

# THE PSC ACQUISITION AND TECHNOLOGY POLICY AGENDA

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Transforming for a Future of  
Improved Performance  
and Results

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## Transforming for a Future of Improved Performance and Results

### I. Introduction

The U.S. government annually spends approximately \$500 billion—almost half of its discretionary budget—on the acquisition of goods and services, with services making up over 55 percent of all of those acquisitions. However, to date, much of the attention to improving the processes through which those goods and services are procured has centered on the acquisition of major weapons systems (and services in support of these systems) and less on the increasingly complex and dominant role of services and technology in meeting the government’s missions. Even today, efforts continue within the Department of Defense to apply its extensive processes for weapons systems acquisition to the acquisition of services and information technology.

But it is important to recognize that the acquisition of professional services and technology is vastly different from the acquisition of major weapons systems or products. So too are the dynamics of the marketplace. Specifically and most importantly, the acquisition of major systems takes place largely in an environment where the government is effectively the only customer and the number of potential providers is limited. Conversely, the professional and technology services sectors are broad and diverse and include companies with widely varying degrees of engagement in the public sector. As such, in order to ensure the optimal competition for ideas and solutions, any approach to the acquisition of these services **MUST** adapt to this blended market and must lean heavily toward best commercial, as opposed to government-unique, practices and dynamics.

In addition, it is clear that the current process for the government’s acquisition of professional and technology services is too slow, and even calcified, and fails to incentivize innovation and creativity that is available to help the government improve its mission outcomes. In large part, these challenges are driven by a system that is designed to prevent failure rather than encourage innovation. It is a zero-defect mentality that, in any environment, presents enormous barriers to effective, efficient, and contemporary solutions. The federal workforce, which is among the most dedicated workforces in the world, is given neither the tools nor the support to exercise critical thinking and judgment and instead is rewarded for what are often the wrong strategic choices but that are nonetheless the “safest.”

While the acquisition of information technology brings with it certain unique characteristics, focusing on IT acquisition alone is not sufficient. In the vast majority of acquisitions, technology is either the core element of what is being procured or is a core enabler of the service being procured. Indeed, the convergence of services and technology, illustrated in part by the move to cloud-based services, is changing the face and character of the marketplace as a whole. The impacts of that convergence will be felt not only in the acquisition of information technology capabilities, but the acquisition of most other services that rely on technology for execution. Whether it is access to new applications or entirely new technologies, the professional services sector is being affected as acutely as the technology sector itself. In other words, the traditional lines separating professional services from information technology have been blurred almost to the point of extinction, and any effort to reform, or transform, acquisition must be consistent with and reflective of these realities.

This agenda is the result of extensive internal discussions and analyses conducted by members of the PSC Board of Directors to respond to specific information requests from the U.S. Congress and to inform a range of other acquisition and technology policy initiatives. It includes recommendations that are pertinent to all aspects of services acquisition as well as recommendations that are more directly relevant to one or more individual market segment(s). Taken together, they represent an important part of a much broader PSC acquisition and technology policy action agenda.

In the main, the report is premised on several factors:

- Today's services "market" is not one market; it is an amalgam of diverse functional capabilities. The diversity of these capabilities requires an acquisition system characterized by flexibility and risk-based critical thinking to ensure that the acquisition strategies chosen are appropriate to the desired outcome, rather than founded on an overly simplistic set of assumptions and processes.
- The current market is cyclical, in that new capabilities advance to a "commodity" phase more rapidly than ever but then often goes through multiple additional cycles of development and modernization.
  - The use of "lowest price technically acceptable" acquisition strategies, or "best value" acquisitions that ultimately default to a price shootout, inhibit continued improvement and innovation and should be avoided for all but the most basic, static commoditized services. One of the greatest dangers to the government's effective utilization of critical services is a tendency by the federal customers to "commoditize" capabilities that are not, in practice or fact, commodities.
  - The use of a risk-focused taxonomy, as defined in the [2013 PSC Leadership Commission Report](#) (and reiterated in this report) must be core to the development of any acquisition strategy or model.
  - The use of statements of objectives (SOOs), vice traditional statements of work (SOWs), is critical. Only through the use of SOOs, which focus on performance and outcome, can providers continually innovate, insert new technology where appropriate, and deliver optimal outcomes.
- The time is right for major change, not just incremental reform.
  - The current combination of workforce challenges and changes, budget sensitivity, and the complexity of missions demands modern business and workforce models, not simply the "reform" of antiquated models. In addition, the digital age requires different expertise, approaches and solutions.
- Smart acquisition will center largely on maximizing resources for investment in innovation and continuous improvement vice sustainment of existing systems.
- The increasingly rapid evolution of technology and technology applications demands an acquisition system with four key attributes:

- Speed to outcome, both in terms of an acquisition process that reflects the market in which services are being procured AND in terms of the ability of a solution or service to deliver real results.
- Agility, principally driven by a focus on modular development and implementation (where appropriate) and a concomitant focus on the problems to be solved vice fulfilling government-specified “requirements”
- Optimal transparency and competitiveness
- A recognition that some degree of risk is inevitable; that a zero-defect environment is impossible to achieve and would be unaffordable

With these basic tenets in mind, our acquisition transformation agenda is divided into six categories: (1) workforce, (2) pre-solicitation, (3) solicitation/evaluation, (4) post-award/performance, (5) ensuring a competitive industrial base, and (6) general/cross-cutting recommendations. While divided into distinct categories tied intentionally to the acquisition lifecycle, few of these recommendations can or will by themselves lead to meaningful improvement in a vacuum. The entire ecosystem requires serious and sustained leadership attention. Absent that focus, the performance and cost improvements the taxpayer has a right to expect will continue to prove elusive.

## II. Workforce

Problem: *The federal workforce is in the early stages of its most massive transition in decades. This is most pronounced in the technology workforce, where there are 10 professionals over 50 for every one under 30. In the acquisition workforce, the transition has already begun and the new generation of professionals are already being trained and oriented to traditional acquisition practices and rules—even though the rapidly shifting market landscape requires very different strategies going forward for what services to buy and how to buy them.*

Recommendation: *Embark on a clear, steady and significant workforce transformation initiative in which cross-functional development, business acumen, technical skills and new and creative training and education tools form the core. This initiative, at a minimum, should include the following:*

- 1) Amend the Office of Federal Procurement Policy Act to rename OFPP the “Office of Federal Acquisition Management and Policy” (OFAMP) and give it explicit policy and workforce authority over the full acquisition process rather than just contracting.

Rationale: As the primary federal agency guiding government acquisition, expanding OFPP’s current authorities and role is an essential first step in better integrating the full acquisition process and workforce. Too often, particularly in the civilian agencies, “acquisition” is equated with “contracting” when, in fact, contracting is but one critical element in the acquisition process. And while OFPP has attempted to establish a set of program management requirements, the office’s ability to enforce such standards absent clear statutory authority remains in question.

- 2) The Office of Personnel Management, in conjunction with the restructured OFAMP, should create a clearly defined career path for program management in the civilian agencies.

Rationale: The civilian agencies, unlike DoD, have no clear cut, aspirational career field for program managers. OMB and surveys by others have documented over the years that, in too many cases, “project managers” are equated to “program managers” and/or individuals responsible for signing certain documentation are deemed to be “program managers” whether or not they have the requisite training and skills. The career path should include, in addition to well understood systems engineering and related skills, numerous early functional rotations, contemporary training opportunities, and rotations in the private sector, all of which are essential to developing well rounded program managers and leaders.

To their credit, OFPP and the Chief Acquisition Officers Council have already begun to develop skills definitions and standards for program managers, but no actual career path currently exists. In a government that is largely managed through “programs,” this is a critical workforce gap that must be addressed.

- 3) OFPP/OFAMP and OPM should immediately institute new acquisition workforce rotational requirements to include mandatory cross-functional rotations AND training. Similarly, opportunities for rotations into the acquisition field should be provided to end-users, auditors, and others to gain an appreciation of the work required.

Rationale: It has long been a best commercial practice to expose developing talent to all aspects of a business’s operations to ensure that, as they begin to specialize, they understand the intersections and perspectives across the enterprise. Government workforce development, on the other hand, is almost entirely insular and confined to a single functional category. By changing that paradigm, and requiring that acquisition professionals gain experience across the organization – in finance and accounting, budget, operations, etc., – the government will be developing a more well-rounded acquisition community than ever before and will help ensure closer alignment between the acquisition professionals and their internal customers. The same rationale is applicable to those functions that intersect with the acquisition workforce.

- 4) OPM, in conjunction with OFPP/OFAMP, should create a new career path for “technology management.” Unlike previous recommendations for the creation of IT contracting cadres, this career field would borrow from best commercial practices and lead to the development of a defined, fully supported, career field that combines critical business acumen and skills (including acquisition) with technology knowledge and expertise.

Rationale: One of the longest standing and most widely acknowledged challenges in government is that it maintains strong siloes of work. The creation of a highly skilled, hybrid technology management workforce will both enhance the government’s internal capacity to direct and oversee its growing technology needs and help to emphasize customer-centric decision-making, as opposed to the current functional compliance emphasis.

- 5) Create an Acquisition Excellence Council (AEC), under the auspices of OFPP/OFAMP, comprised of government, industry and academic experts, to review and, where necessary, overhaul current federal acquisition education programs and institutions to ensure that the training and education of the acquisition workforce is both current and forward looking,

focuses appropriately on business acumen and skills, including risk management and mitigation, and emphasizes critical thinking and decision-making.

Rationale: Surveys conducted by the Professional Services Council and others have clearly documented that federal acquisition leaders do NOT believe their workforces have adequate business acumen, judgment or critical thinking skills. Despite enormous investments and the continued expansion of “brick and mortar” federal acquisition training entities, the currency and availability of acquisition training has not meaningfully improved and there is a demonstrable gap in the training on services. For services acquisitions, quality training is virtually non-existent. The AEC would be responsible for setting new education and competency standards, exploring and approving alternative training tools and sources.

- 6) As the AEC is formed and conducts its initial reviews, OFAMP/OFPP, in collaboration with the Undersecretary of Defense (AT&L), should launch a pilot program to identify and test alternative acquisition workforce training and development tools. The pilot program should include an open competition for tools that rely on contemporary online/interactive capabilities, focus on outcome-based performance management, and more.

Rationale: The acquisition workforce is the vital foundation upon which nearly 50 percent of the federal discretionary budget is executed. Improved training and development is not only a necessity, it is highly TIME SENSITIVE, given the large numbers of new entries into the workforce. Current training tools have not been able to meet the needs of today’s workforce, let alone for the future workforce. It is time to immediately and deliberately explore alternatives to the traditional system.

- 7) As new acquisition workforce training tools and curricula are developed, requirements and certifications should be aligned with a recommended taxonomy for services acquisition, included in PSC’s 2013 Leadership Commission report.

Rationale: Much as agencies should tailor their acquisition strategy to the level of complexity and mission risk inherent in acquiring a given capability, acquisition workforce training and certifications should be structured such that personnel with the most relevant and demonstrated competencies are appropriately assigned to acquisitions that require their particular set of skills.

### **III. Pre-Solicitation**

Problem: *Decisions made in the pre-solicitation phase form a foundation that can make the difference between successful acquisitions and missions and failure. Missteps at this stage of the process can “snowball” throughout the acquisition lifecycle.*

Recommendation: *Establish processes that enable accurate cost assessments and require cross-functional communication and collaboration before and during requirements generation to ensure accountability and transparency throughout the lifecycle of an acquisition.*

- 1) When organic or external sources of performance are being considered, and when cost is a key decision factor, OMB should provide agencies with a vastly improved and more accurate tool for estimating the relative costs of contractor vs. government performance. In so doing, OMB should utilize and adopt the core recommendations in the Center for Strategic and International Studies' (CSIS) 2011 report "DoD Workforce Cost Realism Assessment."

In addition, because it has those same (and additional) inherently faulty cost comparison analysis methodologies, DoD Instruction 7041.04 (formally known as the Directive Type Memorandum 09-007) should be eliminated, or revised to address shortcomings identified in the CSIS report.

Rationale: An accurate comparison of the fully burdened, lifecycle costs of contractors, government civilians or military to perform specified work is an essential element in any sourcing strategy for other than inherently governmental functions or critical positions. Yet the government today lacks an accurate process. The previously utilized, but currently outlawed, OMB Circular A-76 process as well as the new DoD Instruction 7041.04 are both fatally flawed, as documented by GAO, independent commissions formed by DOD, and other agencies. The key flaw, and proposed "fixes," were identified in the only objective, comprehensive analysis of these tools conducted by the non-partisan Center for Strategic and International Studies. CSIS's 2011 report provides a sound foundation on which to build an objective and accurate cost comparison tool.

- 2) OMB should require that all significant programs be led and managed by an "Integrated Accountability Chain," based on the Integrated Project Team (IPT) model, that includes lead participants with functional decision making authority from all key internal stakeholder components (customer/operator, contracting, engineering, legal, budget, etc.) Contractor representatives must be engaged with, but might not be members of, the official "integrated accountability chain."

Rationale: The concept of IPTs is not new, but their use and effectiveness has been minimal at best. While they often exist on some level, they typically lack the requisite decision-making authorities necessary to achieve continuous program reviews, scope control, and process discipline to ensure transparency, accountability and speed to outcomes. The Integrated Accountability Chain(s) should submit regular, coordinated progress reports to senior agency management to document their work AND track the program's status against validated metrics. The goal is to provide more authority and responsibility to the program office.

- 3) Internal and cross-functional communication should be required and evaluated by the Integrated Accountability Chain.

Rationale: A lack of continuous communication between the program and the contracting office in the government impedes successful mission outcomes. Robust communication is required to ensure that process and compliance don't outweigh mission needs and outcomes. [A related recommendation can be found in IV.4 below.]

- 4) OMB should conduct a study examining 1) how government certifications, such as FedRAMP or Capability Maturity Model Integration (CMMI), affect competition, 2) whether alternative certifications meet the same or similar standards, and 3) the ability of these certifications to evolve to meet new requirements and contractor offerings. Many of these certifications are static. Evolving threats, such as cyber, require constantly evolving standards. More information is needed to know if these standards can evolve rapidly and robustly to maintain their value.

Rationale: While alignment to standards can increase efficiency and ensure interoperability, certification processes can sometimes serve as a barrier to entry. A thorough understanding of the extent, if any, these certifications serve as a barrier to entry is needed to judge their value.

#### IV. Solicitation/Evaluation

Problem: *Too often, solicitations are overly prescriptive of how requirements are to be executed, and less instructive about desired outcomes and the criteria upon which offerors will be evaluated. Evaluations focus disproportionately on price as the primary factor in determining the successful bidder, without adequately assessing bidders' ability to fulfill mission needs. This is especially true for inventive solutions that may offer significant additional capabilities. The single-minded focus on price drives further adverse behaviors such as subjecting contractors to cost audits on firm fixed price (FFP) contracts and constrained by arbitrary employee compensation caps.*

Recommendation: *Solicitation requirements should focus on the outcomes the government wishes to achieve, with continuous input from stakeholders in the contracting community, and provide opportunities for bidders to demonstrate where alternative solutions can achieve greater results. Similarly, evaluations should include clear and specific weights for desired criteria and be oriented to the outcomes to be achieved, not solely the price to be paid. Non-value-added requirements that restrict contractors' ability to compete for work and deliver innovative solutions should be removed.*

- 1) Each acquisition strategy should be developed to fit the nature of the work to be performed. An objective taxonomy, such as developed by PSC and included in the 2013 Leadership Commission report, that assesses complexity and risk should form the basis of the agency's acquisition strategy. Best value/cost-technical tradeoff (CTTO) should be the default evaluation technique used for services acquisitions except for the most basic, commoditized requirements.

Rationale: A common taxonomy of services to be used to drive business and acquisition strategies based on the acquisition's requirements will help drive smart business and acquisition strategies for the desired outcomes.

Using the CTTO acquisition technique allows the government to best match the capabilities it needs with the price it is willing to pay. Using CTTO does not prevent an award from going to the lowest priced bidder; instead, this technique empowers the contracting and program workforces to critically assess which acquisition strategy and resulting solutions most efficiently and effectively achieve the desired mission outcomes. It also provides an



opportunity for the government to consider solutions that may not have been previously considered. In addition, the use of LPTA strategies for other than commodity procurements presumes that the government is the best and sole determinant of the basic technical levels required to achieve optimal outcomes; this is a dangerous presumption that is compounded by the government's human capital challenges.

We reject the red herring that promoting best value over LPTA is an effort to increase prices the government is required to pay. Where the government decides it is appropriate to make a tradeoff between technical capability and the price to be paid, that resulting "best value" determination is the right price to pay.

- 2) Statements of Objectives (SOOs) should be the default solicitation technique, especially for major IT and complex services acquisitions, for all but the most basic, "commoditized" IT or services acquisitions. Statements of Objectives must include specific, measurable goals, tied to mission outcome, against which the acquisition will be measured. OMB should reaffirm its guidance emphasizing that the goal of SOOs is to unleash contractor creativity in support of achieving desired goals, rather than specifying the method(s) by which they are to be achieved.

Rationale: Overly prescriptive solicitations, detailing "how" the solution is to be constructed, rather than stating the objective of the problem to be solved, limit industry's ability to bring innovative solutions to the government. Uses SOOs places more responsibility on the acquisition workforce to correctly define the problem to be solved and requires a robust ability to assess differing approaches. This can only be done via meaningful collaboration with the program office which is more difficult under an acquisition where the program officer and contracting officer reside in different agencies or don't communicate with each other. Especially for innovative technological solutions, using SOOs requires an extensive understanding of technology and risk, which the current contracting workforce may lack.

- 3) When SOOs are not used, requests for proposals (RFPs) should explicitly allow contractors to offer an alternative solution or strategy that differs from the specific prescriptions included in the RFP as long as the proposed solution or strategy still meets the desired outcome.

Rationale: Companies are often unsure when and how to propose alternative solutions and are wary of offering any alternative solution that may fall outside the "traditional" or current solution set the government has identified through its requested requirements. Conversely, contracting officers may be wary of selecting alternative solutions for fear that their decision will be rejected by the technical community or protested by competitors. By explicitly allowing a range of solutions and strategies, companies could provide a more diverse set of solutions to the government and the government would be better able to pick the best offering from these solutions. Alternative solutions include ways to both reduce costs and improve performance. Evaluation of these alternative solutions and strategies should focus specifically on their ability to deliver the desired outcome. If a proposal meets the desired outcome, it should not be penalized for utilizing an alternative solution or strategy. Nor should companies be penalized for offering ideas beyond the limitations of the solicitation. As a corollary, all proposals must be evaluated fairly and consistently to mitigate protest challenges. We recognize that this recommendation places more

responsibility on the contracting and technical workforces to correctly and fairly assess differing approaches.

- 4) When innovation is a goal for an acquisition, an “innovation template” should be added as an addendum to the RFP. This template can be populated by bidders to call-out specific innovations included in their proposal, their individual and collective costs, and expected returns on investment. PSC is developing a notional “innovation template” that will be available by early fall, 2014. The template is intended to provide a tool to the contracting workforce to help them assess differing approaches.

Rationale: In proposals, the government needs to be able to clearly understand the innovation being offered, the cost of the innovation, the risk and risk mitigation, and the benefits the innovation provides.

- 5) Explicitly authorize and require continuous communications—within the precepts of procurement integrity—within the government (between the program and contracting offices) and between the government and contractors. This communication is required during all stages of the acquisition process (pre-solicitation, pre-award, post-award), although the nature of the communication differs in each of these stages. Communication about technical needs and desired outcomes (i.e. “expectation management”) is especially important within the government during the pre-solicitation phase. In addition, an external communication plan and execution should be one aspect developed and evaluated by the Integrated Accountability Chain.

Rationale: While communication within government and between government and industry has been promoted by some top government leadership (DOD’s “Better Buying Power,” OMB’s “Mythbusters,” etc.), it is still lacking in too many agencies and at too many levels. Many government employees do not understand when communication is permissible. Federal agencies are also unsure about their authority to leverage social media and other avenues to communicate with industry. [A related recommendation can be found in III.3 above.]

- 6) The government should avoid the inappropriate use of procurement methods (e.g. reverse auctions) for other than purely commodity-based requirements, while also embracing well-accepted industry best practices, such as pre-RFP due diligence sessions, use of social media for communication, competitive down-selects, oral briefings, and specified bid/price ranges.

Rationale: Procurement methods such as reverse auctions, which are focused only on achieving the absolute lowest price, are not appropriate for any type of systems integration or professional and technical services contracts. Evaluation of professional and technical services should be based on the best value for the government, considering price and all relevant non-price factors. Procurement approaches that incorporate more innovative and “commercial-type” best practices into federal procurement increase competition, reduce the number of protests, and increase the likelihood that the government will select an offeror that best meets its requirements for a fair price.

- 7) Prime contractor past performance must be a key metric on all solicitations.

Rationale: The FAR already provides that past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency, relevance and source of the information, the context of the data, and general trends in contractor's performance already must be considered in every solicitation, with rare exceptions. However, too often we see examples that do not require any past performance information. While care must be taken to be sure that past performance requirements do not establish unreasonable barriers to competition or to driving towards innovative solutions, past performance has been ingrained in federal acquisition because it is a fair predictor of future performance.

- 8) Require the disclosure of absolute weights of all evaluation factors (cost, technical performance, risk, etc.) in solicitations and task order requests that include evaluation factors.

Rationale: Currently the FAR requires agencies to internally develop specific weighting for the evaluation factors for awards, but these weights are not publically disclosed. The FAR requires disclosing only the "relative weighting" of the evaluation factors. Offerors should have the maximum insight possible into the solutions the government is seeking and how the government will evaluate and differentiate solutions. Not disclosing the absolute weight of evaluation criteria only serves to reduce the ability of contractors to provide the outcomes the government seeks.

- 9) Create incentives or remove disincentives for prime contractors to engage with and include emerging contractors/capabilities.

Rationale: To ensure the government still has access to the solutions provided by commercial companies, the government needs to better incentivize, or remove obstacles that disincentivize, primes from engaging with new or emerging subcontractors from outside the traditional marketplace. These could vary based on the technology or capability being sought.

- 10) Remove and simplify regulatory and compliance burdens which prevent prime contractors from partnering with subcontractors.

Rationale: While non-value added regulations and compliance burdens should be removed from all contractors to the maximum extent possible, there are certain regulations and compliance burdens unique to the government market that are necessary to maintain oversight throughout the supply chain. Yet the growing regulatory flow-down requirements from primes to subs prevents subcontracting from being a viable means for the government to gain access to the unique capabilities that may be available from these companies. While some primes may see the mandatory flow-down as a protection of their interests, these same government requirements discourage many commercial companies from entering the government market.

- 11) Pre- or post-award cost audits on firm fixed price (FFP) contracts, including FAR Part 12 procurements, should be prohibited except in cases where deleterious evidence exists that would require an audit.

Rationale: Cost audits on FFP contracts increase administrative costs (which are not recoverable because the contract is FFP), while not reducing the government's risk, because the risk is already borne entirely by the contractor. Moreover, the point of the government's use of FFP is to focus on price in competitive markets rather than on the components of the price that are only relevant in a cost type environment.

- 12) Eliminate the contractor compensation allowable cost caps for all but the very few top executives of a company; instead rely on competitive market forces within the relevant human capital market(s) to ensure fair and reasonable compensation.

Rationale: Contractors are not only competing against the government and other federal contractors for workforce talent, but are also competing within the global commercial market. If contractors don't have the ability to adequately compensate employees, this talent will not be accessible to the government. Market forces should guide compensation, not poorly thought-out and false comparisons to the salaries of government executives. We recognize that the allowable cost cap does not directly constrain employee pay, but in all but a few of the largest government contractors, the allowable cost cap operates as the de facto compensation cap.

- 13) If the allowable cost compensation caps remain, exemptions to the compensation caps should broadly include all high-demand career fields appropriate to the needs of the agency. OMB should issue guidance informing agencies on the use of these exceptions. Exemptions must be flexible to enable contractors to quickly access employees in areas of emerging needs.

Rationale: An interim FAR rule published June 24, 2014 provided limited guidance on the use of the statutory exemptions for high-demand positions. However, the rule requires decisions to be applied on an individual, and on a contract-by-contract, basis that fails to follow the hiring decisions that companies have to make before award.

## **V. Post-Award/Performance**

**Problem:** *Agencies and contractors do not simply declare victory once a contract is awarded. Both want to ensure successful mission outcomes for the government and an accurate past performance record to inform future acquisitions. Issues often arise when winning bidders and their government customers do not have common understandings and expectations about the basis of an award decision or the required contract performance. When contract awards do not go smoothly, a host of problems can arise, and information that could help improve these processes is often lacking or not shared.*

**Recommendation:** *Government and industry need formal information sharing and expectations management processes after both successful and unsuccessful bids. This will help inform contract execution and mitigate protests. To ensure successful mission outcomes, mechanisms are necessary to refresh aging technology capabilities over the course of the contract lifecycle and to accurately and expeditiously document contractor performance. When issues do arise, processes should be*

*implemented to quickly rectify and document problems, and capture lessons learned to better enable future success.*

- 1) If a SOO is not used, insert an “emerging technology provision” into technology solicitations and resulting contracts that allows contractors to integrate new or evolving technology into their solution during performance, rather than constraining the contractor to only use technology in the form that existed when the contract was first signed. Utilizing emerging technology should be incentivized when it can reduce costs and/or improve mission outcomes.

Rationale: Technology changes too quickly for a solicitation or proposal to know or adequately describe which technology will best achieve a desired solution years down the line. Without an “emerging technology provision,” the government is limited in its ability to subsequently alter contracts in light of changes in technology. A mechanism is needed to allow the best possible technologies to be used to achieve mission outcomes, even if such technology was not available when the contract was signed, while ensuring that post-award changes remain within scope of the contract.

Contractors should retain the “burden of proof” of why a specific technology insertion is desirable and appropriate (i.e. reduce costs, increase capabilities, lower risk, etc.).

A government “scope change entity” could closely monitor the use of the “emerging technology provision” to set appropriate bounds.

- 2) Post-award “kick-off meetings” with all key government stakeholders and the contractor should be required as a means of ensuring a common understanding of requirements and expectations of both transition and contract execution.

Communication post-award, but before performance, should be planned for and conducted by the Integrated Accountability Chain.

Rationale: Kickoff meetings to establish a common understanding of performance requirements are used frequently in government, but often not in a collaborative way. In DOD, for example, for major systems, the Defense Acquisition University (DAU) often serves as a facilitator for these “kick-off meetings.” Such collaborative meetings are also a commercial best practice to ensure that projects begin on the best foot possible.

- 3) Require that post-award debriefings to contractors contain all information that would otherwise be releasable in the course of a legal discovery process, including a detailed description of how the contractor was rated in each of the evaluation criteria. For large procurements, this debriefing should be in person. The quality of this debriefing should be one aspect planned for and evaluated by the Integrated Accountability Chain.

Rationale: Companies often have little insight into why they lost a bid. An improved debriefing process will both reduce the frequency of protests (as many protests are driven by a desire for additional information) as well as improve the quality of future bids as companies will better know the areas they need to improve.

- 4) Develop accurate procurement administrative lead time (PALT) data metrics (to be made available to the public) to help inform ongoing process improvement and efficiencies. This can be achieved by adding the release date of a solicitation, as well as the solicitation number, to the required information to be entered into the Federal Procurement Data System (FPDS) to facilitate collection. There is no burden on the contracting officer to report this information. We do not intend for this information to be used to rate agencies or contracting officers, however.

Rationale: While some agencies are tracking it, no agency publicly releases information on PALT. PALT has an immense impact on both government efficiency and effectiveness as well as contractor costs and efficiency. By adding PALT data to FPDS, contractors, think tanks, government agencies, and others will be able to easily analyze this important statistic and use it as a tool to drive improvement.

- 5) Revitalize the past performance reporting system by requiring the thorough and timely completion of past performance evaluations by government offices coupled with timely notice to affected contractor(s). Past performance reviews should focus on measurable objectives directly contributing to mission outcomes that are specifically dictated in the solicitation.

Rationale: A thorough past performance system both reduces the government's risk and provides successful contractors with a competitive discriminator. Currently, past performance reports are frequently neglected, delayed, or left incomplete by government officials. The FAR only suggests the timeline for agency action to complete past performance evaluations but it should become mandatory. The quality and speed of past performance reporting should be included as a performance metric for the acquisition workforce. Data on the timeliness of government and contractor submission of past performance reports should be maintained and publicized. DOD already publically reports on this information quarterly.

Contractors must retain the ability to appeal past performance reports to ensure that a company is not unfairly disadvantaged without due process.

- 6) OMB should mandate the collection of more protest data regarding all protests filed and resolved by agencies. The data collected should include, at a minimum:
- a. Protest forum (Agency / GAO / Court of Federal Claims)
  - b. Agency protested
  - c. Solicitation number
  - d. Solicitation title
  - e. Awardee
  - f. Protestor(s)
  - g. Disposition (Sustained, Denied, Dismissed, Withdrawn, Resolved)
  - h. Post-disposition awardee
  - i. Evaluation technique
  - j. Contract type
  - k. Contract value

Rationale: The data collection and transparency would provide valuable metrics and data to undertake a meaningful analysis of the root cause of protests and trends. It will also help focus attention on problem areas and measure the success of protest mitigation initiatives—including early detection and corrective action to address unintended negative consequences. The data will also provide visibility of best practices that can be documented and replicated across the government.

- 7) Every agency or component should form a protest review committee, comprised exclusively of government legal and contracting expertise, which can be called upon immediately after a protest is filed for a large procurement to perform an independent review of the record and oversee any corrective action.

Rationale: Since these government officials were not involved in the agency's procurement and source selection decision, they are better positioned to identify errors in the evaluation process or gaps in the record and recommend early corrective action in lieu of a costly and time-consuming defense of the protest. As a result, the government can quickly proceed with the award, based on an improved evaluation and source selection record, and commence contract performance to obtain necessary goods and services.

Agencies such as the Air Force and the Army Material Command already use this practice.

- 8) The "Integrated Accountability Chain" should institute a "360 degree stakeholder review" (contracting, customer, financial, industry, etc.) following an acquisition to assess the quality of the process from the perspectives of openness to innovation, communications, acquisition speed, etc. The results of this review should be shared with all stakeholders and the Head of Contracting Activity so that it can be used to inform future acquisitions and evaluate existing policies and procedures. Contractor input on these reviews is essential to maximize the government's future access to best industry solutions.

Rationale: Comprehensive reviews of programs that include all stakeholders are an industry best practice and are necessary to obtain lessons learned to improve future programs and processes. These reviews must include all major stakeholders so the acquisition is not judged on a single, simplistic measurement (compliance, lack of protests, etc.). The Office of Management and Budget and Department of Homeland Security are beginning to formulate these reviews but appear limited to involving only government officials. This would NOT be a judgment on who won (or should have won), but instead a value-added assessment of whether the process met the core objectives of the end-customer and the tenets of smart acquisition.

## VI. Ensuring a Competitive Industrial Base

Problem: *Socio-economic considerations within the federal acquisition arena, while laudable, frequently come into conflict with agencies achieving their mission needs, and often undermine the health of the federal marketplace as a whole. Similarly, commercial items requirements are often an inhibitor to agencies' easily obtaining desired capabilities.*

Recommendation: *Minor adjustments to the requirements for small business set-asides, prime and subcontracting requirements, and commercial items definitions could improve both the viability of the federal marketplace and the offerings available to the government.*

- 1) Establish separate small business prime contracting goals for specific categories of acquisitions, e.g., major systems acquisitions, weapons systems acquisitions, service contracts, etc. The definition of a "major system" could be taken from OMB Circular A-109.

Rationale: Current practice is to "jam" set-asides into services contracts, regardless of mission effect, as a means of making up for low small business participation in major weapons systems/platforms. This inhibits competition and inappropriately interferes with healthy market dynamics. By rationalizing the goals, departments will be better able to tie their socio-economic strategies to mission outcomes.

- 2) All federal agencies should count subcontractor participation by small businesses on major systems towards its prime contracting goal achievements.

Rationale: DoE currently permits this due to its recognition that achieving its small business prime contracting goals is unrealistic given its program and mission requirements. A very similar dynamic exists with regard to major weapons systems at DOD.

- 3) If the percentage of work set aside for small business in any given NAICS Code/Product Service Code is less than 50 percent or more than 200 percent of the government-wide small business goal, agencies must submit a report justifying why their small business utilization was so high or low in that sector. Example: if the government-wide goal is 23 percent, this provision would trigger if the small business set-aside in a given NAICS Code/PSC was less than 11.5 percent or more than 46 percent.

Rationale: The government's laudable small business goals are designed to facilitate the entrance of small businesses into the contracting market. Unfortunately, rather than applying the small business goals evenly across sectors, disproportionate amounts within certain sectors are set-aside for small business while other sectors see almost no small business participation. In some sectors, (i.e., aerospace manufacturing) this disparity makes practical sense, but in others, small business set-asides are being used to distort the market and pigeonhole small businesses into specific types of work.

- 4) Broaden the definition of a "commercial item" or "commercial service" to permit the entity producing the item or delivering the service to qualify so that each item does not have to individually meet the definition.



Rationale: Today, all of the acquisition rules for “commercial items” are tied to the specific item or service to be acquired. Granting commercial entity status will facilitate government access to a broader range of products and services. We recognize that defining the eligibility criterion for an entity has been extremely difficult and controversial. Many current laws are based on both what the item or services is and how it is sold to the government. Nevertheless, we see significant benefit to the government if this approach could be used.

## **VII. General/Cross-cutting Recommendations**

Problem: *A variety of broadly applicable government-unique regulatory and legislative requirements restrict the flexibility of federal agencies to implement both long-term and rapid technology investments, to harness innovative approaches that could be offered by new entrants to the market, and to evaluate their progress in meeting overarching strategic objectives.*

Recommendation: *Reduce and streamline government-unique requirements to better take advantage of existing commercial capabilities and enable strategic planning to meet current and future agency needs.*

- 1) Agency Performance Improvement Officers should be empowered and required to create and report on metrics that indicate progress toward meeting agency strategic objectives.

Rationale: Federal law already requires the head of each agency, in consultation with the agency Chief Operating Officer, to designate a senior executive of the agency as the agency Performance Improvement Officer; these officers are tasked to ensure that the mission and goals of the agency are achieved through strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved. They support the head of agency and the Chief Operating Officer in the conduct of regular reviews of agency performance, including at least quarterly reviews of progress achieved toward agency priority goals, if applicable. They are responsible for assessing both agency-specific and cross-agency goals.

Some agencies have used these performance metrics to focus on agency procurement success, such as Treasury did in increasing their small business contracting goals. Others are engaged in cross-agency initiatives, such as those 2014 OMB established objectives for “Smarter IT delivery” or maximizing the value of federal spending through strategic sourcing and shared services.

- 2) Create an Information Technology Appropriation to alleviate the challenge of having to move money between different appropriation accounts (e.g., R&D and O&M) to facilitate new approaches and techniques in IT solutions as well as to provide flexibility for long-term planning and strategic investment. In return for greater execution flexibility, the agency (using readily available tools) could provide Congress with near real-time transparency into how the funds in the IT appropriation were being spent. Put another way, the false sense of control achieved through giving an appropriation (with a set of spending limitations) and then waiting to find out next year if it was used effectively could be replaced by the

combination of increased flexibility on how the funding can be spent coupled with near real-time visibility into what the money is being spent on.

Rationale: Given the current rules on when to use O&M vs. R&D vs. procurement accounts for IT acquisitions within DOD or across similar budget accounts in the civilian agencies, it can be very difficult for an agency to quickly change course when a better option is discovered. This issue gets at the challenges that government faces in moving between capital expenditures (CAPEX) and operating expenses (OPEX) outside of budget cycles and working capital funds. When new approaches or techniques require a change in contract approach, it may also require a change in appropriations (e.g., buying a managed service rather than building a system). IT projects are often delayed for extended periods of time to either reprogram funds or initiate new funding requests. In addition, a multiyear appropriation (as opposed to single year funds) would allow for better long-range planning and strategic investment and implementation flexibility, as currently exists for other procurement-related appropriations, without diminishing funds accountability or oversight.

- 3) Create a separate funding mechanism specifically to facilitate rapid (or “sprint”) technology acquisitions. This funding would only be available for sprint acquisitions. Acquisitions under this mechanism could have a maximum award ceiling and may be subject to limited competition.

Rationale: Technology moves too fast for the current acquisition system and funding models. This is particularly visible in small, modular app development, which can be measured in weeks and months rather than years. This authority would allow the government to quickly access small, agile solutions without the burdens of the full acquisition system and promote modular technical acquisitions to meet rapidly changing requirements.

- 4) Reduce non-value added regulatory and oversight burdens.

Rationale: Non-value added regulatory and oversight burdens increase costs and restrict entry into the government marketplace.

In response to a February 12, 2014 *Federal Register* notice published by the Department of Defense seeking public feedback on the department’s review of statutory and regulatory requirements, PSC, through its affiliation with the Council of Defense and Space Industry Associations (CODSIA), submitted 77 recommendations for eliminating burdens and barriers confronted by the defense industrial base (See Appendix C.) The comments focus on five distinct categories: 1) the elimination of duplicative or redundant requirements, 2) focusing on outcomes rather than processes, 3) adopting a risk-based approach to oversight, 4) rebuilding a meaningful preference for commercial item acquisitions, and 5) proliferating competition. While all of the recommendations merit consideration, PSC highlights the following recommendations:

- a. CODSIA Recommendation #7: Review all government-unique and DoD-unique requirements applicable to commercial items, such as domestic sourcing requirements, intellectual property rights, Item Unique Identification (IUID), services manpower

reporting, and numerous FAR and DFARS clauses, to determine whether the government's preference for use of commercial items is better served by eliminating such barriers to commercial firms doing business with DoD. Also consider the costs versus benefits of such requirements on other than commercial items, particularly in a constrained budget environment. Seek legislative relief to enable more cost- efficiencies and improved access to commercial technology.

- b. COTSIA Recommendation #34: Raise the Truth-In Negotiations Act (TINA) threshold substantially and reassess it annually. This will save all parties time in analysis and enhance the speed to contract, facilitating a quicker placement of actions on contract without significantly impacting the government's ability to get a fair and reasonable price.
  - c. COTSIA Recommendation #35: Re-evaluate DoD policies regarding competitive acquisitions in which only one offer is received and clarify that price may be considered to be fair and reasonable even in instances where only one offer is received.
  - d. COTSIA Recommendation #54: Required DCAA to make better use of risk assessments and process improvements to eliminate time spent on low-risk situations.
  - e. COTSIA Recommendation #59: Eliminate executive compensation reporting requirements mandated by Federal Funding Accountability and Transparency Act (FFATA) or significantly raise the thresholds that trigger the reporting requirement.
  - f. COTSIA Recommendation #64: Eliminate duplicative reporting requirements in favor of electronic contractor man-hour reporting (eCMR).
  - g. COTSIA Recommendation #66: Restore the TINA waiver authority the DOD heads of contracting held prior to the enactment of the FY2003 NDAA, thus realigning it with the authority currently granted to civilian agencies.
- 5) In the short term, the Cost Accounting Standards (CAS) threshold should be raised. An independent study should be commissioned to identify the differences between CAS, Generally Accepted Accounting Principles (GAAP), and the International Accounting Standards, the rationale for those differences, and what the impact of moving away from CAS would be for government and industry. CAS should be explicitly prohibited from being required for any small business set-asides.

Rationale: CAS is the single largest barrier to new contractors entering the federal marketplace, especially companies with significant commercial offerings, and is a prime cost driver for both small and large companies. Existing recognized accounting principles have the necessary transparency and auditability needed to ensure compliance.

- 6) Revise and clarify the intellectual property and rights in data regulations to ensure that companies who invest in developing technologies using their own funds, and not in response to a specific government requirement awarded through a development contract, are able to retain the intellectual property to such innovations.

Rationale: Current federal contracting rules, particularly for commercial items, conflate rights in data with ownership interests. It is in the government's best interest to have greater access to and participation from the commercial (non-traditional) companies and to have access to more capability-based solutions. However, these companies should be able to retain such IP rights rather than cede them to the government. Existing federal programs, such as the Small Business Innovation Research program, already protect the intellectual property of those small businesses that receive grants under the program and their right to commercialize that technology. For many government contracts, the government has a legitimate interest in having access to such IP for its internal use; however, too often the government improperly releases that IP or misuses the rights in data for competitive re-procurement. Mechanisms exist (such as providing for IP or technical data rights at contract formation or acquiring great rights after award through bilateral negotiation to ensure that the government's needs are clearly stated and that it has the appropriate access to the information it needs.

## **VIII. Conclusion**

What the government buys, how it buys, and from whom it buys goods and services is in a constant state of change. For the past several years, PSC has been at the forefront of thought leadership on the acquisition and business policy and technology policy issues affecting the services market and our members. We have also been an aggressive advocate for action across the entire range of those issues. This agenda continues our initiatives. It builds on the extensive research and analyses derived from our biannual Acquisition Policy Survey reports and the extensive recommendations included in the 2013 PSC Leadership Commission report. It draws from the experiences and expertise of the Acquisition Policy Review Commission (APRC) members, many other PSC member companies, and the candid comments from many in government spanning a wide range of agencies, job functions and job responsibilities.

In developing the framework for this report and in making the 42 specific action recommendations in six topic areas, the APRC chose to align the recommendations to track three of the basic milestones in the life-cycle of the government's acquisition process: (1) pre-solicitation; (2) solicitation/evaluation; and (3) post-award/performance. In addition, our first area for substantive action recommendations focuses on workforce issues because no discussion of acquisition or technology policy transformation can be complete without addressing – and extensively changing – both the demographics of and the training tools and techniques for the acquisition workforce. Regrettably, however, for far too long more has been said than has been done. Our recommendations provide new approaches to addressing the critical roles and skills of the acquisition workforce.

Similarly, the changes that are taking place in the technology applications being sought after by government and being used by contractors also requires a significant refresh of the rules of the road. But not all of these changes need to come in the acquisition process, however, and the report includes recommendations addressing these areas throughout the report, including in the segment that addresses the importance of preserving and expanding the competitive industrial base and in the segment on general and cross-cutting matters. The growing convergence between technology and services necessitates transformative thinking about how the government acquires solutions from the private sector.

We value the confidence in PSC's analyses and recommendations placed in us by members of Congress and their staffs and the senior agency leaders as they consider these important issues. The federal acquisition ecosystem is at a critical crossroad and presented with a timely opportunity. We look forward to contributing significantly to making meaningful and effective change.

**IX. Appendices**

## Appendix A

- APRC members
- Working group members

## Appendix B

- Full copy of PSC's 2013 Leadership Commission

## Appendix C

- Fully copy of [CODIA's list of 77 recommendations](#) for eliminating burdens and barriers submitted to DoD Director of Defense Procurement and Acquisition Policy

## Appendix D

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# FROM **CRISIS** TO **OPPORTUNITY**

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Creating a New Era of Government  
Efficiency, Innovation and  
Performance

THE REPORT OF THE 2013 PSC LEADERSHIP COMMISSION

***PSC*** PROFESSIONAL  
SERVICES  
COUNCIL

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# EXECUTIVE SUMMARY

Over the course of the last three decades, there have been numerous analyses, reports, and initiatives designed to generate meaningful improvements in the federal government's performance. Some have focused broadly (e.g., National Performance Review, Government Performance and Results Act), some more narrowly (e.g., Federal Acquisition Streamlining Act, Clinger-Cohen Act, E-Gov Act, and the National Commission on the Public Service ). Each has contained important and valuable recommendations. And each has resulted in some measurable improvements.

Nonetheless few would argue that the federal government today is on a positive, sustainable path toward optimizing its operations and its delivery of services to the American people. Longstanding, seemingly intractable, systemic pressures; new and daunting fiscal and human capital crises; and growing functional and mission disconnects have left the federal government at one of its most difficult points in its post-World War II history.

Thus, the PSC Leadership Commission has sought to address one significant, albeit partial, set of those challenges: the intersection of federal human capital, acquisition and technology. It is our view that, by addressing substantively and aggressively some of the more prominent challenges impacting those crucial aspects of government operations, meaningful change can and will occur and a tone and path charted for further fundamental change of the type needed to meet the demands of the current times and into the future.

Indeed, it is our view and vision that the challenges of today and the mandate for change they present represent equally great opportunities to make real progress toward a government that encourages and sustains people, innovation and performance through the use of smart, thoughtful and evidence-based business, programmatic and contemporary practices. Rather than remaining stuck in its past, we envision a government moving forward on a refreshed and energized path.

The Commission's internal deliberations and its discussions with numerous external stakeholders were framed by six basic tenets:

- Massive change has surrounded and engulfed the government. That “change” is both internal and external and only some of it is within the power of government to control. But it must be leveraged so that the force of change can be used to launch long-term improvement rather than be allowed to further wither and weaken the government of today and tomorrow.
- There are a number of near-term steps that can be taken, most without legislation, that can serve as the building blocks for more in depth change that will result in real process and performance improvements.
- Any recommendations for change must evolve from a holistic, multi-functional perspective, reflective of the “whole of government,” including government employees, industry, non-profits and others implementing partners.
- The application of innovative technologies, solutions, processes and business models can provide the government with game changing opportunities during these challenging times.
- The responsibility for accepting and pursuing change and driving excellence is a shared one. Each segment of the “whole of government” must be a willing and collaborative contributor in the process. Rare is the case where a failure to achieve excellence can be laid at the feet of just one component; likewise, rare is the case where great success can be attributed to any one component.
- While all aspects of government operation must be a part of the solution, the greatest returns will be gained through a clear and persistent focus on the people from all entities that perform the government's work.

*The challenges of today and the mandate for change they present represent equally great opportunities to make real progress.*

*The government must  
seize this moment of  
change.*

Through its work, the Commission arrived at key findings, each of which is important, but which together offer a road map forward. Those findings are detailed in the next sections of this report as are the recommendations derived from them. Some recommendations are near term, some long term; some complicated and difficult, some simpler. The key recommendations resulting from these findings are summarized as follows:

- It is time to fundamentally rethink and revise current human capital strategies, including planning, development, performance management, and, in some cases, structures. It must be recognized that whatever has been done for the last two decades simply is not delivering the desired results, and future-focused human capital initiatives must not be based on present or past presumptions.
- Collaboration must become a central component of government operations, internally and externally. This means that all participants, inside and outside of government, must be working toward and evaluated against a set of common performance and mission measures.

- Industry, and all other components of the “whole of government,” must demonstrate a sustained commitment to being a pro-active partner with government in the search for solutions. Similarly, the government must view and treat those components as partners, even as it exercises strong and appropriate oversight and management of their work.
- Filling the growing leadership void in government must be a priority for the executive and legislative branches.
- The government must seize this moment of change and reap the significant benefits by establishing and embracing a culture of excellence and innovation. This will require a structured approach to making investments through R&D funding and incentives that promote collaboration.
- Given the centrality of acquired services of all kinds to the proper functioning of government today and tomorrow, there is an abject need for a common taxonomy of services to drive smart and appropriate business and acquisition strategies.

## Summary of Recommendations

	OFPP/GSA/DoD/DHS teams assess the intersection of human capital planning and the acquisition and technology fields with an emphasis on skills of the future, talent access, development and retention.
	Identify and assess alternative acquisition workforce training and development methods with a focus on business acumen, contemporary online training tools, and enhanced continual learning opportunities.
	Amend the Office of Federal Procurement Policy Act to give OFPP statutory authority over the entire acquisition workforce, including clear authority and responsibility for creating a career path development regime for program managers.
	Create an Acquisition Excellence Council (AEC) with responsibilities including redesigning and restructuring the federal acquisition training system and developing a common evaluation and assessment process.
	Design a new human capital strategy model for both acquisition and technology personnel with rapid rotations across broad functional areas (such as budget, program management, IT, and HR).
	Create mandatory “cross training” requirements for acquisition, technology and oversight/audit personnel.
	Create a “new” cross-functional career ladder for “technology management.”
	Direct collaborative initiatives at the program level to identify and implement targeted, sustainable program efficiencies.
	Institute “360 degree” assessments of acquisition process outcomes.
	Mandate post-award debriefings that are substantive, interactive and provide a scope of information similar to that available through a formal discovery process.
	Expand the role of GSA’s Office of Innovative Technologies to coordinate a process to harvest innovative ideas, private sector best practices, targeted crowd-sourcing initiatives, innovation challenges and contests to generate candidates for transformative solutions within the government.
	Facilitate a cross-agency collaborative information sharing initiative to better leverage the benefits of R&D spending in technology across federal agencies, while reducing duplication.
	Create an acquisition dashboard tool to track both procurement lead times and sources of delay.
	Create a broad government-industry exchange program in which government employees have the opportunity to gain a better understanding of how industry functions. This program must be implemented carefully to avoid any potential conflicts of interests.
	Create a pre-award services taxonomy to inform acquisition strategy based on the characteristics of the desired service.
	Avoid the use of LPTA acquisition processes for any requirement for which new or innovative solutions are sought.
	Include specific source selection scoring where innovation is desired in an acquisition.
	Convene a joint panel of industry and government to craft recommendations on how to institute balanced and meaningful reforms to the protest process.
	Develop a template to be used as a proposal addendum through which companies can identify <i>and</i> monetize proposed innovations or performance objectives that exceed the requested minimum.
	Convene a CEO panel that meets with top federal acquisition and technology officials to identify current trends—positive or negative—in both industry and government practice and behavior.
	Develop and make available (without charge) an online, basic strategic acquisition course focused on consumption-based acquisition/infrastructure as a service.
	Fund one or more focused research initiatives designed to provide effective case-study lessons related to the application of the new services taxonomy to emerging and other complex requirements, such as cloud services.

- The Human Capital Dilemma
- A Culture of Innovation and Excellence
- Achieving Successful Services Outcomes
- The Role of Industry



# INTRODUCTION

*Contrary to widely accepted best management practices, executive and legislative branch leaders continue to sharply devalue the government's most precious asset: its people.*

The U.S. government is at a critical crossroads. Rarely, if ever, has it had to contend with the kind of fiscal uncertainty and austerity we see today, while also coping with a rapidly escalating human capital crisis, a hitherto unseen pace of change in technology, and diminishing public confidence. If ever there were a compelling crisis out of which lasting change was both possible and necessary, this is it. The current unprecedented convergence of human capital and technology change is the source of many challenges, but it also offers great opportunities for lasting improvement.

This crisis comes as the nation faces a broader set of challenges—from education to science and technology leadership to emerging global competitors and an entirely unpredictable international security environment. While the specific challenges of our time are unique, from a historical perspective these challenges can be seen as analogous to those that have faced many nations and even companies over time. The common lesson of that history is that those that heeded and responded to the environment in which they were operating succeeded in some of the greatest turnarounds in history. It is through that lens—seeing the current crisis as an opportunity to create a new era of government efficiency, innovation and performance—that this report was developed.

What is perhaps most striking about the current environment is that, despite the enormous obstacles and their often demoralizing effects, the government continues to function reasonably well. The civil service and its diverse implementing partners in companies, NGOs, non-profits, and elsewhere—often called the “whole of

government”—have not surrendered and have not collapsed. As always, they remain focused on and committed to their missions. But the pressures under which they operate, and the toxicity and friction of the environment in which they are expected to deliver more and increasingly better services, make it nearly impossible to sustain that current level of performance, let alone strive for new levels of excellence and innovation.

The evidence is growing that the fabric of government is at risk of being shredded unless real and substantive change occurs. The rate of federal employee retirements is accelerating.<sup>1</sup> Government's ability to attract and retain critical talent is in serious doubt.<sup>2</sup> And the punitive, risk-averse culture that has grown over more than a decade of second guessing, finger pointing, and casting aspersions, rather than seeking to learn and improve, is deepening its roots. Federal employees labor under pay freezes, the constant threat (or reality) of furloughs, sharply reduced training and development resources and a drumbeat of public debasing. Contrary to widely accepted best management practices, executive and legislative branch leaders continue to sharply devalue the government's most precious asset: its people.

The challenges are not limited to the government's own employees. They also affect the government's implementing partners in the private sector in many similar ways. As government resources have become more constrained, thousands of jobs have been entirely lost through associated contract eliminations or reductions, while others have been forced into part-time status. Anti-contractor rhetoric has become at least as common a political tool as public employee bashing. And

<sup>1</sup> According to the Office of Personnel Management, federal retirement rates increased 30 percent between fiscal years 2011 and 2012; further, OPM reports handling four times as many retirement actions than expected in March 2013 alone. From April through July, however, the number of retirement actions returned to more historic rates, partially attributable to the imposition of significant furloughs in many federal agencies. Nevertheless, while monthly actions are variable, the long-expected “retirement bow wave” of federal employees is unstoppable. See <http://www.fedscope.opm.gov/employment.asp>.

<sup>2</sup> According to OPM data, the government's demographic and skills imbalances have not improved; the workforce is aging and, particularly in critical skills functions, the new/younger workforce remains a stark minority, sometimes at levels that are diametrically opposite that which is found in the commercial sector.

perhaps most distressingly, but not surprisingly, the challenges of the times are leading to more divisiveness, even though unity and partnership would be a far more effective and rewarding path forward.

Despite dozens of highly respected, thoughtful, and insightful studies and their recommendations on everything from human capital to technology, to acquisition and organizational structure, things have not noticeably improved. That is not to say those changes were ill-conceived or that they have not had a positive impact. Nor is it to say that there are no pockets of excellence or innovation across government. But collectively, they have been unable to “crack the code.” As the combined crises facing government today continue to grow, so does the need to redouble our efforts to make meaningful change.

This is where the PSC Commission has focused its efforts. We do not claim to have “cracked the code.” Nor would we suggest that there is a single blueprint that will enable and sustain the kind of agile, innovative government that delivers its services in highly effective and efficient ways. Rather, we have attempted to coalesce the thinking of a set of highly experienced executives with deep roots in and around government, as well as the insights and perspectives of our government colleagues in acquisition, technology and human capital, in an effort to present a framework through which both short- and long-term initiatives can help address the current crises and turn them into exciting opportunities. This is precisely what has transpired in numerous sectors of the economy, and unique as government is, it can also happen there.

This is not a report solely on federal acquisition, although acquisition plays a central role in its findings and recommendations. After all, acquisition—defined broadly and correctly as the entire value chain that drives and supports the vast array of government requirements and capabilities in which “procurement” is a critical subset but far from the only element—is absolutely central to the functioning of today’s government. Since acquisition is responsible for nearly half of the government’s discretionary budget spending, it only follows that it should also be a primary focus of leadership in every government

component and be positioned to enhance the quality and efficiency of government service delivery. To date, it has not been.

Nor is this another report that attempts to define that which the government should do itself and that which it should contract for. As articulated in the report, our view is that, beyond the existing legal and regulatory framework, including current policy on “inherently governmental” activities, the question of “what” should be, needs to be, or can be performed in the government or private sector should result from the appropriate application of case-specific, objective, strategic, human capital, mission and related analyses.

Finally, this is not a report solely on information technology acquisition or usage. Much has already been said and written about the government’s challenges in acquiring and integrating complex IT solutions. But much as acquisition is more central than ever to the proper functioning of our government, so too is technology. In today’s time of extraordinary change in both technology and in technology business models, it must also be a central focus of leadership attention, human capital planning, discussion, analysis, and action.

Instead, this is a report that focuses on the combination of these challenges and on ways we believe the government can better and more effectively access, acquire, manage and integrate its own organic capabilities with externally provided professional services and technology to drive optimal outcomes many years into the future. The recommendations in this report are intended to be actionable, objective and multilateral. Each component of the “whole” has both a set of obligations and opportunities to help ensure that the American taxpayer is the beneficiary of greater efficiency and effectiveness in all that the government does. It is the job of leadership, in all aspects and segments of government and industry, to enable them to do so.

The current crises have created a clear need and offer a powerful opportunity for change. Our failure to take advantage of that opportunity may haunt us for decades. On the other hand, our ability to tackle the challenges and take advantage of the opportunities before us offers the hope of an exciting new era.

*Despite dozens of highly respected, thoughtful, and insightful studies and their recommendations on everything from human capital to technology, to acquisition and organizational structure, things have not noticeably improved.*

# FINDINGS AND RECOMMENDATIONS

*Addressing our findings and recommendations will not solve all of government's problems. But ignoring them will almost certainly make them worse.*

Through months of research and discussions, both at the Commission level and with a wide range of government officials and front-line professionals in the federal and private-sector acquisition, technology and human capital communities, the Commission reached a set of findings. Of note, *all* of the findings articulated below were consistent with the views of virtually *all* inside and outside government who participated in the Commission's deliberations.

This list of findings and recommendations is not comprehensive and, at its core, reflects a synthesis of dozens of observations and insights from a wide array of sources. And, of course, the Commission remains solely responsible for them. But they do capture the essence of the multi-faceted challenges we face. In addition, while many of our findings have cross-cutting effects, we have attempted to categorize them in generalized terms.

Further, the findings and recommendations intentionally do not extensively reference or address the current fiscal debate. Fiscal instability is, of course, a storm cloud hanging over all that the federal government does. It also greatly reduces certainty and predictability—the two most desirable elements in any marketplace—for both government agencies and their private-sector partners. But solutions to our fiscal status are far beyond the control of those charged with directly executing the government's missions. And it appears evident that even if some degree of certainty returns, the government and its partners are likely to face a prolonged period of austerity. This fiscal austerity is not, and should not be, a barrier to implementing our recommendations. Rather, as suggested by General Martin Dempsey, Chairman of the Joint Chiefs of Staff, a crisis of this type allows you to make changes and improvements that would otherwise be impossible.

Over the next decade, the government will undergo an almost complete generational change and face unrelenting fiscal pressures,

growing public demands, and new and undetermined global threats. Addressing our findings and recommendations will not solve all of government's problems. But ignoring them will almost certainly make them worse.

## The Human Capital Dilemma

It is time to fundamentally rethink and revise current human capital strategies, including planning, development, performance management, and, in some cases, structures within the federal government. The world around us is evolving and many sectors are realizing revolutionary benefits through innovations and working models driven by both technology and the capabilities and expectations of the new generation. While many efforts have been made over the last two decades to improve the performance of the federal workforce at large, from expanded cross-functional development to new training and education opportunities and tools, it is time to recognize that these reforms simply are not delivering the desired results. As such, it is folly to base future-focused human capital initiatives on present or past presumptions. Continuing to throw money and resources at the challenge, and to “nibble around the edges” of longstanding strategies, is almost certain to perpetuate rather than change the current trajectory. Instead, the focus must be on carefully and objectively assessing and charting the workforce skills and capabilities that will be most needed in, and available to, the government in the future. Given the tectonic demographic shift the government is currently undergoing, a necessity and an opportunity exist to create a workforce, across the “whole of government,” which is characterized by innovation, agility, critical thinking and continuous development, combined with the workforce's longstanding tradition of mission focus. Yet, today there are few signs that the steps needed to move in this direction are being taken.

These workforce challenges are not government's alone. The government's implementing partners, both in the for-profit and not-for-profit sectors, are also facing increasingly acute competition for talent that is in short supply across the economy. Thus, the focus on people, on enabling access to the best and the brightest and on continually supporting and developing them, is a responsibility shared by all components of the "whole of government." As Drs. Robert Kaplan and David Norton discovered in their work on "The Balanced Scorecard," there is a clear causality between employee morale (the net result of a combination of factors, including support, reward, opportunity, and empowerment) and institutional success. While the measures of success are certainly different for government than for a commercial enterprise, the concept and key elements of improving employee morale throughout the "whole of government" nonetheless remains just as relevant and important.

When questioned about obstacles within the federal workforce system, the rising generation of government professionals, primarily, but not solely, in the acquisition field, report that, as a result of the government's approach to workforce training and development, critical thinking and innovation has ceded ground to the kind of rigid, rules-based practices of the past. This trend is identified as one of the single greatest factors driving high performers out of the government and keeping other high performers from seeking government employment. Unfortunately, the adverse consequences of this trend are already becoming more and more evident, particularly within the federal technology and acquisition workforces.

Further, while it does not garner nearly as much attention as the acquisition workforce, the federal technology workforce is facing a set of immense challenges, some of them worse than almost any other sector of the government, particularly as the government's reliance on technology grows. As depicted in Figure 1, according to Office of Personnel Management (OPM) data as of September 2012, among the federal technology workforce there are *at least nine times as many people over 50 as under 30*, and this ratio is even worse among the cybersecurity workforce.<sup>3</sup> This is precisely the opposite of what one

finds among the private-sector technology workforce, where there is a growing reliance on young, innovative workers, and is indicative of the government's continued difficulty attracting and retaining younger, highly skilled technology professionals.

There is little evidence that federal personnel practices and policies have been more than minimally modified to improve the training and development of younger professionals in order to help the government overcome its lack of competitiveness for young talent. While the competition for technology talent continues to increase in the broader commercial human capital market, the federal government continues to be hampered by a lack of an agile, responsive and "welcoming" hiring process and personnel process. Increasingly, the government's implementing partners are being subjected, in some cases intentionally, to similar constraints imposed on their efforts to compete for talent.

The federal technology demographic problems are not limited to its inability to sufficiently recruit young talent. As federal retirements rise, the prevalence of mid-to-peak career professionals (the "next generation of leadership") has been diminishing at a worrisome rate.<sup>4</sup> Yet few if any meaningful steps have been taken to adapt the government's human capital "strategic planning" to modern realities. A meaningful focus on succession planning, performance management (and reward), re-occurring feedback, and career planning and guidance—which are common in high-performing private-sector companies—remain exceptionally rare in government. While legislation and regulation do limit the government's flexibility concerning employee recruitment, management, and compensation, much can still be done. Without renewed efforts and creative thinking, the government's struggles with the technology workforce will only increase in the coming years.

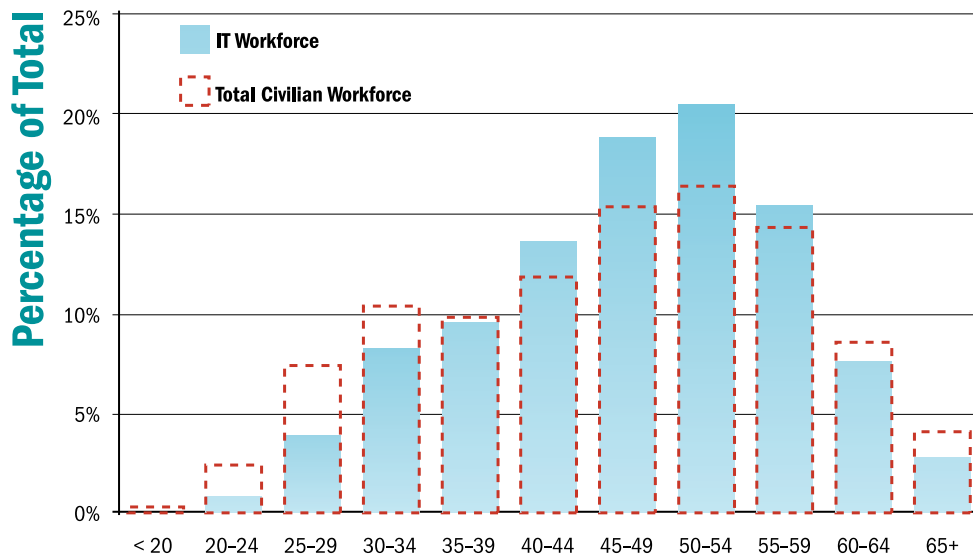
The demographic and training problems within the federal acquisition workforce, while different than those facing the technology workforce, are also especially acute. The acquisition workforce does not face the same competition challenges for recruitment that face the technology workforce. Rather, it has unique

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<sup>3</sup> Office of Personnel Management FedScope Data

<sup>4</sup> PSC Analysis of OPM Government Demographic Data 2001-2012

**Figure 1. Federal IT Workforce Distribution by Age**



Source: OPM Fedscope. The data reflects the workforce demographics as of September 2012. IT workforce is defined as the Information Technology 22xx series classification.

training and development needs that, despite a variety of different attempts, generally remain unmet.

As reported in the December 2012 biennial PSC Acquisition Policy Survey<sup>5</sup> and reconfirmed throughout the Commission's deliberations, government acquisition leaders and younger professionals share a deep concern that, despite policy directives, proclamations, and legislative initiatives—including nearly \$2 billion in acquisition workforce development funds spent by the Department of Defense (DoD) alone since 2007—the skills and capabilities of the workforce have not improved and key skills gaps (negotiations, business risk/acumen, understanding complex IT) remain largely unaddressed.

As these results indicate, despite a more than 15 year old policy requiring contracting officers to have a bachelor's degree and 24 hours of business training, federal acquisition leaders overwhelmingly report that their workforces lack core business acumen and knowledge in key areas. Figure 2, taken from PSC's 2012 Acquisition Policy Survey, highlights the gaps in two key acquisition workforce skills between the *requirements* identified by federal acquisition leaders as critical to success and the share of those leaders who feel that their workforces actually have such competencies. And while these concerns have been exacerbated by the current fiscal crisis, they are not new. A decade of PSC's biennial Acquisition Policy Surveys have continuously found that federal acquisition leaders believe that the federal acquisition workforce is not equipped with the necessary knowledge, tools, *and support* to perform their work effectively. In short, despite huge investments of time and money over the last decade, existing training and development programs and entities continue to lack agility and currency and, as articulated by the majority of respondents in PSC's December 2012 survey, simply do not get the job done.<sup>6</sup>

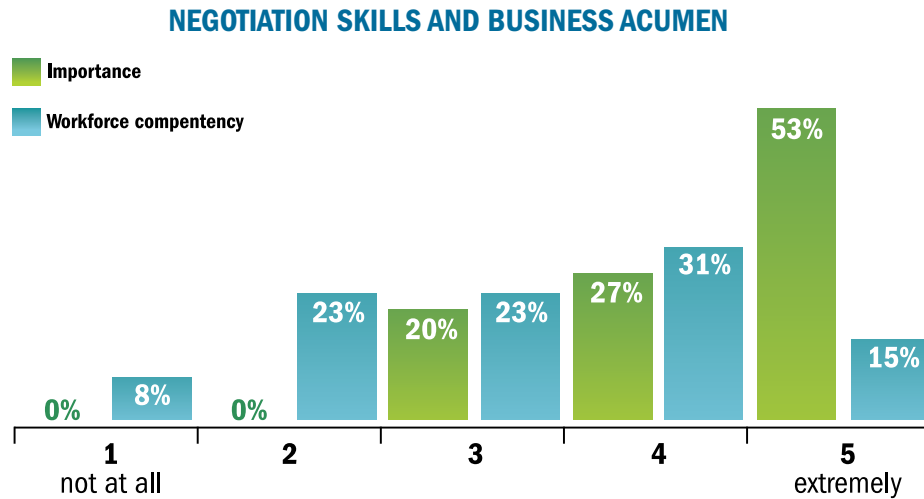
At the same time, over the last decade and a half, the levels of experience within the contracting workforce have shifted significantly for the worse. As Figure 3 shows, in 1998 less than 5 percent of contracting officers had less than five years of service, while in 2012, this number rose to 30 percent. At the same time, the "next generation of leadership," those with 10 to 30 years of experience, has rapidly disappeared, leaving a hollowed out contracting workforce lacking the necessary experience to properly execute complex acquisitions. As a result, inexperienced contracting officers are being promoted and deployed to positions that would normally require far more seasoned professionals.<sup>7</sup> That this is occurring at a time when core business skills appear so lacking is a matter of grave concern and is itself a justification for a major rethinking of the federal acquisition training and development process.

<sup>5</sup> See: "The Unabated Crisis: The 2012 PSC Acquisition Policy Survey" December 2012. Available at [http://www.pscouncil.org/i/p/Procurement\\_Policy\\_Survey/c/p/ProcurementPolicySurvey/Procurement\\_Policy\\_S.aspx?hkey=835b11ac-0fe7-4d23-a0e0-b98529210f7e](http://www.pscouncil.org/i/p/Procurement_Policy_Survey/c/p/ProcurementPolicySurvey/Procurement_Policy_S.aspx?hkey=835b11ac-0fe7-4d23-a0e0-b98529210f7e)

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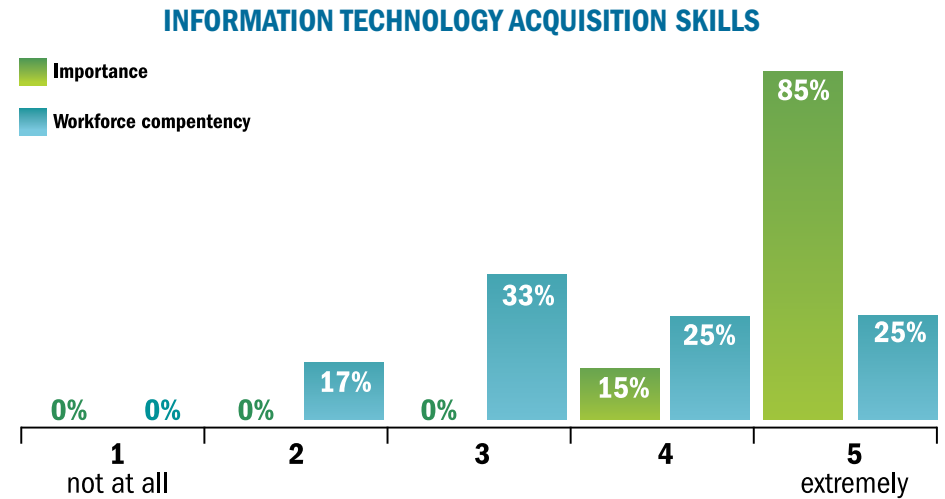
<sup>7</sup> The age distributions for the technology workforce and contracting officers are opposites of each other, yet both distributions are detrimental due to the type of work being performed. For the information technology workforce, younger workers are extremely valuable due to their familiarity with cutting-edge technology and their frequent contributions to innovation. However, in the contracting officers community, most knowledge is gained on the job and in government-run educational institutions, rather than colleges or universities. Young contracting officers often lack the experience to successfully manage complex acquisitions.

**Figure 2. Critical Acquisition Workforce Skills Do Not Align With Core Requirements**



While the acquisition leadership in government acknowledges the central importance of negotiating skills and business acumen within their workforce, they report that these skills are not sufficiently prevalent. Only 15 percent of respondents said that their workforce was extremely competent in this area, while 8 percent said their workforce was not at all competent and more than half of all respondents said their workforce's competencies were average or worse.

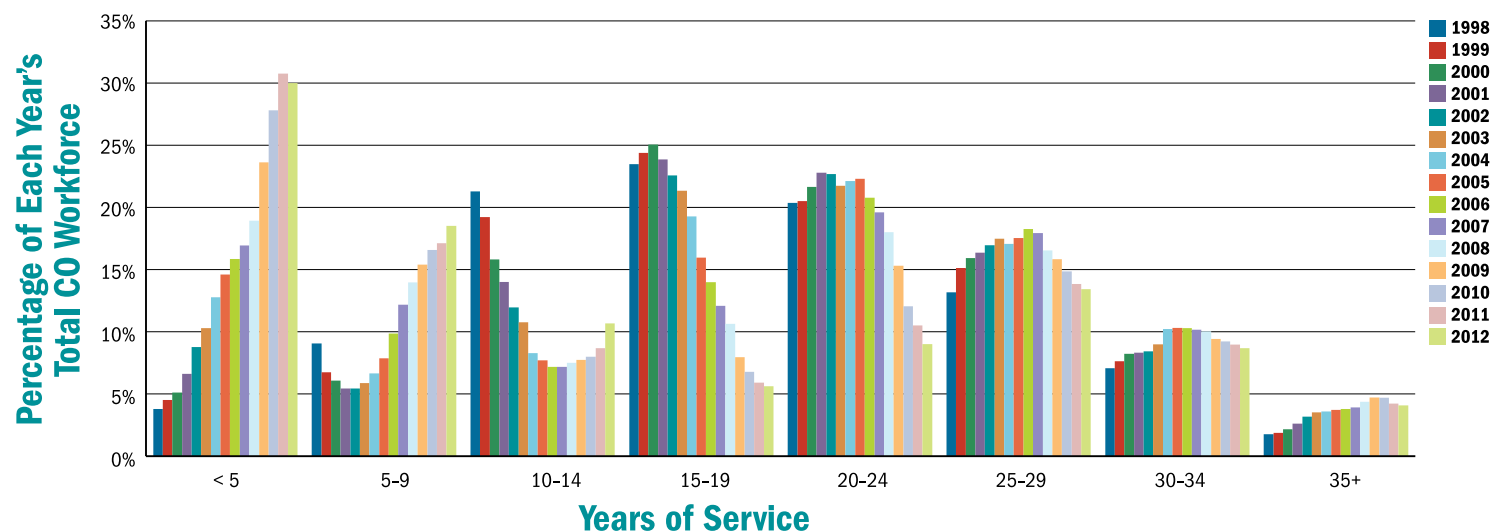
Source: PSC's 2012 Acquisition Policy Survey



Information technology acquisition skills are another area where there is a misalignment between acknowledged importance and workforce competency. A resounding 85 percent of leaders rated IT acquisition as being extremely important, while only 25 percent said that their workforce was extremely competent in acquiring complex IT and again, more than half rated the competencies as average or worse.



**Figure 3. Federal Contracting Workforce Distribution by Years of Service**



Source: OPM Fedscope. The data reflects the workforce demographics as of September 2012. The contracting workforce is defined as the Contracting Workforce 1102 series classification.

Thus, the key question all must address is why the existing training and education mechanisms for the acquisition workforce are not producing the desired results. It is certainly not for a lack of commitment and passion on the part of those responsible. Nor is it, especially in the cases of DoD, the Department of Homeland Security (DHS) or the Department of Veterans Affairs (VA), for a lack of resources. So it must be that the current structure, content and process associated with curriculum, training, and workforce development are a significant portion of the problem.

Most institutions faced with the evident challenges confronting the government would recognize the futility of perpetuating current strategies or making modest adjustments to them. Instead they would seek new, different and objective resources and strategies to re-vamp the training and education to address gaps in both strategy and content. Doing so has long proven to be the key to a “turnaround.”

Yet, this has not taken place within the acquisition, technology, or any other key workforce component in the federal government.

### *The PSC Commission recommends:*

- The creation of a joint working group to assess the intersection of human capital planning and the acquisition and technology fields. The group should be comprised of senior Office of Federal Procurement Policy (OFPP), General Services Administration (GSA), DoD, DHS and other agency officials representing acquisition, technology and human capital leadership. The working group should focus on key strategic questions, including: Where are the government’s strengths in workforce recruiting and retention? Where are its weaknesses? Consistent with the government’s emerging and likely future missions, what are the government’s

most significant long-term workforce needs? What skills do we want that workforce to possess? How do the government's challenges in attracting and retaining technology capabilities affect both the number and skill sets needed in key workforce communities? What will it take to become more competitive for critical skills (including a review of commercial best practices such as how and when firms recruit and make firm job offers, manage high-performing talent, etc.)? And how can the government focus its human capital resources on *critical core capabilities* to help ensure that the problems that emerged from the non-strategic application of workforce reduction requirements in the 1990s do not repeat themselves?

- The Administrator of Federal Procurement Policy, in collaboration with the Undersecretary of Defense Acquisition, Technology & Logistics (AT&L), the Administrator of the General Services Administration, and the Chief Acquisition Officers Council, should launch a research program to demonstrate alternative acquisition workforce training and development methods. The program should be open to acquisition professionals across government, should involve adequate numbers of participants so as to provide a valid test sample, and be designed to include:

- A curriculum that emphasizes business acumen (to include risk management, negotiations, market research, the keys to successful performance-based engagements, and more), characterized by interactive *case-based* training incorporating unique federal policies and laws.<sup>8</sup>
- Strong reliance on contemporary online training tools, including gaming, interactive case-study based exercises, and other resources and tools.
- Presentation of the business-related curriculum components by non-government entities, with the government-unique portions developed jointly by government and non-government experts.

- Rapid and agile testing, with initial launch within six months and continual adjustment and changes.
- Enhanced opportunities for exchange programs and other opportunities for “on the job training” outside of government that do not create a potential conflict of interest.

- Amending the Office of Federal Procurement Policy Act to reflect expanded responsibilities for OFPP beyond “contracting” policy and career development for only contracting officers and contracting officer’s representatives. In so doing, OFPP should be given statutory authority over the entire acquisition workforce and restructured as the Office of Federal Acquisition Management and Policy (OFAMP), with clear authority and responsibility for also developing a career path and an education and development regime for program managers. Today, the civilian agencies, unlike the Defense Department, have no clear cut, aspirational career field for program managers, such as those that exist for contracting officers or contracting officer’s representatives. There are individuals who have the title of program manager but few have the actual training or experience to fulfill true program management roles, despite the increasingly important role of programs, including technology programs. This new career path should feature numerous early functional rotations as well as a range of contemporary training and educational opportunities (to include rotations in private-sector environments that do not create a potential conflict of interest).
- Creating, under the auspices of OFPP, an Acquisition Excellence Council (AEC), co-chaired by the OFPP Administrator and the Principal Deputy Undersecretary of Defense/AT&L. The council should be populated by a diverse group of experts from across government, to include both senior and front-line acquisition professionals (such as leaders of the Rising Acquisition Professionals Community) and industry experts. The council’s responsibilities should include:

*OFPP should be given statutory authority over the entire acquisition workforce.*

<sup>8</sup> At DoD in particular, the first step in training for many new acquisition workforce hires is a “FAR Bootcamp” where the acquisition rules are drilled into them. There is significant concern that this strategy actually diminishes their tendency toward critical thinking. As an alternative, one Chief Acquisition Officer told the Commission that she had conducted an informal experiment within her organization, in which half of her new hires went to “bootcamp” while the other half were given a more case-based/critical thinking approach to learning. In her estimation, the latter cohort is demonstrably more effective and efficient in their work than the former in both the short and long term.



*Competitive pressure should be injected into the federal acquisition workforce training and education regime.*

- Redesigning and restructuring the Defense Acquisition University, Federal Acquisition Institute, Veterans Affairs Acquisition Academy, Homeland Security Acquisition Institute, and other dispersed government acquisition and training entities.
- Standardizing the core competencies required for a high-performing federal acquisition workforce within DoD and civilian agencies.
- Standardizing “big A” acquisition competencies in a way that allows training to draw from the best-in-class corporate universities, rather than a traditional, organic “brick and mortar” school. The most highly regarded corporate universities have few permanent faculty and focus on institutionally unique content, focusing their limited resources on those areas that are directly tied to the company’s core mission, culture and processes. The instruction is conducted principally by *active practitioners* whose job responsibilities explicitly include leading courses at the school for a period of time. For all else, they use external providers. Both of these attributes are the converse of what we see in government today.<sup>9</sup>
- Developing a common evaluation and assessment process for all acquisition education and training provided through the government, regardless of source. The evaluation process should capitalize on feedback mechanisms (from students and their supervisors) that are publicly shared, as well as other tools developed by education evaluation experts. Such a transparent reporting mechanism should drive appropriate competition and performance among the providers.
- Publicly release an annual report on progress in training the acquisition workforce and the continued skill gaps identified as required core competencies.
- Serving as the *sole* arbiter for approving “equivalencies” for non-government providers of acquisition training and education. It is inappropriate for those approvals to rest with existing government education entities, such as the Defense Acquisition University (DAU), since they should be part of, not the owner of, a community of providers who compete to provide excellent results. For them to also “own” the requirements and approval process automatically limits the aperture through which training is or could be provided. No law school determines what other law schools have to teach to qualify for certification; instead, all law schools *compete* to deliver high quality graduates that meet the needs and expectations of their “customers.” The same competitive pressure should be injected into the federal acquisition workforce training and education regime.
- Serve as the *sole* overseer of testing and assessment of skills and competencies for the entire acquisition workforce, including contracting, program management and contracting officer’s representative (COR) professionals.
- Conducting an annual “Acquisition Excellence” Awards program for outstanding performance, with an emphasis on all levels of acquisition from commodities to complex solutions. The awards should focus on timeliness, levels of collaboration, performance against budget and timelines, and, most significantly, quality of outcome. In addition to making the awards, the council should publish online a “lessons learned” compendium gained through each awardee’s experience.
- Designing a new human capital strategy model for both acquisition and technology personnel with rapid rotations across broad functional areas (such as budget, program management, IT, and HR), along with early and continual career development review and path development as standard for new hires, thus adopting a

<sup>9</sup> The Defense Acquisition University today has a standing budget approaching or exceeding \$100 million and several hundred permanent faculty positions with six fixed campuses across the country. This is the traditional “brick and mortar” model that needs to be most significantly overhauled. Of course DAU also offers an extensive online catalog of coursework.

longstanding commercial best practice. Indeed, the more extensive an individual's exposure to and involvement in multiple functional fields of the organization, the more likely they can and will be effective and successful in their chosen career field and be a more effective collaborator and partner. However, clear career guidance is required.

- Creating mandatory “cross training” requirements for acquisition, technology and oversight/audit personnel. These requirements would, in their simplest form, include basic courses to be taken within each functional area as well as in outcome-focused performance management. Moreover, the courses would be offered and taught through the other fields’ training auspices. For example, all contracting officers would be required to take a basic auditing course developed by the government audit community, while every government auditor would be required to take a basic acquisition course developed by the acquisition community. These courses should be designed in a way that highlights likely areas of misunderstanding and/or conflict across the disciplines.
- Working with the Performance Improvement Council, Chief Financial Officers Council, Chief Acquisition Officers Council, and the Chief Human Capital Officers Council, as well as grant and program managers, create a “new” cross-functional career ladder for “technology management.” There has been much talk of late about the need to create an “IT acquisition cadre” available to assist any federal agency, and such a recommendation is contained in major IT acquisition reform bills before the Congress in 2013. We support this IT cadre to address the temporary, government-wide skills shortage, but the technology shortfall requires more than a “cadre.” Again, borrowing from best commercial practices, the government would benefit from the development of a defined, supported, aspirational career field that combines acquisition excellence with technology knowledge and experience and an understanding of effective outcome-focused performance management practices. As the government continues to struggle with the longstanding disconnects between critical functional areas, such an approach offers real opportunity to overcome those disconnects. And perhaps

most significantly, such an integrated workforce offers new and critical opportunities to link individual/functional performance with overall programmatic outcomes, as opposed to the current model in which performance is generally based on functional elements (i.e., contracting officer compliance with acquisition processes and rules) rather than “customer-centric” outcomes.

## A Culture of Excellence and Innovation

Transforming government into the efficient, effective, and innovative organization that the current fiscal era demands cannot be accomplished by small improvements around the margins. It requires a change in how leadership views and uses its ability to leverage the “whole of government,” as well as a change in how the different components which comprise the “whole of government” view and work with each other. In short, it requires a fundamental change in culture and a more open minded and objective approach to traditional “make-buy” decisions.

Culture is driven by leadership. Even in a bureaucracy as large and complex as the federal government, the culture of each agency is impacted directly by the quality and depth of its leadership engagement. Changing culture is difficult and requires long-term organizational investment, but creating opportunities for excellence and innovation can be done incrementally, laying the groundwork for more sustained change. Pockets of innovation and excellence do exist in government, but right now they are few and far between. Only by reinvigorating the culture in government can these become the norm.

Creating a culture of innovation requires the government to take a comprehensive approach that includes leveraging private sector innovation, providing incentives for the private sector to invest in solving government challenges, making investments in innovations through R&D funding and innovation programs, and collaborating with industry on creating processes to foster innovation. Some of the key actions include simplifying access to commercial items and best practices, establishing a framework to share risks between industry and government, protecting industry intellectual property

*Creating a culture of innovation requires the government to take a comprehensive approach that includes leveraging private sector innovation.*

*In any other organization, if one activity accounted for nearly half of that organization's budget, that activity would be a top priority and focus of that organization's leadership. But this is not true in government.*

and accelerating the acquisition process to leverage the benefits of innovation. To sustain innovation, we have to institutionalize processes along with incentives that involve the employees at the field level, not just management at headquarters.

In order to achieve the performance outcomes the government seeks and the taxpayer deserves, collaboration must become a central component of government operations, internally and externally. The current lack of collaboration is not only seen in the divide between government and industry, but is also visible between different agencies, and even between different components of individual agencies. Collaboration must not only be talked about in vague generalities at the most senior levels. In keeping with many of the most successful models of change management and performance improvement, collaboration must be directed to and engaged at the operational levels and continually reinforced by senior leadership. In today's environment, optimal outcomes are simply not possible without close and continuous collaboration. This means that all participants, inside and outside of government, must be working toward and evaluated against a set of common performance and mission measures. Regrettably, according to virtually every individual the commission spoke with, and as reflected in the 2012 PSC Acquisition Policy Survey, years of rhetoric and overreaction have served to substantially diminish government collaboration, internally and externally.

No one party within the "whole of government" can fulfill the mission demands placed on the government on their own. Only by fully employing all of the parties comprising the "whole of government" can excellent outcomes be achieved at reasonable costs. While there are certainly tasks which are proper for only government employees to perform, often referred to as "inherently governmental," there is a large segment of work which outside parties are especially adept at performing. Key among those parties, of course, is industry. Close to half of all current government discretionary spending goes to acquisition. Yet leadership expertise in acquisition, or even the acknowledgement by agency leadership of the necessity and value of procuring outside services, is lacking.

This divide between government and industry is present in all levels of the government bureaucracy. In most other institutions, top leadership is expected to have strong skills in and knowledge of the principal, *core activities* of the institution they lead. Clearly, acquisition and technology are among government's core operational responsibilities, but that insight and knowledge is too often missing at the top. Senior agency leaders outside of the direct acquisition or technology chain generally do not have the necessary insight and knowledge of either acquisition or technology to adequately manage, let alone drive, change in those functions within their organizations. Moreover, the complexity of acquisition is often underappreciated by agency leaders and congressional decision makers alike. As but one step to address this challenge, a core requirement for advancement to GS-15 and/or Senior Executive Service (SES) levels should include functional (and perhaps organizational) experience in acquisition and technology. Stated another way, in any other organization, if one activity accounted for nearly half of that organization's budget, that activity would be a top priority and focus of that organization's leadership. But this is not true in government.

It is widely accepted that the level and quality of collaboration between government and its implementing partners is at a low ebb, and in some areas explicitly discouraged despite other leadership efforts (i.e., the Office of Management and Budget's Mythbusters Campaign, DoD guidance, etc.) to reverse this disturbing trend. This lack of collaboration and communications has a palpable impact on program outcomes and quality as well as on innovation. Both government and industry ascribe the current lack of innovation to the other's behaviors. Government officials have become increasingly concerned that company proposals lack originality and innovation, while company officials feel compelled to propose only within the lines they believe the customer is willing to consider. Both are undoubtedly right to an extent. And that requires an explicit and sustained change in both the Request for Proposals (RFP) and proposal/execution culture and process. In an era of tightening budgets, innovation in both process and outcomes are vital. Yet

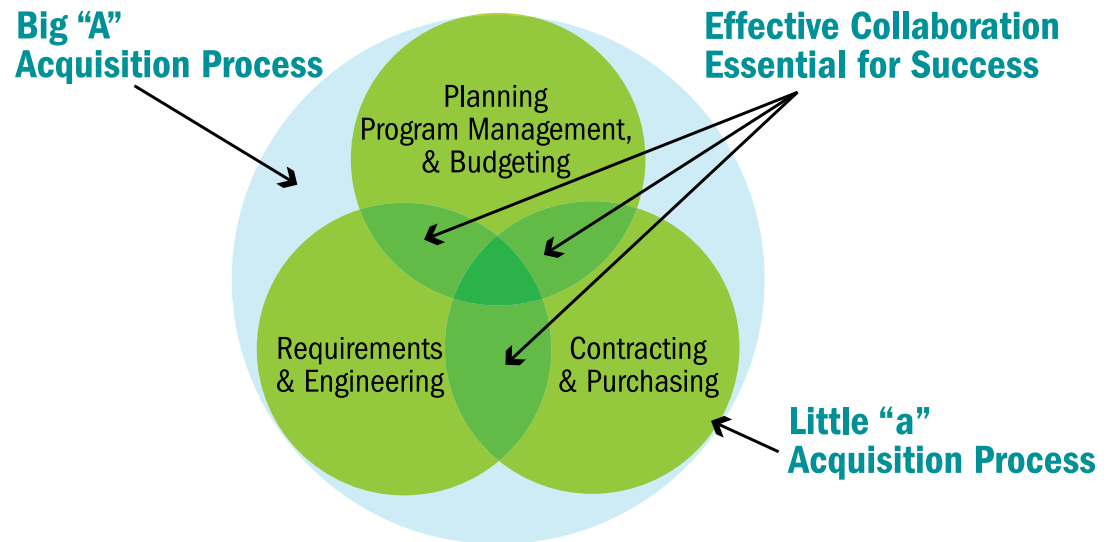
without a more collaborative, trusting culture between government and industry, true innovation will remain elusive.

Furthermore, this lack of collaboration does not exist only between industry and government. It is also prevalent within government itself. In an era when “collaboration” is increasingly recognized as a central operational component in the best of private sector organizations, and a critical element of their success, it is in worrisome decline within the government itself and such decline has frequently been cited in Government Accountability Office (GAO) studies as a contributing factor in underperforming government programs, duplication and fragmentation. Disconnects between the policy, human capital, mission, technology and acquisition communities have improved only marginally at the leadership levels and almost imperceptibly, if at all, at the operational levels. This stovepipe approach leads different components within an agency to pursue different immediate goals, often to the detriment of the desired overarching mission outcome.

In addition, acquisition is often perceived and treated as a “transactional” exercise rather than as a central element of a broader programmatic objective. Instead, acquisition strategy should focus on an organization’s desired outcomes and customer/stakeholder benefits. To some extent, the more narrowly defined understanding of acquisition is due to a lack of understanding of the broader meaning of the term itself. Beyond that, the disconnect between key elements of the true “acquisition” system exacerbate the challenge.

In truth, a range of related processes across the value chain are included in “acquisition” and all are essential to the ultimate outcome. Indeed, when it comes to procuring services, even highly complex services, “acquisition” is too often thought of as “contracting.” But “acquisition,” or “big A acquisition,” as shown in Figure 4, covers a broad range of activities, including systems engineering, planning, budgeting, contracting and more, each of which is essential to successful program execution.

**Figure 4. The Acquisition System**



Source: Adapted from Defense Acquisition Performance Assessment Report, February 2006

Many “non-acquisition” professionals in government asserted to the Commission that the contracting community, which is often organizationally distanced from the customers and end-users it serves, overly controls the decision-making responsibility relative to the capabilities that are selected to execute their missions. The contracting community, it must be said, often argues just the reverse. Whichever side is right is far less relevant than the fact that all recognize the fundamental disconnect.

Finally, there also needs to be change in how government leaders engage with government employees, and how leaders leverage their positions to promote innovation. There appears to be limited confidence by rank and file federal employees that government leaders, including senior politicals and senior career professionals,

<sup>10</sup> Partnership for Public Service “Best Places to Work in the Federal Government 2012.” This report showed employee satisfaction, trust in leadership, and performance-based rewards and advancement at their lowest point since the survey began a decade ago and measurably lower than the average for private sector companies.

<sup>11</sup> PSC 2012 Acquisition Policy Survey

*It is one thing to mandate “cuts;” it is entirely different (and more beneficial) to bring the various stakeholders together...to work collaboratively to identify sustainable efficiencies and savings.*

recognize the importance of serving as “risk absorbers” for their workforces and their programs. This perception, fair or not, is a major contributor to the culture of risk aversion and risk intolerance that is prevalent across most of government today. It is notable that the majority of agencies in which gaps between leadership and the front-line employees are most pronounced are agencies with substantial acquisition and technology footprints.<sup>10, 11</sup>

As D-Day was unfolding, General Dwight Eisenhower penned a speech to be used if the invasion failed and included the line “If any blame or fault attaches to the attempt it is mine alone.” This sentiment is the mark of true leadership, but is rarely heard in government today.

Many ascribe the government’s generally risk-averse culture to a lack of protective, empowering leadership, which also makes it a prime obstacle to innovation and excellence. After all, striving for innovation and excellence require reasoned and rational risk taking. Absent that risk tolerance, mediocrity becomes the norm. And that is certainly a part of the problem. For every mistake made or perceived, finding someone, or several someones, to blame is the first response. There is little opportunity or effort to separate honest mistakes from unethical or illegal activity; minor transgressions take on the same caste as major violations. As we heard repeatedly in the 2012 PSC Acquisition Policy Survey, in our own interactions with government professionals, and in other recent surveys of government officials, there is little faith among the federal workforce that, when the chips are down, their leadership will defend them.

This risk-adverse culture has been entrenched by the current divisions in our political system. The constant finger pointing and blame that has accompanied it over the last decade, while possibly politically effective in the short term, has succeeded over the long term in making the federal workforce risk intolerant and the American public more skeptical of the competence of government.

Further, the lack of clearly aligned incentives, including for achieving “stretch goals,” plays a significant role in the current culture. The most innovative organizations are able to create aligned objectives and goals, along with appropriate reward structures, for those that meet and, even more significantly, exceed the goals. While there are limits to the kinds of incentives that are possible in government (whether applied to government personnel or contractors), much more can be done to make real headway in this area.

### *The PSC Commission recommends:*

- Using the current fiscal crisis as a springboard for agencies to change their culture to focus on outcomes. To do so, senior leaders should direct major program activities to convene stakeholder meetings focused on specific sustainable efficiency goals that identify lower cost ways to operate the programs, regardless of the source of savings. It is one thing to mandate “cuts;” it is entirely different (and more beneficial) to bring the various stakeholders together, prominently including industry or other implementing partners, to work collaboratively to identify sustainable efficiencies and savings. In so doing, the spirit of partnership can be built, greatly enhancing the potential to avoid penny wise, pound foolish, arbitrary cuts.
- A process should be instituted to garner “360 degree” assessments of acquisition outcomes, particularly for large dollar value or other types of significant acquisition, involving all relevant government organizations and key industry participants. Simply put, in the aftermath of any significant acquisition, customer and partner satisfaction surveys should be conducted to identify ways in which key communities (including internal operational customers, for-profit and not-for-profit implementing partners) felt the acquisition process was effective and responsive, and ways in which it was not. Industry will frequently conduct such internal lessons learned reviews to help inform their future bidding and performance strengths and weaknesses. The results of these surveys should



be routinely reviewed by agency leadership to identify dynamic changes to training and practice to drive future improvement.

- The “360” reviews should also include a formal, *mandatory* process for “reverse debriefings.” These debriefings, which can be conducted anonymously and online, perhaps through a neutral agency ombudsman, should be used by agencies to receive candid feedback from industry on what in the procurement worked well or not and why. The results should be shared among all internal and external stakeholders (especially with the end-user “customer”). As such, they can be valuable learning tools for the government’s acquisition and related workforces. Consideration should also be given to maintaining these records, and the “360” review results, in a central database that becomes part of the organizational performance evaluations.
- Similarly, agency leadership should *require* that post-award debriefings be substantive, interactive and provide a similar quality and scope of information to unsuccessful offerors as would be provided through a formal discovery process. History has shown that high-quality debriefings help to prevent post-award bid protests. But recent evidence suggests that debriefing quality has dropped dramatically, too often only including electronic “reports” with no meaningful discussion, if they occur at all. This debriefing technique can also be applied to the request for information (RFI) and draft RFP processes, as well. Rarely do government agencies share their rationale for the decisions made from the inputs received from industry in response to these useful pre-solicitation procedures. Sharing these decisions would likely yield better proposals from industry participants and, maybe more valuably, from those stakeholders who were unwilling or unable to participate in a particular acquisition. A laudable example of this pre-award information sharing is the significant effort GSA made in 2012 and 2013 during its development of the OASIS professional services procurements to keep industry informed of both key decisions and the agency’s rationale for such decisions. In addition, over the past several years, the FAR and Defense Acquisition Regulations (DAR) Councils have provided extensive supplemental information to

accompany significant proposed and final rules that explain how they have addressed or reconciled key issues and public comments.

- Expanding the role of GSA’s Office of Innovative Technologies to coordinate a process to harvest innovative ideas, private sector best practices, targeted crowd-sourcing initiatives, innovation challenges and contests to generate candidates for transformative solutions within the government. Connected to this effort, and as a complement to a “cut and re-invest” strategy, provide guidance through GSA and the U.S. Chief Information Officer to establish a process for agency independent reviews of innovation ideas that come from the field, along with criteria that focus on improving mission outcomes.
- Facilitating through the U.S. Chief Technology Officer a cross-agency collaboration information sharing initiative to better leverage the benefits of R&D spending in technology across federal agencies, while reducing duplication. Agencies lack sufficient funds to directly support all of the research needed to target their specific needs. Similarly, industry lacks sufficient funds to pursue activities to support unique agency needs that are not tied to near-term significant acquisition opportunities. But the federal Chief Technology Officer, through the president’s Office of Science and Technology Policy, can serve as a neutral convener of agency and technology leaders to share information about needs, trends and capabilities. Consider this recommendation akin to the organized market research that federal agencies should conduct before initiating a strategic sourcing for the cross-agency acquisition of goods or services. The Defense Department already undertakes a limited example of this information-sharing of industry research efforts through its collection and controlled dissemination of company “independent research and development” (IRAD) efforts. NASA also engaged in a similar but less well-known process. Related efforts are undertaken by the National Institutes of Health for medical research and by the Department of Homeland Security’s Office of Science and Technology. But too many other agencies have no internal, let alone cross-agency, mechanism for sharing either its technology needs or the results of its technology efforts.

*Agencies lack sufficient funds to directly support all of the research needed to target their specific needs.*

*There is an abject need for a common taxonomy of services to be used to drive business and acquisition strategies based on the acquisition's requirements.*

- Creating an acquisition dashboard tool to both track the time it takes to execute an acquisition and provide insight into those elements of acquisition that most frequently result in delays. This would require immediately beginning a government-wide practice of measuring procurement administrative lead times (the time between release of a final RFP and award of a contract) as well as quarterly updates in which key obstacles (to include external factors, such as budget delays or changes) and challenges are identified.
- As noted in the recommendations in the discussion of the “Human Capital Dilemma” section, one of the proven alternative acquisition workforce training and development efforts can come from well-designed government-industry exchange programs. That recommendation also has relevance to creating the culture of excellence and innovation by providing personal experiences and greater insight into the activities of key stakeholders in the government acquisition and mission-execution processes, although it need not be limited to drawing such exchanges solely from the ranks of current government contractors. For example, pursuant to statutory authority and detailed regulatory procedures, federal agencies have been authorized to undertake a government-industry exchange for information technology professionals under strict rules prohibiting any conflict of interest for either government officials or industry firms participating. In 2012 the Army Contracting Command administratively initiated a limited program for the exchange of its acquisition professionals with major industry partners. Other agencies have similar formal and informal exchange programs—some that go one direction only (government to industry, for example) and some that permit both sectors to participate. Interestingly, in mid-2013, the president launched an exchange program for up to 200 senior African government leaders to take fellowships in U.S.-based organizations. While the details were still being refined as of August 2013, this presidential initiative demonstrates an obvious recognition of the benefits of such government and industry exchanges.

## **Achieving Successful Services Outcomes**

The acquisition system plays a vital role in achieving mission outcomes and providing services to the taxpayer, but it can only be effective, efficient, and innovative if the tools provided for in the rules and regulations governing acquisition are used to their best potential. Acquisitions can vary greatly, and only by using a strategy specifically tailored for an acquisition can one best achieve mission outcomes. Yet, while this may sound like a standard, longstanding tenet of acquisition (and is, indeed, reflected in the Federal Acquisition Regulation), as services acquisitions have become more complex the government has struggled to achieve this basic objective. Instead of focusing on broad business strategy and outcomes, the focus of the acquisition system has become overly centered on rules compliance, presumptive “goods and bads,” and rearview-mirror assessments of how and where funds are spent.

To address this fundamental challenge, we believe there is an abject need for a common taxonomy of services to be used to drive business and acquisition strategies based on the acquisition's requirements. Such a taxonomy will help translate and coalesce the often complex mix of mission requirements, business models, and government “rules” in a way to help inform the road forward and provide insight that can help drive smart business and acquisition strategies. Yet a taxonomy like this does not currently exist. The only “taxonomy” that exists within government is solely a look-back review of historical spending data within overly broad, ill-defined, categories. As a result, the services acquisition process is often driven by a loose amalgamation of regulations (Federal Acquisition Regulation and agency/component supplements) and a growing body of legislative and executive branch policy pronouncements that are at times ineffective and/or in conflict with one another. They often fail to align what is being acquired to a real strategy and are exceptionally difficult to implement consistently, even within a single government entity.

The most vital step to achieving efficient processes and effective outcomes is developing the core acquisition strategy for the desired outcomes. There is not a single acquisition strategy suitable for all requirements but there are certain acquisition strategies that are much more preferable for certain types of requirements. For example, the lowest price technically acceptable (LPTA) source selection strategies can be the proper strategy for the purchase of commodities. The process is efficient because it simplifies the award criteria and selection process while still allowing the government to acquire the outcome it demands. However, for more complex requirements, LPTA is not the optimal source selection strategy. Complex acquisitions are often highly technical, and the bids from different offerors can vary significantly in their technical approach as well as their ability to truly achieve the procuring agency’s desired program outcomes. Because the LPTA process evaluates all “technically acceptable” offers as sufficient and equal, leading the award to be determined exclusively by price, companies are forced to devise low-cost outcomes that are “technically acceptable” but far from the cutting-edge, high-quality outcomes the government may require. In other cases, such as where cost is largely determined by drivers like the Service Contract Act, there will likely be substantial variations in

the capability and quality proposed, with little difference in the price the government pays for the goods or services.

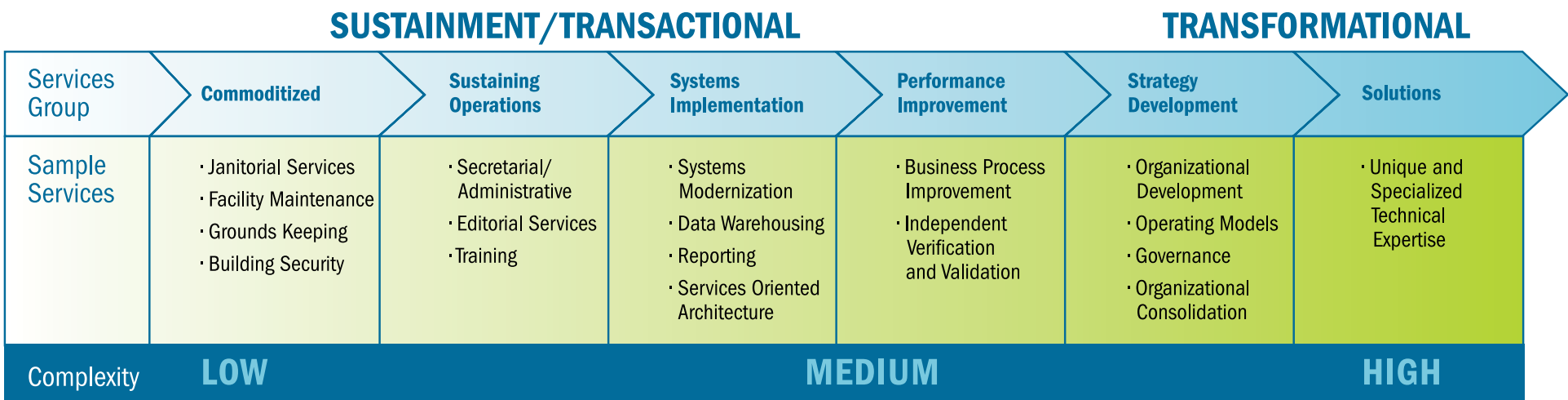
Moreover, if innovation is desired in an acquisition, the acquisition strategy must reflect it. As can be seen in the Figures 5 and 6, some acquisition types, based on their funding structures and distribution of risk, are much more effective at promoting innovation.

*The PSC Commission recommends:*

- Creating, as a guideline for the development of acquisition strategies, a new taxonomy of services that helps guide the workforce toward the stated objectives of the federal acquisition process by providing the basis for aligning what is to be procured with the options available to the government for such procurements.

There are a number of factors that sub-optimize government acquisition and technology endeavors. For the purposes of this report, we have limited our focus to defining a new *pre-award* taxonomy for the acquisition of services that reflects the *attributes* of what is to be acquired and ties those attributes to a strategic,

**Figure 5. Services Acquisition Taxonomy**





**Figure 6. Acquisition Strategy Decision Matrix**

Risk	Very low. Some risk of requirements creep.	Moderately uncertain contract labor or material requirements.	Moderately uncertain contract labor or material requirements.	Highly uncertain and speculative labor hours, labor mix, and/or material requirements (and other things) necessary to perform the contract. The government assumes the risks inherent in the contract, with the flexibility to change the tasks to respond to conditions. The government benefits if the actual effort is less than anticipated, or pays if the effort expands.			
Principal Risk to be Mitigated	<p>The requirement is well-defined.</p> <ul style="list-style-type: none"> <li>Contractors are experienced in meeting it.</li> <li>Market conditions are stable.</li> </ul> <p>Financial risks are otherwise insignificant.</p> <p>Contractor expected to resist requirements creep.</p>	<p>A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and to meet other objectives.</p>	<p>Subjective standards can be fairly applied by the fee determining official. The potential fee is large enough to both:</p> <ul style="list-style-type: none"> <li>Provide a meaningful incentive.</li> <li>Justify related administrative burdens.</li> </ul>	<p>Scope is stable.</p> <p>An objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like.</p>	<p>Objective incentive targets are not feasible for critical aspects of performance.</p> <p>Subjective standards can be fairly applied.</p> <p>Potential fee would provide a meaningful incentive.</p>	<p>Relating fee to performance (e.g., to actual costs) would be of marginal utility or unworkable.</p>	<p>No other type of contract is suitable (e.g., because costs are too low to justify an audit of the contractor's indirect expenses). Cost is directly related to scope— no government risk of adverse indirect rates.</p>
Appropriate Contract Type	Firm-Fixed-Price (FFP)	Fixed-Price Incentive Firm Target (FPIF)	Fixed-Price Award-Fee (FPAF)	Cost-Plus-Incentive-Fee (CPIF)	Cost-Plus-Award-Fee (CPAF)	Cost-Plus-Fixed-Fee (CPFF)	Time & Materials (T&M)
Elements	<p>A firm-fixed-price for each line item or one or more groupings of line items.</p>	<p>Ceiling price</p> <p>Target cost</p> <p>Target profit</p> <p>Delivery, quality, or other performance targets (optional)</p> <p>Profit sharing formula</p> <p>120% ceiling and 50/50 share are points of departure</p>	<p>Fixed-price</p> <p>Award amount</p> <p>Award fee evaluation criteria and procedures for measuring performance against the criteria</p>	<p>Target cost</p> <p>A minimum, maximum, and target fee</p> <p>A formula for adjusting fee based on actual costs and/or performance</p> <p>Performance targets (optional)</p>	<p>Target cost</p> <p>Base amount, if applicable, and an award amount</p> <p>Award fee evaluation criteria and procedures for measuring performance against the criteria</p>	<p>Target cost</p> <p>Fixed fee</p>	<p>Ceiling price</p> <p>A per-hour labor rate that also covers overhead and profit</p> <p>Provisions for reimbursing direct material costs</p>
Contractor Obligation	<p>Provide an acceptable deliverable at the time, place and price specified in the contract.</p>	<p>Provide an acceptable deliverable at the time and place specified in the contract at or below the ceiling price.</p>	<p>Perform at the time, place, and the price fixed in the contract.</p>	<p>Make a good faith effort to meet the government's needs within the scope of work and the estimated cost in the contract.</p>		<p>Make a good faith effort to meet the government's needs within the ceiling price</p>	
Contractor Incentive	<p>Generally realizes an additional dollar of profit for every dollar that costs are reduced.</p>	<p>Realizes profit on cost by completing work below the ceiling price. May earn higher profit by incurring costs below the target cost or by meeting objective performance targets.</p>	<p>Generally realizes an additional dollar of profit for every dollar that costs are reduced; earns an additional fee for satisfying the performance standards.</p>	<p>Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets.</p>	<p>Realizes a higher fee by meeting judgmental performance standards.</p>	<p>Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.</p>	

principle-based taxonomy. Such a clear, pre-award framework of this type will not only help improve outcomes, but will also help drive innovation. Innovation rarely occurs by accident. It must be actively and openly encouraged and clearly and objectively evaluated. Further, the analysis continuum must include not only levels of complexity and risk but also timelines within which the work must be completed. For example, the design and implementation of a complex information technology solution is likely to take time and substantial long-term commitment. But the development and fielding of a new application might be completed in a six week “sprint.” The acquisition strategy must reflect these differences.

As it stands now, the government lacks a clear taxonomy that accounts for these variables. The growing pressures reported by federal acquisition leaders towards process compliance over program outcomes can best be combated by a taxonomy that fully recognizes and respects the importance of process compliance while still illuminating the varied strategies available for achieving better outcomes. In our view, the taxonomy could be based on a continuum, as shown in Figure 5.

- Buttredding basic taxonomy with a clear alignment of responsibility, accountability, risk and reward relating to the overall acquisition strategy and execution that goes well beyond the important decision of the appropriate contract type. Levels of risk require different contract types and incentives. Acquisition strategies should be constructed to result in reasonable contractor risk (recognizing that what defines “reasonable” varies based on the complexity of the desired outcome as well as the necessary level of investment), provide the contractor with the greatest incentive for efficient and economical performance, and properly incentivize the desired level of innovation. The alignment of these factors yields a partnership and contract relationship that is truly an instrument calibrated to provide the greatest opportunity for achieving successful acquisition outcomes and program results.

Regrettably, agencies do not always have the flexibility to make the right choice. For example, some laws have (appropriately or inappropriately) dictated the specific contract type an agency is to use for certain types of acquisitions, such as limitations on DoD’s use of time and materials contracts, the requirement for DoD to use fixed-price contracts for certain research and development efforts, and the requirement for the Department of State to award certain guard services performed outside the United States on the basis of lowest price. In addition, while the FAR already requires contracting officers to evaluate the appropriate contract type based on specific attributes of the government’s objectives, it does not include any consideration of industry’s risks or rewards.

To our knowledge, no taxonomy exists that attempts to focus the government’s acquisition strategy decision-making on aligning industry’s risks and rewards with the appropriate outcomes to be achieved. Thus, the Commission has attempted to create such a pre-award taxonomy in Figure 6. It seeks to highlight a basis for evaluating a range of risks to be taken into account by the government in the acquisition process with considerations of contractor obligations and the associated incentives for industry in the performance of that acquisition under various contracting scenarios. However, in light of the difficulty in finding a perfect match, and to avoid a “one-size-fits-all” default, to their credit many agencies are now favoring the use of “hybrid” contracts that align the appropriate government objectives and contractor risk and rewards to specific work components or time-phases of performance of an acquisition, rather than to entire contracts.

- Avoiding the use of LPTA acquisition processes for *any* requirement for which new or innovative solutions are sought. By adopting a cost-technical tradeoff strategy (true best value), the government avails itself of the flexibility necessary when considering varied technical solutions and costs. Even if price is the single most important factor in the agency’s award decision, true best value enables the agency to make other judgments. Under an LPTA scenario, “technical acceptability” often becomes an exceptionally low bar, and the

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*Given the clear impact of protests, or the fear of protests, on the acquisition process, it is time to address it comprehensively and with the views of both government and industry at the table at the same time.*

award *must* be given to the lowest bidder meeting these minimal technical qualifications. In addition, the use of LPTA strategies for other than commodity procurements presumes that the government is the best and sole determinant of the basic technical levels required to achieve optimal outcomes. That is a dangerous presumption and one largely countered by the government's evident (and previously discussed) human capital challenges.

- Including specific source selection scoring for innovation where innovation is desired in the acquisition. For bidders, the inclusion of such criteria signals a seriousness of purpose on the part of the customer. Many in government express concern that industry proposals are increasingly “vanilla,” while many in industry argue that the “vanilla” nature of their proposals is driven by the objectives and evaluation factors of the government's RFP. By calling out innovation as a measurable and meaningful source selection criterion, it should become clear to all when and where innovation is genuinely sought.

## **The Role of Industry**

While this report is intended to focus on how best to optimize government performance, it would be disingenuous to not also focus on how the government's industry partners must also adjust and move forward. A few recommendations along those lines are included in earlier sections of this report. But we make additional recommendations and commitments that the Commission believes can both build confidence and enhance optimization. While some of these recommendations are only actionable on a company-by-company basis, and the Commission's ability to drive or require specific actions is limited, we believe there are impactful steps that can and should be taken.

## **The PSC Commission recommendations and PSC's commitments for industry are:**

- Given that the rising prevalence, and certainly the fear, of award protests is clearly impacting agency willingness to make subjective decisions or to use other than the most basic acquisition techniques, PSC will convene a joint panel of industry and government leaders and recommend to the administration and Congress, within 180 days, reforms to the protest process that are balanced and meaningful. While the recommendations of the proposed industry-government committee are, of course, yet to be determined, they will address issues including protest thresholds, frequency, scope and cost.

Protests are, in part, a principal driver behind the government's over-use of LPTA acquisition evaluations and awards that are centered on minimal or poorly defined technical requirements. It has, at least in part, contributed to some of the reticence on the part of government professionals to engage in meaningful dialogue with their private sector partners.

This is a contentious issue, for both government and industry, with many complex elements. Nonetheless, given the clear impact of protests, or the fear of protests, on the acquisition process, it is time to address it comprehensively and with the views of both government and industry at the table at the same time.

- To help address government concern that industry proposals are lacking in innovation, PSC, hopefully in conjunction with the Office of Federal Procurement Policy, will develop a template to be used as a proposal addendum through which companies can identify *and* monetize proposed innovations or performance objectives that exceed the requested minimum. It is our belief that such information can greatly assist federal acquisition decisions

and add important levels of understanding that will facilitate appropriate cost-technical tradeoffs—a consideration that in today’s fiscal environment is greater than ever.

- With a commitment of senior government participation, PSC will convene a CEO Council that meets at least twice a year with top federal acquisition and technology officials to identify current trends—positive or negative—in either industry or government practice or behavior, or both. The key issues identified by the panel should be widely disseminated among government and industry leaders with the intent of discouraging negative trends and encouraging the expansion of more positive actions.
- In addition to the CEO Council, and again assuming the cooperation and commitment of our government counterparts, PSC will convene a new forum for frank dialogue that is geared toward *and driven* by young professionals in both industry and government. Organizations like GovLoop’s “Government NextGen,” the Rising Acquisition Professionals Community (RAP-C) and Young Government Leaders, offer extraordinary opportunities for collaborative thought leadership with their industry counterparts from those who represent the future of government service.
- Given continued challenges in both government and industry in adopting new technology business models to the government environment, with the approval and cooperation of the Administrator for Federal Procurement Policy and the Undersecretary of Defense (AT&L), PSC will develop and make available (without charge) an online, strategic acquisition course focused on consumption-based acquisition/infrastructure as a service. The course will be designed to help government entities establish effective requirements and execute an appropriate and effective acquisition strategy.
- PSC will fund, or identify funding for, one or more focused research initiatives designed to provide effective case-study lessons related to the application of the new services taxonomy to emerging and other complex requirements, such as cloud services. The case studies will be academically based and subject to approval and validation by academic, government and industry experts and made available at no charge to the government “corporate” universities and private sector educational institutions. PSC will also use its current “Smart Contracting” website as an information resource with these and related case studies, as well as updates from the CEO Council described above.

# CONCLUSION

*The opportunities are there. And so is the need. The only question is that of our collective will.*

As suggested at the beginning of this report, the current fiscal, human capital, and operational challenges facing the government will not ebb anytime soon. If anything, they could actually increase. The pressure that places on those responsible for delivering government services is also going to remain intense. Moreover, even in the unlikely event that the government's fiscal crisis is soon addressed, the other pressures will be largely unaffected. The competition for talent will continue, since it is driven not by the government but by a range of external forces over which the government has no control. Operational challenges will likewise be largely unabated, since the dynamics that drive those challenges—from international security and threats to ever-growing citizen demands for better and more efficient services—are also outside of the government's control.

In their 2004 book “Government by Network,” Stephen Goldsmith and William Eggers spoke of a new environment in which the availability of information was becoming ubiquitous, traditional hierarchies of information were breaking down, and governments were increasingly and inextricably tied to broad networks of both information and delivery. In its 2003 report, the National Commission on the Public Service (the “Volcker Commission”) said the government was attempting to manage a 21st century mission on the back of mid-20th century structures and processes.<sup>14</sup> And in his series of reports on contracting in Iraq, the Special Inspector General

for Iraq Reconstruction Stuart Bowen reiterated that while fraud and abuse were certainly evident in some Iraq activities, the most significant challenges facing the U.S. government were centered on limited collaboration, coordination, communication, and workforce skills.

The basic conclusions of this report do not break dramatic new ground. As the Commission conducted its work during more than six months of meetings internally and with a range of government officials and other outside experts, the themes of the above work (also reflected in many other reports and analyses), were both prominent and expanded upon in new and different ways. Hence, the Commission's lengthiest deliberations centered on what can or should be done differently to come to grips with long-acknowledged problems as well as newly emerging challenges and what combination of ideas, new or old, offered the best chances for progress.

In the end, our biggest concern was not whether each of our recommendations is enthusiastically adopted and pursued. Rather, it was and remains whether the extent of the current crises is adequately accepted and whether the imperative for real, sustainable change can be identified and recognized. The opportunities are there. And so is the need. The only question is that of our collective will.

<sup>14</sup> “National Commission on the Public Service, Urgent Business for America: Revitalizing the Federal Government for the 21st Century,” Washington, DC: Brookings Institution, 2003. <http://www.brookings.edu/research/reports/2003/01/01governance>

# GLOSSARY OF ACRONYMS

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OPM Office of Personnel Management

AT&L Acquisition, Technology & Logistics

CO Contracting Officer

COR Contracting Officer's Representative

DAU Defense Acquisition University

DoD Department of Defense

GSA General Services Administration

LPTA Lowest Price, Technically Acceptable

OFPP Office of Federal Procurement Policy

OMB Office of Management and Budget

RFP Request for Proposals

SES Senior Executive Series

VA Department of Veterans Affairs



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April 25, 2014

Mr. Michael Canales  
Room 5E621  
3060 Defense Pentagon  
Washington, DC 20301-3060

**Re: Defense Acquisition Regulations System Request for Public Comments on Review of Statutory and Regulatory Requirements**

**CODSIA Case 02-14**

Dear Mr. Canales:

On behalf of the Council of Defense and Space Industry Associations (CODSIA)<sup>1</sup>, we are pleased to have the opportunity to work with the Department of Defense (the Department) as they conduct a Review of Statutory and Regulatory Requirements first published as a request for public comment in the *Federal Register* on February 12, 2014. We believe that now, more than ever, a review of the many unique cost-drivers built into the defense market is paramount to achieving mutual success in an austere budget environment.

Attached to this letter is a list of burdens and barriers facing the defense industrial base (DIB) today. Because these burdens are based in both statute and policy it is crucial for all regulations to be reviewed to achieve maximum savings. Accordingly, we believe that it should become a priority for the Department to review their acquisition regulations on an ongoing institutional basis in order to ensure that all policies and procedures are serving their intended purpose and are not duplicative or erroneous. Indeed, many of the challenges and barriers—to-entry to the federal marketplace today also existed twenty-five years ago. Many acquisition regulations, guidance documents, and policies implemented over the past decade have eroded the underlying acquisition process originally designed by the seminal streamlining statutes to keep the federal public sector market competitive, open to the latest innovations and the commercial companies that develop them and able to sustain a technological superiority over our adversaries.

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<sup>1</sup> CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of seven associations – the Aerospace Industries Association (AIA), the American Council of Engineering Companies (ACEC), the Information Technology Alliance for the Public Sector (ITAPS), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), TechAmerica, and the Chamber of Commerce of the United States. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

During our own process of aggregating this information, we saw patterns emerge that may prove useful as you analyze the responses and conduct a more thorough evaluation of all Department regulations, guidance, and policy. The majority of our responses are grouped into five distinct categories:

### **Uniformity, Standardization, and Consistency**

To drive more efficiency into acquisition regulatory processes, the Department must eliminate duplicative or redundant requirements, whether those requirements are created through the transaction data collection, reporting processes, or agency-unique regulatory variants in the Defense Federal Acquisition Regulation Supplement (DFARS) or Service Supplements that are not harmonized with the Federal Acquisition Regulation (FAR). The requirements of many variants drive significant overhead costs, because they cannot be standardized by industry into a uniform or common business framework. The attached spreadsheet reflects areas where industry believes a policy or process has been put in place that is duplicative of existing requirements or that has the potential to increase complexity and cost because it is not uniformly implemented for whatever reasons.

### **Process versus Outcome**

Too frequently, costs in the acquisition process appear to be driven by an aversion to risk within the Department. Rigid procedural requirements battle with the need to think through an acquisition. We believe the system will benefit from direction to “keep eyes on the ball” which will, in turn, rein in the tendency to dictate overly complex regulations. Many current contracting and administration processes reflect an acquisition system built to hold all vendors accountable for the contractual bad acts or the misbehavior of a small number of contractors. Contractors are increasingly forced to comply with regulations that seek to unearth non-compliance on a zero tolerance, strict liability, basis. Such regulation seldom factors in the cost of compliance to government or industry. The attached spreadsheet reflects areas where industry believes there is an imbalance between process compliance and outcomes where changes could reduce government and industry costs, at the very least in the subcontracting and flow-down processes, without increasing the government’s exposure. We also believe that re-emphasizing the management of compliance will reduce acquisition policy risk.

### **Oversight**

The Department’s acquisition oversight system is overly complex, overly costly, and is not aligned with industry or global best practices. Acquisition oversight has grown dramatically and reflects a complex set of government goals and priorities involving a variety of requirements that require an ongoing and externally driven review and approval process by the Department’s employees. Such a framework is costly for industry to staff—and the Department to enforce—and could be mitigated by adopting the changes set forth in the attached spreadsheet. To some extent, the Department has already taken such strides; the risk-based process at the Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) recognizes that oversight has a price that is reflected in the products and services DoD acquires.

A complementary approach to facilitate a modern oversight framework might be for the Department to invest in the automation and digitization of its data and oversight processes, which

could allow for near real-time Department insight into risk and compliance anomalies. Industry is open to discussing this further.

### **Commercial Preference**

It is beyond dispute that innovation is driven today by the private sector. By honoring the statutory preferences for commercial item products and services and the use of commercial transaction processes set forth in the FAR and DFARS, the government can leverage the latest state-of-the-art technologies, increase competition in federal procurements, and reduce costs associated with government-specific requirements. Unfortunately, the preference for commercial items and services has eroded in practice over time despite the many statutory and regulatory directives that tell the government to seek commercial items and services first. Suppliers of commercial items are discouraged when the Department pressures suppliers to relinquish rights in data for less than its value to remain competitive in a procurement. Inappropriate demands for cost or pricing data and hard to flow down mandatory flow-down clauses also discourage companies who sell in the commercial marketplace from entering the DoD market.

To fully maximize innovation, technical superiority, and the low cost of commercial items, we recommend that the Department review and eliminate many of the barriers to commercial item acquisition identified in the attached spreadsheet that have crept into the procurement process.

### **Constraints on Competition**

In order to encourage more competition in federal acquisitions, we need to find ways to reduce barriers to entering and staying in the defense market. Many companies find it hard to maintain the supply chain they once had because subcontractors and suppliers are unwilling to accept stricter flow-down terms and conditions or compliances requirements unique to the federal market. Those that do have higher costs are often not selected for award because they cannot compete in a lowest-price, technically acceptable environment. This is degrading the Department's ability to gain the most innovative technologies and services available because many companies cannot afford or do not support a business model that requires a separate supply chain or manufacturing process. Commercial item suppliers are thus dis-incentivized from entering or remaining in the government market by the Department's policies, some of which are identified in the attached spreadsheet.

Competitive constraints also include those regulations/policies that make it more expensive for a contractor to participate in the defense marketplace. For instance, by increasing bid and proposal costs through the "only one offer" provisions, the government can limit a company's proposal options when a second proposal is required to compete. Another example is the transfer of additional competitive risk to contractors with the hopes of getting more technical data and the associated rights thereto in proposals. This has the potential to increase the contractor's costs of performance without necessarily increasing the selling price.

To encourage more competition in federal acquisitions, government must reduce its barriers to entry into the defense market place and seek policies that will enable companies to help government agencies fulfill their requirements. This must be balanced with the government's need to obtain product that is free of sabotage, works as intended and is sold at a reasonable price to the government.

Finally, many of today's cost and compliance challenges are rooted in the need for a better equipped defense acquisition workforce. Prescriptive regulatory guidance is an inadequate substitute to address these workforce issues. Among other things, the workforce should be encouraged to use all the flexibilities provided in the FAR and DFARS, be creative in seeking win-win solutions, and incentivized to apply their business acumen and discretion to make balanced financial decisions without fear of being reprimanded. This is the message of Better Buying Power 2.0. CODSIA is committed to partnering with the Department to address these workforce issues and, among other things, strongly encourage the use of inter- and intra-departmental rotations, safe harbors for contracting officials implementing innovative contract source decisions, mandatory professional exchanges with industry, highly competitive career paths, pilot use of reduced rule and compliance regimes, and enhanced training programs that extend the practice beyond the classroom.

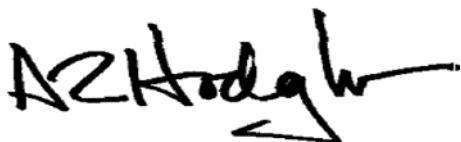
### **Conclusion**

Thank you again for the opportunity to respond to this request for information and share our viewpoints. We look forward to working with the Department as you continue to analyze the response you receive from this request, and we are available at any time to elaborate on our response and work with the Department to develop alternative approaches. CODSIA further recommends that the Department leverage DIB contractors and trade association personnel by creating a group that involves acquisition subject matter experts and that meets on an ongoing basis to exchange ideas and solutions to reduce cost and identify cost drivers in a positive environment

The attached spreadsheet identifies a number of issues. You will see some duplication. We felt it important to allow each of the seven CODSIA associations to express their individual views of the regulatory burden from the perspective of the industry they represent.

In the interim, if you have any questions or need any additional information, please do not hesitate to contact Trey Hodgkins, Senior Vice President at ITAPS, at [thodgkins@itic.org](mailto:thodgkins@itic.org) or 202-626-5758, who serves as the CODSIA project officer for this case, or Bettie McCarthy, CODSIA's Administrative Officer. Bettie can be reached at (703) 875-8059 or at [codsia@pscouncil.org](mailto:codsia@pscouncil.org).

Respectfully submitted,



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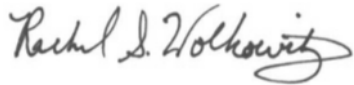
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Attachment

#	Specific Regulatory Citation	Statutory Citation (if any)	Burden or Inefficiency	Recommendation/Solution
1	See DFARS Cases 2012-D055 and 2014-D005, and FAR Cases 2012-032 and 2013-002 for numerous regulations affected.	Section 818 of PL112-81 (FY12 NDAA), as amended by Section 833 of PL112-239 (FY13 NDAA); Section 803 of PL113-66 (FY14 NDAA)	Counterfeit Electronic Parts Avoidance (CEPA): While not yet implemented in regulation, there are two FAR Cases and two DFARS Cases in preparation to address the CEPA legislation. Nevertheless, various DoD offices have attempted to contractually impose pre-regulatory CEPA measures, such as customized Statement of Work (SOW) requirements, special clauses, or invocation of various related standards (e.g., SAE) that have not yet been fully endorsed by industry, which increases costs and may even conflict with imminent regulation designed to properly address CEPA concerns. In addition, the proposed rule for DFARS Case 2012-D055 anticipates linking the oversight of a contractor's CEPA plans and processes to its Purchasing System, despite no such requirement in the legislation. Effective incentives usually involve both "carrot and stick" attributes, yet the lack of any "safe harbor" provisions for contractors with customer- approved CEPA plans and processes significantly undermines contractor incentive for investing in robust CEPA measures.	DoD should consider issuing cease and desist guidance with respect to attempts to impose CEPA requirements in advance of regulations that are still in the development/review phase. Further, since the legislation does not specifically require DOD to tie oversight of a contractor's CEPA processes to one of the six Contractor Business Systems, DoD's proposed rule to link what is fundamentally a quality requirement to a Contractor's Purchasing System should be reconsidered. Introducing the potential of partial interim payment withholds on top of remediation liability only adds potential harm to the industrial base while adding no effective incentive for compliance. Finally, to truly incentivize contractors to develop robust CEPA plans that are submitted for customer approval, DoD should urge Congress to reconsider the addition of a "safe harbor" provision for contractors holding customer-approved CEPA plans and processes.
2	FAR 1.3; Executive Order 13563		Publication of Proposed and Interim Rules without discussion with the regulated public	Regulations that are designed to promote the public interest should be developed with involvement from stakeholders – public and private. Instill within the regulatory process clear opportunities for consultation and collaboration before proposed or interim rules are published. See E.O. 13563
3	Better Buying Power Guidance – Procurement of Commercial Items based on FAR Part 12		There have been frequent inconsistencies with the Government’s application of regulations surrounding the acquisition of commercial items. These inconsistencies are occurring in two distinct areas. In the first instance, Contracting Officers are disregarding the existing sales data for a base commercial product and are interpreting the lack of sales data for a product which meets the “of a type” designation as used to define “commercial items” in FAR 2.101, as a negation of the commerciality of the subject product and thereby requiring the contractor to produce cost or pricing data. In the second instance there are inconsistencies in how the Government interprets what qualifies as reasonable supporting detail required to be provided to support a price reasonableness determination of a commercial item.	<ul style="list-style-type: none"><li>• Redacted invoices should be sufficient documentation for supporting data</li><li>• There needs to be more specificity in what constitutes supporting data for modification of commercial items</li><li>• Update and utilize the DOD Commercial Item Handbook to ensure the consistent application of requirements.</li></ul>
4	Commerciality COs must determine commerciality of major systems, subsystems, and components thereof after concluding (1) item meets definition of FAR 2.101, and (2) CO has sufficient data to establish price reasonableness DFARS 212.102(a)(c) elevates an affirmative CID to a level above the CO when an item is "of-a-type" or "offered for sale or lease".	FASA 10 USC 2533a/b, Public Law 102-355 (FASA), et. al.	Suppliers of goods/services that meet the FAR definition of a commercial item are being required to either certify cost or pricing data & comply with cost accounting standards or are being required to disclose other than certified cost data <ul style="list-style-type: none"><li>• Significantly delaying the acquisition process</li><li>• Shrinking pool of suppliers</li><li>• Otherwise reducing private investment in USG goods and services. An item that meets the definition but is "of-a-type" or "offered for sale or lease" is singled out for stricter treatment and is more apt to be subject to greater cost scrutiny.</li></ul>	<ul style="list-style-type: none"><li>• De-link the FAR definition of commercial item from the requirement for price reasonableness; Honor the definition of "commercial item."</li></ul>



5	Rights in technical data and software • Section 815, FY12 NDAA • DoD Program Manager’s Guide to Open System Architecture	10 U.S.C. 2320	Privately funded IR&D allows the contractor to assert limited rights in the resulting item, process, or subpart or parts thereof to which the investment pertains and the associated data are increasingly at risk of use by competitors due to DoD data rights policies. The government is not acknowledging the doctrine of segregability and demands GPR at a minimum. • Significant deterrent to commercial company participation in DoD market	• Strengthen statutory protection for technical data pertaining to privately funded development to clearly prohibit DoD from using competitive evaluation process as means to extract more than commercial or limited rights in data and software • Lifecycle acquisition costs can be considered in evaluations, but the effect of a GPR or unlimited license to commercial IP should not be considered • Reverse Sec 815 changes, deferred ordering ought to extend only to data developed under (vs. used in) the contract
6	DFARS 212.102 Acquisition of Commercial Items - General		This regulation requires commercial item determinations for acquisitions over \$1 million and adds another bureaucratic hurdle to the contracting process. It adds time and processes to the acquisition process and evidences that DoD does not trust the judgment of its contracting officers.	We recommend the deletion of DFAR 212.102(a)(C) and the associated provision in the PGI.
7	FAR Part 12, DFARS Part 212, and related Part 52/252 clauses and flowdowns	10 USC 2533a/b, Public Law 102-355 (FASA), et. al.	Commercial Items: Over the years since FAR Part 12 was initially revised to replace Part 11 for Acquisition of Commercial Items according to the Federal Acquisition Streamlining Act of 1994 (FASA), there have been a steady increase of USG/DoD-unique clauses and requirements that have been levied upon contracts and subcontracts for commercial items and services. As a result, the cost of commercial goods has risen for those companies willing to accept such terms, or has discouraged commercial firms from doing business with the USG/DoD. These additional clauses and requirements also infer adverse intellectual property and/or data rights provisions will be applied.	Review all USG-unique and DoD-unique requirements applicable to commercial items, such as domestic sourcing requirements, intellectual property rights, Item Unique Identification (IUID), services manpower reporting, numerous FAR and DFARS clauses, etc., to determine whether the Govt’s preference for use of commercial items is better served by eliminating such barriers to commercial firms doing business with DoD. Also consider the costs versus benefits of such requirements on other than commercial items, particularly in a constrained budget environment. Seek legislative relief, perhaps in tandem with measures such as BRAC requests, to enable a more cost- efficient military with improved access to commercial technology.
8	FAR 46.2, .3, & .4 and related FAR 52.246-x clauses, including FAR 52.246-2 and FAR 52.246-11; also DFARS 209.270 and 252.209-7010	Among others: Section 802 of the FY2004 NDAA (PL108-136) and Section 130 of the FY2007 NDAA (PL109-364)	Quality Oversight: MIL-Q-9858 was identified in the Coopers & Lybrand/TASC study of DoD premium costs as the number one driver of cost premium. While much was done to migrate from MIL-unique to industry standards such as ISO-9000-based contract requirements, various DCMA actions have seriously undermined the potential cost savings. These include: (a) partially duplicating the oversight of contractor quality management systems (QMS) conducted by ISO accredited third-party auditors, sometimes invoking the "Inspection" clause in a way that apparently overrides the "Higher Level Contract Quality Requirements" clause; (b) invoking the "Inspection" clause to impose increased Critical Safety Item (CSI) oversight on parts not identified in the contract clause listing under DFARS 252.209-7010; and/or (c) issuing various "internal" DCMA Instructions (DCMA-INST) and "Q- TIP" memos that affect contractor operations.	Longstanding FAR "Inspection" clauses should be reviewed to clarify their relationship to more recent legislative/regulatory measures such as Higher Level Contract Quality Requirements and Critical Safety Item requirements. Consider specifically amending FAR such that the HLCQR clause takes precedence over normal "Inspection" clause in matters pertaining to oversight of a contractor's QMS, or at least issuing OSD-level guidance to that effect, to avoid duplication/overlap of system audit functions. Similarly consider amending DFARS or issuing supplemental OSD-level guidance stipulating that DCMA may not invoke the "Inspection" clause to increase oversight for subsequently-designated CSI parts on a post-award basis without equitable adjustment. Also consider implementing a method for public review and comment on "internal" policy guidance changes prior to issuance.
9	DFARS 252.244-7000, Subcontracts for Commercial Items (June 2013 version)	This clause states that a Contractor is not required to flowdown the terms of any DFARS clause in subcontracts for commercial items at any tier unless so specified in a particular clause. Below are listed clauses that are flowed down in subcontracts for commercial items, causing adverse impacts and undue burdens and costs.	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products. In addition, providers of commercial items and commercial derivative military aircraft (CDMA) items that are not COTS have to estimate specialty metals content just for DoD and for no other purpose; and to flow down this requirement for similarly situated subcontractors, to ensure compliance. Making downstream users (at many tiers) of specialty metals, especially in commercial or commercial derivative items, responsible for compliance with this requirement is burdensome and inefficient.	Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

ATTACHMENT  
CODSIA Comment on Regulations that Add Unnecessary Cost to DoD Procurements

10	DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals	10 USC 2533b	The clause(s) listed require(s) subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	See #9 above.
11	DFARS 252.225-7039, Contractors Performing Private Security FunctionsC22:F22	Section 862 of P.L. 110-181, as amended by section 853 of P.L. 110-417 and sections 831 and 832 of P.L. 111-383	See #10 Above	See #9 above
12	DFARS 252.236-7013, Requirement for Competition Opportunity for American Steel Producers and Manufacturers	P.L. 110-329, Div E, Section 108	See #10 above	See #9 above
13	DFARS 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel	Section 1038 of P.L. 111-84	See #10 above	See #9 above
14	DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees	Section 1092 of P.L. 108-375	See #10 above	See #9 above
15	DFARS 252.247-7023, Transportation of Supplies by Sea	10 USC 2631	See #10 above	Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements. <b>In addition, make it simple and clear that all commercial items are exempt.</b>
16	DFARS 252.247-7024, Notification of Transportation of Supplies by Sea	10 USC 2631	See #10 above	See # 9 above
17	DFARS 252.223-7008, Prohibition of Hexavalent Chromium	N/A	See #10 above	See #9 above
18	DFARS 252.227-7015, Technical Data--Commercial Items	FASA & 10 USC 2321	The clause listed requires subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	See # 9 above
19	DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data	10 USC 2321	The clause listed requires subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	See #9 above
20	DFARS 252.246-7003, Notification of Potential Safety Issues		See comments in line #10 above. In addition, this requires compliance with requirements already regulated for commercial aircraft by the FAA.	See comments in line #9. Also, provide blanket exemption for any supplies already regulated by other agencies (e.g., commercial aircraft regulated by the FAA) and establish a means of taking advantage of relevant safety information collected and monitored by other government agencies.

ATTACHMENT  
CODSIA Comment on Regulations that Add Unnecessary Cost to DoD Procurements

21	DFARS 212.270 Major Weapon Systems as Commercial Items	Commercial Items Public Law 103-355, 10 U.S.C. 2379 Codification of Sec. 815 of the FY 2008 NDAA	Streamlined methods for acquisition of commercial items established by FASA/Clinger Cohen Act have been significantly impeded by subsequent policy and rulemaking. Recent policies and rulemakings have restricted the ability for commercial companies to do business with the Government. The DoD is focused on obtaining cost data rather than performing price analysis. The access to the commercial marketplace is being constrained.	Recommend repeal of 10 USC 2379. In the alternative, the DoD must establish procedures for acquiring commercial items that are consistent with congressional intent. This includes but is not limited to the definition of commercial items.
22	DFARS 227.74 Validation of Rights in Technical Data	Data Rights 10 USC 2321	Commercial items are no longer presumed to be developed at private expense. For commercial items, extensive validation of proprietary data restrictions is now required for companies who, from 1995 to recently, believed themselves to be largely exempt from the process.	1) Restore the presumption of development at private expense for all commercial items. 2) Prohibit the flow down of technical data statutes and associated government unique requirements to subcontracts for commercial items.
23	DFARS 236.606-70 Statutory fee limitation.	(a) 10 U.S.C. 4540, 7212, and 9540 limit the contract price (or fee) for architect-engineer services for the preparation of designs, plans, drawings, and specifications to six percent of the project's estimated construction cost.	Creates an undue burden by virtue of limiting total cost and fee to 6% of the anticipated cost of construction. Given uncertainties surrounding cost of construction, etcetera, the cap is generally applied before certain facts are fully known/understood and serves to possibly cause firm profits/returns to fall below those deemed reasonable. Imposition of this fee limitation does not fully consider a firm's underlying cost of capital (or, stated another way, the opportunity lost in not directing its resources/assets in a different manner). It is noted that the firm must make the same investments in people and assets to perform any "covered" effort without necessarily yielding returns consistent with that investment. Often the costs for designing an infrastructure project, with extensive security, resilience, sustainability, and physical challenges, have no relationship to the construction costs of the project. Construction costs are sensitive to material and equipment costs that do not impact A/E services costs. Often the final construction costs are much higher than the estimated costs used to establish the limitation, due to unknowns, schedule delays, or even errors in the government estimates. Rarely is the A/E contract cost ceiling proportionally adjusted.	The optimum solution would be to assess the factors impacting on the specific A/E services required and arrive at a fair and reasonable cost, independent of estimated construction cost. An alternative might be to have different limitation ranges based on factors impacting design. Another component would be to adjust the limitation as the costs of construction become clearer, with a final adjustment after the construction costs are known. At a minimum, I believe that we should seize this opportunity as a means to re-visit the basis upon which the 6% limitation was determined/calculated.
24	FAR 52.203-13;52.209- 7; 52.209-8; 52.212-5; 52.213-4; 52.244-6 Federal Awardee Performance and Integrity Situation	FAPIIS, SEC 872 FY09 NDAA, P.L 110-417	Contractors are required to input performance and integrity information to a public database. This is a new burden imposed upon commercial companies doing business with the Government.	Add an exemption for commercial item contracts and subcontracts.
25	DFARS 242.7000 Contractor Business Systems	Sec. 893 of the FY 2011 NDAA as amended by Sec. 816 of the FY 2012 NDAA Contractor Business Systems	Government must approve business systems and can withhold payments for disapproved systems. This rule has required considerable increase in compliance staff based upon new criteria the Government has called out. The 5% and 10% withholdings are excessive and punitive in nature and do not signify the teamed approach that the Government emphasizes.	Establish a risk-based approach based upon the size and complexity of Government contracts and Contractor's record of successful past performance. The rule should be modified to limit the Contracting Officer's application of the withhold to only those contracts which are affected by the deficiencies. Also see #60 and #67.
26	FAR Part 32 Performance Based Payments		Performance Based Payments now require identification of actual costs incurred relative to performance events. This is not feasible for many commercial firms. Contractor is now required to have a Government approved accounting system that will track cost to individual contracts.	Repeal recent FAR and DFARS change under Case 2011-D045.
27	DFARS 252.225-7040 - Contractor Personnel Supporting a Force Deployed Outside the US		Current provision does not guarantee adequate safety and security for contractor personnel by either US or ISAF forces. As such if due to security concerns contractor's personnel are forced to withdraw, such withdrawal is considered a contractual breach of contractor's obligations.	We recommend the implementation of the guidance changes identified in the AIA letters to RDML Kalathas dated 1 March 2013 and M. Murphy dated 23 December 2013 be initiated.

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28	17 CFR Parts 240 and 249b Conflict Minerals	Dodd-Frank, P.L. 111-203 Section 1502.	<p>As part of the Dodd-Frank Act, contractors are required to guarantee that the source of supply for certain metals and minerals is not the Democratic Republic of the Congo (DRC). The standard to “guarantee” through all levels of the supply chain is too far reaching a standard. Contractors will not be able to achieve this standard without significant infrastructure expense, and even then may not be able to ensure at all levels. The SEC has estimated initial compliance costs of \$3B-\$4B as end users of the four conflict minerals attempt to find out whether their raw materials originated at mines run by warlords in the DRC or its nine adjoining neighbors. While this is clearly a humanitarian effort to block those repressive regimes from financing their operations by way of this action, the standard is too high and cannot be met in a cost-efficient manner.</p>
29	Comprehensive Subcontracting Plan (CSP) Program	The last extension of the Comprehensive Subcontracting Plan Program - P.L. 112-81 extended the program to Dec.31, 2014.	<p>The 23-year-old CSP has been extended multiple times but is due to expire at the end of 2014, and DoD is not supporting an extension or permanence. The CSP, which allows for a single subcontracting plan each fiscal year instead of individual plans for each contract, allows participating contractors to work more strategically with small businesses and to put more resources into training and mentoring them and finding opportunities for them across our company. CSP was originally created at DoD’s request to eliminate unnecessary administrative activity, and a 2010 report estimated that the program saves DoD more than \$45M annually. The cost to our company alone if it were to expire is estimated at \$2M+ annually. Letting the CSP expire would go against the grain of reforming the contracting process and finding savings.</p>
30	Better Buying Power Guidance - Cash Flow Tool for Evaluating Alternative Financing Arrangements," dated April 27, 2011		<p>Although in general industry applauds the application of business financial techniques, there are a number of issues that remain with the implementation of this guidance that have a substantial cost impact to contractors.</p>
31	FAR 52.204-14 Contractor Manpower Reporting Clause Memorandum	Section 8108(c) DoD and Full Year Continuing Appropriations Act 2011, Public Law 112-10; 40 U.S.C. 121(c); 10 U.S.C. 137; 51 U.S.C. 20113	<p>Manpower reporting is required from contractors. Subcontractors must report directly to prime contractors. Prime Contractors must report data directly to a Government database. Requires additional compliance burdens on contractors.</p>
32	Better Buying Power Guidance – Earned Value Management Business System DFARS 252.234-7001, 7002		<p>There remains room for improvement and cost reduction in the EVM process. By modification of DFAR EVM requirements overall program savings have been shown.</p>
33	FAR 15.404-4/ 52.215-22 & 23 - Profit/Fee – Limitation on Pass Through	For DoD - Sec. 852 FY 2007 NDAA; For agencies other than DoD - Sec. 866, FY 2009 NDAA	<p>The objective of the FAR was to set standards by which the gov’t and the contractor can agree on a fair and reasonable profit/fee. The gov’t shouldn’t be charged excessively, but the contractor needs to be able to make enough profit to stay in business. However, while the FAR does not prohibit fee or profit on travel or material, we are increasingly encountering interpretations that say these are excessive pass through charges.</p>

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34	FAR Part 15, Cost or Pricing Data DFARS Part 215 Cost or Pricing Data	Public Law 87-653, Truth In Negotiations Act	Contractors have to provide detailed cost or pricing data (COPD) for all non-excepted proposed contract actions above the \$700K threshold. This is also the threshold for COPD analysis of proposed subcontractors. Increases to the threshold have not kept pace with inflation, and we believe the threshold is now too low. The original exceptions to required submission of COPD - timesavers - have been eroded.
35	DFARS 252.215-7008 - Only One Offer Affects: 48CFR Part 205.203; Part 208.404, 405-70; Part 212.205,209; Part 214.404-1, 408-1; Part 215.3, 403, 408; Part 216.505-70, 506; Part 252.215-7007, 7008	After submitting a proposal as part of a competitive procurement where it turns out that only a single proposal is received, a contractor is forced to expend the time and effort to turn their bid into either a TINA compliant bid or at the minimum to substantiate that their pricing is fair and reasonable. Since at the time of bidding the contractor is acting under the belief that it is participating in a competitive procurement, there should be an automatic assumption that their bid is fair and reasonable and the exceptions provided under DFAR 215.403-1(c)(a) are met. This requirement puts an undue cost burden on the contractor and significantly delays the government’s ability to make an award.	Raise the TINA threshold substantially and reassess it annually. This will save all parties time in analysis and enhance the speed to contract, facilitating a quicker placement of actions on contract without significantly impacting the govt’s ability to get a fair and reasonable price. Restore exemptions to be more equitable.
36	DFARS Clause 252.234-7001 (a), DFARS Clause 252.234-7002 (c), DFARS Subpart 234.201	DFARS Clause 252.234-7001 (a) and subsections establish the requirement to present evidence of an approved EVMS or a plan to achieve approval of the contractor’s EVMS during the proposal stage for contracts that exceed \$50M. In addition, if the contract value is less than \$50M, the contractor shall provide a matrix to demonstrate how program management practices comply with the EVMS requirements defined by the contract clauses. DFARS Clause 252.234- 7002 (c) reinforces the threshold of \$50M identified in 252.234-7001. Contracts exceeding this threshold are required to use an EVMS determined acceptable by the Cognizant Federal Agency (CFA). Contracts less than \$50M does not require a formal determination of compliance of the contractor’s EVMS to the ANSI/EIA-748 EVMS Guidelines. DFARS Subpart 234.201 specifically identifies the \$20M.	OSD (AT&L) should ensure that EVMS requirements only be placed on contracts where the work scope is appropriate, and that significant additional requirements (i.e., very low levels of detail only be used when absolutely necessary). EVMS should not only be based on a pre stated dollar value and contract type, but based on risk and contract scope and that scope should be primarily development related. Exclusion should be put in place for scope that is time and material, IDIQ, and effort that is primarily full rate production driven. In addition, the dollar threshold for application should be re- evaluated. It is believed that the dollar threshold could be increased from the present \$20M (EVMS required) and \$50 million (approved system required) dollars so that limited government resources can focus on the true large development programs that are the largest share of the defense department budget. A possibility would be to contract for EVMS with “no criteria” where for effort under 50 million the government and the prime contractor would have flexibility to tailor the EVMS requirements so that only the management information necessary to run the program would be contracted for, not the current “one size fits all” mentality that is in place today. Significant savings could occur by reducing non value added surveillance, oversight, and reporting if this were adopted. OSD (AT&L) should not allow an integrated baseline review (IBR) to be delayed pending completion of an EVM compliance review. The purpose of the IBR is to assure the PM that the contractor has a plan in place that addresses the full scope of the contract.
37	DFARS 252.225.7008 - .7010 Specialty Metals	Specialty Metals 10 USC 2533(b)	Delivered items shall include only specialty metals that are melted or produced in the U.S. or a qualifying country. Requires separate supply chain for Government contracts from commercial contracts.
38		FFATA Public Law 109-282 Federal Funding Accountability and Transparency Act	Contractors are required to report first-tier subcontract awards over \$25,000. This is a significant burden on contractors and there does not appear to be any benefit derived by doing this.
			Add an exemption for commercial item contracts and subcontracts. See #65.

39	Business systems clauses <ul style="list-style-type: none"><li>• DFARS 252.242-7005</li><li>• DFARS 252.215-7002</li><li>• DFARS 252.242-7004</li><li>• DFARS 252.242-7006</li><li>• DFARS 252.234-7002</li><li>• DFARS 252.244-7001</li><li>• DFARS 252.245-7003</li></ul>	Uneven application of vague substantive standards yield disproportionate, suspect determinations <ul style="list-style-type: none"><li>• Undue time &amp; expense fixing sound, reliable systems</li><li>• More process, controls, paperwork to ensure compliance</li></ul>	<ul style="list-style-type: none"><li>• Establish clear, reasonable materiality thresholds ... ensure any “significant” deficiency points to issue that renders system as a whole unreliable</li><li>• Develop outcome-based criteria to assess system acceptability (e.g., test for actual defects vs. ambiguous, theoretical system defects)</li><li>• Require that a system may only be disapproved following a “system” audit (v. proposal audit)</li><li>• Tighten criteria against which systems are determined to be acceptable (e.g., not helpful that cost estimating system may be deemed significantly deficient if it does not merely “[r]equire use of appropriate analytical methods” without further clarification)</li></ul>
40	FAR 4.703.c.3 Contractor Records Retention. Requires retention of original records for a minimum of one year in order to validate imaging systems	Government and Industry spend countless hours maintaining paper records.	Eliminate the requirement to hold records for the purpose of validating the imaging system.
41	DFARS 212.301 and 226.104, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	P.L. 107-248, Section 8021 and similar sections in subsequent DoD appropriations acts	Indian Incentive Funding is authorized on an annual basis which results in claims above the annual funding level being deferred to subsequent years--this affects the number of new agreements that contractors will pursue on an annual basis.
42	DFARS 219.71 Pilot Mentor- Protégé Program	Section 831 of FY 1991 NDAA (P.L 101-510)	The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial practices. Some areas are not as beneficial as others but, overall, the program has a significant impact to small business utilization on a number of different levels (e.g., HBCU participation). Administration of the program is costly and prohibits significant industry participation due to lack of meaningful evidence demonstrating a positive return on investment.
			(1) Ensure legislative relevance within the current environment (DoD budget cuts, etc.) to ensure progressive success of the program. (2) Pursue a legislative or regulatory proposal requiring reporting/administration or overall requirements outlining what constitutes a "return on investment." E.g., at the conclusion, mentor firm will demonstrate significant return on investment by partnering with small businesses on small business set-aside proposals for Govt customer for procurement equal to or greater than cost of agreement.
43	DFARS 219.703, Qualified nonprofit agencies for the blind and other severely disabled	10 USC 2410d (P.L. 102-396)	If these agencies have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under 41 USC 85, they are eligible to participate in the program per 10 USC 2410d and Section 9077 of P.L. 102-396 and similar sections in subsequent DoD appropriations acts. Subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal. Current DFARS regulations, DoD policy on prime contractor use of AbilityOne entities, and the AbilityOne Committee criteria are inconsistent in terms of defining a "certified" and "approved" AbilityOne entity that is eligible to be counted as a small business subcontractor under the Small Business Subcontracting Program. This results in costly and unnecessary use of contractor limited resources to validate AbilityOne entities prior to subcontract award, and rework after subcontract award.
			(1) Pursue regulatory change to conform DFARS regulation to 10 USC 2410d criteria for contractor utilization of AbilityOne entities on USG contracts. (2) Pursue legislative change to recognize AbilityOne entities as "small business concerns."



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44	DFARS PGI 216.403-1(1)(ii)(B); DFARS/PGI 215.403-1; FAR 15.403-4(b)(1) Cost or Pricing Data	10 U.S.C. 2306a and 41 U.S.C. chapter 35 Truth in Negotiations Act	Requests for Past Contracts Cost/Profit Data: Certain buying centers in the Services have recently begun levying a requirement in RFPs or during negotiations to provide several years of raw accounting records of past contracts (including Firm Fixed Price contracts excluded from FAR 52.215-2 "Audit and Records - Negotiation") at both prime and subcontract levels. In some cases these requirements include requests for ETC/EAC for incomplete contracts, and profit data, in apparent contravention of FAR 15.402(b)(2). In some cases such requests are characterized as "Data Other Than Certified Cost or Pricing Data" needed in addition to already-provided Certified COPD to establish price reasonableness, despite DFARS/PGI 215.403-1 prohibition of such practice. In some cases the request is characterized as required per "new OSD policy" or "Better Buying Power". In some cases the raw accounting data is characterized as COPD based on PGI 216.403-1(1)(ii)(B) despite the fact that it includes obsolete rates and factors, in contrast to current data already submitted for those cost elements.	Extensive time and effort is expended discussing and/or meeting such 'over and above' data submission requirements in conjunction with definitization of individual transactions. This exacerbates already costly TINA/FAR compliance interpretations, such as cited above. The PGI fosters confusion regarding the definition of cost or pricing data. Despite the intent of the 30 Aug 2010 FAR rule (and subsequent conforming DFARS changes) to clarify the definition of cost or pricing data, some confusion obviously remains. DFARS/PGI and, to a lesser extent, FAR should be reviewed to ensure consistent, minimized requirements for certified cost or pricing data, and to clarify that when certified cost or pricing data are required, the lesser alternative of "other than certified cost or pricing data" is superfluous and should not be requested. PGI should also be reviewed for proper placement of guidance -- e.g., why is an unclear 'reminder' on what constitutes cost or pricing data appended to Part 216 on proper use of FPIF contract type?
45	DFARS 252.244-7001, Contractor Purchasing System Administration DFARS 252.242.7005 FAR 44.3	Sec 893 FY2011 NDAA	DFARS Contractor Purchasing System Review (CPSR) criteria 252.244- 7001 and FAR Part 44.3 CPSR criteria include differences, overlap and/or redundancy (e.g., FAR "major weakness or sufficient information" vs. DFARS "significant deficiency"), and generally, their joint application heighten the risk of inefficient and confusing Govt/industry reviews.	Establish one comprehensive CPSR criteria and process.
46	DFARS 252.242-7005, Contractor Business Systems	Sec 893 FY2011 NDAA, as revised by Sec 816 of FY2012 NDAA	The burden or inefficiency of DFARS 252.244-7001 is further complicated by this clause which provides for a monetary withhold upon a finding of a deficiency (vs. FAR CPSR, which does not).	Establish one comprehensive CPSR criteria and process.
47	DoD Memorandum (dated 28 Nov 2012) Contractor Manpower Reporting Clause FAR 52.204-14	Memorandum: Section 8108(c) Continuing Appropriations Act 2011, P.L. 112-10; FAR: 40 USC 121(c), 10 USC 137, 51 USC 20113	Contractor Manpower Reporting subcontract data requirements are "hidden" in clauses and/or Statements of Work in lieu of more visible CDRs. Also, FAR 52.204-14 Service Contract Reporting is required for agencies other than DoD (confusing and questionable as to why they are different). The subcontractor reporting requirements significantly differ in these two controlling clauses. Also, Contractor Manpower subcontractors may enter required reporting data directly into a Govt database; Service Contract subcontractors are required to report data to the prime contractor and may not enter reporting data into a Govt database.	FAR and DFARS data reporting requirements for subcontractors should be the same. Also, clearly state that commercial items and CI subcontractors are exempt from these requirements as are architect and engineering services.
48	DFARS 252.211-7003, Item Unique Identifier and Valuation		Drives subcontractor cost in part marking and engineering drawings in some instances, beyond reason. Subcontractors find it difficult to understand and comply with this requirement.	Review and make changes for subcontractor requirements to make it easier to understand and administer; exempt commercial items.
49	DFARS 252.211-7008 Use of Government-assigned Serial Numbers		Drives cost into part making and engineering drawings; cannot comply as relates to commercial items as it is inconsistent with commercial practice.	Serial numbers are currently provided at the end item/airplane level. Recommend limiting scope to end item/ airplane level, at least for commercial items. Limit scope
50	DFARS 252.225-7012, Preference for certain domestic commodities	10 USC 2533a, Berry Amendment	In contracts over the SAT, this requires commercial items provided as either end products or components contain only textile with fibers manufactured in the US. Commercial manufacturers do not track this; and sources also change. The requirement is inconsistent with commercial practices.	This should be limited to textile end items--clothing, carpet, etc. Imposing this on use of fibers in non-textile end items (cars, airplanes, tanks, etc.) does not serve the purpose of protecting US fabric makers efficiently (in terms of quantity of fibers incorporated in these items).
51	DFARS 231.205-6 Compensation for personal services		This new regulations adds to the list of expressly unallowable costs. The type of fringe benefit cost is known to be unallowable, by making it 'expressly' unallowable industry must now unnecessarily add a new level of oversight and auditing procedures	We recommend the deletion of DFAR 231.205-6(m)(1).

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52	FAR 52.204-14 Service Contract Reporting Requirements	A new clause issued in January 2014 creates an additional manpower reporting requirement for contractors, for broad data that is of questionable value add. The definition of reportable actions goes beyond “service” contracts and includes the “service” elements of supply contracts. Contractors do not always segregate costs in a manner that permits an easy identification of these different charges, so significant analysis may be required to create a valid answer. The cost of gathering the information is far greater than government estimates, if the data is to be accurate.	Recommend this provision and its reporting requirement either be eliminated, or be applicable only to true services contracts and not extend to supply contracts or the “services element” of supply contracts. See #88, #89	
53	Audits <ul style="list-style-type: none"><li>• FAR 52.215-2</li><li>• FAR 2.215-10 thru -13</li></ul>	As carried out currently by DCAA, DCMA, Price Fighters, etc., routinely and unacceptably impedes proposal negotiation and contract awards <ul style="list-style-type: none"><li>• Time &amp; expense responding to extraordinary and at times conflicting auditor inquiries</li><li>• Unsupported Contractor Purchasing Systems Review findings and defective pricing allegations resulting from misapplication of TINA requirements on subcontractors.</li></ul>	<ul style="list-style-type: none"><li>• Eliminate or substantially reduce auditing for follow-on multi-year procurements</li><li>• Mandate risk-based auditing, sampling of material costs below TINA threshold</li><li>• Sensible materiality threshold, below which costs/price reasonableness will be assessed on a sampling basis</li><li>• Establish uniform, transparent practices for analysis of systems and data required by FAR.</li></ul>	
54	Audits	Audits are inefficient and unnecessarily difficult when undertaken years after the fact when, for example, key personnel may be unavailable and records are difficult to locate. Also, some audits never get completed, for example, accounting systems, which results in repeated contract proposal audits because there is no systemic validation. Contract closeout process is delayed for years because final indirect rates have not been negotiated going back 7-8 years. These create undue risks on funding sources for both contractor and government.	DCAA make better use of risk assessment and process improvement to eliminate time spent on low-risk situations ... streamline audit cycle. DCMA/DCAA championing an audit/contract closeout process that is set to a specific timeline for completion otherwise constructive acceptance should be considered.	
55	Dual audit of Forward Pricing Rates by DCMA and DCAA. DCMA Instruction 130 and DCAA MRD 13-PSP-019(R) both provide for audit of contractor rates.	Duplicative effort by both agencies and contractor. Also, audits may occur at different times and to different standards.	DoD to clarify responsibilities to eliminate redundant actions.	
56	DFARS subcontractor flowdown clauses and provisions <b>other</b> than for commercial items	N/A	Subcontractor flowdown clauses and provisions for noncommercial items should be subject to systemic validation that flowdown is necessary and if so, are necessary and as least burdensome as possible. Current review on a case-by-case basis when new/revised clauses are considered is inadequate to address the overall cumulative effect of potential burdens or inefficiencies.	Identify subcontractor flowdown clauses and establish a validation process for periodic systematic review. Recommend an omnibus legislative proposal to review/eliminate burdensome or inefficient subcontractor flowdown clauses from the statutory requirements and review/eliminate burdensome or inefficient subcontractor flowdown clauses that are not based on statutory requirements.
57	None Direct billing	DCAA, in order to better utilize their auditor time resources and improve productivity, in the past allowed contractors with approved accounting and billing systems the ability to directly submit invoices for payment. This permission has been rescinded, but we are unaware of any issues DCAA had with companies directly billing vs. submitting to the DCAA auditor for review and approval prior to submission.	DCAA should again grant the ability to direct bill.	



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58	50 USC App Section 2155 - Defense Production Act Industrial base surveys of defense contractors	Contractors can be required to gather a host of broad data and report back in a prescribed format, to specific questions. The government’s estimate of the time to complete these surveys – 14 hours total – is extremely unrealistic, assuming valid and accurate information is to be provided. In our experience, completing certain surveys has required hundreds of man-hours. Information required is generally not present in one location, and the data needs to be gathered by site, which often is not a logical division of how the contractor is organized or performs work and means the contractor has to provide multiple responses to one survey request. Some information required is technical, some is manufacturing related, some is financial. In a two- year period, one element of a company received about 13 such separate surveys; several needed to be completed by individual sites, and we estimate that we spent about 3000 man-hours completing them, at considerable expense. In addition, the questions are often vague and broad, the responses are of questionable value for the cost incurred to provide them, and by the time the information is gathered and analyzed it is already outdated. The data is a poor indicator of our industrial readiness posture.	Eliminate the practice of having contractors complete these detailed surveys. If the government needs the data, have government officials perform a more cost-reasonable market analysis in some other manner.
59	FAR 52.204-10 – Reporting executive compensation and first-tier subcontract awards	FFATA	All subcontract/purchase order awards greater than \$25K under a federally funded contract have to be entered by the contractor into a government database (the FFATA Subaward Reporting System, or FSRS) for transparency. However, the \$25K threshold is too low, and this requires a multitude of entries, all of which take time and cost money in labor resources, for a questionable value add. The requirement allows public transparency but does not enhance the quality of products provided to the warfighter, and it increases the expense of those products as contractors incur additional expense to comply with the reporting requirements.
60	DFARS 242.7000 and related clauses. Contractor Business Systems.	Section 893 FY 2011 NDAA as amended by Section 816 of FY 2012 NDAA Contractor Business Systems	Procedures relating to business system administration need to be reviewed and revised to state specific timeframes for actions on the government side in order to avoid imposing undue financial hardships on contractors. For example, while each contractor action/response under the clause at DFARS 252.242-7005 cites a specific number of days to reply or complete the action, timeframes for actions by the government (audit completion/Contracting Officer review/system approval decision) are unspecified. Delays can cause severe cash flow difficulties for some contractors.
61	DFARS 252.217-7028 - Over and Above Work		The current provision requires that the Government “Verify that the proposed corrective action is appropriate”. This step often requires a complete stop in all work while a Government inspector is found and able to visit the site. When done in connection with an aircraft overhaul this obligation frequently results in significant work stoppages as multiple issues can be uncovered during the overhaul process. This results in a significant delay in the contractor’s ability to deliver and an excessive cost incurrence by the Government.
62	DFARS 231.205-18 IR&D Reporting		Contractors are required to report IR&D projects over \$50,000 to a DoD website. Requires contractors to disclose proprietary information and there is no apparent benefit to contractors for doing this. Despite changes made to the reporting requirements at the request of industry, concerns about the use and distribution of the information remain.

63	FAR 52.219-9 Comprehensive Small Business Subcontracting Plan	Public Law 95-507	Partially implements PL 95-507 and, along with the instructions of the eSRS (electronic Subcontracting Reporting System), require that large business contractors report to SBA and the contracting agency utilization of small business subcontractors on contracts containing this clause. The report is due twice yearly. While we concur that the information needs to be reported, annual in lieu of twice yearly reporting would reduce the administrative cost of collecting and reporting the information (and would also reduce the time spent by government persons reviewing the information). One company's estimate is a savings of \$20,000 per year by eliminating the semi- annual submission.	Reduce reporting requirement to annual versus twice annual.
64	Contractor Manpower Reporting	10 USC 2330a	Requires an annual report to Congress reflecting an inventory of services contracting to include the direct labor hours expended by contractor services employees for the fiscal year and the associated cost. Similar to Small Business reporting, an eCMR (electronic Contractor Manpower Reporting system) has been developed to collect this information. The data reported is already available to DoD by way of contract report deliverables and invoices/cost vouchers required under those contracts. One company estimates savings of \$13,000 per year. Another company estimates the cost to comply as being between \$10,000 and \$20,000 per year.	Eliminate duplicate reporting requirement in favor of eCMR reporting.
65	DFARS 217.170 Multiyear Contracting	10 USC 2306b	Multiyear (MYP) Contracting: Significant MYP contracting savings are often foregone due to perception that price must reflect some set % savings over annual procurement.	Pursue amendment to 10 USC 2306b to define savings criteria as a set \$ amount (subject to auto-adjust for inflation) or a percentage of the transaction amount, whichever is lower -- e.g., "\$10M or 10%, whichever is lower".
66	DFARS 215.403-1(c)(4)(A)(1) TINA Waivers	Section 817 of the FY03 NDAA (Public Law (P.L.) 107-314)	TINA Waivers: DoD's authority to waive TINA is significantly curtailed compared to civilian agencies (FAR). With the added criterion that a waiver can only be granted when the product or service cannot otherwise be obtained without the waiver, essentially any contractor who can comply with TINA must do so, even when other available data at the PCO's disposal is sufficient to establish a reasonable price.	Especially in view of the buildup of the DoD Acquisition Workforce, Congress should now restore the discretion and waiver authority that DoD HCA's held before the FY03 NDAA was enacted, and that their civilian agency counterparts retain.
67	See DFARS Case 2009-D038 for extensive list of affected DFARS sections.	Section 893 of the FY11 NDAA (PL 111-383) as subsequently revised by Section 816 of the FY12 NDAA (PL 112-81)	Contractor Business Systems Rule: The heightened oversight associated with the Contractor Business Systems rule grew out of recommendations from the Commission on Wartime Contracting (CWC), in response to billions of dollars of lost/unaccounted funds in Iraq and Afghanistan. Yet Congress applied added oversight/compliance burdens to contractors and contracts where no indication of any similar problems exist, thus effectively driving up cost for all defense contractors in order to address the failings of a narrow subset of defense contractors examined by the CWC.	Ask Congress to redefine "covered contract" to address only those transactions where a demonstrated need for such added oversight burden may be warranted, namely contracts for services in Iraq and Afghanistan, rather than all CAS-covered defense contracts. See #25, #60

ATTACHMENT CODSIA Comment on Regulations that Add Unnecessary Cost to DoD Procurements				
68	FAR 15.408 Table 15-2 Cost or Pricing Data	10 USC 2306 and 41 U.S.C. 254	<p>Proposal Requirements:</p> <p>The strict adherence to FAR 15.408 Table 15-2 undermines the very foundation of the FAR pricing policy in 15.402(a)(3) which states contracting officers shall not obtain more data than is necessary. The impact of FAR 15.408 Table 15-2 spans from continual updates of prime and supplier proposals as requirements change, to the elimination of a parametric approach utilizing historical cost data as a basis for proposing future costs. The types of proposal efforts impacted range from follow-on production and spares to industrial participation offset. One example of this impact is the FAR requirement for a consolidated priced summary of all materials and services by item, source, quantity, and price at the prime and subcontractor level. This consolidation drives the requirement for obtaining additional compliant supplier proposals and preparing Cost/Price Analysis reports (CAR/PAR), which significantly increases proposal cycle time and cost.</p>	<p>Pursue a rewrite of FAR 15.408 Table 15-2 section to eliminate those specific requirements and provide language to allow contracting officers to accept historical data, projections from historical data, and other cost or pricing data as a compliant proposal format. The specific requirements of this FAR section are not a part of public law. Also review the DFARS Proposal Adequacy Checklist for conformance to any resultant changes and eliminate DCMA and DCAA proposal checklist variants.</p>
69	FAR 52.222-41 – Service Contract Act of 1965		<p>This is not an objection to the Act per se but to how acquisition offices have been applying the Act. When appropriately applied, there is significant compliance requirements and infrastructure required but at a level that is acceptable. Increasingly often, however, DoD procurement agencies are invoking the SCA in inappropriate acquisition circumstances (i.e., product and manufacturing environments and efforts being performed predominantly by professional and administrative employees) and imposing an implementation compliance cost on contractors that is not appropriate. Numerous contracting agencies are invoking the requirements of the Act and a wage determination in acquisitions for supplies, products, and manufactured items that are not consistent with the “services” definition. The SCA is being applied to acquisitions that are clearly under the Walsh Healy Public Contracts purview and/or are being performed by non-services employees appropriate for an exception (professional/administrative), but the agencies are not willing to grant the exception. Numerous spares contracts where we as the OEM are “building product” are being classified as “services” by buying commands and being made subject to the SCA.</p>	<p>The SCA should be applied only to true services contracts, to protect true service employees. The SCA is not appropriate in most (if any) production environments where the contractor is providing a product, regardless of how contracted or what stage of the product lifecycle. If the end deliverable is a product, it is not a service.</p>
70	Certs & reps concerning contractor integrity <ul style="list-style-type: none"><li>• FAR 52.209-5</li><li>• FAR 52.209-6</li><li>• FAR 52.209-7</li><li>• DFARS 252.209-7993</li><li>• Numerous other agency- specific provisions</li></ul>		<p>Management ... administrative time &amp; expense</p> <ul style="list-style-type: none"><li>• Data-gathering necessary to ensure vigilance, accuracy</li><li>• Multiple requirements, sometimes duplicative</li><li>• Deterrence for small &amp; non-traditional contractors, unaccustomed to such requirements</li></ul>	<ul style="list-style-type: none"><li>• Create simple, uniform set of certs &amp; reps that all offerors – large or small – must complete</li><li>• Clarify that certs &amp; reps required only for business unit and principals proposed to perform the work (vs. entire corporate enterprise)</li><li>• Limit certs &amp; reps only as to conduct in connection with performing federal government contracts/subcontracts</li></ul>
71	DFARS 252.227-7030 - Technical Data -- Withholding of Payment	10 USC 2320 (the amount of withhold not included in statute.)	<p>The withholding of ten percent (10%) of the contract value is overly excessive and punitive for what is or can be a minor oversight on the part of the contractor. The Government maintains sufficient avenues to ensure a contractor complies with its contractual obligations with respect to technical data including but not limited to: CPAR Reporting; FAR 52.233-1, Disputes; 52.249-8, Termination for Default; etc. The aforementioned provisions provide the Government with the ability to ensure the contractor’s performance without negatively affecting the contractor’s cash flow.</p>	<p>We recommend the deletion of this provision particularly on efforts where there is a hardware deliverable.</p> <p>Short of an overall deletion of the provision, our alternate recommendation would be to reduce the withholding to one percent (1%). This would maintain the nature of a withholding, but alleviate the punitive nature of the withholding.</p>

ATTACHMENT CODSIA Comment on Regulations that Add Unnecessary Cost to DoD Procurements				
72	FAR 15.403-1 Cost or Pricing Data – Adequate price competition Only 1 Offer	The whole objective of bidding competitively is that the gov’t will obtain the lowest pricing the first time. When a contractor submits a competitive bid, it has already put its best foot forward because it does not know who else will bid. The requiring of cost or pricing data after the fact is a cost driver that seems unnecessary. The FAR does not require the submittal of cost or pricing data but allows for it.	Remove the allowance of providing cost or pricing data when a competition has been held, regardless of how many submittals were received.	
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73	DFARS 252.215-7009 – Proposal Adequacy Checklist	The checklist itself is not the problem; the problem is that some DoD agencies and services are requiring their own versions of the checklist, adding or modifying requirements as they deem fit. This practice creates additional work for offerors who have already adjusted their proposal processes to comply with the DFARS requirement.	DoD must require its own agencies and services to comply with this DFARS provision without creating added or modified requirements.	
74	DFAR 217.7404-3 – Undefined Contract Actions	This regulation limits the time of a UCA to 180 days and provides a penalty (the stop of progress payments) if the contractor does not submit a timely qualified proposal, but it does not impose any penalty on the gov’t for failing to negotiate the action in a timely manner. In addition, the term “qualified proposal” is not defined, and the proposal can be rejected for any reason. The delay of definitization or rejection of a proposal delays the contractor’s ability to obtaining funding to 75% and changes the risk/reward position. This can become costly to administer, the contract is treated as a cost-type regardless of the intended contract type, the contractor may have to accept a lower fee than expected, and the gov’t can be put in a position of needing to consider an overrun prior to definitization.	There need to be time limits and penalties for both parties in order to be effective. There should also be a clear definition of a “qualified proposal.”	
75	FAR 52.204-10	Public Law 109-282 Federal Funding Accountability and Transparency Act	FFATA requires primes to input subcontractor data. The time required to obtain the information and enter it for every subcontractor is significant. One company estimates the annual cost to administer this a \$25,000 for the prime alone.	Recommend that the subcontract reporting requirements, be deleted in their entirety.
76	FAR 52.204-4006	Section 8108(c) of P.L. 112-10 Contractor Manpower Reporting Requirements:	This clause requires primes and subcontractors to report direct labor hours and total costs by performance location in the cmR database at the end of each government fiscal year. The effort to comply is time consuming because of the information collection requirements.	Delete the provisions in their entirety. In the alternative, exempt architect and engineering services.
77	FAR Subpart 4.17 Service Contract Inventories	Service Contract Inventories: P.L. 111-117	The information collection burden associated with this requirement for a small company could average between \$10,000 and \$20,000. In aggregate the costs saved both industry and the government when that cost is multiplied across the community of defense contractors could be significant.	This information is available to the government through other mechanisms. If that is not an acceptable path, it is recommended that architect and engineering services be exempt. Also See #72

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