Part 10 - Market Research

10.000 Scope of part.

10.001 Policy.

10.002 Procedures.

10.003 Contract clause.

Parent topic: Federal Acquisition Regulation

10.000 Scope of part.

This part prescribes policies and procedures for conducting *market research* to arrive at the most suitable approach to acquiring, distributing, and supporting *supplies* and services. This part implements the requirements of 41 U.S.C. 3306(a)(1), 41 U.S.C. 3307, 10 U.S.C. 3453, and 6 U.S.C. 796.

10.001 Policy.

(a) Agencies *shall*—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct *market research* appropriate to the circumstances–

(i) Before developing new requirements documents for an *acquisition* by that agency;

(ii) Before soliciting *offers* for *acquisitions* with an estimated value in excess of the *simplified acquisition threshold*;

(iii) Before soliciting *offers* for *acquisitions* with an estimated value less than the *simplified acquisition threshold* when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting *offers* for *acquisitions* that could lead to consolidation or *bundling* (15 U.S.C. 644(e)(2)(A)) and 15 U.S.C. 657q);

(v) Before awarding a task or *delivery order* under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for other than a *commercial product* or *commercial service* in excess of the *simplified acquisition threshold* (10 U.S.C. 3453(c)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available *market research* methods in order to effectively identify the capabilities of small businesses and new entrants into Federal *contracting* that are available in the marketplace for meeting the requirements of the agency in furtherance of-

(A) A *contingency operation* or defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of *supplies*, reconstruction, and other disaster or *emergency* relief activities (See 26.205); and

(3) Use the results of *market research* to–

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if *commercial products* or *commercial services*, or, to the extent *commercial products* suitable to meet the agency's needs are not available, *nondevelopmental items* are available that-

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which *commercial products*, or *nondevelopmental items* could be incorporated at the *component* level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting *commercial products* or *commercial services*, such as type of contract, terms for *warranties*, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of *sustainable products and services* (as defined in 2.101) in accordance with subpart 23.1;

(vi) Determine whether consolidation is necessary and justified (see 7.107-2) (15 U.S.C. 657q);

(vii) Determine whether *bundling* is necessary and justified (see 7.107-3) (15 U.S.C. 644(e)(2)(A));

(viii) Determine whether the *acquisition should* utilize any of the small business programs in accordance with part 19; and

(ix) Assess the availability of *supplies* or services that meet all or part of the applicable *information and communication technology* accessibility standards at 36 CFR 1194.1 (see subpart 39.2).

(b) When conducting *market research*, agencies *should* not request potential sources to submit more than the minimum information necessary.

(c) If an agency contemplates consolidation or *bundling*, the agency—

(1) When performing *market research*, *should* consult with the agency small business specialist and the local Small Business Administration *procurement* center representative (PCR). If a PCR is not assigned, see 19.402(a); and

(2) *Shall* notify any affected incumbent small business concerns of the Government's intention to bundle the requirement and how small business concerns *may* contact the appropriate Small Business Administration *procurement* center representative (see 7.107-5(a)).

(d) See 10.003 for the requirement for a prime contractor to perform *market research* in contracts in

excess of $7.5 million, other than contracts for the *acquisition* of *commercial products* or *commercial services* (section 826 of Pub. L. 110-181).

10.002 Procedures.

(a) *Acquisitions* begin with a description of the Government's needs stated in terms sufficient to allow conduct of *market research*.

(b) *Market research* is then conducted to determine if *commercial products*, *commercial services*, or *nondevelopmental items* are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of *market research* will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The *contracting officer may* use *market research* conducted within 18 months before the award of any task or *delivery order* if the information is still current, accurate, and relevant. *Market research* involves obtaining information specific to the product or service being acquired and *should* include-

(i) Whether the Government's needs can be met by-

(A) *Products* or services of a type customarily available in the commercial marketplace;

(B) *Products* or services of a type customarily available in the commercial marketplace with modifications; or

(C) *Products* or services used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of *products* or services to meet customer needs and associated costs;

(iii) Customary practices, including *warranty*, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the *products* or services are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain *recovered materials* and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Whether the Government's needs can be met by small business concerns that will likely submit a competitive *offer* at fair market prices (see part 19).

(2) Techniques for conducting *market research may* include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent *market research* undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying the Governmentwide database of contracts and other *procurement* instruments intended for use by multiple agencies available at https://www.contractdirectory.gov/contractdirectory/ and other Government and commercial databases that provide information relevant to agency *acquisitions*.

(v) Participating in interactive, on-line communication among industry, *acquisition* personnel, and customers.

(vi) Obtaining source lists of similar items from other *contracting activities* or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential *offerors* early in the *acquisition* process.

(ix) Reviewing systems such as the *System for Award Management*, the Federal *Procurement* Data System, and the Small Business Administration's Dynamic Small Business Search.

(c) If *market research* indicates *commercial products*, *commercial services*, or *nondevelopmental items* might not be available to satisfy agency needs, agencies *shall* reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit *commercial products*, *commercial services*, or *nondevelopmental items* to satisfy the agency's needs.

(d)

(1) If *market research* establishes that the Government's need *may* be met by a type of product or service customarily available in the commercial marketplace that would meet the definition of a *commercial product* or *commercial service* at subpart 2.1, the *contracting officer shall* solicit and award any resultant contract using the policies and procedures in part 12.

(2) If *market research* establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, part 12 *shall* not be used. When publication of the notice at 5.201 is required, the *contracting officer shall* include a notice to prospective *offerors* that the Government does not intend to use part 12 for the *acquisition*.

(e) The *head of the agency shall* document the results of *market research* in a manner appropriate to the size and complexity of the *acquisition*.

10.003 Contract clause.

The *contracting officer shall* insert the clause at 52.210-1, *Market Research*, in *solicitations* and contracts over $7.5 million, other than *solicitations* and contracts for the *acquisition* of *commercial products* or *commercial services*.