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SUBJECT: Myth-Busting Memorandum

1. With expenditures of over $500 billion annually on contracts and orders for goods and services, the federal government has an obligation to conduct our procurements in the most effective, responsible, and efficient manner possible. Access to current market information is critical for agency program managers as they define requirements and for contracting officers as they develop acquisition strategies, seek opportunities for small businesses, and negotiate contract terms. Our industry partners are often the best source of this information, so productive interactions between federal agencies and our industry partners should be encouraged to ensure that the government clearly understands the marketplace and can award a contract or order for an effective solution at a reasonable price. Early, frequent, and constructive engagement with industry is especially important for complex, high-risk procurements.

2. The Federal Acquisition Regulation (FAR) authorizes a broad range of opportunities for vendor communication, but agencies often do not take full advantage of these existing flexibilities. Some agency officials may be reluctant to engage in these exchanges out of fear of protests or fear of binding the agency in an unauthorized manner; others may be unaware of effective strategies that can help the acquisition workforce and industry make the best use of their time and resources. Similarly, industry may be concerned that talking with an agency may create a conflict of interest that will preclude them from competing on future requirements, or industry may be apprehensive about engaging in meaningful conversations in the presence of other vendors.

3. February 2022 marked 11 years since the Office of Federal Procurement Policy (OFPP) issued the first "Myth-Busting" memo to address misconceptions in communication between industry and government during the acquisition process. Even today, it remains one of the most important documents on how industry and government should engage.

4. OFPP has issued four "Myth-Busting" memos in total and these memos remain relevant today.

5. The purpose of these memos include:

    - Identifying common misconceptions about vendor engagement that may be unnecessarily hindering agencies' appropriate use of the existing flexibilities, and provide facts and strategies to help acquisition professionals benefit from industry's knowledge and insight.

- Directing agencies to remove unnecessary barriers to reasonable communication and develop vendor communications plans, consistent with existing law and regulation that promote responsible and constructive exchanges.
- Outlining steps for continued engagement with agencies and industry to increase awareness and education.

6. The original Myth-Busting memo, entitled **"Myth-Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process"** was issued 2 Feb 2011.

   Details of those misconceptions include:

   - **Misconception**– "We can't meet one-on-one with a potential offeror."
   - **Fact** – Government officials can generally meet one-on-one with potential offerors as long as no vendor receives preferential treatment.

   - **Misconception** – "Since communication with contractors is like communication with registered lobbyists, and since contact with lobbyists must be disclosed, additional communication with contractors will involve a substantial additional disclosure burden, so we should avoid these meetings."
   - **Fact** – Disclosure is required only in certain circumstances, such as for meetings with registered lobbyists. Many contractors do not fall into this category, and even when disclosure is required, it is normally a minimal burden that should not prevent a useful meeting from taking place.

   - **Misconception** – "A protest is something to be avoided at all costs – even if it means the government limits conversations with industry."
   - **Fact** – Restricting communication won't prevent a protest, and limiting communication might actually increase the chance of a protest – in addition to depriving the government of potentially useful information.

   - **Misconception** – "Conducting discussions/negotiations after receipt of proposals will add too much time to the schedule."
   - **Fact** – Whether discussions should be conducted is a key decision for contracting officers to make. Avoiding discussions solely because of schedule concerns may be counter-productive, and may cause delays and other problems during contract performance.

   - **Misconception** – "If the government meets with vendors, that may cause them to submit an unsolicited proposal and that will delay the procurement process."
   - **Fact** – Submission of an unsolicited proposal should not affect the schedule. Generally, the unsolicited proposal process is separate from the process for a known agency requirement that can be acquired using competitive methods.

- **Misconception** – "When the government awards a task or delivery order using the Federal Supply Schedules, debriefing the offerors isn't required so it shouldn't be done."
- **Fact** – Providing feedback is important, both for offerors and the government, so agencies should generally provide feedback whenever possible.

- **Misconception** – "Industry days and similar events attended by multiple vendors are of low value to industry and the government because industry won't provide useful information in front of competitors, and the government doesn't release new information."
- **Fact** – Well-organized industry days, as well as pre-solicitation and pre-proposal conferences, are valuable opportunities for the government and for potential vendors – both prime contractors and subcontractors, many of whom are small businesses.

- **Misconception** – "The program manager already talked to industry to develop the technical requirements, so the contracting officer doesn't need to do anything else before issuing the RFP
- **Fact** – The technical requirements are only part of the acquisition; getting feedback on terms and conditions, pricing structure, performance metrics, evaluation criteria, and contract administration matters will improve the award and implementation process.

- **Misconception** – "Giving industry only a few days to respond to an RFP is OK since the government has been talking to industry about this procurement for over a year.
- **Fact** – Providing only short response times may result in the government receiving fewer proposals and the ones received may not be as well-developed – which can lead to a flawed contract. This approach signals that the government isn't really interested in competition.

7. Myth-Busting Memo 2, entitled **"Addressing Misconceptions and Further Improving Communication During the Acquisition Process"** was issued 7 May 2012.

   Details of those misconceptions include:

   - **Misconception** –"The best way to present my company's capabilities is by marketing directly to Contracting Officers and/or signing them up for my mailing list."
   - **Fact** – Contracting officers and program managers are often inundated with general marketing material that doesn't reach the right people at the right time. As an alternative, vendors can take advantage of the various outreach sessions that agencies hold for the purpose of connecting contracting officers and program managers with companies whose skills are needed.

- **Misconception** – "It is a good idea to bring only business development and marketing people to meetings with the agency's technical staff."
- **Fact** – In meetings with government technical personnel, it's far more valuable for you to bring subject matter experts to the meeting rather than focusing on the sales pitch.

- **Misconception** – "Attending industry days and outreach events is not valuable because the agency doesn't provide new information."
- **Fact** – Industry days and outreach events can be a valuable source of information for potential vendors and are increasingly being used to leverage scarce staff resources.

- **Misconception** – "Agencies generally have already determined their requirements and acquisition approach so our impact during the pre-RFP phase is limited.
- **Fact** – Early and specific industry input is valuable. Agencies generally spend a great deal of effort collecting and analyzing information about capabilities within the marketplace. The more specific you can be about what works, what doesn't, and how it can be improved, the better.

- **Misconception** – "If I meet one-on-one with agency personnel, they may share my proprietary data with my competition."
- **Fact** – Agency personnel have a responsibility to protect proprietary information from disclosure outside the Government and will not share it with other companies.

- **Misconception** – "Agencies have an obligation not to share information about their contracts, such as prices, with other agencies, similar to the obligation they have not to disclose proprietary information to the public."
- **Fact** – There are no general limitations on the disclosure of information regarding existing contracts between agencies within the Government. In fact, agencies are encouraged to share pricing information to ensure that we are getting the best value for our taxpayers.

- **Misconception** – "To develop my new proposal, I don't really need to tailor my solution to the specific solicitation since the government won't read my proposal that closely anyway."
- **Fact** – Offerors should tailor each proposal to the evaluation criteria, proposal instructions, and specific requirements of the solicitation to which they are responding. Contracting Officers and evaluation team members read proposals closely for compliance with the proposal instructions and must evaluate them against the evaluation factors and the statement of work in the solicitation.

- **Misconception** – "If I lose the competition, I shouldn't bother to ask for a debriefing. The Contracting Officer won't share any helpful information with me."

- **Fact** – Unsuccessful offerors should ask for a debriefing to understand the award decision and to improve future proposals.

8. Myth-Busting Memo 3, entitled **"Further Improving Communication with Effective Debriefings"** was issued 5 Jan 2017.

   Details of those misconceptions include:

   - **Misconception**: "Companies do not really use the information provided in a debriefing to improve their work."
   - **Fact**: Industry has indicated that offerors are less likely to protest when they understand their weaknesses and have clarity on the source selection outcome. Industry has also stressed the value derived from understanding the government's perspective on the proposal's strengths and weaknesses and the relevance of this information to future business decisions and future proposals.

   - **Misconception**: "Debriefings always lead to protests."
   - **Fact**: An effective debriefing process can greatly reduce the frequency of protests, as protests are often driven by a desire to obtain additional information – information that should otherwise be available via a proper debriefing. According to data in the Government Accountability Office's (GAO) Bid Protest Annual Report to Congress, the most common reasons why unsuccessful offerors file protests is related to issues with the evaluation criteria in the solicitation. Although offerors have access to the evaluation criteria, they often lack substantive insight into how the source selection officials assessed the proposal's strengths and weaknesses.

   - **Misconception**: "Debriefings are unpredictable and there is no way for government personnel to prepare."
   - **Fact**: A successful debriefing, whether oral or in writing, requires attentive preparation that can be planned with the aid of relevant subject matter experts and can vary with the complexity and the value of the procurement. While an agency may not be able to fully predict a vendor's exact motivations for requesting a debriefing, there are a number of common-sense assumptions that can be made, such as the likelihood that the unsuccessful offerors seek context to better understand why the proposal was not selected and to gain feedback to strengthen their position in the future. A well-prepared and clearly-organized debriefing will gain the confidence of the unsuccessful offeror by demonstrating that the government's selection was merit-based, rational, and reasonable. Prior to holding the debriefing, all government personnel attending the debriefing should be informed about the overall process and be made aware of the agenda.

   - **Misconception**: "Contracting officials should provide minimal feedback for procurements conducted under the Federal Supply Schedules or when using simplified

acquisition procedures because offerors who participate in acquisitions conducted using these tools understand that agencies are only required to give those offerors a brief explanation for the basis of the award decision."

- **Fact**: Providing meaningful debriefings can improve the government's ability to gain better value from acquisitions conducted using simplified acquisition procedures or through the Federal Supply Schedules. Use of a simplified process does not mean that an offeror can more easily infer the reason for non-selection. Although the risk of protest is lower with smaller dollar acquisitions, benefits such as helping vendors understand how to make their offers more competitive and instilling confidence to participate in future actions can be especially valuable given that small businesses are more likely to bid on these contract actions.

    - *Best Practice*: DOD encourages contracting officials using simplified acquisition procedures and the Federal Supply Schedules to provide, whenever possible and feasible, a thorough and effective explanation of the basis of the award. While agencies recognize the beneficial principles of providing debriefing like information, instructions recognize the need of contracting officials to evaluate available resources and available staffing and balance the benefits of thorough explanations with the administrative efficiencies of simplified acquisitions.

- **Misconception**: "When an offeror brings an attorney to the debrief that signals that the offeror will protest, therefore, contracting officials should limit the debrief discussion."
- **Fact**: A vendor's decision to bring an attorney to the debriefing does not necessarily signal a heightened potential for a protest or potential of a difficult conversation, especially if the agency is prepared to give an informative and well-planned debriefing. Vendors have various internal policies and procedures that may require that an attorney always participates in meetings with government officials. As an assurance and as a precaution, many agencies ensure that government legal counsel is made aware of and involved in debriefing preparation and the actual debriefing as best determined by the agency. Agencies' use of and consultation with legal counsel is encouraged as a best practice as it helps facilitate a meaningful debriefing.

    - *Best Practice*: To gain a better understanding of the potential tone of the debriefing, the contracting officer should solicit the offeror attendee list and relevant titles ahead of the debriefing, whenever possible. The Department of Defense (DOD), as a matter of procedure, recommends that "the Program Manager and/or Requirements Owner and Legal Counsel should participate in debriefings to offerors."

- **Misconception**: "To avoid any issues being raised by the other offerors, the government should disclose to the debriefed offeror only its proposal ratings and that

it was not selected as the winning proposal – the government should avoid engaging in further discussions or follow-up questions during the debrief."

- **Fact**: The debriefing is meant to provide a thorough explanation of the basis for the award and should comply with the minimum requirements in accordance with FAR 15.506(a)(1), including an explanation of deficiencies and strengths of offeror proposal; ratings of debriefed offeror's proposal and successful offeror's proposal; past performance ratings of the offeror; overall general ranking of proposals when any ranking was developed by the agency during the source selection; and reasonable responses to relevant questions.

- **Misconception**: "The government should not spend time debriefing the winning offeror – this is not valuable to either side.
- **Fact**: An effective debriefing can provide short term and long term benefits for both contracting officials and the successful and unsuccessful offerors. FAR 15.506 allows for post-award debriefings for any requesting offeror, including the winning offeror. During a debriefing, contracting officials have the opportunity to receive feedback from the offeror on the solicitation and the source selection process. Industry continues to emphasize the important value of debriefings and the fact that offerors are able to identify areas of improvement and responsiveness in proposals and can adjust future proposals to more clearly state how a potential proposal meets the government's needs.

    - *Best Practice*: The Small Business Administration (SBA) encourages both successful and unsuccessful offerors to consider asking for a debriefing to better understand the proposal evaluation in order to improve and develop future proposals.

- **Misconception**: "All debriefings should be completed in writing."
- **Fact**: Debriefings may be completed orally, in writing, or by any other methods acceptable to the contracting officer. While there is no specific requirement on the manner in which a debriefing should be completed, both agencies and industry have expressed a preference for in-person debriefings. In-person debriefings allow for an open, flexible space where the government and offeror are able to communicate in a productive manner and foster a positive rapport. If financially prohibitive for the offeror to attend a debriefing in person, the contracting officer may consider a phone teleconference, a video teleconference, or a written response. Altogether, the preferences of the offeror should be afforded due consideration, however, the contracting officer maintains and makes the final decision as to the location and methodology for the debriefing.

    - *Best Practice*: DOD policy encourages in-person debriefings whenever practicable, but also promotes the use of available technologies to facilitate an effective debriefing. For written debriefing materials, if meeting in person is

not an option, recommend inclusion of a comprehensive evaluation of the cost and technical ratings of the debriefed offeror. As a best practice, the written debriefing materials should be reviewed by agency general counsel.

9. The last and most recent Myth-Busting Memo 4, entitled **"Strengthening Engagement with Industry Partners Through Innovative Business Practices"** was issued 30 Apr 2019.

Details of those misconceptions include:

- **Misconception #1**: "Using innovative business strategies to the Federal contracting process is not a core program management or contracting office responsibility in meeting mission needs.
- **Fact**: Applying new and innovative ways of conducting the Government's business is a critical, core responsibility of contracting staff, integrated project teams, and the agency's senior leadership. In fact, the Federal Acquisition Regulation (FAR) I. I 02-4(e) specifically charges acquisition officials with encouraging business process innovations and promotes the use of a wide variety of strategies and practices to ensure that mission requirements are met.

- **Misconception #2**: "Complying with the FAR's complex requirements drives long procurement lead times that cannot be shortened in any material way;"
- **Fact**: The FAR provides flexibility to meet mission needs, including large, mission-critical requirements, in a timely and even expedited manner. Over the last several years, an increasing number of agencies, supported by their AIAs, have shortened the time from requirements identification to solution delivery – sometimes by 50% or more – by making a concerted effort to consider all available options under the FAR, and not just resorting to past practice. These efforts have resulted in consideration and use of long-recognized, but underutilized, strategies described in the FAR, such as oral presentations and multi-phase advisory down-selects. Efforts have also led to approaches not expressly envisioned but not prohibited by the FAR, such as confidence ratings and on-the-spot consensus evaluations with minimal or no individual evaluation write-ups.

- **Misconception #3**: "Non FAR-based acquisition authorities (i.e., authorities that cannot be exercised under the FAR) are never available for general use by agencies and are designed to be considered only on a limited basis for unique needs and circumstances."
- **Fact**: While agencies must have authority to use acquisition tools that would otherwise not be allowed under the FAR, agencies may also leverage a number of non-FAR based authorities by working with other agencies that do maintain such authorities. These include joint-venture authority vested in the Department of Commerce (DOC) and "Commercial Solutions Opening" authority given to GSA,

which may offer benefits to address a wide range of agency needs across the government – including requirements for emerging technologies to fight cyber threats or in support of IT Modernization, such as for cutting edge IT applications for improved data management. These authorities are not meant to replace the FAR, but rather to provide additional alternatives beyond what the FAR currently allows so that agencies have increased options in situations where the FAR and its flexibilities (as described in the prior fact) may not provide an optimal solution. DOC and GSA have established guardrails to work with agencies in using their authorities.

- **Misconception #4**: "Before a potential government procurement starts, it is not valuable for government personnel to engage with industry representatives to discuss substantive agency strategic and planning needs."
- **Fact**: To maximize market research efforts, agencies are encouraged to engage vendors early in the planning process to learn about market capabilities and ways that industry may fulfill requirements in non-traditional ways. Acquisition offices can also partner with companies to acquire business intelligence to help the government position itself with better pricing and negotiation strategies, more meaningful evaluation criteria, and improved terms and conditions (so long as the respective entity does not disclose procurement specific information and does not compete on the procurement).

- **Misconception #5**: "The best way to engage with industry during the planning phase is through a written request for information."
- **Fact**: Requests for Information (RFIs), while useful, can result in a static, one-way exchange where agencies do not have the resources to respond and vendors do not have the opportunity to demonstrate their capabilities. However; agencies can conduct virtual meeting sessions (live RFIs) and can schedule separate virtual presentations for potential offerors to demonstrate solutions with contracting officers, program managers, and others. This type of pre-solicitation engagement can improve cost savings, increase competition, promote small business participation in government market, and help define technical requirements. Feedback and input from industry through RFIs, can inform the government on market capability; which companies are interested in a specific acquisition; pricing strategies that align with market models; critical performance areas that can inform evaluation criteria; and industry input on proposal submission.

- **Misconception #6**: "Advising vendors to withdraw from participating in an acquisition, even if a vendor is not qualified and unlikely to receive the award, will not save time because all vendors would want to continue to the next phase of the review.
- **Fact**: In an advisory, multistep, down-select process, contracting officers can recommend that vendors whose initial proposals suggested they were unlikely to be successful withdraw from further participation in a procurement to avoid incurring

proposal preparation costs. The advisory down, select process benefits both the government and industry, especially small businesses, as it helps conserve time, staffing, and cost resources when it is clear that some vendors are unlikely to be selected.

- **Misconception #7**: "Product demonstrations are too complex and provide limited value for acquisition personnel."
- **Fact**: The "show me, don't tell me" approach enables potential vendors to actually demonstrate the product and/or services instead of filling out paperwork to explain how the product and/or service would meet the government's needs. Such presentations allow companies to exhibit their capabilities and enable agencies to understand relevant products and services before making an award.

- **Misconception #8**: "The best way to evaluate a vendor's past performance is to look at the Past Performance Information Retrieval System (PPIRS)."
- **Fact:** Contracting officers should use any and all information in their evaluation of offeror experience. FAR 15.305(a)(2)(ii) requires the contracting officers to consider information obtained from any source when evaluating past performance. The source selection authority shall determine the relevance of any similar past performance information. Aside from the PPIRS ratings, source selection panelists can assess and document vendor performance from numerous sources, including (but not limited to): previous contracting officers, news media, reliable commercial sources of performance information, state and local governments, and other references.

- **Misconception #9**: To help prevent protests, source selection officials should only use precisely defined adjectival ratings and avoid using confidence intervals in evaluating an offeror's capabilities."
- **Fact**: Source selection panelists can assess their level of confidence that an offeror can perform the work using a range of certainty instead of precise rating criteria. Confidence ratings provide evaluators the ability to look more holistically at the strengths and weaknesses of an offer and are often more helpful to a selecting official. Aside from the proposal materials, source selection panelists can assess vendor capabilities using numerous sources, including (but not limited to): previous contracting officers, news media, reliable commercial sources of performance information, state and local governments, and other references.

- **Misconception #10**: "Agency personnel are generally prohibited from engaging directly with associations and other government-focused industry groups because of ethics considerations."
- **Fact**: Ethics laws and regulations do not generally prohibit federal employees from joining associations or other industry groups, and agencies are encouraged to promote appropriate workforce and leadership participation to discuss ideas and solutions. Collaborative engagements may include co-training alongside industry partners,

attending industry-hosted workshops, joint conference panel participation, and industry demos.

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