

TOPIC 2

MARKET RESEARCH

Objective

To determine whether market research was effectively conducted and documented.

MARKET RESEARCH

INTRODUCTION

This guide provides detailed audit steps for determining an agency's compliance with prescribed policies and procedures for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. The guide expands the researchable questions associated with "market research" identified in the *Contract Audit Guide Framework* that was released in 2009 by the Contracting Committee of the Federal Audit Executive Council. The framework provides a construct of issues and researchable questions to consider when planning audits or reviews of contracts. It is the Contracting Committee's intention to issue detailed audit guides for each issue identified in the framework. Audit teams are encouraged to modify the *Market Research Audit Guide* as appropriate, and to use the guide, in conjunction with other appropriate tools, to assess compliance with acquisition rules.

BACKGROUND

The FAR establishes market research as a tool for identifying (1) sources to ensure competition, and (2) commercial products to meet an agency's needs. Market research is an essential element of building an effective strategy for the acquisition of commercial items.

FAR Part 10 prescribes the policies and procedural requirements for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. This is so agencies ensure that legitimate needs are identified and trade-offs are evaluated when acquiring items to meet those needs. The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The FAR directs the Government to document market research in a manner appropriate to the size and complexity of the acquisition. However, the FAR provides limited guidance on the extent of market research that agencies must conduct and document.

The FAR lists some market research techniques, including (1) contacting knowledgeable individuals in the government and industry regarding market capabilities to meet the acquisition requirements, (2) publishing formal requests for information in appropriate technical journals or business publications, and (3) involving potential offerors in interchange meetings or holding presolicitation conferences early in the acquisition process.

DEFINITIONS

Bundling – Combination of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a single contract that is likely unsuitable for award to a small business because of one or more reasons (diversity, size, specialized nature of the elements of performance, aggregate dollar value, and/or geographical dispersion of performance sites).

Commercial Item – A product or service (other than real property such as land and buildings) that is:

- Customarily used for non-governmental purposes that has been sold or offered for sale, lease, or license to the general public;
- Advanced technologically or in performance, is not yet available commercially, but will be in time to satisfy the delivery requirements under a solicitation;
- A commercial item and has had minor modifications to meet a Federal Government requirement;
- Offered and sold in substantial quantities to the general public based on established catalog or market prices for specific tasks under standard commercial terms and conditions; or
- A non-developmental item; if it is determined, the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Market Research – Collecting and analyzing information about capabilities within the market to satisfy agency needs.

Non-Developmental Item (NDI) – Any previously developed item used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the U.S. has a mutual defense cooperation agreement; or

- An NDI item that requires only a minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or office; or
- Any item being produced that does not meet either of the NDI requirements above solely because the item is not yet in use.

APPLICABLE LAWS AND REGULATIONS

The following laws and regulations prescribe the criteria applicable to Market Research:

- *FAR Part 10, "Market Research,"* prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

Because the agency/department you are auditing may have FAR supplements or implementing guidance in addition to the criteria identified above, you will also need to identify and become familiar with the requirements and criteria in those documents.

AUDIT STEPS

NOTE: Because agencies have discretion in the amount of market research they must perform, auditors will have to use professional judgment in determining whether sufficient market research was conducted.

OBJECTIVE: DETERMINE WHETHER MARKET RESEARCH WAS EFFECTIVELY CONDUCTED AND DOCUMENTED.

- A. Determine if the contract describes and defines the Government's requirements in sufficient terms to facilitate effective market research.
- B. Review the contract file to determine if the activity effectively evaluated whether commercial items or non-developmental items were available to meet the Government's needs or could be modified to meet the Government's needs. Market research records should include:
 1. A determination that the Government's needs can be met by either:
 - a. Items of a type customarily available in the commercial marketplace;
 - b. Items of a type customarily available in the commercial marketplace with modifications; or
 - c. Items used exclusively for governmental purposes.
 2. A review of customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs. Such records may include a review of:
 3. Information on customary practices, including warranty, buyer financing, discounts, and contract type, considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

4. Legal and/or regulatory requirements unique to the item(s) being acquired;
 5. A review of the availability of items that contain recovered materials and items that are energy efficient;
 6. A review of the distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and
 7. A review of the size and status of potential sources of the items or services.
- C. Determine whether the contract file documents one or more of the following market research techniques:
1. Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
 2. Formally requesting information published in appropriate technical or scientific journals or business publications, as appropriate.
 3. Querying Government-wide contract databases and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/contractdirectory/> and other Government and commercial databases that provide information relevant to agency acquisitions.
 4. Communicating on-line with industry, acquisition personnel, and customers conducted.
 5. Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.
 6. Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.
 7. Holding interchange meetings or presolicitation conferences to involve potential offerors early in the acquisition process.
- D. If market research indicated that commercial or non-developmental items may not be available to satisfy the agency's need, determine whether the agency reevaluated the need in accordance with FAR 10.001(a)(3)(ii) and determine whether the need could be restated to permit commercial or non-developmental items to satisfy the agency's needs?

- E. If the acquisitions involved consolidation, bundling, or tiered evaluations, determine whether the agency conducted sufficient research to determine how the incumbent small businesses would be impacted?
- F. Determine whether the Government documented the results of market research in a manner appropriate to the size and complexity of the acquisition.
- G. Determine if the contract action taken by the Government reflected the market research conducted. Determine and evaluate the reasons for significant variations.
- H. Discuss any market research weaknesses with the contracting officer to identify the cause of the deficiencies.