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GSA Office of Governmentwide Policy

SPE Memo SPE-2022-03

## MEMORANDUM FOR ALL GSA ACQUISITION ACTIVITIES

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SUBJECT: Appropriate Internal Interactions in the Acquisition Process

**1. Purpose.**

The purpose of this memo is to provide guidance on the appropriate management involvement in the acquisition process.

**2. Applicability.**

The memo is applicable to all GSA contracting activities in the Federal Acquisition Service (FAS), Public Buildings Service (PBS) (including the Office of Leasing), Office of Administrative Services (OAS), and staff offices.

**3. Background.**

In 2013, the Office of the Inspector General issued a report addressing improper management interference in a contract. In response, on February 18, 2014, FAS issued *GSA Policy and Procedure 2800.1 - Managing and Documenting Stakeholder Interest in Contracting Actions* and on February 20, 2014, the former FAS Commissioner issued a memo entitled "*Enhancing Proper Procurement Controls and the Contracting Officer's Autonomy within the Procurement Function.*" In portions of the agency, both the policy and the memo have been misunderstood as limiting management discretion in assigning, monitoring, and/or reviewing contracts or contracting actions.

To clear up this confusion, this memo cancels both the February 18, 2014 policy and the February 20, 2014 memo. It replaces them with this SPE memo which addresses appropriate and inappropriate management intervention.

**4. Overview.**

FAR 1.102 contains a statement of guiding principles for the federal acquisition system. The statement begins by speaking to the need of satisfying the customer in terms of cost, quality, and timeliness. Members of the acquisition workforce carry out and execute these guiding principles. Supervisors overseeing the acquisition workforce ensure the workforce members have appropriate training, qualifications, resources, and information to be successful. The supervisors also oversee the quality, soundness, and timeliness of actions.

a. Who are the participants in the acquisition process?

Members of the Acquisition workforce are formally defined in GSAM 502.101. In general anyone involved in defining requirements, developing or executing any portion of acquisition strategy, administering contracts, or disposing of surplus items are part of the acquisition process.

b. What is management's role as part of the acquisition process?

Management is responsible for establishing effective acquisition processes and fostering participation from all stakeholders.

The supervisors and managers<sup>1</sup> of an acquisition team member should among other things:

- Empower all participants to engage in the acquisition process and acquisition reviews<sup>2</sup> as appropriate.
- Encourage all participants to provide relevant perspectives and information to the rest of the acquisition team
- Create appropriate boundaries for the contracting officer to make decisions in the best interest of GSA
- Monitor performance of the acquisition team member and establish controls to align to the FAR Guiding Principles. Head of Contracting Activities (HCAs), in particular, must also establish controls to ensure good management practices including with respect to warrant use by contracting officers.

c. What is helpful, meaningful, and appropriate management involvement in an acquisition?

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<sup>1</sup> Supervisors and managers may include team leads, branch-level management, division management, contracting directors, regional management, Service-office management and HCA's.

<sup>2</sup> GSA acquisition policy in the GSAM has evolved to set standards around acquisition reviews. See [GSAM 504.71](#) and the accompanying [GSAM Change 102](#) for additional background.

Helpful, meaningful, and appropriate management involvement in an acquisition includes:

- Helping to change allocated resources to the contracting officer and acquisition team to complete projects, and address competing priorities, when necessary.
- Providing training, resources, or assistance when issues or knowledge gaps are identified by the acquisition team or management.
- Ensuring the contracting officer and acquisition team members hold the certifications, warrants, and/or specialized credentials to complete assigned tasks.
- Ensuring all applicable procurement documentation (e.g. acquisition plans, justifications and approvals, determination and findings, award decision documents, price analysis) are clear, logical, and consistent during reviews at the applicable routing stages.
- Conducting or facilitating internal reviews to understand and highlight potential roadblocks and weaknesses of a certain contract action, as well as successes.
- Ensuring proper acquisition planning including procurement milestones (when applicable), to meet requirements and minimize risk.
- Implementing appropriate safeguards to protect against conflicts of interest, fraud, waste, abuse, and other ethical dilemmas.
- Ensuring all acquisition participants understand procurement integrity requirements.
- Involving and ensuring the relevant offices - including the assigned counsel's office, Office of Acquisition Management/Office of Policy and Compliance, and Office of Government-wide Policy - are included for guidance, as necessary and/or when required..
- Documenting and memorializing any conversations or communications<sup>3</sup> had directly with an offeror or contractor and sharing that documentation with the relevant contracting officer when the contracting officer was not present.
- Promoting acquisition innovation and streamlining

d. What is adverse or inappropriate management involvement in an acquisition?

Adverse or inappropriate management involvement in an acquisition includes but is not necessarily limited to:

- Pressuring a contracting officer to sign or execute a contract action, or to decline or reject a contract action.

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<sup>3</sup> Documentation must include the conversation or communication details such as date, time, attendees and their roles/organization, contact information, topics discussed, reason the contracting officer wasn't included in the conversation or communication, and any additional follow-up actions. The [GSA Form 2429](#) may also be used.

- Negotiating or agreeing to terms with a contractor without the relevant contracting officer's knowledge and involvement **unless** that supervisor will take over and sign as contracting officer<sup>4</sup>.
- Otherwise interfering with a contracting officer's ability to complete their authorized duties.

e. Impasses

There may be times when a contracting officer reaches an impasse with a vendor, contractor, requirements office, or another member of the acquisition team. Sometimes a party to an impasse may raise the issue to the contracting officer's supervisor. If this happens, the supervisor should ensure the position of each party has reasonably been considered.

If the supervisor concludes the contracting officer has made an appropriate business decision, ensure the contracting officer has adequately documented the basis for his/her conclusion. Convey the conclusion to the party that raised the impasse.

If the supervisor concludes the contracting officer has not made a decision that satisfies the acquisition guiding principles, document additional points for the contracting officer to consider.

If, following a complete review, the contracting officer and the supervisor are unable to reach agreement, the supervisor may:

- Elevate the issue for a higher level review
- Ask the contracting officer to reconsider his/her position
- Reassign<sup>5</sup> the contract or contract action to another contracting officer
- Sign the contract action (if the supervisor holds a warrant)
- Change workload or work prioritization

The supervisor may not:

- Direct the contracting officer to sign the contract
- Direct the contracting officer to decline to sign the contract
- Provide specific direction without confirming it in writing

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<sup>4</sup> In such an instance, the supervisor must have the proper warrant and authority to sign on behalf of the Government.

<sup>5</sup> If there is a reassignment of a contract or contract action to another contracting officer, the factual areas of agreement and disagreement between the contracting officer and supervisor must be documented by the former contracting officer and provided to the newly assigned contracting officer.

Agency personnel are invited to seek the assistance of legal counsel for any matter, whether or not legal review is required by statute, regulation, or GSA Order. Early consultation with counsel is strongly encouraged in matters expected to be contested, and/or where the exercise of sound business judgment<sup>6</sup> suggests that consultation with counsel is appropriate<sup>7</sup>.

## **5. Cancellation.**

- FAS P 2800.1, “Managing and Documenting Stakeholder Interest in Contracting Actions” is canceled by this memo.
- FAS Memorandum, “Enhancing Proper Procurement Controls and the Contracting Officer’s Autonomy within the Procurement Function” is canceled by this memo.

## **6. Points of Contact.**

Any general questions related to this memo may be directed to [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov). For specific questions related to your Service-office, please contact the following:

- FAS Office of Policy and Compliance: [opcmailbox@gsa.gov](mailto:opcmailbox@gsa.gov)
- PBS Office of Acquisition Management: [pbsoampolicy@gsa.gov](mailto:pbsoampolicy@gsa.gov)
- PBS Office of Leasing: [pbsleasepolicy@gsa.gov](mailto:pbsleasepolicy@gsa.gov)
- Office of Administrative Services: [cocacq.request@gsa.gov](mailto:cocacq.request@gsa.gov)

## **7. Appendix.**

- Appendix A - Contract Action Examples
- Appendix B - Procurement Situation Examples

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<sup>6</sup> If the supervisor within the supervisory chain-of-command has reason to believe that the contracting officer failed to exercise sound business judgement, for example, the remedies at GSAM 501.603-4 are available. However, a pattern of impasses by either party described in Section 4.e. may indicate additional training is needed or a performance issue exists that should be addressed via the relevant Office of Human Resources Management (OHRM).

<sup>7</sup> [GSA Order ADM 5000.4B](#), dated 11/14/2014

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**Appendix A - Contract Action Examples**

The boxes below provide helpful examples of appropriate and inappropriate involvement by management for certain contract actions.

The contract action examples are not exhaustive, but should allow, in addition to the memo, acquisition members, including acquisition management, to understand the spirit of proper involvement and be able to apply the examples similarly to other acquisition-related actions and situations.

These examples are applicable to actions related to all manners of contracts, including blanket purchase agreements, task and delivery orders, leases, Federal Supply Schedule contracts, Government-wide Acquisition contracts, Multi-agency contracts, and Indefinite Delivery Indefinite Quantity contracts.

**Contract Action Example: Sole Source/Limiting Sources Decision**

**Examples of helpful, meaningful, and appropriate management involvement related to this action**

- Promote the acquisition of commercial products and commercial services.
- Promote full and open competition.
- Challenge requirements not stated in performance-based acquisition terms.
- Challenge barriers that create restrictive procurements (e.g. burdensome contract clauses and terms and conditions).
- Support the contracting officer in communicating to requirement offices that proper procurement planning and preparation is required for helping the acquisition team meet outcomes resulting in the best interest of GSA.
- Ensure the documentation supporting limiting competition is clear, logical, and consistent during reviews.
- Ask questions to understand why the acquisition team believes limiting competition is necessary and help them identify ways to expand their options.
- Help create an atmosphere that supports promoting competition for follow-on contracts or orders.

### **Examples of adverse or inappropriate management involvement related to this action**

- Pressure a contracting officer to agree to limiting competition not in accordance with the FAR, GSAM, or other applicable laws or policies.
- Agree with a contractor to limit competition without the relevant contracting officer's knowledge and involvement.
- Not emphasizing proper procurement planning and preparation to avoid untimely and urgent actions that limit the acquisition team's ability to meet outcomes resulting in the best interest of the Government and the mission.

### **Contract Action Example: Price Reasonableness Decision**

#### **Examples of helpful, meaningful, and appropriate management involvement related to this action**

- Inquire about the status and, when needed, change allocated resources to the contracting officer and acquisition team to timely complete the price reasonableness determination.
- Request and review all ancillary information the contracting officer and the acquisition team developed to support the analysis.
- Ensure the price reasonableness determination is clear, logical, and consistent during reviews.
- Ask questions during reviews to understand the determination.
- Establish check-ins with the contracting officer to help identify roadblocks that management may be able to resolve, as well as ensure the contracting officer and the acquisition team are working efficiently to complete the action.
- Help the contracting officer identify applicable historical pricing from similar actions within the division or Service-office.

#### **Examples of adverse or inappropriate management involvement related to this action**

- Pressure a contracting officer to determine fair and reasonable pricing without proper due diligence.
- Agree to pricing with a contractor without the relevant contracting officer's knowledge and involvement.
- Ignore or disregard concerns highlighted by the contracting officer and acquisition team.
- Otherwise interfering with a contracting officer's ability to complete the required price analysis and reasonableness determination.

### Contract Action Example: Award Decision

#### Examples of helpful, meaningful, and appropriate management involvement related to this action

- Inquire about the status and, when needed, change allocated resources to the contracting officer and acquisition team to timely complete the award decision document.
- Ensure the award decision document is clear, logical, and consistent during reviews.
- Ask questions during reviews to understand the decision including the overall acquisition strategy.
- Establish check-ins with the contracting officer to help identify roadblocks that management may be able to resolve, as well as ensure the contracting officer and the acquisition team are working efficiently to complete the action.
- Helping to ensure the document is routed in accordance with GSA, Service-office, and local policy

#### Examples of adverse or inappropriate management involvement related to this action

- Pressure a contracting officer to sign or execute the award decision document.
- Agree to terms or an award with a contractor without the relevant contracting officer's knowledge and involvement.
- Otherwise interfering with a contracting officer's ability to make an award decision in the best interest of the Government.



**SPE-2022-03****Appendix B - Procurement Situation Examples**

The boxes below provide helpful examples of appropriate and inappropriate involvement by management for certain procurement-related situations.

The situation examples are not exhaustive, but should allow, in addition to the memo, acquisition members, including acquisition management, to understand the spirit of proper involvement and be able to apply the examples similarly to other acquisition-related actions and situations.

These examples are applicable to situations related to all manners of contracts, including blanket purchase agreements, task and delivery orders, leases, Federal Supply Schedule contracts, Government-wide Acquisition contracts, Multi-agency contracts, and Indefinite Delivery Indefinite Quantity contracts.

**Situation Example: Procurement Milestone Planning****Examples of helpful, meaningful, and appropriate management involvement related to this situation**

- Support the contracting officer in communicating to requirement offices that proper procurement planning, preparation, and dedicated technical support is required for helping the acquisition team meet outcomes resulting in the best interest of the Government.
- Be engaged in the Acquisition Planning stage, or, if the Acquisition Plan is complete, review it to help monitor the identified schedule risks and help ensure the plan to mitigate the identified schedule risks is being implemented.
- Establish check-ins with the acquisition team (and other management as necessary) to understand and highlight potential roadblocks that may negatively impact the schedule.
- Ask for a milestone chart from the contracting officer to ensure milestones are being met.
- Change allocated additional resources to the contracting officer and acquisition team to streamline the acquisition process.
- Support and encourage the development, application, and documentation of innovative contracting methods.

**Examples of adverse or inappropriate management involvement related to this situation**

- Pressure the contracting officer and acquisition team to skip or ignore required steps in the acquisition process.
- Create a culture or atmosphere that consistently results in urgent requirements that doesn't allow the contracting officer to perform proper planning and due diligence.

**Situation Example: The contract is a high-risk contract**

**Examples of helpful, meaningful, and appropriate management involvement related to this action or situation**

- Be engaged in the Acquisition Planning stage, or, if the Acquisition Plan is complete, review it to help monitor the identified technical, cost, and schedule risks as well as to ensure the plan to mitigate those identified risks is being implemented.
- Establish check-ins with the acquisition team (and other management as necessary) to understand and highlight potential roadblocks and weaknesses of a certain contract action, while also reflecting on positive developments and opportunities for action resolution.
- Support and encourage the development, application, and documentation of innovative contracting methods.
- When the requirement is urgent, help the contracting officer and acquisition team with resources and strategies to improve outcomes and deliverables.
- Implement strategies to ensure the contract (and all procurements) is efficient and effective in delivering high quality goods and services that meet customer needs, at fair pricing, in compliance with regulations, and with the utmost integrity.

**Examples of adverse or inappropriate management involvement related to this action or situation**

- Pressure the contracting officer to sign or execute the contract action because of external influence.
- Not providing the contracting officer reasonable time to complete required actions in accordance with the FAR, GSAM, or other applicable laws or policies.
- Agree to pricing or other terms or conditions with a contractor without the relevant contracting officer's knowledge and involvement.
- Ignoring concerns highlighted by the contracting officer and acquisition team that are creating roadblocks to completing the price reasonableness determination.

- Otherwise interfering with a contracting officer's ability to complete the required price analysis and reasonableness determination.

**Situation Example: Contractor is bypassing the contracting officer and going directly to management when there is a disagreement**

**Examples of helpful, meaningful, and appropriate management involvement related to this action or situation**

- Document and memorialize any conversations or communications<sup>8</sup> had directly with a contractor and share that documentation with the contracting officer.
- Ask the contracting officer to provide an analysis of the issue with all relevant information.
- Ask the contracting officer and the acquisition team to analyze and consider alternatives.
- Ensure inherently governmental functions are not performed or overly influenced by the contractor.

**Examples of adverse or inappropriate management involvement related to this action or situation**

- Negotiating or agreeing to terms with a contractor without the relevant contracting officer's knowledge and involvement **unless** that supervisor will take over and sign as contracting officer.
- Failure to investigate facts of the situation.
- Fail to document any conversations or communications directly with a contractor without the contracting officer's involvement when the conversation is dealing with a specific contract action or may result in preferential treatment.

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<sup>8</sup> Documentation must include the conversation or communication details such as date, time, attendees and their roles/organization, contact information, topics discussed, reason the contracting officer wasn't included in the conversation or communication, and any additional follow-up actions.