

Federal Agencies' Automation Push Could Aid Contractors

By **Daniel Wilson**

Law360 (August 23, 2019, 9:55 PM EDT) -- Growing enthusiasm across federal agencies for software bots to automate rote tasks could result in a loss of some work for contractors, but it could also mean quicker contract awards and a smoother bid submission process.

Agencies are increasingly embracing robotic process automation, or RPA, to complete tasks, usually repetitive ones, and the use of RPA in contracting could lead to benefits for contractors like faster contract awards, at least for large deals where there may be hundreds of submissions, according to Morrison & Foerster LLP attorney Tina Reynolds.

RPA bots could also more quickly check contract submissions from bidders and let them know if required documents are missing or incomplete, Reynolds said.

"Sometimes there are documents that need to be submitted alongside an offeror's proposal — signed representations or certifications, or proof of insurance ... things like that could be checked by a computer to make sure they're done," she said.

Although the government only recently began adopting RPA, the benefits of using it for certain contracting tasks, such as allowing workers to take on higher-value work, have already been made clear.

"This digital labor is a benefit to the government because it frees up scarce dollars that can then be applied to more complex tasks, ultimately delivering better service to citizens," said Marc Mancher, global public services robotics and cognitive leader at Deloitte Consulting LLP.

What has been less clear, however, is how the use of RPA can affect contractors on the other end of those deals.

There are some potential downsides, such as agency bots taking on work a contractor previously would have brought its staff in to complete, "which could decrease contractor revenue," Mancher said.

But many contractors will experience no difference in their contractual dealings with agencies, and there are several potential benefits in addition to those highlighted earlier by Reynolds.

For example, although contracts based on subjective criteria, like technical requirements, are too nuanced to be fully assessed using RPA, automated processes could be used to look over at least some

parts of those bids — such as assessing resumes of proposed staff against key words — and could help to reduce potential bias in assessments, Reynolds said.

Invoice processing could also largely be automated through RPA, speeding up how quickly vendors are paid by the government, according to James Walker, the federal chief technology officer and director of public sector marketing at UiPath, which develops RPA software.

Further, there is a potential benefit for contractors using RPA themselves as a form of "digital labor" on federal contracts, enabling them to deliver the same service at a lower cost, which would be particularly beneficial for fixed-price contracts, Mancher said.

And if a federal contractor hasn't yet been exposed to RPA, it's likely that they will be soon, experts say.

The government has been slower to adopt the technology than the private sector, with barriers such as agencies' pressing day-to-day work limiting the time available to explore new technologies, as well as issues of how to integrate automated technology into workflows and how to adopt policies written for human workers to be used with RPA, according to Mancher and his Deloitte Consulting colleague, senior manager Rick Skigen.

Nonetheless, since NASA in 2017 adopted its "George Washington" bot, the first RPA bot to be used by a federal agency — done under the watch of Walker, who was in charge of RPA at NASA's Shared Services Center at the time — contracting officials at many federal agencies and offices have been looking to make up for lost time.

"With 50-plus agencies using RPA in less than 18 months, it is hard to find software or technology accepted [by the government] faster," Walker said.

Agencies that have jumped on board have frequently sung the praises of RPA, pointing to the potential to save thousands of man-hours of work, usually with a relatively low upfront investment of time or money, as well as to other benefits like increased accuracy in repetitive tasks — because bots don't get bored or distracted.

"It's fairly inexpensive as far as technologies go and our teams can pick it up really quickly," Federal Chief Information Officer Suzette Kent told reporters in May.

Also, both the White House's fiscal year 2020 budget request and recent Office of Management and Budget memos have "[made] clear RPA is an important priority" at the highest levels of government, Walker noted.

While the government is far from reaching the limits of RPA in contracting, with many of its more mundane data collection and verification tasks still yet to be automated, there is even more scope for RPA to be used in the future, according to Skigen and Mancher. The current "rules-based" RPA process, for example, could become more of a "cognitive" process in future, looking deeper into data gathered from the contracting process to find ways to streamline and improve contracting, they said.

But there are limits to how far automation can go, experts noted, saying it's unlikely that a fully automated contracting process, where a high-level artificial intelligence process could take a set of requirements and create a contract, assess bids, and award a final deal with little or no human intervention, could come to pass.

There is no absolute legal prohibition on using AI to perform contracting tasks, with current law more focused on issues such as delineating the type of work that must be performed by federal employees and that which can be done by contractors, according to Reynolds.

But there still has to be input in the contracting process from a government lawyer and contracting officer to make sure everything is squared away, and "ultimate decision-making on the award of a contract has to be made by a government employee," Reynolds noted.

"I wouldn't imagine any of those processes could be replaced without subjecting the [contract] award decision to challenge," she said.

Whether or not AI-run contracting is a realistic or legal goal in the long term, Walker suggested that it still makes more sense to focus first on the low-hanging fruit able to be plucked through the use of RPA.

"The amount of work that is mundane, boring and is able to be automated at the RPA level is so spectacular [that] we should not be so focused on artificial intelligence and we should focus on the available and affordable opportunities of RPA," he said.

--Editing by Breda Lund and Emily Kokoll.