



 **Summit Insight**
Win More Federal Business Faster

MythBusting

Meet the Contracting Officer



Q4 Planning *SLAM*

One of the top complaints vendors make is “Government buyers aren’t allowed to talk to us.”

That’s not true.

Not only are Contracting staff and Federal buyers allowed to talk to you, but the highest level of Administration officials continues to actively *encourage* them to have those conversations!

Federal Acquisition Regulation (FAR) 15.201 says the government is encouraged to talk to vendors prior to bidding!

15.201 Exchanges with industry before receipt of proposals.

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see [3.104](#)). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

Remember, this regulation isn’t a vendor’s bill-of-rights. You can’t wave it front of a Contracting Offer and tell them they have to talk to you (in fact, you basically don’t ever want to tell a Contracting Officer how to do their job). If they’re grouchy, just move on. Someone else will talk to you!

Let’s look at the details:

15.201 Exchanges with industry before receipt of proposals.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government’s requirements, and enhancing the Government’s ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions.

How might those exchanges take place?

15.201 Exchanges with industry before receipt of proposals.

(c) Cont'd

Some techniques to promote early exchanges of information are—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research, as described in [Part 10](#);
- (4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);
- (5) Presolicitation notices;
- (6) Draft RFPs;
- (7) RFIs;
- (8) Presolicitation or preproposal conferences; and
- (9) Site visits.

(d) The special notices of procurement matters at [5.205\(c\)](#), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

Want a one-on-one call or meeting?

While what you might want most is a one-on-one meeting, you may need to show some good faith effort of your own by going to a few of the public events first, to demonstrate to the agency's representatives that you're willing to invest time and effort to get to know them. Be persistent and patient. Playing the long game is easier when you are *focused* on a few target agencies.

Are there innovations in the way you do what you do?

Let that be your conversation opener: to talk with them about innovation and new ideas for *future* acquisitions, not the one that's on the street right now.

Why and when might they be reluctant to talk to you?

See Section (f), below.

15.201 Exchanges with industry before receipt of proposals.

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer must be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a potential offeror in response to its request must not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and is protected under [3.104](#) or [Subpart 24.2](#). When conducting a presolicitation or preproposal conference, materials distributed at the conference should be made available to all potential offerors, upon request.

When an RFP is on the street, they're pretty much in blackout mode.

Even if what you want to talk to them about isn't the solicitation they're working on, they are super-cautious! Expect that any communications with buyers and contracting officials will be somewhere between formal, limited, or conducted according to prescribed rules and process.

But you CAN catch them between bids. If they handle the kind of service or product you purchase, odds are good that they or a colleague near them will do more of it in the future.

Fiscal year-end is not a great time to call people who've never heard of you. Even OUTSIDE of fiscal year end, you may still run into some people that want to make you go away. Just call on the next one.



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR - 2 2018

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Engaging with Industry

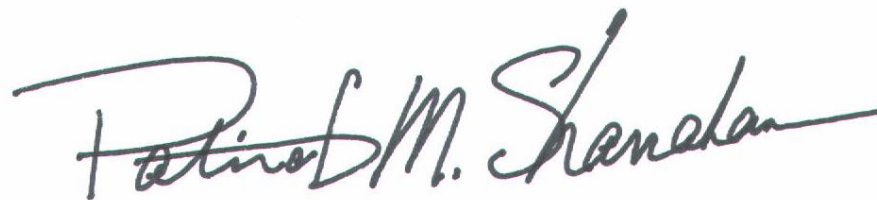
Our National Defense Strategy (NDS) directs our intentional engagement with industry to harness and protect the National Security Innovation Base as well as modernize key capabilities. Cultivating a competitive mindset requires that we optimize our relationships with industry to drive higher performance while always remaining within the letter and spirit of ethics and procurement regulations. This policy updates Deputy Secretary of Defense memorandum, Subject: Policy for Communications with Industry, dated June 21, 2010, to achieve the objectives of the NDS and reiterates the guidance in the Secretary of Defense memorandum, Subject: Dialogue with Industry, dated April 24, 2017.

The Department relies upon thousands of contractors spanning a wide array of industry segments and supporting a multitude of mission requirements. Industry is often the best source of information concerning market conditions and technological capabilities. This information is crucial to determining whether and how industry can support the Department's mission and goals. Conducting effective, responsible, and efficient procurement of supplies and services while properly managing the resultant contracts requires Department personnel to engage in early, frequent, and clear communications with suppliers. As the NDS makes clear, dialogue helps industry make informed investment and business decisions necessary to meet near- and long-term requirements of the Department. Proactive engagement will maximize support to the

Warfighter; set realistic expectations and technologically achievable requirements; enhance the ability of organizations to meet cost, schedule, and performance objectives; and establish policies and business practices that promote the long-term viability and competitiveness of the industrial base supporting defense.

We must always comply with the ethics and procurement laws and rules governing interactions with industry. They should not, however, cause officials to be reluctant to engage in exchanges with industry. While we must always be mindful of our legal obligations, they do not prevent us from carrying out our critical responsibility to engage with industry. There is a broad range of opportunities for communications with industry in a fair, impartial, and transparent manner that fall well within the parameters of the ethics and procurement laws. For example, events hosted by industry associations may provide opportunities to efficiently, effectively, and ethically connect the DoD with leaders from across a particular industry or segment.

The Department's policy continues to be that representatives at all levels of the Department have frequent, fair, even, and transparent dialogue with industry on matters of mutual interest, as appropriate, in a manner that protects sensitive information, operations, sources, methods, and technologies. Leaders must talk with personnel about the importance of having dialogue with industry and help them understand the parameters for doing so. To assist personnel, attached are DoD Myth-Busters on Communications with Industry, which are intended to update and supplement the "Myth-Busting" memoranda previously issued by the Office of Federal Procurement Policy. Also attached is a synopsis prepared by the DoD Standards of Conduct Office of applicable ethics and procurement laws that form the boundaries within which personnel must operate in their communications with industry.

A handwritten signature in black ink, reading "Patrick M. Shanahan". The signature is written in a cursive, flowing style with a prominent initial "P" and a long, sweeping underline.

Attachments:
As stated

ATTACHMENT A

DoD Myth-Busters - Communications with Industry

1	<p>Myth: DoD officials should never hold individual meetings with a defense contractor.</p>
	<p>Fact: DoD officials may hold individual meetings with a defense contractor. However, officials should take into account several factors, including the topic(s) to be discussed, whether the official is willing and able to hold such meetings with all similarly situated entities, any pending matters involving the contractor (procurements, claims, audits, etc.), and any other factors that might give rise to an appearance of impropriety. In fact, there may be situations where an individual meeting with a contractor is to DoD's advantage or necessary to further DoD's mission, such as where a discussion of a company's proprietary information is necessary to an overall understanding of industry status and capabilities. Of course, group meetings, such as "industry days" are always a safe bet if you don't need to have an individual meeting.</p>
2	<p>Myth: Outside of communications required as part of the procurement process or contract administration matters, only senior leaders should meet with members of industry.</p>
	<p>Fact: While there certainly may be occasions where a senior leader needs to meet with industry representatives, it is always best to ensure that meetings are held at the lowest appropriate level relative to the topic and purpose of the meeting. This helps to avoid any appearance of "special access" or "favoritism," as well as negating any perception that the boss favors a particular entity. Additionally, when senior leaders meet with industry, they should consider having appropriate members of their staff present, particularly if there is an ongoing procurement or other sensitive matter. Staff can provide valuable input and backup to assist in mitigating procurement integrity, litigation or other risks.</p>
3	<p>Myth: Industry does not have ethics rules of their own.</p>
	<p>Fact: Many companies not only have their own ethics policies, but may actually have more stringent restrictions with significant penalties. While Government ethics rules are applicable only to Government personnel, contractors may have their own set of ethics rules that govern their interactions with customers, to include their Government clients. Additionally, since many industry personnel are "at will" employees, they may be subject to immediate termination for violations.</p>
4	<p>Myth: Industry's interests are diametrically opposed to the Government's interests.</p>
	<p>Fact: While this may be true at times (for example, where the Government is engaged in litigation with a contractor), it is not universally true. Generally, both parties have an interest in successful contract execution. Appropriate communications that are frequent and meaningful are key to reaching that mutual goal and can significantly reduce the misunderstandings and miscommunications that lead to adversarial relationships and proceedings.</p>
5	<p>Myth: Industry is more risk tolerant than the Government.</p>

	<p>Fact: Companies do not want negative media or Congressional attention any more than Government agencies do. Publicly traded companies are particularly sensitive to the potential for negative coverage to impact stock prices and must answer to shareholders and boards of directors when mishaps occur. Of course, for both industry and the Government, there may be individual personnel who intentionally or inadvertently cause issues. However, the impact that these individuals have can be mitigated, or even eliminated, with proper training and clear communication of expectations (both internally from leadership and externally between Government and industry personnel/leaders). By keeping appropriate lines of communication open, we can facilitate our mutual interests in avoiding potential issues and maintaining public trust.</p>
6	<p>Myth: I'm just meeting with my old buddy "MG (ret.) Smith" who happens to work for a major defense contractor so I don't need to worry about ethics or procurement integrity issues.</p>
	<p>Fact: This one can cut both ways, and it's all about the details. Of course, you may meet with your old friends, even if they work for defense contractors. But, depending on your position/participation in relation to the work performed by the contractor, there may be appearance or impartiality issues. Obtaining information about the intent of the meeting beforehand is important. The first step is to consider whether the meeting really is purely social:</p>
	<p>* What will you be discussing? If, for example, it's the kids and grandkids - no problem. If it's his company's contract or capabilities, then it's probably not a personal meeting.</p>
	<p>*Where are you meeting? If it's at the office on official time, probably not a personal meeting. If it's at a home or social establishment on personal time, then more likely a personal meeting.</p>
	<p>*If you are going out, who is paying? If his company is paying or reimbursing, then it's not personal.</p>
	<p>Conversely, what about the retired GO/FO who used to be your boss, not your buddy? What if he calls and wants to meet now that he works for a major defense contractor? Depending on his post-employment restrictions, this may be a problem. You should contact your ethics office to determine what restrictions may be in effect.</p>
7	<p>Myth: The Secretary's message to "play the ethical midfield" restricts my ability to engage in frequent communication with industry.</p>
	<p>Fact: DoD policy is that personnel can and should engage in communication with industry. However, the policy also clearly states that such communications should be fair, even, and transparent and conducted in an appropriate manner, taking into consideration applicable ethics and procurement laws and regulations. This requires that personnel maintain awareness of what is and is not appropriate to ensure that lack of knowledge is not causing them to unnecessarily restrict communications, on the one hand, or to engage in inappropriate communications, on the other hand. In other words, personnel should find that midfield between not communicating due to fear of a misstep and inappropriately communicating due to lack of knowledge.</p>

ATTACHMENT B Applicable Laws

The following are statutory and regulatory limitations on communicating with any nonfederal entity, to include members of the defense industrial base:

➤ Conflicts of Interest (18 U.S.C. § 208)

- Law - Government officials may not participate personally and substantially in a particular matter that will have a direct and predictable effect on their financial interests or those of their spouses, minor children, general business partners, or prospective employers.
- Communications Impact – Personnel should not participate in meetings or other exchanges where the topics include matters that will impact the finances of a company in which they have an actual or imputed financial interest.
- Allowed – participation in general discussions about policies, programs, and capabilities, particularly where multiple vendors are present.
- Prohibited – participation in discussions about a specific contract involving the entity whose interests are imputed to the employee or matters having a financial impact on a narrow class of entities, of which the conflicting entity is one.

➤ Procurement Integrity (41 U.S.C. § 2102 and 48 C.F.R. § 3.104-4)

- Law - Government officials shall not knowingly disclose contractor bid or proposal information or source selection information.
- Communications Impact – Personnel should not discuss matters relating to ongoing procurements without proper authority and should never discuss offeror bid/proposal data or source selection information with anyone outside of the procurement team.
- Allowed – Any communications permitted or required by the FAR, such as clarifications, discussions, negotiations, and debriefing information, when conducted under the oversight of a contracting officer. Discussion of public information, such as information contained in any solicitation or other posted documents, information provided to the media, or information announced in relation to prior contract awards.
- Prohibited – Sharing a bidder/offeror’s proposed approach, proprietary data or other nonpublic information about methodology or business.

➤ Trade Secrets Act (18 U.S.C. §1905)

- Government officials may not disclose trade secrets or other proprietary information (which includes processes, operations, style of work, or apparatus, as well as the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures) unless authorized to do so by law. Such legal authority is rare.

➤ Federal Advisory Committee Act (5 U.S.C. App.2) “FACA”

- Law – Government officials must comply with the Federal Advisory Committee Act when seeking collective advice or recommendations from a group that includes persons who are not on active military duty, full-time or permanent part-time Federal officers or employees.
 - Communications Impact - This does not apply to any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole. It also does not apply to any group that meets with a Federal official(s) for the purpose of exchanging facts or information.
 - Allowed – FACA does not apply to meetings or discussions held for purposes of obtaining individual recommendations from the attendees (e.g., the group is not providing collective advice or recommendations). It also would not apply where the Government is seeking to exchange or obtain factual information (e.g., an industry day discussing capabilities or new initiatives).
 - Prohibited – FACA would apply to a meeting or discussion where the assembled non-federal participants are requested to develop and provide advice or recommendations as a group.
- Impartiality (5 C.F.R. § 2635.101 and § 2635.501-503)
- Law - Employees shall act impartially and not give preferential treatment to any private organization or individual. Employees should not participate in particular matters where the circumstances would cause a reasonable person with knowledge of the relevant facts to question the employee’s impartiality.
 - Communications Impact – In deciding whether to meet with industry, officials should consider whether they are able and willing to meet with all similarly situated parties in the same manner. Officials should also consider whether the circumstances and their own personal and business relationships would cause the public to question their impartiality.
 - Allowed – Meeting with suppliers of a particular product type to determine whether industry has the production capability to meet anticipated requirements, but limiting the invitees to those with existing high volume production lines.
 - Not Recommended – Meeting with only a single supplier in an industry where there are 3 or 4 suppliers of equivalent capability and experience to discuss that same production capability.
 - Prohibited – Meeting only with the incumbent contractor, to discuss requirements for the follow-on contract.
- Use of Nonpublic Information (5 C.F.R. § 2635.501-703)
- Employees shall not use or allow the use of nonpublic information to further any private interest, whether through advice or recommendation, or by knowing unauthorized disclosure.

Myth-Busting tips 1 – 8 are adapted from a memorandum *Addressing Misconceptions and Further Improving Communication During the Acquisition Process*, issued May 12th, 2012, by Lesley A. Field, Acting Administrator for Federal Procurement Policy

Vendor Misconceptions about Communications with the Federal Government

1.	<p>Misconception – “The best way to present my company’s capabilities is to market directly to Contracting Officers and/or sign them up for my mailing list.”</p>
	<p>Fact – Contracting officers and program managers are often inundated with general marketing material that doesn’t reach the right people at the right time.</p> <p>Instead:</p> <ul style="list-style-type: none"> • attend industry outreach sessions that agencies host to introduce contracting officers and program managers to vendors; and • research officials involved in specific projects that you can help with, and focus your e-mails and phone queries on how your past performance and capabilities relate to those requirement or needs.

Vendors often send marketing materials – especially unsolicited collateral – to contracting and program offices. If the materials don’t include the information that the individual recipients most need, the recipients aren’t likely to pay much attention.

Vendors can often meet program managers and contracting officials at industry outreach sessions and briefings that agencies hold to provide information on how to do business with that agency, and the nature of future requirements, and discuss how their capabilities relate to items in the annual procurement plans. Vendors can also develop relationships with buyers by attending pre-proposal conferences that provide detailed information about specific agency requirements.

When and where are those events?

The FedBizOpps home page, www.fbo.gov, links to a [Vendor Collaboration Central Event Listing](#) of agency-vendor engagement opportunities including industry days, pre-RFP conferences, and vendor forums, and a [Small Business Central Event Listing](#) of agencies’ business events intended to help vendors contact key buying officials within an agency.

The more you research publicly-available information about the agency you want to do business with, and its requirements and practices, before your calls, emails or visits, the more productive your conversations will be.

Where can you research current contracts and pending projects?

- www.usaspending.gov publishes data on current and past Federal contracts, including those that may be expiring soon;
- Agency websites often have their advanced acquisition forecasts posted,¹
- Congressional Appropriations Acts include agencies’ future acquisition plans
- The Government Printing Office’s (GPO’s) Federal Digital System (FDSYS), available at <http://www.gpo.gov/fdsys/> provides electronic copies information including the U.S. Government Budget and Code of Federal Regulations
- In 2014, the Government Accountability Office² found that agencies can tend to do less market research on lower-dollar-value acquisitions, and encouraged several Federal departments to improve the documentation they provide their acquisition staff on how to do such research.
- The Department of Homeland Security’s 2009 Market Research Guide³ provides some insight into how and why market research is conducted.

2.	Misconception – “You only need to bring business development and marketing people to meetings with the agency’s technical staff.”
	Fact – Government technical personnel want to meet your subject matter experts rather than get a sales pitch.

Agency personnel are keen to better understand the marketplace, advances in technology, and your firm’s capabilities – in short, technical issues – more than business development issues.

Vendors build trust and show respect for agency officials’ time by arriving well-informed of the agency’s published activities, organization, personnel, missions, acquisition forecasts, budget, and current contracts as well as up-to-the-minute press releases, and tailor your presentation and questions to agency officials accordingly.

Your technical team may be in the best position to provide the information that the agency needs, so be sure to invite them to these meetings. Their knowledge of advances in technology and your firm’s capabilities are much more helpful to agencies than generic sales presentations.

¹ A list of Federal agencies with links to their websites is available at <http://www.usa.gov/directory/federal/index.shtml>.

² MARKET RESEARCH Better Documentation Needed to Inform Future Procurements at Selected Agencies <https://www.gao.gov/assets/670/666447.pdf>

³ Appendix I to the Department of Homeland Security Acquisition Manual, available at http://www.dhs.gov/xlibrary/assets/opnbiz/cpo_hsam.pdf

3.	Misconception – “Attending industry days and outreach events is not valuable because the agency doesn’t provide new information.”
	Fact – Industry days and outreach events can be a valuable source of information for potential vendors and are increasingly being used to leverage scarce staff resources.

The purpose of industry days and outreach events is to communicate the agency mission and upcoming requirements to industry. Vendors may have the opportunity to hear from and speak to agency representatives about requirements, and can often meet one-on-one with agency personnel before or after the event.

Many times, agencies hold sessions designed to help new vendors do business with them and answer vendors’ questions

This information can help vendors decide whether to invest resources in a bid or proposal in response to the government’s solicitation requirement, how to more effectively target your marketing and outreach, and help you respond to solicitations more successfully.

Industry days are also a great way to meet potential partners and subcontractors.

4.	Misconception – “Agencies generally have already determined their requirements and acquisition approach so our impact during the pre-RFP phase is limited.”
	Fact – Early and specific industry input is valuable. Agencies generally spend a great deal of effort collecting and analyzing information about capabilities within the marketplace. The more specific you can be about what works, what doesn’t, and how it can be improved, the better.

Agencies want and need industry’s input into their acquisition strategies and solicitation packages because it may result in a better solution to their requirements.

In trying to get the best value for their agency and for the taxpayers, contracting and program professionals want to know when products or services are available in the marketplace that can save money or provide a better solution or both. Vendors can help most by providing such information early in the procurement cycle.

Vendors can provide suggestions and comments prior to formal requirements development without creating an organizational conflict of interest so long as that vendor is not then hired to develop the requirements. Agency officials also value vendors' suggestions of detailed solutions to your concerns. Got a concern? *Be specific and clear in your feedback. For example, if an agency is considering a performance-based contract for services but, in your firm's view, has not adequately defined the performance standards, provide the agency with specific suggestions for how the work should be evaluated based on your experience and expertise.*

Take advantage of pre-solicitation opportunities like these to offer specific suggestions you'd like to see made to the final solicitation:

- Agencies may issue a Request for Information (RFI) as part of market research to investigate the industry and marketplace in accordance with Federal Acquisition Regulation (FAR) Part 10, to determine if commercial items are available, to determine if small businesses are capable of meeting the agency's needs, and for many other planning purposes.

For instance, the General Services Administration's Central Contracting Office sought input on the procurement of the next generation of the agency's enterprise IT services and support. Through RFIs, the agency first sought input on the current challenges and strategic technology initiatives, asking industry how it would recommend the agency approach those challenges. A subsequent RFI was issued to seek more specific input to the draft solicitation. A pre-proposal conference, attended by over 50 vendors, helped to further refine agency requirements.

- Agencies may issue a draft RFP to request comments and suggestions from potential vendors on how to improve the solicitation.
- Agencies may hold pre-solicitation or pre-proposal conferences or webinars, or post wikis to explain the requirements, solicitation process, and evaluation factors⁴ and invite vendor questions and feedback.

Here's the big one:

FAR 15.201 encourages exchanges with all interested parties, beginning at the earliest identification of a requirement through receipt of proposals.
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After

release of a solicitation, the contracting officer is the focal point of any communications with the government to ensure a fair competition is conducted. Many times, the contracting officer includes a question and answer period in the acquisition process for potential offerors to review the solicitation and submit questions.

Otherwise, vendors may still ask the contracting officer any questions that you have, in a timely manner, in order to ensure you understand the solicitation. Contracting officers generally prefer questions via e-

mail so that they can ensure they understand the question and so they can facilitate obtaining an answer. Should the contracting officer decide to make any changes to the solicitation, it will be done via an amendment to the solicitation and posted for public viewing.

5	<p>Misconception – “If I meet one-on-one with agency personnel, they may share my proprietary data with my competition.”</p>
	<p>Fact⁵. – Agency personnel have a responsibility to protect proprietary information from disclosure outside the Government and will not share it with other companies.</p>

Agency personnel have a responsibility to protect any information that was received in confidence from an offeror. During source selection, the Procurement Integrity Act and its implementing provisions in the FAR⁷ prohibit Federal procurement officials from disclosing – prior to award of the relevant contract – contractor bid, proposal information or source selection information to any person other than a person authorized to receive such information. Procurement officials take this prohibition very seriously; if a violation occurs, there may be criminal and civil penalties.

While the protections of the Procurement Integrity Act do not apply prior to source selection, other protections remain. In many cases, the Trade Secrets Act⁶ will prohibit Federal employees from divulging protected information, including confidential commercial or financial data, trade secrets, operations, processes, or style of work.

The Freedom of Information Act (FOIA) allows agencies to protect commercial or financial information that is privileged or confidential.⁷ In cases where a vendor is concerned that existing protections are insufficient and engaging in pre-solicitation communication will be beneficial, agencies should consider the use of appropriate non-disclosure agreements (NDAs) to ensure that proprietary information will be kept from potential competitors.

⁵ C.F.R. § 3.104-1-11, https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=48%3A1.0.1.1.3#se48.1.3_1104_64

⁶ 18 U.S.C. § 1905, <https://www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-partI-chap93-sec1905>

⁷ 5 U.S.C. § 552(b)(4), available at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/pdf/USCODE-2010-title5partI-chap5-subchapII-sec552.pdf>

6.	<p>Misconception – “Agencies have an obligation not to share information about their contracts, such as prices, with other agencies, similar to the obligation they have not to disclose proprietary information to the public.”</p>
	<p>Fact – There are no general limitations on the disclosure of information regarding existing contracts between agencies within the Government. In fact, agencies are encouraged to share pricing information to ensure that we are getting the best value for our taxpayers.</p>

As explained above, agencies have a responsibility to protect proprietary information from disclosure outside the Executive Branch. Restrictions on such outside disclosure prevent harm both to the competitive position of the contractor amongst its competitors and to the interest of the Government in being able to maintain a robust and competitive marketplace.

By contrast, the flow of information among and between agencies within the Executive Branch does not cause such harm. Moreover, such sharing among and between agencies can enable the Federal Government to root out wasteful duplication and negotiate better deals for the taxpayer.

Therefore, while there might be occasional circumstances where an agency could benefit from signing an NDA that would restrict its sharing of information with another agency, agencies should generally avoid NDAs that prohibit sharing of information – particularly pricing information – within the Government. Price visibility is critical to ensuring that the Government gets the best prices and that agencies are not paying more for the same products or services being bought under the same circumstances. As agencies face increasingly constrained budgets, it is critical that they share more pricing information with their Federal colleagues to ensure that the Federal Government is obtaining the best prices for the taxpayer.

7.	<p>Misconception – “To develop my new proposal, I don’t really need to tailor my solution to the specific solicitation since the government won’t read my proposal that closely anyway.”</p>
	<p>Fact – Offerors should tailor each proposal to the evaluation criteria, proposal instructions, and specific requirements of the solicitation to which they are responding. Contracting Officers and evaluation team members read proposals closely for compliance with the proposal instructions and must evaluate them against the evaluation factors and the statement of work in the solicitation.</p>

Tailor each proposal to respond specifically to the final solicitation, which lists the requirements, instructions to offerors on how to propose, and evaluation factors. Government evaluators determine the strengths and weaknesses of your proposal and also your firm's ability to perform the prospective contract successfully based on your responses to what the solicitation requests.

- *Develop a checklist of solicitation requirements to ensure that a response is provided for each requirement and that it is in the format requested in the solicitation. If you follow the solicitation instructions, it will facilitate evaluation of your proposal.*

Proposals in which vendors simply cut and paste from the RFP or use the same language from a previous proposal often miss important evaluation factors or misunderstand the nuances of the requirements are rarely selected for award. If you cut and paste responses from previous proposals, your proposal may fail to explain what you're proposing in *this* offer. Offers that do not respond to the solicitation risk being eliminated from the competition, which means the vendors has wasted valuable time and resources to prepare the proposal.

- *Vendors should be fully responsive to all evaluation factors, including past performance information. Some vendors incorrectly assume they will get credit for good performance since the government was aware of its work, even if the vendor doesn't mention it in its proposal.*

Vendors who attend a pre-solicitation or pre-proposal conference offered by the agency are likely to get a better understanding of the procurement and what is required in the proposal, and develop a more comprehensive proposal addressing the requirements.

For assistance in how to respond to government solicitations, there are several resources available to assist you:

- **Procurement Technical Assistance Program:** 98 Procurement Technical Assistance Centers nationwide help businesses compete successfully in Federal, state and local government contracting by providing one-on-one counseling sessions, classes, seminars and matchmaking events at little or no cost.⁸
- **Offices of Small and Disadvantaged Business Utilization (OSDBU):** OSDBUs are the primary advocate within each Federal executive agency responsible for promoting the maximum practicable use of all designated small business categories within the Federal acquisition process. You can find a listing of agency OSDBUs at <http://www.osdbu.gov/members.html>.
- **Veterans Contracting Program:** The Department of Veterans Affairs has created the Center Verification and Evaluation (CVE), which is solely dedicated to assisting veterans in starting and building businesses. CVE's web portal for veteran-owned businesses is <http://www.vetbiz.gov>.

⁸ More information is available at <http://www.aptac-us.org>

8.	<p>Misconception – “If I lose the competition, I shouldn’t bother to ask for a debriefing. The Contracting Officer won’t share any helpful information with me.”</p>
	<p>Fact – ALL offerors should ask for a debriefing to understand the award decision and to improve future proposals.</p>

In a formal procurement, the process by which offerors request and receive an explanation of the award decision is the debriefing. Asking for a debriefing is the best way to find out why you were not awarded the contract or order.

In accordance with FAR 15.505 and 15.506, agencies must provide debriefings to unsuccessful offerors in negotiated procurements upon written request either when excluded from the competitive range prior to award, or upon notification of award.

Agencies actually appreciate when unsuccessful vendors request debriefings because it gives contracting professionals an opportunity to point out weaknesses in the vendor’s proposal and, provide them with the rationale for award, and mentor the vendor to be more competitive on future proposals.

These debriefings can be provided in person or in writing, depending on the agency’s preference. When conducting competitions under FAR Part 8, agencies must provide a brief explanation to unsuccessful offerors on awards that are based on factors other than price alone. You can use the information provided to adjust your proposal strategy in future procurements to be more competitive.