

THE MARKET RESEARCH CONUNDRUM

Since the advent of Acquisition Reform as legislated by Public Law (PL) 103-355, The Federal Acquisition Streamlining Act of 1994 (FASA) and PL 104-106, The Federal Acquisition Reform Act /Information Technology Management Reform Act (FARA/ITMRA) of 1996 (also known as the Clinger-Cohen Act), the Federal acquisition workforce has become increasingly familiar with the term "market research." This workforce has received extensive amounts of literature and instruction describing what market research is, why and when it is required, who should be doing the research, the various methods of data collection and the techniques that can be used to conduct market research. A case can be made that given the breadth of personnel who continuously remain involved in some form of market research in order to effectively perform their assigned job responsibilities, a significant portion of the Acquisition workforce can claim expertise in particular market sectors. Given the legislation, literature, training and experience over the last 6 years, can there be any more mysteries associated with performing market research?

The heightened awareness of the need to learn which firms are capable of meeting the Government's requirements for a particular acquisition had its roots in PL 98-369, The Competition in Contracting Act of 1984 (CICA). As the justification format to certify that only one firm has the capability to meet the Government's requirements evolved, it became clear that it was necessary to corroborate that conclusion. Waiting until the solicitation synopsis to advertise a sole source requirement was not a viable method of corroboration. Therefore, the then newly devised Justification and Approval (J&A) document contained a section on Market Surveys (now titled Market Research), essentially to affirm industry's agreement that there was, in fact, only one responsible source. Acquisition reform progressed and FAR 15.201, Exchanges with industry before receipt of proposals, was written. The revised procedures enabled and encouraged a much freer exchange of information between Government and industry. This development not only gave industry a better understanding of the Government's requirements but also resulted in the Government acquiring increased knowledge and understanding of the marketplace and the capabilities of individual firms. As the swift pace of technological advancement swept through the commercial world, it became more essential that the Government keep abreast of industry's rapidly expanding capabilities. FAR Part 12, Acquisition of Commercial Items, established as a matter of policy the Government's preference for commercial and non-developmental items (CI and NDI). This policy recognized the fact that private industry, through competition, was constantly improving and perfecting its products, services and capabilities and that many of these could meet Government requirements and be provided at a lower cost. Government personnel are expected to be aware of where to go to acquire required goods and services. This awareness is obtained through market research which FAR 2.101 defines as "collecting and analyzing information about capabilities within the market to meet agency needs."

FAR Part 10, Market Research, requires that market research be performed as appropriate to the circumstances. Of course, the circumstances will vary depending on the history of the item, its technological complexity and the availability of data. The success of the research will depend on the knowledge, perseverance and initiative of the group conducting the research. Responsibility for conducting market research falls upon the Program Management Office's technical requirements personnel. Although seemingly straightforward, the relatively simple requirement for market research can generate discord between the requiring activity and the market that seeks to serve it. When industry claims that it has the capacity to meet the Government's requirements and the market research team has concluded that there is only one responsible source, there is a conflict that must be resolved. Further, industry may question whether the market research, as conducted by the requiring activity, was appropriate based on the contention that the team sought too narrow a solution to meet its requirements. For example, if the Government obtained a solution that exceeded its basic requirements through a competitive award utilizing performance specifications, must it retreat to its original requirements baseline when it does research for a follow-on competition or can it insist its current requirements are for solutions equal to or greater than the capabilities it is currently being provided? Some in industry argue that the latter approach unnecessarily restricts competition by giving the incumbent an unfair competitive advantage.

Clearly, as you plan for conducting market research you must first understand your requirements baseline and the question posed in the above example must be resolved prior to initiating your research. Another example, which points out the challenges in performing market research, pertains to the FAR Part 12 policy regarding CI and NDI solutions. FAR Part 12.201 establishes that agencies shall conduct market research to determine if there are CI or NDI that meet the Government's requirements. If there are, then the Government is to acquire the CI or NDI. How should you do market research if you know there is *one* NDI solution? Should you limit your market research to just CI or NDI solutions based on the FAR Part 12.201 provision? Should you do this even if you know or strongly suspect that there are several firms with the capability to *develop* a solution that meets the requirement? What about competition? If you limit your market research to just CI or NDI and there is only one vendor with a NDI solution, is your basis for sole source that FAR Part 12 required it as a function of policy?

Questions, issues and challenges regarding performing market research abound, even after legislation, literature, training and several years of experience. As the Government addresses questions like those cited above, it will continue its Acquisition Reform journey and further improve its ability to obtain quality goods and services from industry at a fair and reasonable cost.

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