

Shaping Federal Procurements

There are misunderstandings by contractors and federal employees involved in the acquisition process about how to engage in legal, ethical pre-solicitation communications with one another. According to FAR 2.002, pre-solicitation communication by government officials with industry is the best source of market information needed to conduct effective and efficient procurements. Those communications can be in the form of conferences, public hearings, market research, pre-solicitation notices, draft RFP's, Requests for Information, site visits and one-on-one meetings. It is the one-on-one meetings that are the most misunderstood and difficult to obtain.

One-on-one meetings are lawful pre-solicitation communications. According to the National Contract Management Association (Nov. 2017 issue of CM magazine):

- Effective communications involve industry exchanges with contract and requirements (program) officials.
- General marketing campaigns are not as effective as government contractors connecting directly with program and contract officials
- Early and specific industry input about what works, what does not work or how something can be improved is valuable.

The opening chapter of the FAR acknowledges that fairness and openness cannot exist without open communications; therefore it encourages effective communications between government and industry. The allowable topics include contract type, terms and conditions, acquisition schedule, feasibility of requirements, the statement of work, data requirements, proposal instructions, approach to evaluating past performance and other matters of industry concern or suggestions on innovations to address the government's needs.

The government wants innovative solutions that meet their needs and reduce costs. It is incumbent upon contractors to understand thoroughly the requirements of upcoming agency solicitations and to articulate their suggestions, solutions and questions within the parameters of public policy. Successful contractors gather and analyze publicly available information about upcoming solicitations. This data may be in the form of procurement forecasts, acquisition strategies, agency strategic plans, public presentations, and a variety of documents posted on agency and procurement solicitation websites.

An essential first step to obtaining a one-on-one meeting with a government requirements or contracting official is to express an in-depth understanding of the agency's needs. Then, articulate your differentiators, value proposition, product features and benefits, knowledge,

skills and competencies within that context. Include metrics, case studies and other validation of your assertions.

Government procurement officials are also required to conduct market research to determine whether commercial or non-developmental items are viable to meet agency requirements. And, in some cases, as in the private sector, government agencies are unaware they have a requirement for a specific technology until they have been educated about its availability and benefits. Being educated about industry trends, technologies and innovations is an important part of a fair, efficient government procurement process.

Restrictions on pre-solicitation communications are to avoid favors in exchange for bidding information, conflicts of interest, the appearance of conflict of interest, impropriety, bias, preferential treatment or collusion.

The government is not allowed to share with vendors, proprietary information submitted by other vendors, including cost information. And acquisition professionals must ensure equal access to beneficial, competitive information regarding the upcoming procurement by all bidders.

However, information that can be shared with vendors during pro-solicitation include information related to prior incumbent contracts, historical data on the procurement at issue, contact information for program or acquisition officials, and the number of personnel performing the contract.

Understanding how to engage legally, ethically and openly in pre-solicitation conversations with program and contract officials helps you better position your company's products and services for acquisition.

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