Nominations for the Top Acquisition Priorities (and other topics of interest in 2019)

Rob Burton
Lorraine Campos
Paul Rosen
Monica Sterling
Priorities – Office of Federal Procurement Policy (OFPP)

- Confirmation of President’s Nominee to be OFPP Administrator – Michael Wooten
  - Confirmation hearing scheduled for May 7, 2019
- Category Management
  - New OMB guidance memorandum issued on March 20, 2019
- Industry Engagement
  - OFPP “Myth-Busting #4” memorandum issued on April 30, 2019
- Improved Management of Major Acquisitions –
  - Part of the President’s Management Agenda
- Supply Chain Risk Management
Section 809 Panel Recommendations

• In the FY 2016 NDAA, Congress established the “Section 809 Panel” to streamline DoD’s acquisition system and regulations
• Panel issued three volumes of recommendations, consisting of 93 separate recommendations
• Last volume of recommendations issued on January 15, 2019
• Panel made several controversial recommendations, such as replacing DoD’s commercial buying procedures with more simplified procedures
• OFPP has not taken a formal position on the recommendations
DoD Response to Section 809 Recommendations

- DoD supports most of the Panel’s recommendations
- Under Secretary of Defense for Acquisition and Sustainment issued a response to the recommendations on March 16, 2019
- DoD called for more research on recommendations that could impact national security, supply chain, or cybersecurity considerations
- For example, DoD did not endorse
  - recommendations for a more simplified commercial buying process; and
  - exceptions to domestic preference requirements (e.g., Buy American)
- DoD pushed back on proposed “radical changes” to commercial buying
Government Contract Spending Overview

Federal Contract Spending Hits Five-Year High

Dollars in billions, by fiscal year

<table>
<thead>
<tr>
<th>Year</th>
<th>Spending (billion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>$448</td>
</tr>
<tr>
<td>2015</td>
<td>$442</td>
</tr>
<tr>
<td>2016</td>
<td>$478</td>
</tr>
<tr>
<td>2017</td>
<td>$513</td>
</tr>
<tr>
<td>2018</td>
<td>$560</td>
</tr>
</tbody>
</table>

Source: Bloomberg Government data
Government Commercial Contracting

• 2018 Slight decline in GSA Schedule Sales
  • $32 Billion
  • Uptick in Services – approx. 70% overall

• 2019 increase expected in Commercial Contracting
  • Schedule 70 IT Services
  • Blanket Purchase Agreements (BPAs)
  • Increased use of GWACs

The Big Picture Commercial Contracting

- 30+
  Schedules (GSA and VA)
- 14%
  GWACs increased 14% in 2016
- BPAs
  Agency increased spending on BPAs
- IT
  GSA Schedule 70 $14 Billion
The Government—Following Commercial Lead

National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, Section 846

- Procurement through E-Commerce Portals
  - GSA’s Phase II Implementation Plan – Market Research & Consultation – April 2019
    - GSA will begin operational implementation of the program – proof of concept
    - Limit purchases made through proof of concept to micro-purchase threshold
    - GSA will start with **e-marketplace model** for initial proof of concept while continuing to assess other methods
Government Contracting – E-Marketplace Model

<table>
<thead>
<tr>
<th>Competition</th>
<th>User Experience</th>
<th>Compliance</th>
<th>Investment/Complexity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotes competition at the supplier level (sell third-party vendor products in addition to their own, provides support for onboarding)</td>
<td>Offers search and comparison functions, products and supplier reviews, mimics consumer experience</td>
<td>Basic features that can support compliance needs at the MPT (account set-up restriction of item approval workflows, etc.)</td>
<td>Limited investment cost to access e-marketplace model portals. Many existing suppliers access the markets through e-marketplace model offerings, negating the need for onboarding costs. Implementation would require GSA to address a number of supplier concerns.</td>
</tr>
</tbody>
</table>

*Procurement Through Commercial E-Commerce Portals – Phase II Report Market Research & Consultation*
Government efforts to be more commercial

Streamlining Procurements

- GSA MAS Schedule program consolidation – 24 Schedules to 1 Schedule
  - Reduce administrative burden (Contractor, GSA and Government)
  - Timeline
    - 2019 New Schedule Development
    - 2020 Mass Modification and Multiple Contract Consolidation
      (Does not include the Department of Veterans Affairs)
  - Potential Concerns
    - Consistency in process
    - Pricing
    - Audits
    - Training (GSA and Industry)
- Commercial contracting terms modifications distinguishing of Software from Software-As-A-Service (SAAS)
- Other Transaction Authority (OTA)
  - Fewer restrictions
  - Flexibility in acquisitions
- Blockchain use in Federal Contracts – GSA
What Is Congressional Oversight?

• Oversight defined
• Authority
• Senate v. House
• Majority v. Minority
• Rules
• Differences/Similarities from Government Investigations
Forms of Oversight

- Requests for documents (letters, subpoenas)
- Requests for briefings
- Requests for testimony (closed, public) under oath
  - To target companies or individuals
  - To witnesses
- Hearings
Subjects of Congressional Oversight

- Pendulum of current events (What’s hot/in the news)
- Pendulum of power (Democrat vs Republican priorities)
- Executive branch
- Waste, fraud and abuse
- Recent trends
Unique Oversight Issues for Contractors

• Business with the government
• Contractual obligations
• Reputational impacts
• Sensitive government information
Dealing with the Potential for Oversight

- Preparation
- Understanding sources of oversight
- Understanding potential consequences for businesses
- Best practices
Contact Information

Robert Burton
rburton@crowell.com
202.624.2982

Lorraine Campos
lcampos@crowell.com
202.624.2786

Paul Rosen
prosen@crowell.com
213.443.5577

Monica Sterling
msterling@crowell.com
202.624.2549