

GSA POLICY AND PROCEDURE

SUBJECT: Managing and Documenting Stakeholder Interest in Contracting Actions

1. Purpose. The purpose of this policy and procedure is to provide guidance on how to manage and document interest from stakeholders on issues and decisions that support a procurement action.

2. Background. The GSA Office of Inspector General (OIG) issued Audit Report Number A120161/Q/6/P13003, Improper Management Intervention in Multiple Award Schedule Contracts, on June 4, 2013. In the process of its review, the OIG found instances of improper management intervention that undermined the authority of contracting officers.

This Instructional Letter is being issued by the FAS Commissioner to provide guidance on how stakeholder interests should be documented and processed.

3. Authorities. FAR 1.602, Contracting Officers; FAR Part 3 - Improper Business Practices and Personal Conflicts of Interest; FAR Subpart 5.4 - Release of Information; GSAM 503 - Improper Business Practices and Personal Conflicts of Interest; GSAM 505.303-70 - Notification of Substantial Awards; Awards Involving Congressional interest, FAR Subpart 4.8-Government Contract Files, GSAM Subpart 504.8-Government Contract Files; GSAR 505.403 - Requests from Members of Congress and/or Instructional Letter 2013-04-Contracting Officer Responsibilities Pursuant to GSA Office of Inspector General Contract Audits.

4. Applicability. This applies to the entire FAS acquisition workforce involved in the awarding and/or the administration of contracts, to include, Blanket Purchase Agreements, task and delivery orders, Federal Supply Schedule contracts, Government-wide Acquisition contracts, Multi-Agency Contracts, and Indefinite Delivery Indefinite Quantity contracts.

This policy and procedure does not apply to situations where the acquisition workforce is seeking contractor assistance (e.g. industry days, pre-proposal conferences, due diligence meetings, Industry Council meetings, or other exchanges with industry, etc.) except in situations where the stakeholder is requesting a decision be made in a contracting action.

5. Instructions/Procedures

a. Contracting Officers are responsible for documenting contract files in accordance with all applicable regulations to include FAR, GSAM, and all FAS policies. An accurate and complete contract file reflects significant details of each individual procurement action from requirements gathering to contract close-outs. Each contract file should clearly document the full story of the procurement actions taken, from pre-solicitation to close out activities. As such, the entire acquisition workforce (e.g. Contract Specialists, Program/Project Managers, Contracting Officers, Contracting Officer Representatives (CORs) and Acquisition Managers) also have the responsibility of forwarding documentation of acquisition communications to the Contracting Officer to be included in the contract file.

b. Acquisition strategies and decisions should continue to be documented and filed, in accordance to the Contract Tab Advisory Guide, as appropriate to the strategies and decisions being made. At a minimum, the contract file should contain documentation:

- In the acquisition plan (TAB 3);
- In the signed results of a contract review process (e.g. Pre-Negotiation Clearance Panels (PNCP) or Contract Review Board/Panel (CRB/P)) (TAB 28);
- In the pre and price negotiation memorandum (TAB 15);
- In the award decision memorandum (TAB 25); and/or
- In Contract administration documentation (TAB 40).

This documentation should be reviewed and approved through the business line's established procurement controls process.

c. Stakeholder interest, for purposes of this policy, is defined as communication (verbal or written) from any person or organization that has or could have influence or has something to gain or lose in decisions made in contract actions. Stakeholder interests can be received from management, contractors, professional associations, Congress, and private citizens (as examples). When stakeholder interest requires resolution of an issue or a determination to support a specific procurement action then the communication is required to be documented in the contract file.

d. When stakeholder interests are communicated the Contracting Officer shall take the following actions as appropriate:

(1) If the Contracting Officer receives stakeholder interests from Industry and/or professional organizations, directly applicable to a specific procurement action, the Contracting Officer should inform his/her management and document the communications in a memorandum to the file, located in the contract tab appropriate to the communication. The memorandum of file should include, at a minimum:

- Date
- Time of Discussion
- Company/Organization
- Attendees/Participants
- Point of Contact
- Telephone Number
- Reference/Subject
- Topics Discussed
- Any Follow Up Actions
- Contracting Officer Signature

(2) When Congressional and constituents interest or inquiries are received, all inquiries must be referred to the Office of Congressional and Intergovernmental Affairs (OCIA) at GSACongressionalAffairs@gsa.gov and filed in the contract file under TAB 39. Reference, minimum documentation requirement in section 5d(1).

(3) When the Contracting Officer receives notifications from Contract Specialists, Program/Project Managers, and/or CORs regarding communications with stakeholders, directly applicable to a specific procurement action, the Contracting Officer shall request the individual to document the communications in a memorandum to the file and the Contracting Officer shall place the documentation in the contract file, under Tab 39. Reference, minimum documentation requirement in section 5d(1).

(4) When the Contracting Officer receives interests from management outside of the business portfolio's procurement controls process (i.e. PNCP or CRB/P), the Contracting Officer shall document the communications in a memorandum to the file and, if necessary, escalate the memorandum through the management chain

(5) Managers of acquisition personnel shall fully document all conversations and correspondence with stakeholders, not involving the contracting officer, related to acquisition decisions on specific contracts, offers or strategies in a memorandum to the file. This information must be provided to the Contracting Officer to be placed in the contract file under the appropriate tab.

e. Contracting Officers are to execute contracting actions that comply with acquisition laws and policies, and that are free from undue pressures. Any attempt that clearly disrupts and/or impacts the integrity of the procurement process shall be reported to the business portfolio's senior leadership, the Senior Procurement Executive, and/ or the OIG, as appropriate. As an easy rule of thumb, no acquisition manager shall direct a contracting officer to sign an action that he/she would not be willing to sign.

If the contracting officer is not comfortable with the proposed action, it is appropriate for the Contracting Officer to prepare the acquisition documents for the signature of the warranted acquisition manager.

f. Nothing in this policy should be read or understood to limit the legitimate and critical role of GSA Management in providing oversight to procurement operations. Managers have an essential role across the GSA acquisition programs, ensuring sound business decisions are made, that business decisions are well defined and documented, and in ensuring open communication between GSA and industry.

6. Signature.



THOMAS A. SHARPE, JR
Federal Acquisition Service Commissioner
General Services Administration

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Date

Appendix: Questions and Answers

Q1. Describe the difference between "management interference" and "proper oversight"?

A1. Appropriate management oversight would include reviewing documents for completeness, sound business judgment, and compliance with applicable laws and can be done utilizing the established procurement controls within the business portfolio. These reviews are also necessary for evaluation of individual performance. It is appropriate for acquisition managers to review contract documents, seek clarifications, check assumptions, and apply their expertise. Conversely, "management interference" is defined as any attempt to disrupt and/or impact the integrity of the procurement process and should be reported to the management chain and/or the SPE and OIG, as appropriate.

An example of appropriate oversight would be if an acquisition manager reviews a best value award decision, and finds that the write-up is not complete or compelling, it would be appropriate for the manager to return the proposed award, ask questions, and point to the strong and weak areas of the analysis.

A decision made by FAS management /supervisor to direct a CO to execute a contract action in which the manager would not personally be willing to sign is an example of improper management interference.

A2. Do all conversations with contractors have to be documented?

Q2. No. Through the Myth Busters campaign, the Office of Federal Procurement Policy has emphasized the importance of communication between the government and industry. With the understanding that this dialogue leads to better outcomes (price, performance, quality, etc.) acquisition personnel are strongly encouraged to lead appropriate dialogue. However, when this dialogue centers on a specific procurement action the conversation shall be fully documented in a memorandum to the file.

Q3. Does the stakeholder's request need to be in writing?

A3. No. A stakeholder request can be made in a phone call or during a meeting. When the stakeholder interests are not in writing, it is important that the acquisition workforce document the details of the communications and submit the documentation to the Contracting Officer for inclusion in the contract file. For verbal conversations with a member of Congress or his or her staff, the acquisition workforce can use GSA Form 1321 to document the discussions and forward to OCIA.

Q4. Do we need to secure a non-disclosure agreement for procurement sensitive information? Even from the OIG, GAO or PMR?

A4. If the information contains procurement sensitive or source selection documentation and it will be elevated to someone outside of the acquisition team, it may be appropriate to have a non-disclosure agreement completed by the individual receiving the document. Ensure the documents are marked, "Source Selection Information", Reference FAR 2.101 and FAR 3.104.

A4b. The GAO and OIG are granted access to documents under different authorities. Under 31 U.S.C. Sec. 716, GAO is granted the authority to access information and records and therefore is not required to sign a non disclosure agreement. In accordance with GSAM 503.104-4(1), the OIG is authorized to access information and is not required to sign a non disclosure agreement. The Senior Procurement Executive (SPE) may also designate the PMR Division as authorized personnel.

Q5. If the interest is from Congress, is the request asked in the requestor's official capacity (i.e., committee chair) or personal interest capacity?

A5. The Congressional request should indicate the capacity of the person requesting the response. However, all congressional requests should be referred to OCIA via email at GSACongressionalAffairs@gsa.gov.

Q6. How is the interest documented and what tab should it be filed under?

A6. Documentation of stakeholder interest/request should be in a memorandum to the file per the above instructions and filed under the contract tab appropriate to the communication. If no specific tab applies, file under TAB 39.

Q7. Should a Contracting Officer include meeting minutes with their supervisors when they discuss contract decisions? Where should those be filed?

A7. Procurement decisions and strategies should be documented in the contract file at a minimum, in the acquisition plan, contract review process, and/or memorandum to file. Contracting Officers have the discretion to determine if meetings minutes are required for contract decisions/discussions with their supervisor. However, if the discussions are outside of the business portfolios standard review process, the Contracting Officer should document the discussions in a memorandum to the file. The memorandum should be filed under Tab 39.

Q8. Does the policy list every "stakeholder interest" example?

A8. No. The list and examples are not all inclusive. It provides foundational guidance for the acquisition team in the documentation process. It also ensures the Contracting Officer has the autonomy to make documentation decision based on the specifics of the individual action/situation.

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