

Comments on
Awarding of Government National Security Contracts
R. Terry Marlow
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It is interesting that today we are discussing the awarding of national security contracts and not just defense contracts. This is a subtle, if not subconscious, recognition that contracts impacting national security can be, and are, awarded by agencies other than the Department of Defense. Like DoD, the other agencies are required, for the most part, to comply with the same acquisition laws and regulations, including the Federal Acquisition Regulation (FAR). The FAR is a highly complex set of rules that government contracting officers follow in the award of contracts to government contractors within the industrial sector.

It is my observation that when the public becomes concerned about the integrity and performance of government contracting, most often one of two issues is at stake — either the fairness of the process or the integrity of the people working in the process. Rarely is there concern about the “mechanics” of the acquisition process — or how it actually works. The mechanics are too complicated for the general public to fully understand without extensive explanation. But when the public becomes concerned about the fairness and integrity of the acquisition process, the debate quickly becomes focused on the mechanics.

Over my career there have been numerous attempts to fix the mechanics of the process. There has been a never ending search for the “holy grail” of government acquisition — perfect cost, schedule, and technical performance at the least possible cost. Unfortunately, while in pursuit of the holy grail, the acquisition process has been tweaked and audited until almost every good or bad idea has been tried more than once. Occasionally, however, a good idea surfaces or is re-emphasized.

An example of an old idea being re-emphasized in recent years is DoD’s increased emphasis on the use of “performance-based” contracts. These are generally fixed-price contracts wherein the government buys performance or completion of a task. One of the early examples of the use of performance-based contracts was the purchase of aircraft tires by the U.S. Air Force in the 1960s.

The performance measurement was the number of landings that could be made per tire. There were no government specifications stipulating how the tires were to be manufactured. The competition to supply the tires (or number of landings) was decided on the basis of cost per landing. It is a great idea that really works.

I expect to see more use of performance-based contracts, including greater use in the acquisition of services.

Unfortunately, there has been continued pressure for cost data for performance-based contracts by the government audit community. The effect of demanding cost data is likely to be fewer contractors willing to provide goods and services to the government and higher cost to the taxpayers without a meaningful benefit. And this gets to the main point I wish to make today.

Many years ago, I was involved in a detailed study of the cost of government oversight of contractor operations. The fundamental lesson from the study was that the government adds layers of oversight and audit requirements in response to acquisition “incidents” without an adequate understanding of the cost of the oversight. The study found that in a significant number of cases the cost of oversight was higher than the potential savings.

When considering a proposed improvement to the acquisition process, the government should always consider not only the cost and benefit but also the potential for unintended negative consequences. Experts in acquisition and related government processes should be the ones conducting the analysis.

It has been interesting to watch the defense acquisition reform process operate over an extended period of several decades or more. Government has frequently retraced its steps and reversed its course. Some of this has been appropriate. However, excessive change confuses the process and the people working within it.

In 1986 the President’s Blue Ribbon Commission on Defense Management, followed by the Defense Science Board (DSB), recommended that DoD move away from the use of military specifications toward greater use of commercial items in military equipment. The commissioners and members of the DSB believed that military specifications were so difficult to keep updated that they locked old technology into military weapons and equipment while commercial technology continued to advance at a breakneck pace. Further, they were concerned the military would be unable to take advantage of the R&D investments made by commercial industry as long as DoD programs were tied to military specifications.

Spearheaded by Defense Secretary Perry in the early going, DoD has made great progress incorporating commercial items and technology into military weapons and equipment the last 15 years. FAR Part 12, Acquisition of Commercial Items, was created as a result of DoD’s leadership in this area. But there has been resistance along the way — both within the government and outside.

In recent years we’ve seen attempts to chip away at government’s progress. We’ve experienced attempts to maintain a narrow definition of “commercial item” and reinstate the requirement for certified cost and pricing data and cost accounting standards for items deemed commercial. There have also been calls for standardizing basic contract terms and conditions for FAR Part 12 contracts rather than relying on each vendor’s proposed terms. Such proposals will, if implemented, lead to more restrictions on the use

of commercial products and services and commercial contractors until the intent of the original reform is negated.

I've often asked myself how it is that we can bring together some of the brightest minds in the field of government contracting, have them make recommendations for improving the process, implement the recommendations and — before the ink is dry on the new legislation or regulations — the process of thwarting the original reforms begins.

I've concluded this phenomenon occurs because we often allow critics to force the bureaucracy into a debate that leads to sub-optimization.

Keep in mind, almost no reform is perfect. Therefore, whenever a proposed new reform is debated, both positive and negative aspects of the reform are considered. In the end, if the reform is implemented, it is because the net effect of the positive and negative aspects is determined to be positive.

It is at this point that much of the undoing begins. The critics arrive on the scene and begin picking at the negative aspects of the reform. They focus the debate on a particular negative aspect that was considered in the initial debate of the reform. But that fact gets lost along the way. Often, the people involved in the original debate are gone and unavailable to set the record straight. And, thus, the process of sub-optimization gets underway.

I urge anyone who looks at the current acquisition process with an eye toward reform to consider whether or not what they propose could result in sub-optimization and a weakening of other parts of the process.

About once every 20 years over the last 60 years, the defense acquisition process has undergone a major examination by senior-level, nationally recognized independent experts. The last examination was by the President's Blue Ribbon Commission on Defense Management — appointed by President Reagan in 1985 and led by Chairman David Packard. As pointed out earlier, we are seeing signs that Packard Commission-inspired reforms, such as use of commercial products in military systems, have begun to fall prey to other interests. This indicates to me that another major examination of the process is coming due.

DoD has recognized the need for a review of its acquisition process and conducted its own review in 2005 — the Defense Acquisition Performance Assessment Panel (DAPA). The panel's final report, which was released to the public on January 31, 2006, focused on an integrated assessment of three inter-related processes that make up the larger comprehensive defense acquisition process — budget, acquisition, and requirements. Each of the three processes must operate together in a highly complex mechanism to produce the military equipment and services necessary to defend the nation, according to the report.

The findings and recommendations of the DAPA Panel are directed at making improvements in six major areas: 1) organization, 2) workforce, 3) budget, 4) the requirements process, 5) operational testing, and 6) the acquisition process. The panel did an excellent job and was very creative in its recommendations.

Their most important recommendation, in my opinion, is the call for a stable program funding account. While similar ideas have been explored in the past and rejected, this is an idea whose time has arrived. It has long been understood that the habitual changes in the budget for acquisition programs are major cost drivers. It remains the single, most costly problem left in the acquisition process.

I believe we are likely to see steps taken to reduce budget instability and create some form of management reserve, such as the DAPA proposal for a “stable program funding account.” The sooner action is taken in this regard, the better.

The other DAPA recommendation that towers above the rest, in terms of importance, is the call for rebuilding and valuing the acquisition workforce as well as stabilizing its leadership. The nation is blessed with many outstanding career civilian and military personnel serving in the government. However, we are at a point in history where the government acquisition workforce is in jeopardy of becoming ill-equipped to handle the increasingly complex procedures involved in the acquisition of goods and services. Part of the reason for this is an aging workforce of experienced, talented people and their impending exodus to retirement. Beyond this, it appears that many of the new generation of bright, young people entering the workforce might be receiving inadequate training and experience.

It is extremely important that the best and brightest of the next generation of acquisition personnel be identified early and be given special training and work experience to prepare them to take over leadership positions when their time comes. Further, they must be adequately compensated for their government service so that they are not tempted to leave for higher paying jobs in the private sector.

Imbedded in the workforce concern is the difficulty the government has in recruiting the talent necessary to properly lead the acquisition workforce. The process that has evolved for filling political appointments in DoD — and the executive branch more generally — is broken and has been for some time. It deters those who could bring great skills and talents to public service.

For those who are not scared away, the process is unacceptably long and uncertain. While each step in the process might add some marginal value, the overall result is unworkable, as reflected in the 25 percent vacancy rate for presidentially-appointed and senate-confirmed positions that existed at DoD in August 2005. Other barriers to public service add to the recruiting difficulty — burdensome financial reporting requirements, significant pay differentials between the public and private sectors, and post-government employment restrictions.

The difficulty in recruiting political appointees is becoming acute. *I expect that Congress will address the barriers to public service in the next few months with the intent of making public service more attractive.*

Changes that need congressional attention include 1) simplifying the appointment and confirmation process, 2) adjusting financial reporting requirements, 3) providing appointees with signing bonuses to offset the cost of transitioning to government service, and 4) updating post-employment restrictions for those completing government service.

In concluding my remarks, I will briefly discuss the Acquisition Advisory Panel, also known as the Section 1423 Panel, which evolved from the Services Acquisition Reform Act in the fiscal 2004 Defense Authorization Act. Congress mandated that the panel review federal contracting laws, regulations, and policies. The panel's six working groups have been examining ways to improve:

- Use of commercial practices in acquiring services.
- Performance-based contracting.
- Use of interagency and government-wide contracts.
- Small business federal contracting opportunities.
- The federal acquisition workforce and professional development concerns.
- Identification and treatment of inherently governmental functions and activities.

The panel members' final report is due in August 2006, but many of their thoughts have been published on their Web site as they have proceeded with their work.

The panel has many excellent proposals under consideration. One of the more controversial issues is the government's use of commercial practices in acquiring services. The panel weighed whether or not a service with an as-yet-to-be-determined price in the marketplace should be considered a commercial service when it meets all the criteria as set forth in FAR Part 2.101.

Industry maintains that the determination of commerciality must be kept separate from the determination of price fairness and reasonableness and has pointed out that if a service offered by a non-defense commercial firm is deemed to be non-commercial, the service might not be accessible by the government.

Whatever the outcome of the panel's deliberations on this issue, the importance of government access to commercial services must be part of the consideration.

In summary, we are seeing the beginning of a new round of examination of the government's acquisition processes and procedures. We seem to be off to a good start with thoughtful examinations by both the Defense Acquisition Performance Assessment Panel and the Acquisition Advisory Panel. Both panels are timely and likely to result in important improvements.