Government Executive

Treasury Beware

By David Litman

October 15, 2008

In November 2001, as I was reading successive drafts of the Aviation and Transportation Security Act, I grew more and more concerned. The bill, which established the Transportation Security Administration, laid out a list of projects for the agency's first year. I could see that all of them would require major contracting efforts. At the time, I was senior procurement executive for the Transportation Department, where TSA resided until the Homeland Security Department was established. I advised management of the need to have contracting expertise ready when the bill finally passed. But in the rush to establish and staff the organization and meet its many mandates, little attention was paid to acquisition needs.

As I watch the implementation of the Emergency Economic Stabilization Act, which establishes an Office of Financial Responsibility within the Treasury Department, I see a risk of history repeating itself. Two principal lessons from my experience with TSA could decrease that risk and help the new Treasury organization get off on the right foot.

1. Contracting flexibilities are irrelevant to success.

When TSA was formed, it was directed to base its acquisition procedures on the Federal Aviation Administration's procurement system, which is self-contained and does not use the Federal Acquisition Regulation. The Treasury Department is being offered a different kind of contracting flexibility -- the ability to waive provisions of the FAR whenever needed (it is not clear whether it can waive the underlying statute). Although this approach is better than that taken in the TSA legislation, it should be used judiciously and sparingly.

During its first six months, TSA awarded several major contracts. Some were successful, some less so. But a little known fact is all those initial contracts were awarded using the FAR as an interim guide because it took a while for the organization's small acquisition staff to develop, implement and learn TSA's version of the FAA acquisition system. Employing tools such as General Services Administration schedules, governmentwide contracts, and the authority in the FAR to limit competition in urgent and compelling circumstances, TSA was able to award those initial contracts relatively quickly and with meaningful competition.

I drew two conclusions from this experience. First, the existing acquisition regulations provide substantial flexibilities that are sufficient to support most mission needs. Second, following the regulations doesn't guarantee success. What determines if a contract will work is clearly defining requirements and developing an appropriate acquisition strategy, selecting the contractor most capable of meeting those requirements, and managing the contract effectively after award. Those three factors rely on having a knowledgeable acquisition staff, leading to lesson No. 2.

2. Experienced acquisition leadership is critical.
Treasury should immediately assign a veteran procurement executive to report directly to the head of the new organization. The office also should bring on experienced contracting and program employees for the near term until it is fully staffed. This could be accomplished by reassigning or rotating people from other parts of the department, asking for temporary assignments from other agencies, or using resources from other agencies such as the Interior Department's National Business Center.

These are measures TSA failed to take. The head of procurement was the last executive hired there, more than six months after its establishment. And when that position was filled, it was buried three levels down in the organization. During that first six months, I drafted someone from another Transportation organization to address immediate procurement issues (mostly awarding new contracts). This official received part-time help from members of my staff and his staff. But there was no one focused on building a functioning procurement organization or processes. There was no one to oversee the contracts once they were awarded. And there was no senior executive who could advise the leadership team on the best acquisition methods or alternatives.

On the program side, TSA took a very innovative approach to attracting expertise, but it had significant consequences for acquisitions. The organization brought in talented executives from the commercial sector. They were great to work with and innovative thinkers, but they did not know federal acquisition. We ended up trying to educate them on the fly, and this resulted in a lot of duplicative work in developing requirements and acquisition strategies as well as endless discussions on how much they could direct contractors after awards as needs evolved. It was frustrating for both parties.

Without an acquisition executive at the leadership level, and with little dedicated contracting support and program executives inexperienced in federal acquisition, it is little wonder that TSA's procurement program got off to a rocky start.

Treasury can avoid TSA's mistakes by focusing first on making sure it has acquisition specialists in place to support its mission. People must take priority over process in developing an acquisition program for the new office. That is the best way to ensure that contracting is part of the solution to this financial crisis and doesn't all too soon become part of the problem.

David Litman was senior procurement executive at the Transportation Department from 1995 to early 2008. He is currently a board director for the nonprofit Procurement Round Table.

By David Litman

October 15, 2008

https://www.govexec.com/management/2008/10/treasury-beware/27859/