

# **“How Do I Arrive at a Fair and Reasonable Price”**

## **An ACT-IAC Acquisition Management Shared Interest Group Training Workshop**

### **1. General:**

On November, 3, 2011, the ACT-IAC Acquisition Management Shared Interest Group (SIG) hosted a free training workshop titled “How Do I Arrive at a Fair and Reasonable Price.” The workshop consisted of collaborative open sessions, panel discussions and three (3) break-out sessions which delved into the subject. After the workshop an informal networking event was held.

The Federal Government Thought Leader was Patrick Bradfield from the Department of Education/Federal Student Aid (DoED FSA).

The workshop’s industry sponsors were Distributed Solutions, Inc. and Sapient Government Services, Inc.

### **2. Purpose:**

The purpose of the workshop was to provide a short, free, local training opportunity for primarily federal acquisition practitioners in order to focus on a very specific day-to-day challenge being encountered in the acquisition community.

### **3. Speakers/Facilitators:**

Joanie Newhart, CPCM, Office of Federal Procurement Policy	Patrick Bradfield, CPCM, DoED FSA
John Nyce, Department of Interior National Business Center	Chris Hamm, General Services Administration Federal Systems Integration and Management Center
Stacey Lowenberg, General Services Administration Federal Systems Integration and Management Center	Richard Pineda, Dell Federal
Althea Kireillis, Executive Office of the President	Marie Jatsko, CFCM, Dell Federal

(Note: Speaker biographies are located in the enclosures)

### **4. Attendees: (see enclosures for attendees and contact info)**

### **5. Problem Statement:**

There is concern in the acquisition community that cost and price analysis is a dying art. The workshop participants were noticing a shift to a “mechanical” fair pricing approach, with too much emphasis on “science – not “art.”

### **6. Content:**

The most straight-forward way to articulate the subject matter that was presented, discussed and debated at the workshop is to use a question and answer format, so the following content will be provided in that manner:

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#### **a) When is it appropriate to talk to vendors in advance of issuing a solicitation?**

- When conducting market research
- When trying to understand vendor's capability
  - What are the boundaries I must pay attention to?
    - Unfair to competition
    - Misleading
    - Prevent someone from bidding
    - Don't take one vendor's solution and discuss with another vendor.

#### **b) When a program official or contract specialist lacks the technical knowledge of the service or commodity being purchased (such as in the case of a new or rapidly evolving technology), is it appropriate to ask for such information from the vendor community? If the pre-solicitation stage?**

- Absolutely- you have to keep up with tech & software advancements
- Caution yourself to be fair and talk to all vendors
- Go to tech people and back to industry to clarify. Take info back to your organization and explain it in their language.

#### **c) Is it legal to ask vendors about labor rates and other cost information in the pre-solicitation stage of a procurement?**

- In general, yes, wage rates are legal.
- Ask the following questions to vendors:
  - Who else did you sell this to?
  - What was the price you sold it at?
  - What is the name of who you sold it to? Follow up with this contact to verify work was completed.
    - Can't let this information influence you, but you can let it inform you.
- Gov't needs to be better at learning how vendors sell
  - Cloud computing is helping with this
- Some reasons that the contract people want to know costs is to create budgets for upcoming quarters.
- It all comes down to trust and relationships. If you can't trust each-other, nobody wins.

#### **d) Under what conditions can I engage vendors in advance of solicitation in order to ascertain cost drivers and other aspects of pricing that will impact solicitation terms and ultimately determine of a fair and reasonable price?**

- Requests for Information (RFI)'s
  - How many times can produce an RFI?
    - Several- as long as you're not getting a binding contract out of it.
- We're all looking at different things and therefore we need to be more collaborative with the engagement process.

#### **e) What are legitimate questions that I can ask to obtain the information I need to help me determine a fair and reasonable price, without asking too much?**

- “Price-to-win” is a hot topic....but what is it really?
- You can ask for the following:
  - RFI

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- Delivery information
- Competitors
- Socio-economic status (location of headquarters/ office... this determines wage rates)
- Contractual history
- Terms & Conditions

#### **f) How does one document the results of pre-solicitation conversations with vendors?**

- Name of other vendors
- Market research
- Acquisition Plan
- Memos- want to see *who* conducted the Market Research?
  - Internet research is not enough
- Talk to somebody- make a note of your conversation
- Scheduled price lists
- Commercial price lists

#### **g) What are some of the things I need to consider when determining what’s fair and reasonable?**

- It is important to understand the context of the situation (e.g. criticality, timing, unique skills required).
- Simply acquiring enough pitches from vendors is not the answer; the true goal is to understand the market for a product/service.
- Your upfront due diligence in evaluating pricing has significant risk reduction for development and delivery (terms?).
- Low labor costs are not your goal; outcome is. You (the buyer) must understand the tradeoff between cost and quality.
- What is important to remember is that everyone is being compared at the same LOE, but not everyone WORKS at the same LOE. The lowest price does not make the best value.

#### **h) When should I start talking with Industry?**

- The relationship between the buyer and vendor should start long before procurement.
  - Government is typically bad at defining requirements, work with vendors to define better Request for Proposal (RFP)
  - Consulting with industry will also provide an efficient access to market research.
- Once something is formally considered a “procurement,” the open communication doors close. Vendors spend their time trying to divine intent.
- Minor communications like RFP release date or very specific rare skills needed could be mutually beneficial with minimal downside.

#### **i) What are some tips for fair and reasonable price determinations?**

- For vendors with a commercial component, most favorable customer pricing is used as a ceiling from which to negotiate down.

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- Challenges due to position descriptions – the vendor, not the government, provides the position description. Five descriptions of the same position will all be different. Is there potential for standardization?
  - Cost Plus:
    - When given rates, government goes to Defense Contract Audit Agency (DCAA) verification. This is the simplest path.
    - If the vendor is not DCAA approved, go to General Services Administration (GSA) schedule.
    - If no GSA schedule, look for similar contracts across other agencies/commercial pricing
    - Large focus on DCAA rate verification
  - Fixed Price:
    - Vendors hesitant on giving out pricing information; they bare the risk so anonymity is the mitigation.
    - Fundamentally different, can't measure solution in terms of bodies and hours.
  - Lots of dialogue on use of salary surveys to support fair pricing
  - Gartner subscriptions discussed but very expensive
- j) Other than GSA Schedules, what sources of labor rates, inflation indices, cost-drivers (like economic or marketplace factors) exist?**
- Consult salary surveys – for example Mercer salary surveys
  - Look at salaries, labor categories, and generic descriptions of position and work backward. Split into three categories: junior – standard – senior
  - Use the DCAA verification first; THEN the GSA Schedule do a cross-walk of titles/labor categories
  - Current pricing also comes from vendors and their proposals, they are the driver off of their current prices
  - Government also depends on reviewing the contractor commercial invoices
- k) What factors are important in considering if a vendor's prices are “way too high” or “way too low”?**
- Be sure not to misinterpret the government's requirements
  - Review geographic locations
  - Review skillsets and levels
  - Review contractor commercial invoices
- l) Where is a good place to learn about cost-estimating and how to demystify the Independent Government Cost Estimate (IGCE)?**
- Department of Defense (DOD) Cost Estimating School is #1 resource/classes
- m) What is a good resource/website to have aggregated information on salary?**
- Simplyhired.com – Pulls aggregate info on location, job title, category, salaries
- n) Should the price have an escalation over 5 years? What is the basis of estimate?**
- No. It should have a de-escalation since virtualization should be cheaper.
  - Need to look at the Service Level Agreements

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- Need to look at the uptime for emergencies (Government wants their websites to continue during emergencies, without outages)
- Need to know what the vendor’s experience is in the cloud computing business
- Need to know if Certification & Accreditation (C&A) is done (that weeds out a lot of vendors as this is a requirement).

**o) On fixed-price contracts, how do you know you have the “right” price?**

- Review Gardner (which is an expensive subscription \$1k)
- Bloomberg (not quite as expensive as Gardner, but not cheap)

**p) What are some of the issues you find in fixed price and T&M contracts?**

- When a vendor provides a commercially-sold product a price reduction to a commercial buyer, the government expects that same reduction even if they are not buying in the same volume. That expectation is “unfair” (a valid industry perspective).
- Smaller companies may walk away from government contracts because only 10% of their customer base is government.
- Also, smaller companies who have extensive documented commercial sales of commercial labor might say to the government: “We charge \$200/hour; take it or leave it”.
- Fixed Price puts the risk on the vendor; whereas time and material puts the risk on the government. Most contracts are fixed price.
- Because of the risk on the vendor, they are less likely to want to “open the kimono” and share their cost info.
- The fear of potential government misuse of contractor-provided information. This is one reason that vendors are reluctant are NOT be as willing to share their cost info.
- Subcontractors who are not reliable or forthcoming with their own costing information to their primes – which also causes an issue with sharing true and accurate cost information.

**7. Suggestions on Improving the Process:**

- Implement a vendor showcase to learn more about vendors before issuing a solicitation:
  - Define the rules of engagement
  - This approach encourages dialogue between gov’t and vendors.
- Have brown-bag lunch and learn where vendors come in:
  - EOP instituted this idea about once/ quarter
  - Vendor’s come in and explain their latest and greatest
  - You may not need the information now, but you will have it for future use.

**8. Off-Topic Discussion:**

- One group had a slightly off-topic on “real time” procurement since cloud computing was now a hot topic.

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- Government originally hired a research firm to gather information on cloud computing over the last 3 years.
- The firm documented over the 3 years, and that historical information is being used to work on the present procurement.
- It also is helping the government to revamp their requirements.

### **9. Additional Reading:**

Attendees are also encouraged to read “Fair and Reasonable Price Justification: Judgment of Market-Based” by Johnny J. Battle, Jr., in the January 2008 issue of Contract Management magazine.

### **10. Disclaimer:**

The workshop was not meant to be a policy-setting or policy-interpretation venue, but as an opportunity to discuss an important challenge facing the Federal acquisition community today. Discussion items, viewpoints and “tricks of the trade” hints should be interpreted by attendees as simply information to provoke further discussion, critical thought and research into how to perform daily acquisition mission support tasks more efficiently.

### **11. Enclosures:**

- How Do I Arrive at A Fair & Reasonable Price (Event Handout)
- OMB OFPP Myth-Busting memorandum
- EOP Vendor Engagement Tips
- Sample Market Research Questions
- Extract from DOD Pricing Manual on Market Research
- OFPP Effective Vendor Engagement
- Dell Fair and Reasonable Pricing
- Attendee List with Contact Information

Our deepest thanks to all the attendees, speakers, panelists, facilitators, and support personnel.

Sincere Regards,

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