



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 29, 2009

M-09-25

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

SUBJECT: Improving Government Acquisition



The President's Memorandum on Government Contracting, issued on March 4, 2009, calls on federal agencies to improve the effectiveness of their acquisition practices and the results achieved from their contracts. Sound acquisition practices help agencies guard against inefficiency and waste and improve their ability to obtain quality supplies and services that are on time and within budget.

The Presidential Memorandum requires OMB to issue guidance in two steps. The first step, presented here, is guidance on reviewing existing contracts and acquisition practices. The second, due in the fall, is guidance on competition, contract types, acquisition workforce, and outsourcing. Closely-related additional guidance, on managing the multi-sector workforce and on holding contractors accountable for past performance, is being issued concurrently with this guidance.

This memorandum requires agencies to take the following actions: (1) review their existing contracts and acquisition practices and develop a plan to save 7 percent of baseline contract spending by the end of FY 2011; and (2) reduce by 10 percent the share of dollars obligated in FY 2010 under new contract actions that are awarded with high-risk contracting authorities.

I. Acquisition savings plans

The Administration has set a net savings target of \$40 billion a year through better acquisition and acquisition-related program practices. Accordingly, each agency shall develop a plan to save 3.5 percent of baseline contract spending in FY 2010 and a further 3.5 percent in FY 2011. These savings may be used to meet the budget targets in OMB's June 11, 2009 guidance on FY 2011 budget submissions. The plan should identify the steps that will be taken along with the projected savings for each identified step. Agencies that have recently announced or commenced acquisition reforms may count the savings from these reforms in meeting the 7 percent target.

There are many ways in which an agency may achieve savings from their acquisition activities. For example, savings can be realized by: (1) ending contracts that do not meet program needs or projects that are no longer needed, (2) building the skills of the acquisition workforce and recruiting new talent so as to negotiate more favorably priced contracts and manage contract costs more effectively, (3) developing more strategic acquisition approaches to leverage buying power and achieve best value for the taxpayer, (4) increasing the use of technology to improve contract management, and (5) reengineering ineffective business processes and practices to reduce cost to spend. A further description of some of these steps is provided in Attachment 1.

The specific actions agencies take will vary based on how the agency currently uses contracting to support its mission, its human capital and technology requirements, and the current quality and effectiveness of its acquisition processes and practices. Accordingly, each agency must identify and prioritize its particular needs and develop a tailored plan to improve the performance and cost-effectiveness of its acquisition activities.

II. Reducing the use of high risk contracting authorities

Noncompetitive contracting, cost-reimbursement contracts, and time-and-materials and labor-hour (T&M/LH) contracts pose special risks of overspending. Non-competitive contracts present a risk because there is not a direct market mechanism for setting the contract price. Cost-reimbursement contracts and T&M/LH contracts pose a risk because they provide no direct incentive to the contractor for cost control. While these contract authorities are important tools when used appropriately, reports from the Government Accountability Office (GAO), agency inspectors general, and agency management indicate that they are often used without an appropriate basis or sufficient management and oversight to limit taxpayer risk.

Accordingly, agencies should begin taking actions to reduce use of these high risk contracting authorities for new contract actions. Using FY 2008 achievements as a baseline, agencies should aim to reduce by at least 10 percent the combined share of dollars obligated through new contracts in FY 2010 that are: (1) awarded noncompetitively and/or receive only one bid in response to a solicitation or a request for quote, (2) cost-reimbursement contracts or (3) T&M/LH contracts.

Agencies that wish to address other high-risk authorities should confer with OMB's Office of Federal Procurement Policy. Additional background and information on this request is provided in Attachment 2.

Agencies that are subject to the Chief Financial Officers Act shall develop plans in accordance with this memorandum and submit them to OMB by November 2, 2009. Other agencies are encouraged to consult with OMB and take appropriate steps tailored to their mission needs and operating environments.

Thank you for your attention to this matter.

Attachments

Attachment 1

Examples of Steps Agencies Should Consider in Achieving Savings Targets

The following are a few examples of ways an agency might achieve its acquisition savings targets. The approaches described below are of two general types: (A) those that directly reduce spending as a result of decisions which are typically made at the program or project level (e.g., the program's objectives have been accomplished or changed), and (B) those that create savings through more effective acquisition practices. Agencies should develop specific plans that reflect their particular needs and are encouraged to pursue other actions needed to achieve their savings targets.

A. Saving through reductions in spending

- End contracts that are (i) ineffective, (ii) wasteful, (iii) support programs that are being terminated, reduced, or changed in scope, or (iv) not otherwise likely to meet the agency's needs. Agencies should have procedures in place that allow them to review contracts at appropriate decision points, and to evaluate the effectiveness of existing contracts through collaborations between acquisition, program, and project officials, so as to make the most informed decisions about whether to exercise options, renew contracts, or cancel contracts.

Examples:

The Department of Energy projects \$30 million in savings in FY 2010 from a proposal, included in the FY 2010 Budget, to terminate funding for a contract to refurbish the Los Alamos Neutron Science Center. This center was built 30 years ago and no longer plays a critical role in weapons research. Maintaining the Center would be cost prohibitive.

The Department of Agriculture projects \$18 million in savings in FY 2010 from a planned contract termination that would be made in connection with a proposal, included in the FY 2010 Budget, to end funding for the Watershed and Flood Prevention Operations Program. This program has a lower economic return than other Federal flood prevention programs and more than 95 percent of the program was earmarked in FY 2009, which has undermined the Department's ability to use project evaluations as a basis for prioritizing funding.

Agencies are encouraged to review the alignment between their acquisition, project, and program activities. The effective integration of these activities lies at the heart of an agency's ability to achieve desired cost, schedule, and performance outcomes from programs that rely significantly on contractors to provide supplies and services. OMB's Office of Federal Procurement Policy (OFPP) will post a reference document at http://www.whitehouse.gov/omb/procurement_default/ that agencies can use, as appropriate, to evaluate where opportunities for improved alignment in agency activities may exist.

B. Savings through more effective acquisition practices

- Strengthen the acquisition workforce. Agencies should analyze whether the current size, skill-level, and organizational structure of their acquisition workforces are sufficient to achieve a high performance level. As appropriate, agencies should develop plans to (a) increase the size of their acquisition workforce (broadly defined to include contracting, program management, and the contracting officer's technical representative), (b) make any necessary investments in training, and (c) restructure acquisition workflows to improve efficiency and free up acquisition workforce time for more strategic activities. In analyzing acquisition workforce needs, agencies should pay particular attention to retirement and other separation trends, steps that can be taken to increase retention of experienced acquisition experts, and ways to emphasize the importance of acquisition work as a high-prestige management responsibility critical to agency mission success. Agencies are encouraged to provide specific information on the additional FTEs and funding necessary to carry out their proposed plan for strengthening the acquisition function.
- Strengthen acquisition practices. Agencies should review their acquisition practices and compare them to best practices at other agencies. Practices that have been shown to improve acquisition outcomes include:
 - enhancing upfront planning to align program requirements and acquisition strategies and to make sure acquisition requirements are clearly specified;
 - increasing the amount of attention paid to market analysis, cost estimates, and choice of contract types and incentives, so as to achieve excellent and cost effective performance;
 - increasing the amount of attention paid early in the acquisition process to ensuring that sufficient internal capacity is or will be in place to effectively manage and oversee contract performance and mitigate risks after award;
 - instituting peer reviews at critical stages of high-priority acquisitions to bring the agency's best expertise to bear to ensure effective execution of acquisition, project, and program responsibilities. Peer reviews can be conducted in a variety of ways, but typically evaluate if an acquisition for carrying out the investment is being planned or managed effectively and offer constructive ideas and alternatives for achieving desired outcomes; and
 - ensuring that systems are in place to review contract cost, schedule, and performance goals on an ongoing basis and that corrective actions are taken in a timely manner to affect contract outcomes when variances from these goals occur.
- Develop more strategic acquisition strategies. Agencies should increase their participation in government-wide strategic acquisition initiatives, including strategic sourcing initiatives that reduce costs for all agencies by leveraging the government's buying power and, where appropriate, expand their use of enterprise-wise strategic acquisition initiatives that offer significant savings opportunities from both business process improvements and access to lower product and service costs.

Managing Risk in Noncompetitive, Cost-Reimbursement and Time-and-Materials and Labor-Hour Contracts

Noncompetitive, cost-reimbursement, and time-and-materials and labor-hour (T&M/LH) contracts play an important role in helping agencies meet needs that arise in a variety of challenging circumstances. Noncompetitive contracts enable agencies to address requirements that can only be satisfied by one source or that arise during emergencies when time allows for only limited consideration of offers. Cost reimbursement contracts help agencies obtain critical research, leading edge innovation, and other needs where there is considerable uncertainty about the resources that will be necessary to achieve the government's objective. T&M/LH contracts help agencies accomplish tasks for a reasonable cost where the needed amount of labor effort cannot be specified in advance, such as when an information technology office must diagnose the cause of a system failure.

Notwithstanding these benefits, each of these authorities carries significant risk of overspending. Noncompetitive contracts force agencies to negotiate contracts without the benefit of a direct market mechanism to help establish pricing. Cost-reimbursement and T&M/LH contracts provide limited incentive to control costs. However, by recognizing and managing these risks, agencies can avoid wasteful spending and meet needs under conditions where other acquisition strategies are likely to be less effective.

Accordingly, agencies are encouraged to review the adequacy and effectiveness of their internal procedures and practices related to the use of these vehicles and make improvements where weaknesses are identified. Good stewardship might include:

- Applying additional resources to the analysis and negotiation of fair and reasonable prices for noncompetitive contracts, examining the reasons why only one offer was received in response to a solicitation to ensure the government is not engaging in restrictive practices that reduce competition, and working with requirements officials to explore opportunities for new solutions that might be met by two or more sources;
- Planning for the migration of work from a cost-type to fixed-price contract as requirements become better defined; and
- Performing an analysis of organizations within the agency that have repeatedly renewed T&M/LH contracts to consider the continued need and cost-effectiveness of such arrangements, whether other contract types are more suited, and if in-sourcing should be considered, either because the agency has insufficient internal capability to manage its operations or might save costs by converting the work to federal performance.

In addition to mitigating risks when these contract authorities are employed, agencies should make sure to limit use of these authorities to situations when they are truly appropriate. Reports from the Government Accountability Office, agency inspectors general, and agency management point to a general overuse of these authorities that requires agency action – specifically, a reduction in use for new contract actions. Therefore, this guidance calls for agencies to reduce

by at least 10 percent the combined share of dollars obligated through new contracts in FY 2010 that are (1) awarded noncompetitively and/or receive only one bid in response to a solicitation or a request for quote, (2) cost-reimbursement contracts, or (3) T&M/LH contracts.

Thus, an agency that in FY 2008 had 40 percent of its contract dollars in these high-risk categories should reduce this number to at most 36 percent of the dollars obligated through new contract actions in FY 2010.

Noncompetitive awards include, at a minimum, those otherwise subject to competition under Part 6 of the Federal Acquisition Regulation (FAR) that were not competed on the basis that there is only one responsible source (i.e., FAR 6.302-1) or unusual and compelling urgency (i.e., 6.302-2). In defining the class of contracts targeted for reduction, agencies are encouraged to include also awards made pursuant to FAR 8.405-6, which authorizes agencies to restrict their consideration of contractors under the Federal Supply Schedules program, and (2) FAR 16.505(b)(2), which permits agencies to make awards under a multiple award contract without giving fair opportunity to all contract holders.¹

As a result of reviewing internal practices, agencies may identify additional high-risk activities in need of management attention. Agencies that wish to address other high-risk authorities as part of their target should consult with OFPP.

Other efforts

Changes will soon be made in the FAR to improve policies and practices associated with the use of cost-reimbursement contracting and help to guard against their overuse. Consistent with section 864 of Public Law 110-417, these changes will address: (1) when and under what circumstances cost-reimbursement contracts are appropriate, (2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts, and (3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

OFPP is also working on guidance with agency Chief Acquisition Officers to further strengthen use of competition and selection of contract type. The guidance will be issued later this fall, in accordance with the President's Memorandum on Government Contracting.

¹ Agencies should not include acquisitions in their target that are made noncompetitively pursuant to a statute that authorizes or requires that the acquisition be made through another agency or from a specified source, including those identified in FAR 6.302-5(b), such as sole source awards made under the small business development “8(a)” program, the HUBZone Act, or the Veterans Benefits Act, awards made to qualified nonprofit agencies for the blind or other severely disabled pursuant to the Javits-Wagner-O’Day Act, and awards made to Federal Prison Industries pursuant to 18 U.S.C. 4124. In addition, agencies need not, as a general matter, address actions in their target that are made pursuant to FAR 6.302-3, -4, -6, or -7.