, acquisition personnel, and customers. While agencies should ensure that these tools can be used securely and appropriately, their use should be encouraged to the maximum extent practicable. In accordance with OMB's 25 Point Implementation Plan to Reform

Federal IT Management, GSA and OMB will be developing an acquisition communications platform for launch in June 2011 that will increase collaboration on RFIs and draft RFPs, improve communication during question and answer periods, and otherwise support better engagement. Agencies may also have similar tools, and their use should be encouraged.

Strategy – Use the procurement forecast to generate interest and publicize those opportunities available to small businesses. Ensure that the points of contact on the forecast are aware of the content and timing of the release of the document so they can address any inquiries, consider holding an outreach session or webinar to announce the release or update, and don't bundle or overpromise requirements. Hold industry days, public meetings, or small business conferences, and consider hosting multiple outreach sessions for large or complex requirements.

Attachment 2

Vendor Communication Plans

Agencies should provide clear, consistent direction to their workforce and industry partners about how to engage with industry prior to the award of contracts and task and delivery orders under the Federal Supply Schedule, government-wide acquisition contracts, and other indefinite delivery/indefinite quantity contracts.

To ensure this, agencies shall develop high-level plans that include the core elements listed below. These plans should be general in nature and can build on existing guidance. OFPP will work with the agencies in the development of the community of practice discussed earlier to identify best practices, training opportunities, samples of guidance, and other information that may be helpful in developing these communication plans.

1) Statement of agency commitment to:

   a) Communicate early, frequently, and constructively with industry;
   b) Include small businesses and subgroups of small businesses in communications with industry;
   c) Include vendors that the agency has not worked with in the past;
   d) Identify, in the agency's published procurement forecast, which procurements are likely to involve opportunity for additional communication with industry; and
   e) Protect non-public information including vendors' confidential information and the agency's source selection information.

2) Identification of senior agency and bureau (if applicable) official responsible for promoting vendor engagement;

3) Brief description of efforts undertaken or planned to reduce barriers and promote engagement;

4) Criteria for identifying which acquisitions must include vendor input in the pre-award phase and the extent of the required engagement as a condition of approval by the agency's investment review board (or similar body). At a minimum, acquisition plans for high-risk, large-dollar, and complex programs, such as those for major IT systems and for re-competitions that need to attract new entrants to ensure adequate competition, should include a comprehensive vendor engagement strategy that:

   - includes at least one industry day or a pre-solicitation or pre-proposal conference; and
   - allows for a reasonable amount of one-on-one engagement; and
   - allows time for discussions, as needed and in accordance with FAR Part 15, during the proposal evaluation process; or
   - requires a written justification as to why those steps are unnecessary.

5) Publication of engagement events to include industry days, small business outreach sessions, pre-solicitation conferences, RFP question and answer sessions, etc. These shall be posted and updated regularly using the existing "special notices" function on www.fedbizopps.gov and on other sites as identified by the agency.[7]

6) Brief description of roles and responsibilities of the –

   a) Contracting Officer
   b) Program Manager
   c) COR/COTR
   d) General Counsel
   e) Ethics Officers
   f) OSDBU
   g) Other Officials[8]

7) Training and awareness efforts for employees and contractors;

8) Links to existing policies; and

9) Plans to follow-up with employees and industry representatives within 6 months of posting the vendor engagement plan, to further refine and improve communication, (e.g., post-award surveys of the contracting officers, program managers, and offerors for large, complex procurements, focus group meetings for general feedback).

[7] Instructions for posting such events on www.fedbizopps.gov will be provided to agency points of contact for vendor communication as needed.
[8] Such as those identified in the procurement forecast.

ATTACHMENT B – Communicating with Industry (Statutory Limitations)

The following are statutorily based limitations on communicating with firms and representatives of the vendor community.

- **Conflict of Interest Prohibition (18 U.S.C. § 208)**
  Government Officials may not participate in a matter that presents an actual or apparent conflict of interest.

- **Procurement Integrity Act (41 U.S.C. § 423)**
  Government officials may not disclose proprietary or source selection information.

- **Competition in Contracting Act (10 U.S.C. 2304)**
  Government officials may not give unauthorized preferential treatment to one firm but must treat all firms equally.

- **Trade Secrets Act (18 U.S.C. § 1905)**
  Government officials may not disclose trade secrets or other proprietary information without permission of the owner of the information.

  Government officials must protect procurement-sensitive information and information that would not otherwise be disclosed to the public under the Freedom of Information Act.

- **Federal Advisory Committee Act (5 U.S.C. App. 2)**
  Government officials must comply with the Federal Advisory Committee Act when seeking consensus advice or recommendations from a group that includes non-government employees.

ATTACHMENT C – "Rules" for Communicating with Industry

(What Program Officials/Managers and other staff members need to know before they meet with vendors and industry representatives)

Program Officials/Managers and other staff are encouraged to talk with industry of both large and small businesses so that DOC procurements reflect an understanding of the commercial marketplace and the business environment of the vendors that support DOC. This exchange of information, however, must take place within a framework that treats all vendors (and potential vendors) fairly and impartially. Your Contracting Officer is your best resource in preparing you for a vendor meeting; always inform your Contracting Officer before meeting with a vendor. The following guidelines will help a DOC Program Official/Manager and other DOC staff members to develop a framework and set of sound business principles when meeting with vendors.

THE RULE: After the agency needs are established and the requirements to satisfy those needs are developed, no exchange with industry and potential vendors shall occur without the permission and without the presence of the Contracting Officer. A procurement begins at the point when the agency needs are established and the description of the requirements to satisfy agency need is developed. In meetings with vendors or industry representatives, do not disclose "procurement sensitive" or "source selection sensitive" information; do not disclose the proposal evaluation process or the specifics of an on-going procurement; and do not discuss litigation or pending litigation. *No information shall be released after agency needs are established and the requirements to satisfy those needs are developed, except by the Contracting Officer.*

1. AVOID UNAUTHORIZED COMMITMENTS (i.e., an agreement that is not binding because the Government representative making the agreement lacks the proper authority to enter into that agreement on behalf of the Government.) **Good Practice**: End each vendor session with the statement: "Nothing discussed in this meeting authorizes you to work, start work, or bill for work. Any understanding on your part to the contrary is a mistake."

2. TREAT ALL VENDORS AND POTENTIAL VENDORS FAIRLY AND IMPARTIALLY

3. CONDUCT BUSINESS WITH INTEGRITY, FAIRNESS, AND OPENNESS. Not only must the acquisition process have integrity, but the actions of each DOC employee must reflect integrity, fairness, and openness. Avoid Organizational Conflicts of Interest or even the appearance of a conflict.

4. UNDERSTAND YOUR ETHICS RESPONSIBILITIES. Consult your Contracting Officer or your Ethics Officer in the Office of General Counsel if you have questions or concerns related to ethical conduct or procurement integrity.

5. BEFORE ACCEPTING A MEETING, NOTIFY YOUR CONTRACTING OFFICER. Your Contracting Officer may provide you with information about the vendor, their current contracts with DOC, or if they are active in proposing to a specific procurement. After agency needs are established and requirements to satisfy those needs are developed, **no** exchange with industry and potential vendors shall occur without the permission of and without the presence of the Contracting Officer. (See "The Rule" above).

6. CONTROL THE MEETING AND ITS AGENDA. Always prepare and follow a meeting agenda. Before the meeting, identify specific information that you want the vendor to address. You may limit the number of attendees and specify the mix of the vendor's business development and technical staff to attend.

7. EMPHASIZE THAT THE PRIMARY PURPOSE OF THE MEETING IS FOR THE GOVERNMENT TO LEARN ABOUT THE INDUSTRY AND MARKETPLACE. Ask questions and get an understanding of the advantages and issues associated with a particular approach or business practice. Ask the vendor clarifying questions, but avoid expressing opinions or preferences. The meeting should not be the basis for further action, and should not unintentionally solicit a proposal.

8. ALWAYS MAKE THE INFORMATION YOU PROVIDE THE SAME TO ALL VENDORS. Provide a standard information package to all vendors that provides up-to-date and accurate information about the mission and requirements. **Good Practice**: Provide vendors with information that could properly be published on the DOC public website. *You should not provide other-than-public information without prior written approval of your Contracting Officer and General Counsel.*

9. ENSURE IMPARTIALITY. Do not render to, or accept preferential treatment from any private party (e.g., VIP visitor treatment for vendors such as Government vehicle rides from the airport, officially hosted free dining). Further guidance is available for DOC employees from DOC's Ethics Counsel. Also avoid private discussions about a vendor's business and its relationship with DOC, except under the circumstances described in Attachment D, Guidelines for One-on-One Communications.

10. DOCUMENT THE RESULTS OF THE MEETING. Documenting the results and findings of the meeting is a critical part of your market research effort. Be sure to record the date; place; and meeting participants, including their company affiliation and contact telephone numbers/emails. Mark this document "Confidential Business Information" and limit its distribution if it contains proprietary data.

ATTACHMENT D – Guidelines for One-on-One Communication

(These guidelines only apply to vendor communications conducted by the Contracting Officer and Acquisition Team members before the Agency finalizes the requirements definition phase of a specific procurement and before the acquisition strategy is defined)

WHO: Knowledgeable individuals in Government and industry led by the Contracting Officer and organized by the Acquisition Team.

WHEN: During the requirements definition phase of an acquisition; before the release of a solicitation. After the release of the solicitation, the Contracting Officer must be the single focal point of any exchange with potential offerors.

WHY: "*The purpose of exchanging information is to improve the understanding of the Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements*" (FAR Part 15.201(b)). The sessions help develop acquisition strategies and solicitations that will ultimately provide the best opportunities for the program to meet its performance objectives. Federal participants gain an understanding of the current state of the marketplace, including commercial/Government best practices, industry capabilities, innovative delivery approaches, commercial market service levels, performance strategies and measures, and associated risks, and costs. These sessions may provide an opportunity for the Acquisition Team to explore new concepts of operations, methodologies, and business practices to meet the current need.

LIMITATIONS: Contracting Officers may discuss general information about the agency mission needs and future requirements. The Contracting Officer must avoid giving a vendor an unfair competitive advantage. All information must be given equally (and as nearly as possible, at the same time) to all interested parties to avoid the appearance of any improprieties. Ensure that no source selection or proprietary date is disclosed, including any potential vendor's confidential business strategy.

GUIDELINES FOR ONE-ON-ONE COMMUNICATION WITH VENDORS

FAR 15.201 provides the Contracting Officer guidance in conducting these meetings

- Develop a brief overview of the size, scope, and complexity of the program (such as a Concept of Operations or a general Statement of Need/Description of the Problem).
- Identify industry leaders. Analyze the industry and determine which vendors (and appropriate point of contact within the company) you need to contact for your market research needs. Document your rationale. There is no requirement to include every interested party in one-on-one meetings. At a minimum, a "representative" vendor from each of the various market segments providing the services.

- Develop a standard agenda and control the meeting by focusing on the agenda. Limit the meeting to a specific timeframe.
- Contact the vendor and explain what you are doing, give a brief overview of the size, scope, and complexity of the program, and indicate you will follow up with a letter.
- Send a letter requesting a meeting:
    - Provide a brief synopsis of the problem you are trying to solve.
    - Advise that the purpose of the meeting is to conduct market research needed to develop an acquisition strategy for a mission requirement.
    - Indicate that the vendor's standing in the marketplace is the reason it was selected to participate in the sessions.
    - In keeping with operational focus of the market research, request that the participants primarily be technical managers and operational staff from both their Government and commercial divisions.
    - Encourage the vendor to illustrate its discussions with samples and examples of best practices that they use on other Federal contracts or that they believe are pertinent to the requirements.

- Assign one Federal participant the role of meeting moderator to act as the meeting facilitator.
- Develop a script and set of questions for the Federal staff to use during the meeting. A script ensures that the sessions are conducted in a fair and consistent way. This practice ensures that all vendors hear the same message and that the meeting moderator conveys all the necessary information.
- Emphasize that the sessions are not in any way "evaluative" in nature, and they do not constitute a pre-proposal conference.
- Encourage communication between the Government participants and the vendor. Ask questions about the information presented. Explore the advantages and disadvantages of the approaches presented.
- Document each meeting immediately after it is held.
- Analyze the results of the meetings; identify lessons learned, trends, and performance measurement approaches. Prepare a Market Research Report that captures the analysis and conclusions. Consider transcribing the session to capture the information, but analyze and summarize the information into the report.
- Determine how the acquisition strategy should be affected based on the market research.

ATTACHMENT E – Market Research Report Template

A Market Research Report documents market research in a manner appropriate to the size, complexity, and urgency of an acquisition. In consultation with the Contracting Officer, the following template may be tailored to fit the market research needs and vendor outreach/engagement planned for a particular requirement. Use only those sections applicable to your requirement. If a section is not applicable, note that, and support with a brief explanation.

I. Authority

Market research is required in accordance with:

- FAR 7.012, Acquisition Planning Policy
- FAR 10.001, Market Research Policy

II. Background Information

Describe the background of the procurement and circumstances/events leading up to the requirement. Include:

- Program Office
- Other stakeholders
- Program Office Point of Contact
- Type of Acquisition (service or supply)
- Expected dollar value of requirement
- Related/Interdependent projects or programs
- Acquisition Team members, if applicable;

Name	Title	Office	Telephone	E-mail Address

- Timeframe in which the market research was conducted

III. Initial Requirements (as identified by the Program Office)

- Describe the Government's requirement in terms of:
  - Functions to be performed
  - Performance required and/or
  - Essential physical characteristics
- Discuss any cost effectiveness issues associated with requirement:
  - Any potential cost drivers? (e.g., additional costs from some other activity that may influence the cost of the requirement)
  - Any cost/performance tradeoffs? (e.g. an analysis of the value added relating to costs and performance levels)
- Describe the schedule requirements, e.g., performance periods and/or delivery due dates
- Identify the Advanced Acquisition Plan (AAP) number generated by Advanced Acquisition Planning System, and when the plan was published to the public (http://fido.gov/doc/aap/publicview.asp)
-

IV. Participants in Market Research

Describe the involvement of the individual Acquisition Team members and any participants in the market research effort. (The titles listed in the table below are examples)

Name	Title	Office	Telephone	E-mail	Role in Market Research
	Program Official				
	Contracting Officer				
	Contract Specialist				
	Small Business Specialist				
	Strategic Sourcing Specialist				
	Other				
	Other				

V. Market Research Techniques and Sources

Described techniques and sources used during the market research. The following table may help structure and summarize the techniques used in the market research effort.

Check if part of research	Sources Used in Market Research	Details of Research/Comments
	Advance Acquisition Plan Reviewed	
	Acquisition history reviewed	
	Other recent market research reviewed	
	Interviewed knowledgeable individuals in industry	
	Interviewed knowledgeable individuals in Government	
	Government Databases reviewed	
	Commercial Databases reviewed	
	Participated/Attended Tradeshows and Industry Conferences	
	Professional Journals reviewed	
	Source Lists of DOC and other Govt Agencies reviewed	
	Catalog and Product literature reviewed	
	Participated in DOC SB Vendor Outreach	

	Sessions	
	Reviewed requirements with Small Business Specialist	
	Reviewed existing DOC-wide and Multi-component contract vehicles including DOC strategic sourcing initiatives	
	Other	
	Other	
Check if part of research	**Sources Used in Market Research**	**Details of Research/Comments**
	Priority Sources Reviewed	
	Supplies: Agency Inventories	
	Supplies: Excess from other Agencies	
	Supplies: Federal Prison Industries at http://www.unicor.gov	
	Supplies: Procurement List maintained by the Committee for Purchase from People who are Blind and Severely Disabled (Ability One) (Formerly Javits-Wagner O'Day (JWOD) at http://www.abilityone.gov	
	Supplies: Wholesale supply sources (e.g., GSA)	
	Supplies: Mandatory Federal Supply Schedules accessible through http://www.gsa.gov	
	Supplies: Optional Use Federal Supply Schedules (access GSA Advantage) at http://www.gsa.gov	
	Supplies: Commercial Sources (includes educational and non-profit institutions)	
	Other	
	Services: Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (Ability One) (Formerly Javits-Wagner-O'Day (JWOD) Program at http://www.abilityone.gov	
	Services: Mandatory Federal Supply Schedules	
	Services: Optional Use Federal Supply Schedules	
	Services: Federal Prison Industries	
	Mandatory sources reviewed (per FAR Part 8) if applicable for: - Public Utility services -Printing and related supplies -Leased motor vehicles -Helium	

	Services: Commercial Sources (includes educational and non-profit institutions	
	Other	
	References/Sources Checked	
	Existing intra-/interagency contract vehicles, e.g., Interagency Contract Director at: https://www.contractdirectory.gov/contractdirectory/ and existing DOC-wide and Multi-component contract vehicles (e.g. Strategic Sourcing Initiatives, such as FSSI BPA for Office Supplies; DOC-wide vehicles such as NOAA Link for IT)	
	Central Contractor Registration (CCR) at http://www.ccr.gov	
	Department of Labor Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determination information at http://www.wdol.gov	
	Past Performance Information Retrieval System (PPIRS) at http://www.ppirs.gov or Contractor Performance Assessment Reporting System (CPARS) at http://www.cpars.csd.disa.mil/cparsmain.htm	
	Excluded Parties List System (EPLS) at http://www.epls.gov	
	Industry Communication/Engagement	
	Industry Days	
	Industry Conferences	
	Sources Sought Notices: Request for Information (RFI)	
	Sources Sought Notices: FedBizOpps at http://www.fedbizopps.gov	
	Presolicitation Conference	
	Preproposal Conferences	
	Site Visits	
	One-on-One Vendor Discusions	
	Other	
	Other	

VI. Identify Product/Services and Sources Able to Meet the Requirement

- Identify or describe:
  - Product/Service, including any brand name product information
  - Product/Service characteristics and/or capabilities
  - Company information (e.g., name, POCs, address, telephone number, e-mail address, website)
  - Company characteristics, past performance, and business category

Business Category	Name of Potential Source(s)/Other POC Information
Large Business	
Small Business	
Small/disadvantaged business	
Section 8(a) business	
Woman-owned business	
HUBZone small business	
Veteran Owned small business	
Service Disabled Veteran Owned Small Business	

- If sole source, describe efforts to locate additional sources

VII. Description of the Commerce Marketplace

- Describe marketplace
- Assess Government's leverage in marketplace, e.g., describe the Government's negotiation strengths and/or weaknesses in the market
- Describe the nature of other market participants, e.g., other governments (foreign, state/local), commercial firms, etc., and discuss how other buyers for the same product or service may affect your purchase.
- Identify availability of commercial or non-developmental items that satisfy requirements (value or shortcomings of each) and sub-component.

VIII. Prevalent Business Practice

- Identify standards/customary terms and conditions and industry business practices (include information on payment, freight delivery, acceptance, and warranties).
- Describe generally accepted business practices that differ from standard Government practices
- Discuss if contract financing is applicable. If so, ensure compliance with FAR 32.202-3, Conducting Market Research About Financing Terms
- Discuss any laws or regulations unique to the requirement

IX. Pricing and Market Issues

- Identify price sources (e.g., market price, catalog, GSA, etc.), price ranges and price variations.
- Describe market trends for product or service, e.g., technical, business, and pricing.
- Describe how the application of cost or pricing market information collected from market research will be used in the development of the Independent Government Cost Estimate for the requirement.

X. Other Considerations

- Identify other considerations gathered from market research, e.g., opportunities to "unbundle" requirements to enable more contracts and subcontracts to small, small disadvantaged and other socio-economic procurement categories.

- Discuss quality factors, including such issues as past performance, references, product testing or evaluation, customer satisfaction, warranties, and quality problems
- Describe consideration of environmentally preferable and energy efficient products and services (i.e., the full range within Sustainable Acquisition or "Green Procurement")
- Discuss Buy American Act applicability.
- Discuss Trade Agreements Act applicability.
- Other

XI. Market Analysis Summary

- Summarize the market research techniques and resources used in the market research.
  - Identify:
    - . Products/Services available
    - . If Commercial/Non-Developmental/Developmental Product/Service
    - . Sources (companies, etc.)
    - . Types of Businesses (large, small, etc.)
    - . Pricing
  - Summarize:
    - . Market conditions (commercial marketplace)
    - . Customary commercial practices
    - . Other considerations
- Provide market research conclusions and recommendations
- Document the decision and rationale to satisfy the agency's need with a commercial item/service, is market research so warrants.
- Document the decision and rationale if the agency's need *cannot* be satisfied with a commercial item/service
- Provide supporting documents, as appropriate

Yes	No	Market Analysis Summary
		Are there products/services and sources capable of satisfying the Government's requirement?
		Are commercial items available to meet requirements?
		Are commercial items available that could be modified to meet requirements?
		Are commercial items available that could meet requirements if the requirements are modified to a reasonable extent?
		Are available items available for Government purposes?
		If commercial items are not available, are non-developmental items available to meet requirements?
		If commercial items are not available, are non-developmental items available that could be modified to meet requirements?
		If commercial items are not available, are non-developmental items available that could be modified to meet requirements if the requirements are modified to a reasonable extent?
		Could commercial items or non-developmental items be incorporated

		at the component level?
		Provided: Customary Industry terms and conditions including warranties, buyer financing, discounts.
		Provided: Requirements of any laws and regulations unique to the item being acquired
		Provided: Extent of competitive environment
		Provided: Environmental Considerations and concerns
		Provided: SAFETY Act considerations/applicability
		Provided: Distribution and support capabilities of potential vendors, including alternative arrangements and cost estimates
		Provided: Size and status of potential sources (including small business status and if use of source is required by FAR Part 8)
		Provided: Identify available commercial items and describe the respective merits and shortcomings of each
		Provided: Description of any market conditions that may be time sensitive or change supply or demand, technology, laws, and supplier costs, etc.
		Provided: Identification of potential sources. Description of capabilities of individual vendors, pricing information, delivery schedules, and standard terms and conditions, such as incentives and warranties.
		Provided: Any market surveys developed by industry or federal agencies
		Provided: Pricing issues, price ranges, and price variations
		Provided: Description of industry/market trends—technical/pricing/business, etc.
		Provided: Buy American Act Consideration
		Provided: Trade Agreements Act Consideration
		Provided: Other: Specify
		Provided: Other: Specify