

DOE Vendor Communication Plan

I. Background

On February 2, 2011, the Office of Federal Procurement Policy (OFPP) issued a memorandum entitled “Myth-Busting: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.” In addition to identifying and refuting common misconceptions about vendor engagement, the memorandum directed agencies to develop high-level vendor communication plans to discuss how each agency will reduce unnecessary barriers, publicize communication opportunities, and prioritize engagement opportunities for high-risk, complex programs or those that fail to attract new vendors during re-competitions.

II. Statement of Agency Commitment

The Department is committed to early, frequent, and constructive communication with its industry partners during the acquisition process. We believe that this communication is critical to every phase of the acquisition process, from market research through contract performance. Accordingly, it is the Department’s policy that contracting officers should interpret their responsibilities for information disclosure broadly and disclose the maximum information permitted by law and regulation about Departmental needs to industry during the acquisition process. Of course non-public information including vendors’ proprietary data and agency source selection information must always be protected. The Department’s commitment to vendor communication extends in a special way to small businesses, and those businesses with which the Department has not worked in the past.

III. Identification of Senior Agency Official Responsible for Promoting Vendor Engagement

Each Head of Contracting Activity (HCA) shall serve as an Ombudsman responsible for promoting vendor engagement.

IV. Description of Efforts Undertaken or Planned to Reduce Barriers & Promote Engagement

The Department has long sought to encourage appropriate and effective communication with its industry partners during the acquisition process. It has published several guides for use by acquisition personnel, including *DOE/HR-0194 “Let’s Talk: Acquisitions and Communications”* and *“Tools for Improving Industry/Government Communications During the Procurement Process”*. These guides provide a wealth of

information to acquisition personnel regarding the available tools to increase vendor engagement, as well as practical “do’s and don’ts” of disclosure.

Despite this consistent guidance and the flexibilities provided by the Federal Acquisition Regulation, a culture of risk aversion continues to exist. The primary barrier to improving communication is simply a reluctance to do so on the part of acquisition personnel, out of fear of protest or otherwise compromising the integrity of the process. Therefore, in order to further encourage responsible communication with industry, the Department plans to increase awareness of the benefits of vendor communication, while increasing its utilization of the following proven techniques and incorporating recent best practices:

(a) Industry Days

The Department has periodically conducted “industry day” type events in the form of Program Acquisition Conferences and General Acquisition Conferences. The former are held in order to allow the Department to explain its overall programmatic needs and mission requirements and to solicit questions from industry. Industry participants learn the status of programs and the Department’s priorities first hand, while the Department can request market information about products and capabilities to inform the development of a successful acquisition strategy. The latter are focused on improving the acquisition process by seeking feedback regarding the Department’s acquisition philosophy and practices.

(b) Requests for Information and Draft Solicitations

Requests for information are a useful market research tool that the Department utilizes to solicit preliminary information from industry to identify potential sources and capabilities in the marketplace. This information can be critical in developing a realistic acquisition strategy with a high probability of meeting programmatic requirements.

Draft solicitations are often useful for technically complex competitive acquisitions, or when unique contractual approaches are employed. The document should be as complete as possible, containing draft specifications, evaluation factors and key terms and conditions. Industry often provides useful comments and insights that enable the Department to fine-tune the solicitation and maximize the chances of success.

The Department will investigate and consider encouraging the use of emerging social media solutions for pre-award collaboration, like on-line wikis similar to the GSA Better Buy Project.

(c) Pre-solicitation & Pre-proposal conferences

Pre-solicitation conferences allow the Department to explain the particulars of a specific acquisition, including anticipated milestones and to answer industry questions. These conferences often provide an effective way of facilitating communications between potential prime and subcontractors. The conferences are especially useful when conducted following the release of a draft solicitation. Attendee lists should be published quickly in order to facilitate teaming (especially useful for small businesses).

Pre-proposal conferences are an excellent opportunity for potential offerors to obtain clarification of doubtful elements of the solicitation and to provide any necessary feedback in order to ensure the Department receives high quality proposals and avoids future problems.

(d) One-On-One Engagement with Industry

Since our industry partners are often (understandably) reluctant to share useful information in a public forum for fear of losing their competitive advantage, one-on-one meetings can be a very effective communications technique, especially during the market research and pre-solicitation phases of the acquisition process. They can also be incorporated into pre-solicitation conferences as breakout sessions for increased efficiency and value. It is important to remember that if discussion of potential contract terms and conditions is contemplated, the Contracting Officer must be included (FAR 15.201(c)(4)).

(e) Maximum disclosure at debriefings, and feedback sessions for procurements that don't require formal debriefings

When done well, debriefings and informal feedback sessions for unsuccessful offerors can be valuable tools for increasing effective competition in the future by improving the quality of future proposals. Sometimes Contracting Officers, out of fear of protest, conduct debriefings in a minimalist fashion, providing only the required minimum elements identified at FAR 15.506(d). While point-by-point comparisons and disclosure of information prohibited from release or exempt from release under FOIA shall not be made, the Department encourages its Contracting Officers to make their debriefings as meaningful as possible by providing the maximum amount of relevant information. For instance, sharing the evaluated strengths of an offeror's proposal, along with its weaknesses and deficiencies, is often much appreciated.

In the same spirit, the Department encourages its Contracting Officers to provide meaningful feedback (when requested) in circumstances where debriefings are not required

by the FAR, such as task or delivery order awards placed against Federal Supply Schedules. Contracting Officers are already required at FAR 8.405-2(d) to “provide a brief explanation of the basis for the award decision”, and this explanation should be sufficiently thorough (while remaining brief) to constitute meaningful feedback.

V. Criteria for Identifying Acquisitions which must Include Vendor Engagement in the Pre-Award Phase

In order to ensure that appropriate vendor engagement is obtained for the agency’s most critical acquisitions, all acquisition plans for contracts expected to exceed \$100M (including options), and for all contracts defined as “Capital Asset Projects” or “Major IT Investments” within the meaning of the DOE Capital Planning and Investment Control (CPIC) program, in conjunction with the investment review processes outlined in DOE Orders 413.3b, “Program and Project Management for the Acquisition of Capital Assets” and 200.1a, “Information Technology Management” must include a comprehensive vendor engagement strategy that includes at least one industry day or pre-solicitation or pre-proposal conference, allows for a reasonable amount of one-on-one engagement, and allows appropriate time for discussions as needed and in accordance with FAR Part 15 during the proposal evaluation process. Acquisition plans which lack any of these requirements must include a justification as to why the omitted steps are deemed unnecessary.

VI. Publication of Engagement Events

All vendor engagement activities, including industry days, small business outreach sessions, pre-solicitation/pre-proposal conferences etc. shall be posted publicly and updated regularly using the “special notices” function on FedBizOpps (see Policy Flash 2011-53). Depending on the circumstances of the instant acquisition, it may be appropriate to consider additional methods of publication to facilitate the participation of otherwise highly qualified sources who may not be current government contractors.

VII. Roles and Responsibilities in Vendor Communication

a) Contracting Officer (CO): The role of the CO in the vendor communication process is critically important. Typically the CO, in collaboration with the program office will determine which vendor communication techniques are appropriate for the instant acquisition and they will jointly execute the chosen strategies. The CO should especially consider methods that may generate new entrants to the market in order to increase competition, and collaborate with the OSDBU to reach out to small businesses. CO’s should be aware of the contents of the agency procurement forecast, and ensure that the entry for the instant acquisition is accurate. After the solicitation is released, the CO must be the focal point for all communications with offerors.

b) Program/Project Manager (PM): The PM is typically the procurement initiator, and has an extensive role in the acquisition process. Regarding vendor communication, the PM is heavily involved in the market research process and will usually provide the technical subject matter expertise in meetings with industry (one-on-one or pre-solicitation conferences). As soon as a need is identified, the PM should inform the CO about the level of vendor engagement needed to conduct effective market research, and assess the expected level of competition and associated need for introducing new entrants to the market. Any pre-solicitation vendor engagement activities should be coordinated with the CO (though the CO need not attend).

c) Contracting Officer's Representative (COR): The COR has an extensive role in the contract administration phase, performing technical oversight functions as delegated by the CO. He should always keep the CO informed, and document important events and communications as appropriate. The COR must remember to be cautious and not let communications with the contractor turn into constructive changes to the contract which could increase cost and delay performance.

d) General Counsel: General Counsel serves in an advisory role and seeks to ensure that the acquisition team's actions are in accordance with statute and regulation. Accordingly, counsel should encourage communication to the maximum extent practicable, and advise the acquisition team on what is considered appropriate communications in terms of content, delivery, and methodology.

e) Ethics Officers: Agency ethics officers are a valuable resource available to the acquisition team that are particularly useful in resolving or mitigating potential conflicts of interest and other ethical situations that may arise. DOE intends to encourage the inclusion of vendor communications in the annual ethics training to clearly explain what is permissible, not just what is prohibited.

f) Ombudsman for Vendor Engagement: This senior official, identified in paragraph III, is responsible for the overall contracting activity effort to improve engagement with large and small businesses, increase awareness of the need to communicate with industry effectively, and to seek feedback on the agency's outreach efforts on a regular basis.

g) Acquisition Career Manager: The ACM should ensure that everyone is informed of training opportunities to improve vendor engagement.

h) OSDBU: The Office of Small & Disadvantaged Business Utilization advocates for the increased use of small and disadvantaged businesses in agency procurements. They maintain and publish the DOE Acquisition Forecast which provides extensive information on

potential prime and subcontracting opportunities. They host an annual small business conference that is very well attended and offers educational workshops, speakers, and business matchmaking sessions.

VIII. *Training and awareness efforts for employees and vendors*

FAI is developing a continuous learning module which will help participants to develop a better understanding of permissible communication during the acquisition process. All personnel involved in the acquisition process are encouraged to complete this module when it becomes available on the FAI website – www.fai.gov .

IX. *Links to Existing policies*

- DOE/HR-0194 *Let's Talk: Acquisitions and Communications*
http://energy.gov/sites/prod/files/maprod/documents/Acquisitions_Communications.pdf
- *Tools for Improving Industry/Government Communications During the Procurement Process*
http://energy.gov/sites/prod/files/maprod/documents/Tools_for_Improving_Industry_Communications.pdf
- Acquisition Guide Chapter 7.1, *Acquisition Planning* (pg 16)
[http://o.management.energy.gov/documents/AttachmentFlash2011-40\(3\)\(3\).pdf](http://o.management.energy.gov/documents/AttachmentFlash2011-40(3)(3).pdf)
- Acquisition Guide Chapter 15.1, *Source Selection Guide*
<http://o.management.energy.gov/documents/AcqGuide15pt1.pdf>

X. *Follow-up Plans*

Within six months following the release of this plan, the Office of Procurement & Assistance Policy (OPAP) will follow up with employees and industry representatives to gain feedback and to further refine and improve communication as necessary. OPAP may conduct surveys of contracting officers, program managers and offerors for large, complex procurements and/or conduct focus group meetings as appropriate.