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Procurement During A Time Of Crisis

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Adapting to Challenging and Changing Times

- Maddening
- Frustrating
- Mind-blowing
- Aggravating

Supply Chain Issues

- 24 months later, the supply chain issues persist and in some way are even worse
- Inflation is now at a 40-year high
- Fuel prices have increased significantly causing other prices to increase
- Public procurement professionals continue to have difficulty obtaining needed materials and supplies

Supply Chain Issues

- Public procurement professionals continue to have difficulty obtaining needed materials and supplies

Why Are There Shortages and Price Increases?

- “Blame the fouled-up supply chain that connects manufacturers around the world with the makers and assemblers of their component parts, as well as with the consumers and businesses that buy the finished goods.
- The problem emerged shortly after the COVID-19 pandemic struck, and it’s seemed to get only worse since then.”

Why Are There Shortages and Price Increases?

- Fuel prices began to increase in February 2021 due to public policy
- Fuel prices rose even higher due to the war in Ukraine

Why Do We Have Supply Chain Issues?

- Manufacturers in the U.S. and the rest of the industrialized world have long outsourced the production of common and low-cost products to China and other low-wage countries

Why Do We Have Supply Chain Issues?

- Starting in the 1970s, companies outsourced the production of an increasing number of more sophisticated products, often using multiple contractors to produce and then assemble the components
- Labor costs have increased since the COVID-19 pandemic began

Why Do We Have Supply Chain Issues?

- Companies have difficulty in hiring needed workers
- Very little is manufactured in the USA today
- Some companies forgo having U.S. factories altogether, using contractors to assemble their products from the pieces made by subcontractors
- With or without a U.S. plant, a company that relies on a far-flung supply chain requires some combination of planes, ships, trucks and warehouses to pull its products together and store the inventory

Why Do We Have Supply Chain Issues?

- Global supply chains are especially prevalent in durable goods (such as cars and appliances), tech products (such as cellphones and computers), clothing, footwear, textiles, furniture and plastic goods
- And although most U.S. imports come from China, Mexico and Canada are also important links in the supply chain here, as are a number of Asian and European countries

What Does the Future Hold?

- Labor, transportation and logistics costs are up
- There's reduced capacity because of the problems all along the supply chain
- There's a finite number of resources across the board, including the number of containers and amount of manufacturing capacity

What Does the Future Hold?

- Manufacturers and distributors are passing their higher costs onto to their customers
- Vendors are advising they can no longer honor their contract pricing
- Vendors are asking for fuel surcharges
- Goods are taking longer to arrive
- Some items are becoming harder to find
- More inflation is expected

What Does the Future Hold?

- Factories can take weeks to restart after being shutdown for COVID related reasons
- West coast ports were barely keeping up with growth in freight before the pandemic and have no ability to absorb disruption
- Shortage of trucks to haul cargo containers to their destination

How Long Will It Last?

- Experts are saying it will take another year or two before the supply chain can work its way through the backlog

Strategies for Dealing with Supply Chain Issues

- Procurement professionals need to leverage their knowledge and partnerships with current suppliers
- Procurement professionals need to collaborate across the profession
- Government agencies may need to inventory more and rely less on “Just in Time” and “Next Day” deliveries

Strategies for Dealing with Supply Chain Issues

- Realize that prior procurement spend data may not be able to predict future purchases during unprecedented times
- Do we consider requests for economic price adjustments?
- Do we consider requests for fuel surcharges?

Strategies for Dealing with Supply Chain Issues

- New York State Preferred Sources
 - Group 38232 – Hazardous Incident Response Equipment (HIRE)
 - Group 39000 – Industrial & Commercial Supplies & Equipment
- Federal General Services Administration
 - GSA contracts

Strategies for Dealing with Supply Chain Issues

- New York State centralized contracts
 - NYSID
 - NYSPSP / IBNYS / NIB
- MMCAP Infuse Group Purchasing Organization for government facilities, operated by the State of Minnesota
- National Cooperative Contracts
 - Sourcewel
 - Omnia Partners Public Sector



Force Majeure

- Review your agencies force majeure clause in your contract templates
- A force majeure clause allocates the risk of loss if performance is hindered, delayed, or prevented because of an event that the parties could not have anticipated or controlled
- It provides a contractual defense, the scope and effect of which will depend on the express terms of a particular contract

The 3 Elements of Force Majeure

1. Unforeseeable event
2. Outside the parties' control, that
3. Renders performance impossible or impracticable

Issuing Your Own Solicitation

- Use shorter terms - 3 months or 6 months - rather than one-year or multi-year contracts
- Provide flexibility in your specifications for price increases
- Conduct market research to identify as many potential bidders as possible
- Consider the application of monthly or quarterly CPI increases
- Advertise in additional online notification systems – NYS Contract Reporter



Issuing Your Own Solicitation

- Issue more “spot bids” for one-time purchases, with a shortened response time (5 days), with terms that state you will issue a purchase order within a specific number of days, after the bids are submitted

Issuing Your Own Solicitation

- Look to pool demand from several government agencies to take advantage of volume discounts
- Remember, your award price is only the lowest price on the day of the award
- Pricing will fluctuate based on supply and demand
- You may want to renegotiate the pricing with the awarded vendor if market prices drop

What is an Economic Price Adjustment Clause?

- A fixed-price contract with economic price adjustment **provides for upward and downward revision of the stated contract price, upon the occurrence of specified contingencies**
- Under the Federal Acquisition Regulations (FAR) “fixed-price government contracts with an economic price adjustment clause provide for upward and downward revisions of the stated contract price upon the occurrence of specified contingencies

A fixed cost contract with economic price adjustment may be used when.....

1. There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance,

AND

A fixed cost contract with economic price adjustment may be used when.....

2. Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract
 - Price adjustments based on established prices should normally be restricted to industry-wide contingencies
 - Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control

Sample Economic Price Adjustment Clause

The County recognizes this product or service has a price component that may have a commodity with changing costs. The Contractor/Supplier may request a Price Adjustment no more frequently than once each quarter (3-month period).

A Price Adjustment request must be made in writing and include the reason for the request, documentation supporting the request (i.e., commodity increases), the current pricing, and the requested revised pricing.

The County will review the Price Adjustment request. If the Price Adjustment is deemed reasonable the Price Adjustment request will be accepted by written acknowledgement. If the request is not accepted the County may entirely reject the request or may counter with revised pricing. In either case the County will provide a written explanation in support of the decision.



Sample Economic Price Adjustment Clause

The Director of Purchasing may use available indexes (e.g., CPI or PPI) to determine if the requested Price Adjustment is reasonable. Typically, a Price Adjustment that exceeds 5% will not be approved unless very unusual and significant changes have occurred in the industry.

In the event industry costs decline, the County shall have the right to receive, from the Contractor, a reasonable reduction in prices/pricing that reflect such cost changes in the industry. The County will make a written request to the Contractor for a Price Adjustment in writing with supporting documentation.

Putting the Pieces of the Puzzle Together

- Good news – there are many contract vehicles already in place
- Use Coprocure.us to identify all national cooperative contracts that are available
 - www.coprocure.us
- Same distributors/vendors on multiple contracts (can be confusing)

Putting the Pieces of the Puzzle Together

- During time of national shortage, distributors will give preference to “current” customers
- Distributors allocate product based on prior orders – if you didn’t purchase from them prior to the shortage, chances are they will not sell you now
- There are benefits from dealing with large national distributors with established contracts

Increase Planning Activities with Internal Customers

- Keep internal customers up to date on current market conditions so they can plan properly regarding current timeframes
- Help them identify alternate suppliers
- Help them identify equivalent products and services
- This may be a perfect time to get our internal customers to be more open-minded regarding acceptable products

Diversify Your Supply Chain

- Supply chain diversification mitigates your risk by making sure you have a diverse supplier base, no matter what problem may arise
- Taking the time in advance to source, pre-qualify, and onboard multiple suppliers speeds up your response time when an incident occurs
- This reduces the time and money lost to the disruption

Diversify Your Supply Chain

- COVID-19 has showed us that we cannot rely on a single supplier relationship to meet our needs in times of national disaster or emergency
- We need to establish relationships with multiple suppliers for the same product category in order to improve our chances of having access to supplies

Diversify Your Supply Chain

- Establish relationships and open accounts with all the major distributors and Preferred Sources on state, federal and cooperative contracts
- Don't overlook small local suppliers that may be able to supply your needs
 - i.e., Dental Supply house during initial shutdown
- Make purchases for the same supply item from several sources on a regular basis
- Be a customer to all the major suppliers of your critical need products and services



Diversify Your Supply Chain

- You will have to select your contract vehicle when you establish your customer relationship
- You will not be able to “cherry-pick” available contracts at the time of each purchase
- You will need to be in contact with your major distributors at a minimum weekly, but most often daily to see what inventory they may be able to allocate
- Take what ever quantities they can allocate to you, no matter how small they are
- You can build inventory one box, and one week at a time

Online Resources

- Don't rule out online retailers such as Amazon and Amazon Business
 - They may be the only suppliers with inventory
- Buyer beware
 - Who are you buying from – Amazon or a reseller?
- You do have some protection making these purchases with a p-card

Speed Up Your Order/Payment Cycle

- Streamline internal approvals
 - Internal delays may result in product being sold to someone else
- Use p-card when necessary
- Make sure all invoices are paid on time to ensure good status with each supplier

Increase Inventories

- With input from your end users, determine the minimum quantities you want to maintain in a stockpile for future emergencies
- Make purchases in whatever quantities are available
 - Slowly build your stockpile
- Waiting for a supplier that can ship large quantities may be futile in times of national shortages

Strategy Review

- Keep up-to-date on market conditions and product specifications
- Review all available contracts and determine which are best for your agency
- Open accounts with all major distributors and preferred sources
 - Purchase from everyone on an ongoing basis
 - Identify local suppliers

Strategy Review

- Join MMCAP – all local governments and school districts are eligible
- Determine if issuing your own solicitation is your best alternative
- Diversify your supply chain
- Review online procurement policy and p-card limits
- Speed up order and payment cycle time
- Create a stockpile
- Keep up-to-date on market conditions (emphasis applied)