White Paper: PSC "Thematic Recommendations" to DoD Section 809 Panel

July 13, 2016

Introduction

Section 809 of the FY 2016 National Defense Authorization Act (NDAA) requires that the Secretary of Defense establish a nine-member advisory panel consisting of experts in acquisition and procurement policy, the objective of which is to review the DoD's acquisition regulations and provide recommendations for streamlining the procurement process and reducing barriers to obtaining innovation. As the Section 809 panel begins its work, below are the Professional Services Council's (PSC) initial thematic feedback based on member company input for the panel's consideration.

I. <u>Communication & Transparency</u>

Challenge: In the acquisition lifecycle, there is often a disconnect between the acquisition workforce and its program offices. Not being able to talk to program officials is one of industry's biggest challenges. The business line program official writes the requirements / Statement of Work (SOW). But without a vendor being able to get a good understanding of the need of the client, industry is unable to provide the agency, and thus the citizen / customer, the right solutions to meet the program's needs.

Proposed Solutions:

Government "Integrated Accountability Chain"

One recommendation made in PSC's 2014 Acquisition and Technology Policy Agenda¹ that could be incorporated into future agency initiatives is to establish an "integrated accountability chain" model for all significant programs. Such accountability mechanisms would bring together key stakeholders from across the Department's functional areas, such as program management, contracting, legal, and financial, to work collaboratively during the acquisition lifecycle of major procurements.² This process has been implemented at DoD, where large services contracts are required to go through a Service Acquisition Workshop (SAW), which is an interactive, in-person course attended by multifunctional teams (including the contracting officials and requirement owners) early in the acquisition process with the intent of defining and refining requirements in order to create an initial draft of the Performance Work Statement. According to DoD, this process has proven to significantly improve the quality of requirement documentations while reducing costs, increasing the likelihood of effective competition and shortening acquisition lead times.

Industry Interaction

GSA is also engaged in efforts to reform its procurement practices. What is notable about the GSA initiative is that they have actively sought broad industry participation and feedback throughout their procurement formulation process. On individual procurements, such as the OASIS contract, GSA established designated forums via its "GSA Interact" website that facilitates continuous communication between the agency and industry. The site serves as a portal for industry to pose questions to GSA about the procurement, a portal for industry to share best practices and plans for continuous feedback similar to that which is normally sought through agency Requests for Information (RFIs), and a "one-to-all" communication tool for the agency to keep the vendor community fully and timely informed. The site even allows for non-attribution/anonymous recommendations to enable the best

 ¹ 2014 PSC Acquisition and Technology Policy Agenda, available at https://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/PSC APRC Framework.aspx.
 ² See DoD Service Acquisition Workshop (SAW), Federal Agency Acquisition Best Practices Examples, available at www.pscouncil.org/PolicyIssues/CAC Resources/Federal Agency Acquisition Best Practices Examples.aspx.

possible acquisition outcomes. PSC believes that the GSA Interact website is a simple yet extremely valuable tool that could be replicated or leveraged by the agency as well.

Job Rotation

A well-trained, skilled and supported workforce in all phases of the acquisition lifecycle is necessary to achieve continued successful outcomes. But much of the new generation of the federal acquisition workforce is still being trained and oriented to traditional and outdated practices and rules. PSC recommends the expansion of initiatives that seek job rotations for the workforce into functional areas outside of their main area of focus. For example, much can be learned by program managers by spending some time working within the acquisition office, and vice versa. In July 2016, DHS initiated its "Exemplar" program that establishes a minimum six-month assignment with industry for its cyber personnel. ³ Initiatives such as these can go a long way to remedying human capital challenges.

A number of civilian agencies⁴ are working to help the acquisition workforce truly understand why industry wants to talk with them in the first place.

For example, PSC worked with the Department of Homeland Security (DHS) to conduct a "Reverse Industry Day" to illustrate the parallel actions industry is taking during the government's acquisition lifecycle and how government decisions or lack of information during that lifecycle impact vendor bid/no-bid decisions and subsequent contract performance.

Challenge: The acquisition lifecycle is complex and involves many stakeholders within the agency and the broader private sector.

Proposed Solutions: In February 2011 and May 2012 OFPP issued its "Mythbuster" memos.⁵ Some departments are taking this a step further and creating their own procurement principles or mythbusters that are tailored to the department's mission and what the agency buys.⁶ If you follow this approach, we suggest simple language and the inclusion of examples of situations that often occur within your agency. What are your agency's procurement phases? What types of conversations/discussions are permissible during each phase? What types of conversations/discussions are always permissible? A thorough understanding of the flexibilities in the acquisition process are necessary for these flexibilities to be used to achieve better acquisition outcomes.

Another potential solution is to put out a "Reverse" Request for Information (RFI) asking for industry feedback. In January 2016, the Treasury Department issued a "Reverse" RFI seeking specific input from industry in an attempt to streamline procurements/solicitations, remove obstacles/impediments and drive better business outcomes.⁷

Challenge: Communicating change to various stakeholders can be time and resource intensive.

Proposed Solutions: PSC members indicated that as new programs are created and priorities are implemented, it is important and would be very useful to have some type of public dashboard with interim milestones so that industry, the public, and especially beneficiaries understand progress and forthcoming changes. The dashboard should be maintained and updated as new information becomes available.

³ DHS Exemplar, available at: https://www.dhs.gov/exemplar.

⁴ PSC Federal Agency Acquisition Best Practices Examples, available at: http://www.pscouncil.org/PolicyIssues/CAC Resources/Federal Agency Acquisition Best Practices Examples.aspx.

⁵ Office of Federal Procurement Policy Memoranda, February 2011 and May 2012, available at https://www.whitehouse.gov/omb/procurement index memo/.

⁶ See, for example, "5 new procurement principles to drive VA's future," Federal News Radio, January 27, 2016. Available at http://federalnewsradio.com/acquisition/2016/01/five-new-procurement-principles-drive-vas-future/.

⁷ Industry Feedback on the Treasury's Procurement, Solicitation Number TWRFI2016, January 20, 2016. Available at https://www.fbo.gov/index?s=opportunity&mode=form&id=0d728a6bcf1fa935dd9bfd3d06ba23bb&tab=core&cview=0.

II. Acquisition Governance

Challenge: Acquisition governance requires a difficult balance—empowering employees throughout the programs while maintaining enough management oversight to ensure consistency and predictability.

Proposed Solutions: Make sure that all significant programs have an approved acquisition program baseline (APB) at each phase in the acquisition lifecycle that clearly articulates what the product or service being acquired is supposed to do, at what cost, and the timeframe in which the capability will be achieved. The importance of this document early in the acquisition lifecycle cannot be overstated.

III. Procurement Timelines and Competition

PSC companies have noticed a "down-select" process used more recently. We understand the benefits and especially the efficiencies associated with this approach. Having the ability to test a team and a solution with the client to either get positive and constructive feedback to improve the overall proposal or to understand a company is not well positioned and does not need to invest additional business development resources is incredibly valuable. We have seen "advisory down-selects" at other agencies utilizing a sources sought notice that focuses on past performance and understanding of requirements to provide an initial rating on win probability: Doubtful – Not likely to win, Possible –Need a lot of work but could get there, Highly Competitive – Should bid. Strategies such as these clearly benefit the agency in allowing evaluation panels to focus their efforts on only the most competitive and qualified proposals. However, agencies must be careful to avoid any signals that a company receiving a low advisory rating, but who does submit an offer, would not be fully and fairly evaluated.

In addition, when there is a two-week turnaround on a proposal response, industry's first assumption is that the procurement is "wired" and a single vendor is best positioned for the work. In this scenario, most companies will likely decide not to bid. If that is not your agency's intent, then it is worth including more frequent forecast updates to include the anticipated pre-award timeline. The use of RFIs, Draft RFPs, Industry Days and the abovementioned two-step advisory down-select process are other great opportunities to encourage greater competition and solicit more creative and innovative solutions.

Challenge: There may be significant transition costs when selecting a new contractor instead of an incumbent.

Proposed Solutions: We understand that there may be significant transition costs when selecting a new offeror to take over the work of an incumbent. However, if the government is to receive the best possible solution, there needs to be a meaningful competitive environment.

Draft RFPs help facilitate greater competition. PSC suggests that you provide to industry versions of the draft RFP as it evolves well in advance of the final RFP release to allow for additional feedback. Include sections L & M in versions of the draft RFP as soon as possible as these are largely viewed as having the most important information influencing whether a company will bid. Consider use of an electronic reading room to provide as much transparency as permissible to improve bid quality and competition from non-incumbents and to level any incumbent advantage.

Forecast as far in advance as practical small business set-aside opportunities and be willing to move work into and out of set-asides. Focus on real opportunities, whether at prime contract formation or at task orders. Also, track and publicly report planned procurement lead times and actual lead times.

Challenge: Long-term contract vehicles require intensive resources to run the competition. Industry changes quickly and sometimes the government's needs change.

Proposed Solutions: We encourage you to continue and enhance On-Ramping and Off-Ramping into all long-term contract vehicles to allow them to refresh more frequently without the expense and burden of a full re-

competition. This "refresh" would help to address the ever-changing nature of the industry, the government's evolving needs, companies changing business models, new acquisitions, new technology, small businesses graduating, etc. When re-competes are coming up, provide industry a timetable for re-competes as early in the acquisition planning phase as possible.

IV. Contract Type

Challenge: T&M contracts increase the risk for the government. Transitioning more contracts to Firm Fixed Price (FFP) shifts risk from the government to the contractor.

Proposed Solutions: PSC supports the government's evolving strategy and tactical implementation to increase the number of Firm Fixed Price contracts, keeping in mind that there are a number of different models for contracting in this manner. PSC has created an acquisition resource called the "PSC Taxonomy for Services" that can help the acquisition workforce understand the appropriate contract type based on attributes of the services to be acquired.⁸

Other Federal agencies have successfully used the strategies below for large, complex development and operations contracts to save money, be more efficient, facilitate innovation, build more predictability and certainty into critical program implementations and to reduce the amount of risk taken on by the Federal Government:

- Structuring Requirements and Design Phases as Time & Materials; once these phases are complete and requirements baselines established, the remaining Build, Test and Go Live activities can be estimated and operated in an FFP environment.
- Structuring the entire contract as FFP with specific thresholds agreed upon, under which no change requests will be required for additional funding (e.g., maintenance or enhancement activities with LOE < 40 hours).
- Use a hybrid contact with T&M and FFP components; for example, keeping all Project Management and Reporting tasks as T&M to support the likelihood of ad hoc reporting, meetings, etc. while all development, operations, training and outreach activities are priced and delivered within a fixed price.

V. <u>Evaluation Criteria</u>

Challenge: Evaluation criteria can have a significant impact on competition and acquisition outcomes.

Proposed Solutions: We recommend that you ensure that solicitation technical evaluation criteria focus principally on how the bidders would improve the quality, timeliness and cost efficiency of future support efforts rather than simply assessing knowledge of current processes that significantly advantage incumbent bidders in their technical scoring. Doing so will also incentivize bidders to develop and offer technical solutions that identify efficiencies which will result in appropriately reducing price or shifting dollars to higher priorities without incurring risk. Conversely, just assessing knowledge of current processes ultimately results in companies providing fewer and/or less qualified personnel or less innovative solutions as the driver for price reductions.

Agencies should also require bidders to address how they will achieve improvements while managing risk and should objectively assess these risks as part of the evaluation, such as evaluating risks to mission effectiveness associated with lower cost (quality) or fewer overall staff for key labor categories, lack of innovation or improvements (technical and management), reduction of salaries and benefits, lack of experienced personnel, workforce greening strategies, achieving full staffing during transition and beyond, workforce retention, average or poor CPARS, lack of extensive track record of success in similar environments with similar statements of work, increase in change orders, increased costs over the period of performance, and poor subcontractor and personnel management structures.

⁸ "PSC Taxonomy for Services," available at www.pscouncil.org/PolicyIssues/ABPC Resources/PSC Taxonomy for Services.aspx.

As an aspect of contractor bid/no-bid reviews, both the structure and content of the criteria and methodology are critical factors in determining whether a contractor will submit a response to a proposal. In addition, providing a firm and transparent understanding of the evaluation criteria reduces the likelihood for protests following award. We recommend agencies release their defined evaluation methodology in the RFP to further reduce the number of unqualified bids received and lower the likelihood for protest following award. Consider standardizing the use of the following technical and management ratings:

Ratings	Description
BLUE (OUTSTANDING)	Offeror's Management and Technical proposal meets requirements, indicates an exceptional approach and understanding of the requirements and proposes several innovations that have high likelihood of improving results, realizing efficiencies, or decreasing program risk and costs. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.
PURPLE (GOOD)	Offeror's Management and Technical proposal meets requirements, indicates a thorough approach and understanding of the requirements and proposes innovations that have high likelihood of improving results, realizing efficiencies, or decreasing program risk and costs. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.
GREEN (ACCEPTABLE)	Offeror's Management and Technical proposal meets requirements, indicates an adequate approach and understanding of the requirements and proposes innovations that have high likelihood of improving results, realizing efficiencies, or decreasing program risk and costs. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.
YELLOW (MARGINAL)	Offeror's Management and Technical proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.
RED (UNACCEPTABLE)	Offeror's Management and Technical proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.

In order to further increase the likelihood that agencies can award to a contractor that has a recently demonstrated track record of supporting similar efforts, we recommend agencies continue to require past performances be no more than three years old. Agencies will be able to further assess whether a past performance reference is truly relevant and can identify increased risk for an Offeror. In addition, this will aid the determination of whether the Offeror's proposed bid rates are realistic and executable.

Where the agency requires past performance questionnaires to assess the quality of past performance, PSC has developed standardized past performance questionnaires to facilitate the collection and government evaluation of this information. In addition, we recommend that each Offeror's proposal receive a single confidence assessment in accordance with table below:

⁹ "PSC Past Performance Information Collection Forms," available at http://www.pscouncil.org/PolicyIssues/ABPC_Resources/PSC_Past_Performance_Information_Collection_Forms.a spx?WebsiteKey=fae489a9-a93a-4c2d-9230-615ba5cc8e5e.

Ratings	Description
Substantial Confidence	Based on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully
	perform the required effort.
Satisfactory Confidence	Based on the Offeror's recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort.
Limited Confidence	Based on the Offeror's recent/relevant performance record, the Government has a low expectation that the Offeror will successfully perform the required effort.
No Confidence	Based on the Offeror's recent/relevant performance record, the Government has no expectation that the Offeror will be able to successfully perform the required effort.
Unknown Confidence (Neutral)	No recent/relevant performance record is available or the Offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned.

We recommend an assessment of risk be conducted as part of the best value trade-off determination between the price volume reconciliation with what was proposed in the technical volume and state your intent to do so in the solicitation. Standardizing this assessment of risk into the trade-off methodology will ensure agencies can safeguard against bidders who propose a technical approach or solution which cannot reasonably be executed at the price provided. It is equally critical that the Government revisit this process following every Best and Final Offer (BAFO) response where price is changed. In such cases, it is not uncommon for some contractors to lower their price without changing their technical approach which may result in higher execution risk.

We also recommend agencies review the new National Security Agency's (NSA) pilot program evaluation techniques to improve the evaluation process in best value procurements and avoid awards that favor low-bids which present staffing risk and help determine whether the contractors can successfully staff the rates they are proposing. One tool, the "Ability to Staff Evaluation Factor," is an assessment of labor categories by a separate source selection team that assesses variance between offeror proposed labor rates and the Independent Government Cost Estimate (IGCE) with an emphasis on key labor categories (labor categories with a significant amount of hours assigned). The result is a standalone objective rating under sections L&M that serve as a scorable risk assessment from a rate standpoint. Another technique is a total price assessment of staffing and retention risk, the "FedSim Methodology," which uses the Government Independent Cost Estimate (ICE) to establish a minimum, midpoint and maximum labor price which all offerors' total labor prices are compared against, resulting in a risk assessment for each offeror's price.

We highly recommend that the price/cost proposal be evaluated in accordance with FAR 15.404 to determine price reasonableness and cost realism to combat low-bid and bait and switch strategies.

VI. <u>Harnessing Innovation</u>

Innovation and creativity are available from both existing and new contractors. Contractors often want to provide innovative solutions to agencies, but are often discouraged from doing so for a variety of reasons including that it was not asked for, uncertainty around how innovation will be evaluated in source selection, and potential costs not found in the current approach. Silicon Valley does not have a monopoly on innovation. PSC prefers to focus on the *what* and *how* rather than the *who* and *where*.

¹⁰ For more information, contact Mollie Quasny, NSA Deputy Chief of Contracting, mmquasn@nsa.gov; 301-688-6883.

If the procurement process is too slow and does not deliver needed solutions, fix the process – do not go around it by employing alternative contracting practices or vehicles.

Challenge: Both traditional and non-traditional companies are consistently developing innovative capabilities and processes that can be harnessed by agencies. How can agencies tap into this innovation quickly without significant cost?

Proposed Solutions: The growing trend of "as a service" delivery models, such as cloud computing, the evolution of the Internet of Things, data analytics, the need to rapidly deploy and upgrade cybersecurity capabilities, and emerging robotics and unmanned systems are prime examples of how innovation is changing the way the private sector operates. These developments and others may offer unlimited potential to assist agencies. However, for such capabilities to be meaningfully utilized by agencies, it is crucial that your agency effectively communicate its desired outcomes to industry. To do so, agencies must share both its short- and long-term goals with the public.

To identify such innovation, PSC developed an innovation template to be the mechanism to facilitate the rapid identification of such innovation.¹¹ We encourage agencies to expressly request that industry highlight specific innovations included in their proposals and to the extent possible monetize the expected returns on investment. Note the PSC template should not be part of the proposal.

In addition, agencies must be willing to take a hard look at the significant compliance and reporting requirements imposed on offerors and on winning contractors. These unique government requirements act as a disincentive to innovation and even to participation in the federal market at all.

VII. Debriefings and Protests

Challenge: Debrief to increase industry understanding, without increasing the likelihood of a protest.

Proposed Solutions: A well-provided debriefing is critical to instilling confidence in the source selection process among all participants and will contribute to reducing the likelihood of a post-award protest. Some staff at the Centers for Medicare and Medicaid Services (CMS) have been meeting with contractors, but only after the protest period has expired, to give meaningful feedback without the fear of a protest. Exploring strategies that would make debriefs much more valuable and allow companies to apply specific, relevant and accurate lessons learned to future opportunities will benefit everyone. We have worked with DHS on training for debriefings that included role-playing scenarios and offer the same to you.

DoD's recently updated Source Selection Procedures include a detailed guide to conducting a debrief, including an explanation of the preparation the government debriefers should take prior to the debrief itself and what information is and is not appropriate to be discussed at a debriefing. Moreover, the guidance highlights that "A poorly prepared debriefing is the surest way to lose the confidence of the offeror and increase the prospects of a protest." ¹²

Sometimes a protest is unavoidable. Make defendable decisions and share them with industry.

VIII. Conflict of Interest Policy

Challenge: For several years, attention has intensified on the issues of conflicts of interest in federal acquisitions. Concerns include the scope and currency of the Federal Acquisition Regulation (FAR) on organizational conflicts of

https://www.pscouncil.org/PolicyIssues/ABPC Resources/PSC Innovation Template.aspx.

http://www.acq.osd.mil/dpap/policy/policyvault/USA004370-14-DPAP.pdf.

¹¹ PSC Innovation Template, The template is available at

¹² DoD Source Selection Procedures, available at

interest (OCI), particularly as the breadth and volume of contracting have significantly increased. In fact, most of the policy guidance in this area comes from GAO protest decisions concerning alleged unfair advantage or improper access to information by competitors. As merger and acquisition activity among the industry has increased, access to desired talent and solutions are more complex.

Proposed Solutions: Many acquisition leaders have offered meeting with potential merging companies to understand potential OCI issues prior to an industry merger or acquisition taking place. Agencies should meet with current and perspective offerors as industry merger and acquisition discussions are taking place.

When contracting officers are evaluating an OCI situation and a contractor mitigation plan, they should be expressly cautioned to not assume that an organization consisting of many business units and affiliates with differing interests will react as if the organization were a single entity. Any OCI determination should recognize that agencies and contracting officers exercise independent judgment and are capable of counterbalancing information and advice. Furthermore, mere appearances or fear of potential future risk, if not supported by material facts, should not require resolution.

Conclusion

PSC appreciates the opportunity to submit this feedback to you and your commitment to work constructively with PSC to achieve better acquisition outcomes. We hope to build on this engagement and dialogue.

For questions or additional information, please contact PSC at policy@pscouncil.org.

The Professional Services Council is the voice of the government technology and professional services industry, representing the full range and diversity of the government services sector. As a trusted industry leader on legislative and regulatory issues related to government acquisition, business and technology, PSC helps build consensus between government and industry. Our nearly 400 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Together, the trade association's members employ hundreds of thousands of Americans in all 50 states. Many of our member companies provide services of all types to DoD and the armed services.



PSC July 13 Presentation to DoD Section 809 Panel

White Paper: PSC "Thematic Recommendations" to DoD Section 809 Panel (July 13, 2016)

References Included in White Paper:

ices Examples.aspx.

- 2014 PSC Acquisition and Technology Policy Agenda, available at: https://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/PSC_APRC_Fr amework.aspx.
- 2) DoD Service Acquisition Workshop (SAW), Federal Agency Acquisition Best Practices Examples, available at: www.pscouncil.org/PolicyIssues/CAC Resources/Federal Agency Acquisition Best Practices E
- xamples.aspx.
 PSC Federal Agency Acquisition Best Practices Examples, available at:
 http://www.pscouncil.org/PolicyIssues/CAC Resources/Federal Agency Acquisition Best Pract
- 4) "PSC Taxonomy for Services," available at: www.pscouncil.org/PolicyIssues/ABPC Resources/PSC Taxonomy for Services.aspx.
- 5) "PSC Past Performance Information Collection Forms," available at: http://www.pscouncil.org/PolicyIssues/ABPC Resources/PSC Past Performance Information C ollection Forms.aspx?WebsiteKey=fae489a9-a93a-4c2d-9230-615ba5cc8e5e.
- 6) PSC Innovation Template, available at: https://www.pscouncil.org/PolicyIssues/ABPC Resources/PSC Innovation Template.aspx.

Additional Resources:

- 7) Eight Biennial PSC/Grant Thornton Acquisition Policy Surveys (2002-2016), available at: http://www.pscouncil.org/acquisitionsurvey
- 8) 2014 PSC Acquisition and Technology Policy Agenda, available at:

 http://issuu.com/professionalservicescouncil/docs/the_psc_acquisition_and_technology_/1?e=4503160/10117195
- 9) PSC White Paper: Service Contract Inventory Reporting Requirements (11/9/15), available at: https://cxo.dialogue2.cao.gov/a/dtd/PSC-Eliminate-Service-Contract-Inventory-Reporting-Requirements/155574-35669
- 10) PSC White Paper: Small Business Subcontracting Reporting Burden (4/28/16), available at: https://cxo.dialogue2.cao.gov/a/dtd/PSC-Reduce-Small-Business-Subcontracting-Reporting-Burden/178231-35669
- 11) PSC White Paper: Executive Compensation Reporting Requirements (5/6/16), available at: https://cxo.dialogue2.cao.gov/a/dtd/PSC-Roll-Back-Executive-Compensation-Reporting/179298-35669
- 12) PSC Government Resources webpage: http://www.pscouncil.org/govresources