

***\*\* Please share these Notes within your agency! \*\****

## **Notes from the Administrator**

**July 2011**

### **White House Forum on Accountability in Federal Contracting**

On July 7<sup>th</sup>, I had the pleasure of joining Jeff Zients, the Federal Chief Performance Officer, as co-hosts of a White House Forum on Accountability in Federal Contracting. This event was an opportunity to highlight the progress that the acquisition workforce has made, and to recognize all of your hard work in successfully increasing competition, buying smarter, and reducing use of high-risk contracts. Jeff provided context for the event by highlighting the recent launch by the President and the Vice President of the Campaign to Cut Waste, and by providing three specific examples – improper payments, real property reductions, and IT reform – where the Administration’s efforts have saved billions of taxpayer dollars. He then focused in on the acquisition area, emphasizing all of the hard work of acquisition professionals across the government, which has led to agencies buying less, pooling their purchasing power to drive down costs, and minimizing use of time-and-materials and sole-source contracts. All of that work has led to very substantial savings – because of your work, the unsustainable pace of contract spending growth has been reversed, and agencies spent \$80 billion less than they would have spent had contracting continued to grow at those previous rates.

In addition to highlighting this overall progress, the Forum allowed us to highlight some areas where, together, we’ve made a difference. This includes acquisition planning, where new guidance on the creation of specialized IT cadres will allow for better contracts awarded at more competitive prices, and where a new report allows us better insights into how we’re doing in obtaining competition, both for contracts and for task- and delivery-orders. It also includes post-award contract management, where new, more rigorous certification requirements for civilian-agency contracting officer representatives should better protect the government’s interests during contract performance.

It was especially helpful that we got to then hear from three agency leaders, who highlighted specific successes within their organizations. Rafael Borrás, Under Secretary for Management at the Department of Homeland Security, discussed the DHS Efficiency Review Initiative, which is working across the agency to reduce costs, streamline processes, eliminate duplication, and improve customer service. Hilda Arellano, Counselor at the US Agency for International Development, discussed USAID’s increased efforts to root out irresponsible contractors who waste valuable agency resources. And Richard Ginman, Director of the Defense Procurement and Acquisition Policy Office within the Office of the Undersecretary of Defense for Acquisition, Technology, and Logistics, discussed a terrific effort within the Navy that led to more than \$1 billion in savings on a large IT procurement.

And, last but not least, this Forum served as the launch point for our next initiative: as part of the Campaign to Cut Waste, we announced a goal of reducing spending on management support service contracts by 15% by the end of FY 2012 – a reduction of \$6 billion. We focused on this area for a number of reasons. First, these services are frequently cited as creating a potential risk of overreliance on contractors for critical activities related to agencies’ missions and operations. Next, in the past decade agency spending in this area has nearly quadrupled, far outpacing the already-fast growth in contract spending that you’ve all worked so hard to reverse. Finally, agencies are twice as likely to buy these services using high-risk contract pricing arrangements that put agencies – and taxpayers – at greater risk.

A recording of the event is available from the White House website at:

<http://www.whitehouse.gov/photos-and-video/video/2011/07/07/white-house-forum-accountability-federal-contracting>. A blog about the event appeared on OMB’s webpage at this address: <http://www.whitehouse.gov/blog/2011/07/21/cutting-waste-contracting>.

### **Myth-Busters**

We are continuing with our “Myth-Busters” campaign – our effort to break down perceived barriers to communication between the government and industry, especially in the early stages of acquisition planning. We are promoting this effort at every opportunity (indeed, you’ll see a specific vendor engagement event listed below), listening to feedback and concerns from our workforce at the agencies, as well as discussing the challenges and opportunities with contractors. As part of that ongoing effort, I met this week with ethics officials from a number of agencies, and was pleased to hear them confirm that the Myth-Busters memo is fully consistent with ethics rules. We are also working on a new memo (“Myth-Busters II”) about myths that industry has about the federal acquisition process, such as the idea that agencies don’t like to compete contracts. As always, if you have ideas on how we can make more progress in changing the culture to increase government-industry communication, please share those ideas with us.

### **Thoughts on One-bid Competitions**

As you know, one circumstance that presents a heightened risk to the government, and the taxpayer, is the case where a solicitation is issued competitively, but only one bid is received. Because such circumstances do not allow for adequate price comparison, the government is left with less information in establishing whether or not the prices offered by the sole offeror are fair and reasonable. The Department of Defense is considering addressing this heightened risk in a

novel way – DoD has recently issued a proposed rule<sup>1</sup> that would amend the Defense Federal Acquisition Regulations Supplement (DFARS) to re-solicit (for at least 30 days) any solicitation that originally allowed for fewer than 30 days of response time and received only one offer. In those cases where the original solicitation allowed for more than 30 days for receipt of proposals and only one offer was received, the contracting officer would be required to take additional actions to ensure fair and reasonable prices through cost or price analysis, or enter into negotiations with the offeror. I'm very supportive of looking for innovative ways to reduce this high-risk situation, so I commend DoD for this initiative. That said, I look forward to hearing about the comments that come in on the proposed rule. For that matter, if you have thoughts you'd like to share with me on this important topic, feel free to contact me at [dgordon@omb.eop.gov](mailto:dgordon@omb.eop.gov).

### **Small Business Contracting**

As we move into the final stretch of the fiscal year, we are focused on driving up our numbers for small business contracting. That means looking for opportunities for small businesses in the end-of-the-year buying. Fortunately, our acquisition professionals know the tools that can help, such as utilizing GSA Schedule buying and 8(a) set-asides, and reaching out to agency OSDDBUs or to SBA's procurement center representatives, who can help identify small businesses capable of fulfilling agency needs<sup>2</sup>. Anything that you can do to help us meet – and exceed – our small business goals, while meeting our user needs, is critical at this time of the fiscal year.

### **Strategic Sourcing Progress Update**

I mentioned last month that June was a banner month for our Federal Strategic Sourcing Initiatives (FSSI), and I can now report that we set yet another record for sales through the OS2 office supplies vehicle. In June alone, sales topped \$20 million, bringing total sales through the first year of this program to just over \$120 million. And as that volume continues to rise, even greater discounts are available. If your agency, or your colleagues, are not yet taking full advantage of this opportunity to both save money and help achieve small business contracting goals, we strongly encourage you to do so. And right over the horizon are government-wide strategic sourcing vehicles for print management, wireless service, and software licenses – buying smarter is spreading!

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<sup>1</sup> Available here: [http://www.federalregister.gov/articles/2011/07/25/2011-18379/defense-acquisition-regulations-system-defense-federal-acquisition-regulation-supplement-only-one?utm\\_content=previous&utm\\_medium=PrevNext&utm\\_source=Article](http://www.federalregister.gov/articles/2011/07/25/2011-18379/defense-acquisition-regulations-system-defense-federal-acquisition-regulation-supplement-only-one?utm_content=previous&utm_medium=PrevNext&utm_source=Article)

<sup>2</sup> Contact information for SBA's PCRs is available here: <http://www.sba.gov/content/government-contracting-field-staff-directory>.

## **Bid Protest Jurisdiction for Civilian Agency Task Orders**

There have been some confusing developments regarding jurisdiction over protests involving task-orders and delivery-orders placed under multiple-award contracts. A few years ago, GAO was given exclusive authority to hear such protests when the task order involved exceeded \$10 million, but this authority was set to sunset on May 27, 2011. As is often the case, the authority appears in two places: title 10 of the United States Code for protests relating to awards from DoD, NASA, and the Coast Guard; and title 41 for most civilian agencies. Congress recently extended the sunset provision for title 10 agencies, but, for various reasons, they didn't do the same for civilian agencies covered by title 41.

To implement the statutory change, an interim FAR rule was published a few weeks ago (see below). It was designed to implement the extended sunset date for the title 10 agencies, and in recognition of the fact that the authority in title 41 had not been extended, the following sentence appeared in the rule's Federal Register preamble: "With this change, contractors will no longer be able to protest task or delivery orders awarded by agencies other than DoD, NASA, and the Coast Guard."

In their own recent interpretation of the relevant laws and the sunset provision, GAO came to the opposite conclusion: GAO issued a bid protest decision, called *Technatomy*, in which they state that the sunset provision means, not that they now can't hear civilian-agency task-order protests, but that they now have *broader* jurisdiction: they can now consider civilian-agency protests of task orders of any dollar value and are no longer limited by the \$10 million minimum. Everyone hopes that this inconsistent reading of the impact of the sunset provision will get resolved (for example, by Congressional action) but, in the meantime, if you're in a civilian agency covered by title 41 and one of your task orders gets protested, you'll definitely want to get guidance from your agency lawyers.

## **Workforce Development**

- **Effective Vendor Engagement: Start the Conversation!** Join the Office of Federal Procurement Policy (OFPP) at a seminar on August 10 at 1 PM at GSA HQ Auditorium (1800 F Street, NW, in Washington) to learn how to effectively use vendor engagement to improve acquisition outcomes. We'll start with some popular government myths, then look at a couple of agency success stories, and finish with a stellar panel of acquisition and IT leaders who have had experience in both the government and private sectors. If you've got questions, we'll have plenty of time for you to ask the experts! Please invite both your government and industry colleagues. Government attendees should register in FAITAS at [www.fai.gov](http://www.fai.gov); industry attendees should send an RSVP to Gloria Poole at [gloria.poole@fai.gov](mailto:gloria.poole@fai.gov). If you have any questions, contact Joanie Newhart at

[jnewhart@omb.eop.gov](mailto:jnewhart@omb.eop.gov).

- Confused about how upcoming changes to the Contracting Certification Program affect you? You may have heard that DoD is changing its contracting certification program effective October 1, 2011. However, the Federal Civilian agency certification program is not scheduled to change at that time. The Federal Acquisition Institute (FAI) has recently kicked off the Contracting Functional Advisory Board (CON-FAB), a multi-agency group of contracting experts. These experts will make recommendations for refreshing the Federal Acquisition Certification in Contracting (FAC-C) program. FAI is working closely with both the federal civilian agencies and the Defense Acquisition University to ensure that any changes to the certification program are designed to best prepare the Federal civilian workforce for success, and that ample transition time will be provided for any changes to the program. So stay tuned! If you have any questions, contact Joanie Newhart at [jnewhart@omb.eop.gov](mailto:jnewhart@omb.eop.gov) or Molly Parker at [molly.parker@fai.gov](mailto:molly.parker@fai.gov).
- Specialized IT Acquisition Cadre Guidance – On July 13, OFPP issued guidance on developing specialized IT acquisition cadres<sup>3</sup> which describes how agencies can: (1) design and organize a cadre of contracting professionals, program managers (PMs), and contracting officer’s representatives (CORs) to ensure these functions work closely throughout the process to achieve program goals, and (2) strengthen the skills and capabilities of this specialized acquisition cadre to improve outcomes. A community of practice (CoP) has been developed on the OMB MAX system (available at <https://max.omb.gov/community/x/3ZA5Ig>), and we need your help to populate the CoP with best practices, information on training and development opportunities, and other resources to help agencies develop this cadre. Please send any documents you would like to share to Joanie Newhart at [jnewhart@omb.eop.gov](mailto:jnewhart@omb.eop.gov).

### **Changes to the FAR**

On July 5<sup>th</sup>, Federal Acquisition Circular (FAC) 2005-53 was published in the Federal Register. The FAC incorporates a number of changes to the FAR, including:

- A final rule adopting the interim rule on equal opportunity for veterans, which implemented Department of Labor regulations on equal opportunity provisions for various categories of military veterans;
- A final rule defining the requirements for agency use of unique procurement instrument identifiers (PIIDs), and extending the use of PIIDs to solicitations, contracts, and related procurement instruments;

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<sup>3</sup> Available here: <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/guidance-for-specialized-acquisition-cadres.pdf>.

- A final rule adopting an interim rule requiring that suspension and debarment requirements flow down to all subcontracts except those for commercially available off-the-shelf items, and in the case of commercial items, to the first-tier only;
- An interim rule that extends the sunset date for protests against awards of task or delivery orders by DoD, GSA, and the Coast Guard (see the section on bid protest jurisdiction above for more information on this change);
- A final rule adopting the interim rule revising FAR clause 52.223-18 to encourage the adoption and enforcement of policies that ban text messaging while driving company-owned or –rented vehicles or government-owned vehicles; or privately-owned vehicles when on official Government business or when performing work on behalf of the Government; and
- A final rule amending the FAR to require that compound interest payments be applied to government overpayments as a result of defective cost or pricing data.

For more details about any of the above, the FAC can be accessed here:

<http://www.federalregister.gov/articles/2011/07/05/2011-16671/federal-acquisition-regulation-federal-acquisition-circular-2005-53-introduction#p-14>.

### **Notes from the Administrator Photo Caption Contest**

We at OFPP know how hard all of you in the acquisition community work, day in and day out, to ensure that you are the best possible stewards of the taxpayers' dollar. And many of you are aware of our very serious emphasis on promoting fiscal responsibility, developing the acquisition workforce, and rebalancing the government's relationship with contractors, either from hearing me speak or from reading these newsletters. But given how hard all of you work, it is important to take a moment from time to time to take things just a little bit less seriously.

It's in that spirit that the OFPP staff offers you the first Notes from the Administrator Photo Caption Contest. Without my knowledge, our fine staff got hold of the photo of me taken last year at a conference hosted by Acquisition Solutions. With some trepidation on my part, our OFPP staff invites you to submit your ideas for the best caption for this photo, subject to a few conditions. First, successful submissions should be related, in some way, to government acquisition. Next, they should be funny! And finally, they should be tasteful. If you would hesitate to claim your submission in front of your supervisor or your mother, it isn't appropriate for this contest.



Please send suggested captions (along with your name and agency) to Jeremy McCrary at [jmccrary@omb.eop.gov](mailto:jmccrary@omb.eop.gov) by August 15th, and we'll publish the winners in the next issue of the newsletter.

That's all for now, but I want to again thank you for everything that you do to ensure that our agency customers' needs are met and our citizens' tax dollars are prudently spent.

Daniel I. Gordon  
Administrator for Federal Procurement Policy

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Issues of Notes from the Administrator are available online for any employee of the executive branch in the Acquisition area of the MAX Federal Community. The MAX community is open to Federal government employees with a valid .gov, .mil, or .fed.us email address, and you can register here: <https://max.omb.gov/maxportal/registrationForm.do>.

Once you're registered, you can find the Notes from the Administrator here: <https://max.omb.gov/community/x/cYJ2I>.