PROCUREMENT ROUND TABLE

www.procurementroundtable.org

March 24, 2023

By email

Lesley A. Field
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

John M. Tenaglia
Principal Director
Defense Pricing and Contracting
Office of the Secretary of Defense
Department of Defense
3060 Defense Pentagon, Room 3B938
Washington, DC 20301-3060

Jeffrey A. Koses
Senior Procurement Executive
General Services Administration
1800 F Street, NW
Washington, DC 20503

Karla S. Jackson
Assistant Administrator for Procurement
NASA Headquarters
300 E Street, SW
Washington, DC 20546

Dear Ms. Field, Mr. Tenaglia, Mr. Koses and Ms. Jackson,

The Procurement Round Table (PRT) is a non-profit, non-partisan organization comprised of 60 former senior federal acquisition officials and industry experts focused on advancing the practice of acquisition across government. Given the criticality of procurement and acquisition to the effective functioning of government, our primary goal is to provide whatever assistance we can to leaders charged with executing this essential function. It is in this spirit that we share our views on the drafting of FAR Case 2023-0006, *Preventing Organizational Conflicts of Interest in Federal Acquisition.*

The PRT fully endorses efforts to ensure that government contracts are awarded in a regulatory environment and effective marketplace where the business interests of the Government are protected, and the integrity of the acquisition process is ensured. Organizational Conflicts of Interest (OCI) can and should be identified, evaluated, and managed through open communications and disclosure between industry and government. Potential and actual OCIs should also be recognized and understood as a normal market occurrence in complex industrial and services marketplaces like the Defense Industrial Base (DIB) and the Federal acquisition marketplace. It is incumbent upon industry to identify all potential and actual conflicts of interest to the Government during the solicitation and proposal process, and it is necessary for the Government to conduct sufficient market research in order to understand the nature and structure of OCIs in a specific marketplace.

OCIs have historically been viewed as a problem or situation to be avoided through limitations on competition. When a potential or actual OCI is identified, companies are usually told that they must decide in which markets or lines of business they ***will not*** compete, for that particular agency, in order to avoid an OCI. This approach to OCIs restricts potential and actual competition and may create barriers to entry for new market entrants.

Over the past twenty years, the number of firms competing in the defense and Federal marketplaces has steadily decreased and the percentage of non-competitive awards has steadily increased. Given the impact of these troubling trends, the development of Federal acquisition policies should place a priority on encouraging competition and the removal of barriers to entry for firms desiring to enter the Federal marketplace. The potential impacts of new acquisition policies on competition and the strength of the DIB and the Federal acquisition marketplace must always be a consideration in developing and drafting new acquisition policies.

The content, policies and processes that may be promulgated and implemented by this FAR Case and resulting proposed rule have the potential to impact and fundamentally alter, for better or worse, the functioning and operations of the Defense and Federal acquisition systems and marketplaces. The purpose of this letter is not to comment on any proposed language or to suggest any specific content of a proposed rule, but rather to urge the FAR Council and the Office of Federal Procurement Policy (OFPP) to ensure that certain formational principles are used to guide the development and drafting of the consequential proposed rule on the risk assessment, evaluation, and management of OCIs. These five principles are:

First, rather than viewing OCIs from a negative perspective, this policy development should view the identification, evaluation, and management of OCIs as an opportunity to design and implement policies that encourage competition in the marketplace, including during contract performance. The presence of an OCI should not be considered as the basis for immediate disqualification of a potential competitor but rather as an opportunity to consider and evaluate OCI risks, and mitigation plans within a particular industry or market based on information learned during market research.

Second, any new regulations must recognize the existence of current contractual OCI mitigation plans as well as the business partnerships, investments and arrangements that are based on the content, approval and execution of those plans and agreements. The impact of renegotiating those plans and business agreements, many of which are long-term in nature, should be carefully considered to avoid undue risk and uncertainty in the marketplace.

Third, the authority of individual contracting officers to continue to use their judgment and maintain flexibility in addressing potential and actual OCIs must not be impeded in the development of a new proposed rule. Contracting officers must retain the ability to structure plans and strategies that address the challenges of individual acquisitions, including unique markets, such as cybersecurity and intelligence requirements.

Fourth, the development of new or revised Federal acquisition policies and regulations concerning OCI management must avoid creating barriers to market entry or raise other disruptive issues. The use of OCI management and mitigation plans should be included and affirmed as measures that enable the effective management of OCIs, enhance competition and do not encourage market exit.

Fifth, the active use of the Federal acquisition and procurement functions to address the equity challenges facing the nation is a national priority. The role that the use of OCI management and mitigation plans could play in encouraging and expanding business opportunities and market entry for small businesses and underserved communities should be understood and explored.

The PRT appreciates the opportunity to provide these views and observations on this important FAR Case for your consideration. If you have questions or wish to discuss this further, please do not hesitate to contact the undersigned.

Sincerely,

David A. Drabkin
Chairman
Procurement Round Table
https://procurementroundtable.org/
drabkind@gmail.com
+1.703.927.1116