



**United States
Department of
Agriculture**

Office of the
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for Administration

Office of
Contracting and
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Date: November 6, 2019

From: Tiffany Taylor, Senior Procurement Executive, Acting, USDA

A handwritten signature in blue ink, appearing to be "Tiffany Taylor", is written over the "USDA" text in the "From:" line.

To: Mission Area COO and USDA CXO

Subject: Communicating with Industry

As we start the new fiscal year, I want to remind you of the importance of proper communication with industry. Communicating with industry early, frequently and clearly throughout the acquisition process is critical to determining whether and how industry can meet the Government requirements to achieve its mission and goals. It helps to maximize the return on acquisition investment and to ensure access to high-quality supplies and services. The existence of laws and regulations around this communication shows its importance in the process.

Agency acquisition personnel are permitted and encouraged to engage in responsible, effective, and constructive exchanges with industry, so long as those exchanges are consistent with existing laws, regulations, agency policies, and promote a fair, transparent, and competitive environment. Mission Area Senior Contracting Officials (MASCO) and Mission Area Senior Program Managers (MASPM) must support personnel in having a productive communication with industry and help them understand our ethical and legal obligations in doing so. Senior executives should protect the agency and themselves by including their MASCO or other knowledgeable contracting professionals when meeting with vendors, and include ethics personnel when meeting with lobbyists.

To preserve the integrity of the procurement process, we must all adhere to ethics statutes and regulations. This includes the ban against gifts (including meals) from contractors, avoiding situations that would create a conflict of interest (such as owning stock in a contractor), or situations where your impartiality could appear to be compromised (such as awarding a contract to a relative).

Major statutes related to ethics in government acquisition include:

- Conflict of Interest Statute ([18 US Code \(USC\) 208](#))
- Ethics in Government Act of 1978 ([Public Law \(PL\) 95-521](#))
- Procurement Integrity Act ([FAR 3.104](#))
- Government Property and Information ([18 USC 641](#))

Because the rules can be complex — and may be the source of a bid protest by a disappointed bidder — to maintain the highest ethical standards, you are advised to contact the USDA Office of Ethics at DAEO.Ethics@usda.gov for any questions.

To further assist, here are links to “Myth-Busters” memoranda issued by the Office of Federal Procurement Policy (OFPP) on Communication with Industry, addressing misconceptions related to agency-industry communication and offer a series of best practices for optimizing the impact of vendor’s engagements with the Federal Government.

[“Myth-Busting” – Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process](#)

[“Myth-Busting 2” – Addressing Misconceptions and Further Improving Communication during the Acquisition Process](#)

[“Myth-Busting 3” - Further Improving Industry Communication with Effective Debriefings](#)

[“Myth-Busting 4” – Strengthening Engagement with Industry Partners through Innovative Business Practices](#)

Also attached are recommended tenets of communication advice to consider when interacting with industry.

If you have any questions regarding this memorandum, please send an email to procurement.policy@usda.gov.

ATTACHMENT A
Myth-Busters - Communicating with Industry

1.	<p>Myth: We can't meet one-on-one with a potential contractor.</p> <p>Fact: Government officials can generally meet one-on-one with potential contractors so long as no contractor receives preferential treatment.</p>
2	<p>Myth: When the government awards a task or delivery order using the Federal Supply Schedules, debriefing the offerors is not required so it should not be done.</p> <p>Fact: Providing feedback is important, both for offerors and the government, so agencies should generally provide feedback whenever possible.</p>
3	<p>Myth: A protest is something to be avoided at all costs - even if it means the government limits conversations with industry.</p> <p>Fact: Restricting communication will not prevent a protest and limiting communication might actually increase the chance of a protest – in addition to depriving the government of potentially useful information.</p>
4	<p>Myth: Conducting discussions/negotiations after receipt of proposals will add too much time to the schedule.</p> <p>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.</p>
5	<p>Myth: I'm just meeting with my old buddy, a previous supervisor of mine, "(ret) John Doe" who happens to work for a major IT contractor, so I don't need to worry about ethics or procurement integrity issues.</p> <p>Fact: This one can cut both ways, and it's all about the details. Of course, you may meet with your old friends, even if they work for a major IT contractor. However, depending on your position/participation in relation to the work performed by this contractor, there may be appearance or impartiality issues. Obtaining information about the intent of the meeting beforehand is important. The first step is to consider whether the meeting really is purely social:</p> <p>*What will you be discussing? If it's their company's contract or capabilities, then it is probably not a personal meeting.</p> <p>*If you are going out to lunch/dinner, who is paying? If their company is paying (or if their company will be reimbursing the cost of the dinner), then the dinner</p>

	<p>is a gift from the contractor. Since contractors are a “prohibited source” under the Ethics rules, this means Federal employees are prohibited from accepting gifts, such as meals or other items. In this situation, you would need to pay for the cost of your own meal.</p>
6	<p>Myth: Attending industry days and outreach events is just a waste of time because the agency doesn’t provide new information.</p> <p>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.</p>
7	<p>Myth: 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 solicitation.</p> <p>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.</p>
8	<p>Myth: Using innovative business strategies to the Federal contracting process is not a core program management or contracting office responsibility in meeting mission needs.</p> <p>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, FAR 1.102-4(e) specifically permits 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.</p>
9	<p>Myth: Getting broad participation by many different vendors is too difficult; we’re better off dealing with the established companies we know.</p> <p>Fact: The government loses when we limit ourselves to the companies we already work with. Instead, we need explore other opportunities to increase competition and ensure that all vendors, including small businesses, get fair considerations.</p>
10	<p>Myth: Agencies generally have already determined their requirements and acquisition approach so our impact during the pre-solicitation phase is limited.</p> <p>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 does not work, and how it can be improved, the better.</p>

ATTACHMENT B

Communication Advice to Consider when Communicating with Industry

- a) **Keep your ears open:** Truly listen to understand any concerns a contractor mentions or asks about. Responding early to potential issues may help identify or implement a simpler, more cost-effective solution and avoid expensive mistakes down the road. Also, be open to potential innovative offerings a contractor could provide.
- b) **Follow up when needed – quickly:** It is important to follow up with a contractor on any promises or questions to ensure understanding or agreement, or even just to show appreciation for the firm’s time and efforts. It is also a good idea to follow any phone calls with an email summarizing key points, just to ensure everyone is in agreement.
- c) **Document, document, document:** Every step of the way, document to ensure a full contract file. This can serve as a safeguard against sustained protests or claims, or an audit citing insufficient documentation on such things as cost justification. Also, turn on email “read receipts” to confirm (and document) that parties received communications.
- d) **Stay mum on source selection or proprietary information:** Information received in confidence from an offeror (e.g., proposals and confidential financial data, trade secrets, operations, processes, or style of work) needs to stay private in accordance with the Procurement Integrity Act and its implementing provisions in the Federal Acquisition Regulation (FAR), as well as 18 U.S. Code 1905. However, the same does not apply to sharing within the executive branch unless there’s a non-disclosure agreement, which can help reduce duplication and benefit future negotiations. To be safe, check with the contracting officer, ethics office or agency legal office before disclosing any information.
- e) **Be knowledgeable:** Only state what you know is a fact and answer any uncertainties with, “I don’t know, but I’ll get back to you” (and respond quickly, as mentioned above). It is good to be well prepared prior to entering conversations with contractors, saving time and minimizing the possibility of leaving out an important point or concern.
- f) **Take the high road:** Always stay professional, respectful, and level-headed, no matter how the communication is going.