

Panel on Contracting Integrity

2007 Report to Congress



Department of Defense
Office of the Under Secretary of Defense
Acquisition, Technology, and Logistics (AT&L)

Executive Summary

Why We Submitted This Report

Section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 directed the Department of Defense (DoD) to convene a panel of senior leaders representing a cross section of the Department for the purpose of conducting a Department-wide review of progress made by DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur. As part of the review, section 813 required the Panel to review the Government Accountability Office (GAO) report, "Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste and Abuse" (GAO-06-838R). Section 813 further required the Panel to recommend changes in law, regulations, and policy that it determines necessary to eliminate the areas of vulnerability, and to provide an annual report to the congressional defense committees on its activities not later than December 31 each year. This is the Panel's first annual report to Congress outlining the structure, process, and initial findings and recommendations of the Panel to enhance contracting integrity across DoD.

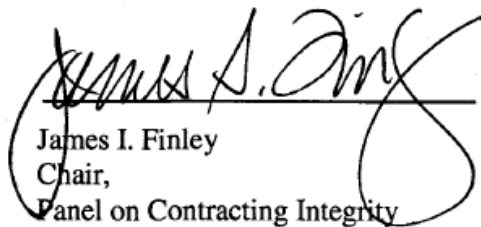
What We Have Accomplished

The Panel established ten subcommittees to support the review of contracting integrity issues: Current Structure of Contracting Integrity; Sustained Senior Leadership; Capable Contracting Workforce; Adequate Pricing; Appropriate Contracting Approaches and Techniques; Sufficient Contract Surveillance; Contracting Integrity in a Combat/Contingent Environment; Procurement Fraud Indicators; Contractor Employee Conflicts of Interest; and Recommendations for Change. Each subcommittee completed a formal report documenting the review of their designated focus areas and presented recommendations to enhance contracting integrity. The Panel plans to meet quarterly. A rolling assessment and tasking process will facilitate efficient and effective implementation and ensure currency and relevance of subsequent actions.

What We Recommend: Initial Actions in 2008

The Panel identified 21 initial actions in 2008 in the following focus areas:

- Reinforce functional independence of contracting personnel and promptly fill contracting leadership positions with qualified leaders of integrity who expect and enforce ethical behavior
- Determine appropriate size of the contracting workforce and ensure that it has the appropriate skills to effectively and efficiently price, award and manage more than \$300 billion in annual contracts
- Develop a DoD-wide consistent contract policy execution review plan, strengthen contracting approaches, and re-invigorate contract surveillance techniques
- Improve planning and training for contracting in combat/contingent environments


James I. Finley
Chair,
Panel on Contracting Integrity

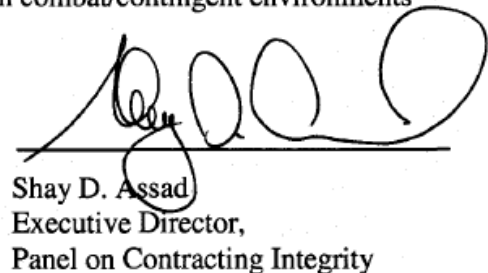

Shay D. Assad
Executive Director,
Panel on Contracting Integrity



TABLE OF CONTENTS

SECTION I. DEPARTMENT OF DEFENSE PANEL ON CONTRACTING INTEGRITY..... 3

A. PURPOSE.....3

B. BACKGROUND.....3

C. PANEL STRUCTURE.....5

 GOALS AND OBJECTIVES.....5

 PANEL ORGANIZATION.....5

 APPOINTMENT OF CHAIR AND EXECUTIVE DIRECTOR.....5

 IDENTIFICATION OF PANEL ROLE.....5

 PANEL MEMBERSHIP.....5

 PANEL SUBCOMMITTEES.....8

 PANEL MEETINGS.....9

 PANEL CONTINUITY.....10

D. DEPARTMENT OF DEFENSE ACTIVITIES.....10

 MAY 2007 OFFSITE.....10

 COMMISSION ON ARMY ACQUISITION AND PROGRAM MANAGEMENT IN
 EXPEDITIONARY OPERATIONS.....10

 COMPETENCY ASSESSMENT ETHICS AND INTEGRITY AWARENESS ELEMENT.....10

 PROCUREMENT FRAUD WORKING GROUP.....11

 COORDINATION WITH OTHER FEDERAL ORGANIZATIONS.....11

 ETHICS REGULATIONS AND POLICY TRAINING.....11

 DECEMBER 2007 OFFSITE.....12

E. NEXT STEPS – TAKE ACTION.....12

 PANEL WAY AHEAD IN 2008.....12

 QUESTIONS.....12

SECTION II: SUBCOMMITTEE ANALYSES AND RECOMMENDATIONS FOR ACTION..... 13

A. SUBCOMMITTEE STRUCTURE.....13

 SUBCOMMITTEE CHAIRS AND MEMBERSHIP.....13

B. SUBCOMMITTEE PROCESS.....15

 SUBCOMMITTEE RESEARCH, ANALYSIS AND RECOMMENDATIONS.....15

C. SUMMARY OF SUBCOMMITTEE FINDINGS AND RECOMMENDATIONS.....17

 1. CURRENT STRUCTURE OF CONTRACTING INTEGRITY.....17

 2. SUSTAINED SENIOR LEADERSHIP.....18

 3. CAPABLE CONTRACTING WORKFORCE.....27

 4. ADEQUATE PRICING.....28

 5. APPROPRIATE CONTRACTING APPROACHES AND TECHNIQUES.....29

 6. SUFFICIENT CONTRACT SURVEILLANCE.....30

 7. CONTRACTING INTEGRITY IN A COMBAT/CONTINGENT ENVIRONMENT.....31



8. PROCUREMENT FRAUD INDICATORS.....32
9. CONTRACTOR EMPLOYEE CONFLICTS OF INTEREST.....32
10. RECOMMENDATIONS FOR CHANGE.....32
 a. ANALYSIS OF RECOMMENDATIONS.....33
 b. ADDITIONAL RECOMMENDATIONS.....36

SECTION III. APPENDICES

APPENDIX A: SUBCOMMITTEE REPORTS.....37
 1. CURRENT STRUCTURE OF CONTRACTING INTEGRITY.....38
 2. SUSTAINED SENIOR LEADERSHIP.....40
 3. CAPABLE CONTRACTING WORKFORCE51
 4. ADEQUATE PRICING SUBCOMMITTEE.....61
 5. APPROPRIATE CONTRACTING APPROACHES AND TECHNIQUES.....72
 6. SUFFICIENT CONTRACT SURVEILLANCE SUBCOMMITTEE.....87
 7. CONTRACTING INTEGRITY IN AN COMBAT/CONTINGENCY ENVIRONMENT.....95
 8. PROCUREMENT FRAUD INDICATORS SUBCOMMITTEE.....100
 9. CONTRACTOR EMPLOYEE CONFLICTS OF INTEREST SUBCOMMITTEE.....103
 10. RECOMMENDATIONS FOR CHANGE SUBCOMMITTEE.....104

APPENDIX B: USD(AT&L) MEMORANDUM DATED FEBRUARY 16, 2007.....1-3

APPENDIX C: GAO-06-838R DoD CONTRACTING.....1-25

APPENDIX D: COMPARISON OF RECOMMENDATIONS.....1-8

TABLE OF FIGURES

FIGURE 1 JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR
2007, PUBLIC LAW 109-364, SECTION 813.....4

FIGURE 2 PANEL ON CONTRACTING INTEGRITY MEMBERSHIP.....6

FIGURE 3 PANEL ON CONTRACTING INTEGRITY ORGANIZATION.....8

FIGURE 4 SCHEDULE OF PANEL ON CONTRACTING INTEGRITY MEETINGS AND EVENTS IN 2007.....9

FIGURE 5 SUBCOMMITTEE STRUCTURE REPRESENTS A CROSS-SECTION OF DoD.....14

FIGURE 6 21 INITIAL ACTIONS FOR IMPLEMENTATION IN 2008.....16

FIGURE 7 SENIOR LEADERSHIP POSITIONS IN CONTRACTING.....19

FIGURE 8 ANALYSIS OF INITIAL ACTIONS FOR IMPLEMENTATION IN 2008.....33



Section I. Department of Defense Panel on Contracting Integrity

A. Purpose

Section 813 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year 2007, Public Law 109-364, (“section 813”) directed the Department of Defense (DoD) to establish a Panel on Contracting Integrity (“the Panel”). The panel consists of senior leaders representing a cross section of the Department for the purpose of conducting a Department-wide review of progress made by DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur. Figure 1 provides the full text of section 813. As part of the review, section 813 required the Panel to review the Government Accountability Office (GAO) report, “Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste and Abuse” (GAO-06-838R). Section 813 further required the Panel to recommend changes in law, regulations, and policy that it determines necessary to eliminate the areas of vulnerability, and to provide an annual report to the congressional defense committees on its activities not later than December 31 each year. This document is the Panel’s first annual report to Congress outlining the Panel structure, process, and initial findings and recommendations to enhance contracting integrity across DoD.

B. Background

In recent years, DoD has increasingly relied on goods and services provided by the private sector under contract. Since Fiscal Year 2000, DoD’s contracting for goods and services has nearly doubled, and this trend is expected to continue. In Fiscal Year 2006 alone, DoD obligated nearly \$295 billion on contracts for goods and services. Given the magnitude of the dollar amounts involved, it is essential that DoD acquisitions are handled in an efficient, effective, and accountable manner. In other words, DoD needs to ensure that it buys the right things, the right way, at the right time.

The National Defense Authorization Act for Fiscal Year 2006 required the GAO to review DoD’s efforts to identify and assess the vulnerability of its contracting system to fraud, waste, and abuse. GAO reviewed the areas of vulnerability in the defense contracting system that allow fraud, waste, and abuse to occur. In addition, GAO reviewed recent initiatives that DoD has taken to address these vulnerabilities, including actions DoD has taken in response to the Report of the Defense Science Board (DSB) Task Force on “Management Oversight in Acquisition Organizations,” dated March 2005.

On February 16, 2007, the Under Secretary of Defense (Acquisition, Technology & Logistics)(USD(AT&L)) initiated implementation of the requirements of section 813 by (1) establishing the Panel, (2) designating the Deputy Under Secretary of Defense (Acquisition & Technology)(DUSD(A&T)) as the Panel Chairman, and (3) designating the Director, Defense Procurement and Acquisition Policy (DPAP), as the Panel Executive Director. This level of organizational management and oversight provided immediate visibility and leadership focus on the issue of contracting integrity and on the key areas of vulnerability to waste, fraud and abuse.



Section 813

ESTABLISHMENT OF PANEL ON CONTRACTING INTEGRITY.

(a) Establishment-

(1) IN GENERAL- The Secretary of Defense shall establish a panel to be known as the 'Panel on Contracting Integrity'.

(2) COMPOSITION- The panel shall be composed of the following:

(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the panel.

(B) A representative of the service acquisition executive of each military department.

(C) A representative of the Inspector General of the Department of Defense.

(D) A representative of the Inspector General of each military department.

(E) A representative of each Defense Agency involved with contracting, as determined appropriate by the Secretary of Defense.

(F) Such other representatives as may be determined appropriate by the Secretary of Defense.

(b) Duties- In addition to other matters assigned to it by the Secretary of Defense, the panel shall—

(1) conduct reviews of progress made by the Department of Defense to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur;

(2) review the report by the Comptroller General required by section 841 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3389), relating to areas of vulnerability of Department of Defense contracts to fraud, waste, and abuse; and

(3) recommend changes in law, regulations, and policy that it determines necessary to eliminate such areas of vulnerability.

(c) Meetings- The panel shall meet as determined necessary by the Secretary of Defense but not less often than once every six months.

(d) Report-

(1) REQUIREMENT- The panel shall prepare and submit to the Secretary of Defense and the congressional defense committees an annual report on its activities. The report shall be submitted not later than December 31 of each year and contain a summary of the panel's findings and recommendations for the year covered by the report.

(2) FIRST REPORT- The first report under this subsection shall be submitted not later than December 31, 2007, and shall contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting.

(3) INTERIM REPORTS- The panel may submit such interim reports to the congressional defense committees as the Secretary of Defense considers appropriate.

(e) Termination- The panel shall terminate on December 31, 2009.

Figure 1. John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, section 813.



C. Panel Structure

Goals and Objectives

The primary goals and objectives of the Panel are to identify actions to eliminate vulnerabilities of the defense contracting system that allow fraud, waste and abuse to occur. The Panel leveraged the research and recommendations from several sources to focus the subcommittees' goals and objectives. The primary sources were the GAO report referenced in section 813: "Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste, and Abuse" (GAO-06-838R), dated July 7, 2006, and the recommendations of the Report of the Defense Science Board Task Force on "Management Oversight in Acquisition Organizations," dated March 2005, found on pages 22-24 of GAO-06-838R. Appendix B provides a copy of GAO-06-838R. The Panel also reviewed Department of Defense Inspector General (DoDIG) findings and the recommendations of the Procurement Fraud Working Group (PFWG). This body of research enabled the Panel to focus quickly on core issues. The Panel established ten subcommittees to perform the analyses and develop the recommendations required by section 813. The Panel identified a specific subcommittee to address each of the focus areas identified by section 813 and GAO-06-838R, and established subcommittees to analyze additional emerging contracting integrity issues and recommend corrective actions. Appendix B provides a comparison of the requirements of section 813; the Defense Science Board recommendations; the GAO focus areas; and the Panel's 21 initial actions for implementation in 2008.

Panel Organization

Appointment of Chair and Executive Director

USD(AT&L) implemented section 813 by establishing the Panel, designating the DUSD(A&T) as the Panel Chairman and the Director, DPAP, as the Panel Executive Director. Appendix B provides a copy of the USD(AT&L) memorandum, "Panel on Contracting Integrity," dated February 16, 2007.

Identification of Panel Role

In the memorandum dated February 16, 2007, USD(AT&L) identified the role of the Panel as a formal body to take a holistic view of all ongoing efforts and initiatives to improve performance in each of the identified areas of weakness. Appendix B provides a copy of the memorandum.

Panel Membership

The Panel Chairman and Executive Director implemented the section 813 requirement for the broadest DoD-wide participation by identifying Panel members from organizations representing all key facets of the defense contracting system. Figure 2 identifies the Panel members and the DoD organizations they represent.



Panel on Contracting Integrity Membership












	Position	Organization
	Panel Chairman/ Deputy Under Secretary of Defense (Acquisition and Technology)	Office of the Under Secretary of Defense (Acquisition, Technology & Logistics) (OUSD(AT&L))
	Executive Director/ Director, Defense Procurement and Acquisition Policy (DPAP)	OUSD(AT&L)
	Deputy Assistant Secretary of the Army (Policy & Procurement) (DASA(P&P))	Department of the Army
	Deputy Assistant Secretary of the Navy, (Acquisition & Logistics Management) (DASN(A&LM))	Department of the Navy
	Chief of Staff , DASN(A&LM)	Department of the Navy
	Deputy Assistant Secretary of the Air Force (Contracting)	Department of the Air Force
	Director	Defense Contract Audit Agency (DCAA)
	Director, Human Capital Initiatives	OUSD(AT&L)
	Component Acquisition Executive	Defense Logistics Agency (DLA)
	Deputy General Counsel (Acquisition & Logistics)	DoD Office of the General Counsel
	Deputy Director, DPAP/Program Acquisition and Contingency Contracting (PACC)	OUSD(AT&L)
	Acquisition Executive	US Special Operations Command (USSOCOM)

Figure 2. Panel on Contracting Integrity Membership (page 1 of 2)



Panel on Contracting Integrity Membership, continued

	Position	Organization
	Deputy General Counsel	Department of the Air Force
	Director of Contracting	Missile Defense Agency (MDA)
	Assistant General Counsel (Acquisition Integrity)	Department of the Navy Office of the General Counsel
	Director	Defense Contract Management Agency (DCMA)
	General Counsel	DCMA
	Assistant Inspector General (Acquisition and Contract Management)	DoD Office of the Inspector General Representatives from: Department of the Army IG Department of the Navy IG Department of the Air Force IG
	Chief of Staff	Department of Defense Advanced Research Projects Agency (DARPA)
	Deputy Director, Acquisitions & Contracts	National Geospatial Intelligence Agency (NGA)
	Chief of Procurement	Department of Defense Education Activity (DoDEA)
	Director, Acquisition	US Transportation Command (USTRANSCOM)
	Deputy Senior Acquisition Executive	National Security Agency (NSA)
	Director for Procurement	Defense Information Systems Agency (DISA)
	Chief, Health Planning Operations	Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Agency (TMA)

Figure 2. Panel on Contracting Integrity Membership (page 2 of 2)



Panel Subcommittees

The Executive Director asked Panel members to assume responsibilities as subcommittee chairs, therefore the subcommittee chairs reflect the same broad scope of DoD organizational participation as does the Panel membership. Figure 3 depicts the ten Panel subcommittees and the organizations represented by the Subcommittee Chairs.

Two subcommittees focus on topics identified in section 813:

- Current Structure of Contracting Integrity
- Recommendations for Change

Five additional subcommittees focus on five key areas of vulnerability identified by GAO in GAO-06-838R:

- Sustained Senior Leadership
- Capable Contracting Workforce
- Adequate Pricing
- Appropriate Contracting Approaches and Techniques
- Sufficient Contract Surveillance

The Panel has added three subcommittees to address emerging contracting integrity issues:

- Contracting Integrity in a Combat/Contingent Environment
- Procurement Fraud Indicators
- Contractor Employee Conflicts of Interest



Figure 3. Panel on Contracting Integrity Organization



Panel Meetings

Panel meetings serve as a forum for leaders in the defense contracting system to align efforts and share successes, experiences, and lessons learned. The Panel includes leaders from areas critical to defense contracting such as the Office of General Counsel and the DoD Inspector General (DoDIG). Panel membership includes representatives from each Military Department (Army, Navy, Air Force); combatant commands key to contracting such as US Special Operations Command (USSOCOM) and US Transportation Command (USTRANSCOM); the Defense Logistics Agency (DLA), Defense Contract Audit Agency (DCAA), and Defense Contract Management Agency (DCMA).

Section 813 requires Panel meetings not less than every six months. Figure 4 depicts the five meetings and events that occurred in 2007 and the purpose of each. The Panel will meet at least quarterly during 2008 to manage implementation of the initial actions and to maintain DoD leadership commitment and involvement.

Panel on Contracting Integrity: Meetings and Events in 2007

Date	Purpose
February 16, 2007	USD(AT&L) Appoints Panel Chair and Panel Executive Director
May 3, 2007	Review and approve Service Acquisition Executive (SAE) nominees for Panel membership
June 4, 2007	USD(A&T) designates Panel members
June 13, 2007	Panel Meeting: <ul style="list-style-type: none"> • Organize Panel and subcommittees; • Review GAO-06-838R and Defense Science Board recommendations; • Review DoD progress to eliminate defense contracting vulnerabilities.
August 15, 2007	Panel Meeting: Review subcommittee findings and establish working groups to focus on areas of vulnerability.
October 11, 2007	Panel Meeting: Review subcommittee recommendations.
November 1, 2007	Panel Meeting: <ul style="list-style-type: none"> • Review draft report; • Identify 21 initial actions for implementation in 2008.
December 10, 2007	Panel Meeting: <ul style="list-style-type: none"> • Review coordinated report for signature; • Develop plan forward for 21 initial actions for implementation in 2008.

Figure 4. Schedule of Panel on Contracting Integrity Meetings and Events in 2007



Panel Continuity

Section 813 provides a Panel sunset date of December 31, 2009. However, as a matter of policy, the Department plans to continue operation of the Panel as warranted to provide a framework for Department-wide senior leadership oversight for the crucial elements of contracting integrity and ethics in the defense contracting system.

D. Department of Defense Activities

May 2007 Offsite

On May 10, 2007, the Panel Executive Director conducted an offsite for senior leaders of the contracting community. One focus of the offsite was a discussion to highlight current issues relating to ethics in contracting and to ensure that leadership of the DoD Contracting Community was fully aware, supportive of, and engaged in the activities of the Panel on Contracting Integrity.

Commission on Army Acquisition and Program Management in Expeditionary Operations

The Commission on Army Acquisition and Program Management in Expeditionary Operations issued its report "Urgent Reform Required: Army Expeditionary Contracting" (Gansler Report) on October 31, 2007. The report made recommendations in four broad areas:

- 1) Increase the stature, quantity and career development of the Army's contracting personnel,
- 2) Restructure organization and restore responsibility to facilitate contracting and contract management,
- 3) Provide training and tools for overall contracting activities in expeditionary operations, and
- 4) Obtain legislative, regulatory and policy assistance to enable contracting effectiveness.

The Office of the Secretary of Defense and the Army have established task forces to review and act on the Gansler report recommendations. Additionally, the Panel on Contracting Integrity is reviewing the Gansler Report to readdress the subcommittee findings to determine whether new recommendations need to be made or current recommendations need to be modified.

Competency Assessment Ethics and Integrity Awareness Element

The entire DoD Contracting Workforce will take a Competency Assessment during 2007 and 2008. The Competency Assessment for the DoD-wide Contracting Workforce includes an ethics and integrity awareness element. The purpose of including this element is to ensure that the entire Contracting Workforce is aware of pertinent regulations and requirements as well as resources, tools and advisors that are available to ensure contracting integrity.



Procurement Fraud Working Group

The Department established the DoD-wide Procurement Fraud Working Group in January 2005. Providing a forum for acquisition professionals to address contracting vulnerabilities to fraud, the Working Group has conducted annual conferences since March of 2005. These conferences provide an opportunity for sharing of best practices among acquisition professionals, and include expert presentations and group discussions, all seeking to provide practical solutions to contract integrity problems encountered in the field. Membership and attendance includes DoD and Department of Justice (DoJ) attorneys, investigators and auditors. The Working Group's steering group meets monthly. Steering Committee members are also members of various committees of DoJ's National Procurement Fraud Task Force and provide a liaison between the two groups to ensure the consideration of DoD interests. The Chairperson is a member of the National Committee. The Working Group has sought in the past to gain acquisition personnel involvement in the annual conference and has the current goal of expanding this effort to obtain broader participation. The Panel on Contracting Integrity will ensure greater participation from the contracting community.

Coordination with Other Federal Organizations

DoD works closely with the National Procurement Fraud Task Force, under the leadership of DoJ, to identify and stop Procurement Fraud, most recently in Iraq and Afghanistan. DoD representatives participate in the Task Force meetings and exchanges of information.

The Department will continue to work with the Office of Federal Procurement Policy (OFPP) to recommend changes to laws, regulations, and policy that would serve to clarify or strengthen issues identified through the work of the Panel on Contracting Integrity.

Ethics Regulations and Policy Training

The Department has initiated several changes to the Federal Acquisition Regulation (FAR) to update the acquisition regulations pertaining to ethics in contracting. The Defense Acquisition Regulations (DAR) Council, in concert with Civilian Agency Acquisition Council, proposed an amendment to the FAR to address a Contractor Code of Ethics and Business Conduct and a requirement for contractors and their subcontractors participating in contracts over a certain dollar threshold to post an Office of the Inspector General Fraud Hotline poster. The Councils published a proposed rule in February to obtain public comments, and subsequently published a final rule on November 22, 2007, with an effective date of December 4, 2007.

In addition, the DAR Council initiated a proposed FAR revision to require contractors to establish and maintain internal controls to detect and prevent fraud in their contracts, and to notify the Office of the Inspector General and contracting officers immediately whenever they become aware of contract fraud. The FAR Council published a proposed rule under Case Number 2007-006 on November 14, 2007, with public comments due by January 14, 2008.

The DoD Standards of Conduct Office updates the mandatory annual ethics training yearly to ensure that it is always current and relevant. The latest revisions, issued August 24, 2007, modify the curriculum to focus beyond a rote understanding of the law, regulations, and policy so that the updated version now contains presentations by the Office of General Counsel and interactive decision-making exercises. The Department also provides on-line the "Employee's Guide to the Standards of Conduct."



December 2007 Offsite

The Panel Executive Director conducted a second offsite for senior leaders in the contracting community in December 2007. He provided a review of the Panel's progress, subcommittee findings and recommendations, and the initial actions for 2008 to ensure DoD contracting leadership awareness and support, and to facilitate sharing of best practices. In addition, the USD(A&T) visited the offsite to share with the participants the importance of the Panel to senior DoD leadership.

E. Next Steps – Take Action

Panel Way Ahead in 2008

Based on the subcommittee recommendations, the Panel identified 21 initial actions for implementation in 2008. The Panel will employ a rolling assessment and tasking process, quarterly or upon action completion, to manage the efficient implementation of all subcommittee recommendations and/or identify new recommendations if warranted. This process will provide for continuous improvement in efficiently and effectively addressing areas of vulnerability in the defense contracting system that allow fraud, waste, and abuse to occur.

Questions

Direct any questions regarding this report to the Director, Defense Procurement and Acquisition Policy, point of contact, Ms. Linda Neilson (linda.neilson@osd.mil) or 703-697-8334.



Section II: Subcommittee Analyses and Recommendations for Action

A. Subcommittee Structure

Subcommittee Chairs and Membership.

The Panel Executive Director selected Subcommittee Chairs based on their expertise with the subcommittee's focus area. The chairs of the subcommittees are leaders in the organizations that represent the many facets of the defense contracting system, as are many of the subcommittee members. Their participation on the Panel provides a unique opportunity to demonstrate leadership commitment to the principles of integrity and ethics in contracting. Furthermore, they are poised to provide insights and lessons learned, share best practices, and recommend improvements in the defense contracting system to eliminate vulnerabilities that allow fraud, waste and abuse to occur. The subcommittees' commitment is key to the Department's success in achieving sustainable change in the critical area of contracting integrity.

Subcommittee membership also reflects a cross-section of DoD. The subcommittees reached out across the Military Departments and Defense Agencies to additional DoD organizations such as the DoDIG, DCAA and the Office of General Counsel, to staff focused working groups.

The Panel Executive Director provided management oversight and support during 2007 and worked with the subcommittees to provide resources and information to support their research and analysis. The Director identified senior staff members to advise and support each subcommittee. The Director's staff conducted weekly conference calls with the working group chairs to provide a consistent focus and a forum for sharing information, asking questions, and efficiently addressing any issues or concerns that may arise.

Figure 5 provides a list of the Panel Subcommittees and identifies the Subcommittee Chairs and the DoD organizations they represent.



Panel on Contracting Integrity: Subcommittees and Chairs

	Subcommittee	Chair
	1. Current Structure of Contracting Integrity	Component Acquisition Executive, Defense Logistics Agency
	2. Sustained Senior Leadership	Deputy Assistant Secretary of the Army (Policy & Procurement)
	3. Capable Contracting Workforce	Director, Human Capital Initiatives, OUSD(AT&L)
	4. Adequate Pricing	Director, Defense Contract Audit Agency
	5. Appropriate Contracting Approaches and Techniques	Deputy Assistant Secretary of the Air Force (Contracting)
	6. Sufficient Contract Surveillance	Chief of Staff, Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)
	7. Contracting Integrity in a Combat/Contingent Environment	Co-Chairs: Panel Executive Director and Deputy Director, DPAP/ Program Acquisition and Contingency Contracting
	8. Procurement Fraud Indicators	Assistant Inspector General, Acquisition and Contract Management, DoD Inspector General
	9. Contractor Employee Conflicts of Interest	Director, Defense Contract Management Agency
	10. Recommendations for Change	Deputy General Counsel (Acquisition & Logistics), DoD Office of the General Counsel

Figure 5. Subcommittee Structure Represents a Cross-Section of DoD



B. Subcommittee Process

Subcommittee Research, Analysis and Recommendations

In response to Panel direction, each subcommittee developed a formal report documenting the review of contracting integrity and ethics issues performed in their assigned focus areas; DoD progress to date in dealing with these issues; and recommendations for corrective actions.

The subcommittees formed supporting working groups of individuals with expertise in specific subject areas. The working groups met regularly to exchange research, share best practices, and discuss options and potential solutions.

In addition, the working groups –

- researched relevant studies and lessons learned,
- methodically reviewed prior studies and reports regarding their subject areas,
- interviewed experts in the field,
- developed a full range of options and recommendations for each area of contracting vulnerability noted in GAO-06-838R,
- performed feasibility assessments based on their expertise, and
- provided recommendations to the subcommittee members.

The subcommittee members focused on sharpening the focus of the recommendations and assessing their feasibility. Finally, they drafted formal reports describing the subcommittee's findings and recommendations for changes to law, regulations or policy necessary to eliminate the specific areas of vulnerability to fraud, waste and abuse they studied.

The individual subcommittee reports are located in Appendix A. This section of the report provides a summary of each subcommittee's analysis and recommendations.

The subcommittees used the Director's weekly conference calls to conduct work on the findings and recommendations; prepare their principals for robust discussions during Panel meetings; and to participate in the process of preparing the Report to Congress.

The Panel members reviewed the Subcommittee recommendations and identified 21 initial actions for 2008. The Panel will employ a rolling assessment and tasking process, quarterly or upon action completion, to manage the efficient implementation of all subcommittee recommendations and/or identify new recommendations if warranted.

Figure 6 provides the 21 recommendations identified by the Panel for initial action in 2008. A summary of each subcommittee's analysis and recommendations follows.



Panel on Contracting Integrity: 21 Initial Actions for Implementation in 2008

<p>1. Current Structure of Contracting Integrity Chair: Component Acquisition Executive, Defense Logistics Agency</p>
<ul style="list-style-type: none"> • DPAP to reinforce the reporting and evaluation requirements in DoD Instruction 5000.66. • CAEs/SPEs self-certify compliance with the reporting and evaluation requirements of DoDI 5000.66, identifying any exceptions, every two years. • CAEs/SPEs self-certify, every two years to DPAP, compliance with DFARS 203.170 separation of duties.
<p>2. Sustained Senior Leadership Chair: Deputy Assistant Secretary of the Army (Policy & Procurement)</p>
<ul style="list-style-type: none"> • Develop metrics for Senior Leadership Positions in Contracting for application DoD-wide. OUSD issue policy memorandum to require DoD components to monitor and report these positions on a semi-annual basis to preclude allowing long-term “acting” leaders in senior leadership positions in Contracting. Using the metrics, OUSD should develop succession lists for temporary “acting” filling of positions; to monitor projected vacancies & initiate selection and nomination processes before vacancies occur. • Performance plans for all senior leaders in the Department, whether under a SES Pay for Performance System or NSPS, specifically include an integrity or ethics objective. • Implement processes to measure the consistency of tone at the top.
<p>3. Capable Contracting Workforce Chair: Director, Human Capital Initiatives, OUSD(AT&L)</p>
<ul style="list-style-type: none"> • DPAP and senior contracting leaders determine appropriate workforce size. • DPAP and senior contracting leaders develop initial human capital-planning addendum to AT&L Human Capital Strategic Plan. • DPAP and senior contracting leaders resource and implement responsive human capital strategies and supporting recruiting, hiring and retention initiatives (including intern/coop programs).
<p>4. Adequate Pricing Chair: Director, Defense Contract Audit Agency</p>
<ul style="list-style-type: none"> • Develop a coordinated Contract Policy Execution Review Plan that recognizes Department-wide risks, promotes consistency in procurement policy execution across all components, and encourages peer review. • Assess need for revised/additional training on competition requirements and differing pricing alternatives. • Change commercial item definition by deleting the “of a type” phrase and revising the language, “offered for sale” to “has been sold.” If this requires a change to law, consider developing a legislative proposal.
<p>5. Appropriate Contracting Approaches & Techniques Chair: Deputy Assistant Secretary of the Air Force (Contracting)</p>
<ul style="list-style-type: none"> • In Interagency Contracting, strengthen pre- and post-award oversight processes, including implementation of October 8, 2007, policy to consider assisting agencies’ fees during the business planning process. • Examine Department-wide strategy to assess reliance on interagency contracts. • Explore means for strengthening competition advocate programs for multiple award Indefinite Delivery/Indefinite Quantity contracts DoD-wide, with focus on increasing competition at task order level.
<p>6. Sufficient Contract Surveillance Chair: Chief of Staff, Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)</p>
<ul style="list-style-type: none"> • Review Contracting Officer Representative (COR) functions/responsibilities; develop certification standard. • Mandate COR assignment prior to contract award. • Process COR appointment through management; ensure performance reviews include COR performance.
<p>7. Contracting Integrity in a Combat/Contingent Environment Co-Chairs: Panel Executive Director and Deputy Director, OUSD(AT&L)DPAP/PACC</p>
<ul style="list-style-type: none"> • Improve training by leveraging Marine Corps and Air Force training capabilities. • Improve training on how to run a contracting office in a combat/contingent environment. • Sub-groups review Fraud Indicator Training and Continuity Book/Contracting Office Transition Plan.
<p>8. Procurement Fraud Indicators Chair: Assistant Inspector General, DoD Inspector General, Acquisition and Contract Management</p>
<ul style="list-style-type: none"> • Newly formed, will provide recommendations in next round.
<p>9. Contractor Employee Conflicts of Interest Chair: Director, Defense Contract Management Agency</p>
<ul style="list-style-type: none"> • Newly formed, will provide recommendations in next round.
<p>10. Recommendations for Change Chair: Deputy General Counsel (Acquisition & Logistics), DoD Office of General Counsel</p>
<ul style="list-style-type: none"> • Assessed level of implementation required for the recommendations of other sub-committees.

Figure 6. 21 Initial Actions for Implementation in 2008



C. Summary of Subcommittee Findings and Recommendations

1. Current Structure of Contracting Integrity

Chair: Component Acquisition Executive, Defense Logistics Agency

In accordance with the specific requirements of section 813(c)(2), this subcommittee examined how the Department of Defense organizational structure supports contracting integrity and whether that structure offers opportunities for improvement.

Organizational structure buttresses the overarching control environment in several ways:

- Senior leadership must understand and execute their appropriate responsibility and authority for the organization's functions.
- Lines of authority and lines of reporting must be clearly delineated.
- Roles and responsibilities must be well defined.
- The structure and associated governing policies must provide separation of duties.
- The structure and its associated policies must provide for the flow of pertinent information to appropriate individuals.
- Key decisions (and the supporting rationale) must be documented.

The Current Structure of Contracting Integrity subcommittee reviewed pertinent GAO reports as well as the DSB Task Force on Management Oversight in Acquisition Organizations report, dated March 2005. While GAO-06-838R did not contain a specific recommendation on this issue, the subcommittee reviewed the DSB Task Force recommendation that "Oversight, source selection and contract negotiations should not all reside in one person."

The subcommittee asked the Military Departments and Defense Agencies and organizations with contracting authority to provide information about existing organizational structure as it relates to the three functions of oversight, source selection, and contract negotiations. The subcommittee analyzed the responses to assess whether DoD organizational structures were presently designed to provide adequate assurance of contracting integrity and to identify any opportunities for improvement.

The subcommittee concluded that the current structures of contracting organizations within DoD appear to include sufficient accountability, controls, separation of duties, and oversight processes to assure reasonable integrity of the acquisition system without excessive increases in cycle time, complexity, or degradation of support to the warfighter.

This subcommittee's initial actions for implementation in 2008 are:

- DPAP should reinforce the reporting and evaluation requirements in DoD Instruction (DoDI) 5000.66, Operation of the Defense Acquisition, Technology, and Logistics Workforce.
- CAEs/SPEs should self-certify compliance with the reporting and evaluation requirements of DoDI 5000.66, identifying any exceptions, every two years.
- CAEs/SPEs should self-certify compliance with the separation of duties described at DFARS 203.170, every two years, and provide to DPAP.



2. Sustained Senior Leadership

Chair: Deputy Assistant Secretary of the Army (Policy & Procurement)

This subcommittee addressed the concern expressed in GAO-06-838R that DoD faces vulnerabilities in aspects of its senior leadership in contracting due to certain disconnects, including senior positions that have remained unfilled for long periods of time, the acquisition culture fostered by management's tone at the top, and inadequate Government oversight of industry/government partnering relationships such as "Lead Systems Integrator (LSI)".

The Sustained Senior Leadership subcommittee reviewed GAO-06-838R and the recommendations of the DSB Task Force on Management Oversight in Acquisition Organizations report, dated March 2005, in this focus area, including that the Secretary of Defense should place high priority on filling appointed acquisition positions through reforms in both the nomination and confirmation processes; that DoD should explicitly articulate its vision and values as an ethically grounded organization; and that partnering arrangements with industry such as LSI create a potential for organizational conflicts of interest and for blurring the distinction between private sector vs. governmental roles and responsibilities.

The subcommittee analyzed information provided by the Military Departments and Defense Agencies to ascertain whether DoD is efficiently filling senior leadership positions in contracting, whether DoD has a systemic, integrated approach to demonstrate a "tone at the top" supportive of contracting integrity and ethics, and whether the Department should re-assess the framework for partnering relationships with industry.

The subcommittee concluded that, since 2004, DoD has successfully mitigated risk associated with unfilled senior leadership positions. However, the subcommittee finds that DoD needs to continue to streamline the process for filling senior leadership positions and institutionalize the successful reforms. In addition, the subcommittee found that there are numerous initiatives in the Department that foster and support a culture of ethics; however, they identified a need for a consistent, DoD-wide standard or a metric that measures the ethical "tone at the top."

This subcommittee's initial actions for implementation in 2008 are:

- Develop metrics for Senior Leadership Positions in Contracting for application DoD-wide. OUSD(AT&L) issue policy memorandum to require DoD Components to monitor and report these positions on a semi-annual basis to preclude allowing long-term "acting" leaders in senior leadership positions in Contracting. Using the metrics, OUSD should develop succession lists for temporary "acting" filling of positions and to monitor projected vacancies and initiate and nomination processes before a vacancy occurs. Figure 7 provides a list of Senior Leadership Positions in Contracting. This list will be reviewed and updated periodically.
- Performance plans for all DoD senior leaders in contracting positions, whether under a SES Pay for Performance System or NSPS, specifically include an integrity or ethics objective.
- Implement processes to ensure the "tone at the top."



Senior Leadership Positions in Contracting Army

DEPARTMENT OF THE ARMY	
Title	Organization
Assistant Secretary of the Army, Acquisition, Logistics, and Technology (ASA-AL&T)	Senior Procurement Executive (SPE) and Army Acquisition Executive (AAE), HQ, Dept. of the Army
Deputy Assistant Secretary of the Army (Policy & Procurement) (DASA-P&P)	Army Principal Acquisition and Procurement Policy Authority for all Army Acquisition Programs, HQ, Dept. of the Army
Military Deputy, DASA (P&P)	Headquarters, Department of the Army
Assistant . DASA (P&P)-Iraq/Afghanistan	Headquarters, Department of the Army
Army Heads of Contracting Activity (HCAs)	
Director	Head of Contracting Activity (HCA), HQ, US Army Materiel Command (AMC), Office of Command Contracting
Director	HCA, U.S. Army Contracting Agency (ACA)
Commander	HCA, U.S. Army Joint Munitions and Lethality Life Cycle Management Command (JM&L LCMC)
Commander	HCA, Joint Contracting Command – Iraq/Afghanistan (JCC-I/A)
Principal Assistant for Acquisition for USAMRMC	HCA, U.S. Army Medical Research and Materiel Command (USAMRMC)
Program Executive Officer	HCA, U.S. Army Program Executive Office for Simulation, Training and Instrument (PEO-STRI)
Other Army Senior Contracting Leaders and Principal Assistants Responsible for Contracting (PARCs)	
Director	ITEC-4
Commander	Contracting Center of Excellence (CCE)
Principal Assistant Responsible for Contracting (PARC)	PARC, Joint Contracting Cmd – Iraq/Afg (JCC-I/A) GRD2-JCC
Principal Assistant Responsible for Contracting (PARC)	PARC, JCC-I/A Contracting, Afghanistan
Principal Assistant Responsible for Contracting (PARC)	PARC, AMC Program Manager, Saudi Arabian National Guard (PM-SANG)
Principal Assistant Responsible for Contracting (PARC)	PARC, Army Sustainment Command (ASC) Contracting
Principal Assistant Responsible for Contracting (PARC)	PARC, Aviation and Missile Life Cycle Management Command (AMCOM LCMC)
Principal Assistant Responsible for Contracting (PARC)	PARC, C-E LCMC
Principal Assistant Responsible for Contracting (PARC)	PARC, The Joint Munitions and Lethality Life Cycle Management Command (JM&L LCMC)
Principal Assistant Responsible for Contracting (PARC)	PARC, Research, Development and Engineering Command (RDECOM)
Principal Assistant Responsible for Contracting (PARC)	PARC, SDDC
PARC, Director of Acquisition Center	
Director of Acquisition Center	PARC, TACOM LCMC
Director/PARC	PARC, ACA Northern Region
Director/PARC	PARC, ACA Southern Region
PARC	PARC, ACA ITEC-4

Figure 7. Senior Leadership Positions in Contracting (page 1 of 8)



Senior Leadership Positions in Contracting Army, continued

DEPARTMENT OF THE ARMY	
Title	Organization
Director/PARC	PARC, ACA – The Americas
Director/PARC	PARC, ACA - Pacific
Commander/PARC	PARC, ACA Contracting Command Europe, (ACA-
Commander/PARC	PARC, Contracting Command, Southwest Asia (SWA)
Commander/PARC	PARC, U.S. Army Contracting Command Korea (ACA-
PARC	PARC, CCE
PARC	PARC, SMDC
PARC	PARC, MEDCOM
PARC	PARC, USAMRMC
Director/PARC	PARC, USACE-HQ
PARC-ATL	PARC, USACE -Atlanta, GA
PARC-DAL	PARC, USACE - Dallas, TX
PARC-WIN	PARC, USACE - Winchester, VA
PARC	PARC, NGB
Deputy Director	PARC, Army Intelligence and Security Command (INSCOM)
Director/PARC	PARC, PEO-STRI Acquisition Center

Figure 7. Senior Leadership Positions in Contracting (page 2 of 8)



Senior Leadership Positions in Contracting Navy

DEPARTMENT OF THE NAVY	
Title	Organization
Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)	Assistant Secretary of the Navy (Research, Development and Acquisition) ASN(RDA)
Chief of Staff/Policy, ODASN(A&LM)	
Director, Program Analysis and Business Transformation,	Assistant Secretary of the Navy (Research,
Assistant Commander for Contracting	
Deputy Assistant Commander for Contracting	Naval Air Systems Command (NAVAIRSYSCOM)
Head, Tactical Aircraft Department	Naval Air Systems Command (NAVAIRSYSCOM)
Head, ASW, Assault, Special Mission Aircraft Department	Naval Air Systems Command (NAVAIRSYSCOM)
Head, Cruise Missile, UAV, Air-1.0 Programs	Naval Air Systems Command (NAVAIRSYSCOM)
Assistant Commander for Acquisition	Naval Facilities Engineering Command (NAVFACENCOM)
Deputy Assistant Commander for Acquisition	Naval Facilities Engineering Command (NAVFACENCOM)
Deputy Commander for Contracts	Naval Sea Systems Command (NAVSEASYSYSCOM)
Executive Director for Contracts	Naval Sea Systems Command (NAVSEASYSYSCOM)
Division Director, Shipbuilding Contracts	Naval Sea Systems Command (NAVSEASYSYSCOM)
Division Director, Surface Systems Contracts	Naval Sea Systems Command (NAVSEASYSYSCOM)
Division Director, Undersea Systems Contracts	Naval Sea Systems Command (NAVSEASYSYSCOM)
Deputy Commander for Contracting Management	Naval Supply Systems Command (NAVSUPSYSCOM)
Assistant Deputy Commander for Contracting Management	Naval Supply Systems Command (NAVSUPSYSCOM)
Special Assistant for Contracting	Naval Supply Systems Command (NAVSUPSYSCOM)
Lead Contracting Executive - COMFISCS	Naval Supply Systems Command (NAVSUPSYSCOM)
Director for Contracts	Space & Naval Warfare Systems Command (SPAWARSYSYSCOM)
Deputy Director for Contracts	Space & Naval Warfare Systems Command (SPAWARSYSYSCOM)
Director of Contracts	NAVICP
Deputy Director of Contracts for Aviation	NAVICP
Deputy Director of Contracts for Maritime	NAVICP
Head of Contracts	SSP
Deputy Head of Contracts	SSP
Director of Business Operations	Office of Naval Research
Executive Director, Acquisition Management	Office of Naval Research
Director, Contracts & Business Management	Military Sealift Command
Deputy Director, Contracts and Business Management	Military Sealift Command
Assistant Deputy Commandant, Installations and Logistics (Contracts and E-Business)	Headquarters, US Marine Corps (USMC)
Deputy Director, Contracts, I&L	Headquarters, US Marine Corps (USMC)
Assistant Commander, Contracts	Marine Corps Systems Command (MARCORSYSYSCOM)
Lead Contracting Officer, Business Operations	Marine Corps Systems Command (MARCORSYSYSCOM)

Figure 7. Senior Leadership Positions in Contracting (page 3 of 8)



Senior Leadership Positions in Contracting Air Force

DEPARTMENT OF THE AIR FORCE	
Title	Organization
Secretary of the Air Force/Acquisition (Contracting) (SAF/AQC)	SAF/AQC
Associate Deputy Assistant Secretary (Contracting)	SAF/AQC
Headquarters, Air Force Materiel Command/Contracting (HQAFMC/PK)	HQAFMC/PK
Air Combat Command/Contracting (ACC/A7K)	ACC/A7K
Air Education and Training Command/Contracting (AETC/A7K)	AETC/A7K
Air Mobility Command/Contracting (AMC/A7K)	AMC/A7K
Air Force Space Command/Contracting (SPC/A7K)	AFSPC/A7K
PACAF/A7K - Pacific Air Forces/Contracting (PACAF/A7K)	PACAF/A7K
Electronic Systems Center/Contracting (ESC/PK)	ESC/PK
Air Armament Center/Contracting (AAC/PK)	AAC/PK
Warner Robins Air Logistics Center/Contracting (WRALC/PK)	WRALC/PK
Ogden Air Logistics Center/Contracting (OOALC/PK)	OOALC/PK
Oklahoma City-Air Logistics Center/Contracting (OC- ALC/PK)	OC-ALC/PK
United States Air Forces Europe/Contracting (USAFE/PK)	USAFE/PK
Space and Missiles System Center/Contracting (SMC/PK) -	SMC/PK
Associate Deputy Assistant Secretary (Contracting)	SAF/AQC
Aeronautical Systems Center Director of Contracting	ASC/PK
Director of Contracting	AFFTC

Figure 7. Senior Leadership Positions in Contracting (page 4 of 8)



Senior Leadership Positions in Contracting Combatant Commands

COMBATANT COMMANDS	
US Special Operations Command (USSOCOM)	
Title	Organization
Component Acquisition Executive: Senior Procurement Executive	US Special Operations Command
Director of Procurement and Head contracting Activity	US Special Operations Command
Deputy Director of Procurement: Competition Advocate	US Special Operations Command
US Transportation Command (USTRANSCOM)	
Senior Procurement Executive	US Transportation Command
Director, Acquisition	US Transportation Command
Deputy Director, Acquisition	US Transportation Command
Chief, Program Management Division.	US Transportation Command

Figure 7. Senior Leadership Positions in Contracting (page 5 of 8)



Senior Leadership Positions in Contracting Defense Agencies and Organizations

OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION, TECHNOLOGY & LOGISTICS) DEFENSE PROCUREMENT AND ACQUISITION POLICY	
Title	Organization
Director, Defense Procurement and Acquisition Policy	OUUSD(AT&L)DPAP
Deputy Director, Program Acquisition & Contingency	OUUSD(AT&L)DPAP/PACC
Deputy Director, Contract Policy & International Contracting	OUUSD(AT&L)DPAP/CPIC
Deputy Director, Defense Acquisition Regulation System	OUUSD(AT&L)DPAP/DARS
Deputy Director, Cost, Price, & Finance	OUUSD(AT&L)DPAP/CPF
Deputy Director, Program Development & Implementation	OUUSD(AT&L)DPAP/PDI
Deputy Director, Strategic Sourcing	OUUSD(AT&L)DPAP/SS
OTHER DEFENSE AGENCIES AND ORGANIZATIONS	
Defense Advance Research Projects Agency (DARPA)	
Director of Contracts Management Office	Defense Advanced Research Projects Agency
Defense Contract Management Agency (DCMA)	
DCMA Deputy Director and Acting Director	Defense Contract Management Agency
Executive Director, Contracts	Defense Contract Management Agency
Deputy Executive Director, Contracts	Defense Contract Management Agency
Defense Commissary Agency (DeCA)	
Director of Contracting	Defense Commissary Agency
Defense Finance and Accounting Service (DFAS)	
Director of Contract Services	Defense Finance and Accounting Service
Chief of Contract Operations	Defense Finance and Accounting Service
Chief of Contract Policy & Compliance	Defense Finance and Accounting Service
Program Manager, Integrated Card Management Office	Defense Finance and Accounting Service
Chief of Contract Policy	Defense Finance and Accounting Service
Defense Intelligence Agency (DIA)	
Acquisition Executive(CAE/SPE)	Defense Intelligence Agency
Head, Contracting Activity (HCA) and Deputy AE	Defense Intelligence Agency
Deputy, HCA and Competition Advocate	Defense Intelligence Agency
Defense Information Systems Agency (DISA)	
Director of Procurement and Chief, Defense Information Technology Contracting Office (DITCO) (HCA)	Defense Information Technology Contracting Organization
Deputy Director of Procurement and Chief, Defense Information Technology Contracting Office (DITCO) (HCA)	Defense Information Technology Contracting Organization
Agency Competition Advocate and Ombudsman	Defense Information Technology Contracting Organization

Figure 7. Senior Leadership Positions in Contracting (page 6 of 8)



Senior Leadership Positions in Contracting Defense Agencies and Organizations, continued

OTHER DEFENSE AGENCIES AND ORGANIZATIONS	
Title	Organization
Defense Logistics Agency (DLA)	
Senior Procurement Executive/Component Acquisition	Defense Logistics Agency
Deputy Director/Competition Advocate	Defense Logistics Agency
Chief, Acquisition Operations Division	Defense Logistics Agency
Chief of the Contracting Office, Defense Supply Center, Philadelphia	Defense Logistics Agency
Chief of the Contracting Office, Defense Supply Center,	Defense Logistics Agency
Chief of the Contracting Office, Defense Supply Center,	Defense Logistics Agency
Chief of the Contracting Office, Defense Energy Support Center	Defense Logistics Agency
Chief of the Contracting Office, DLA Contract Support Office	Defense Logistics Agency
Executive Director, Contracting and Acquisition Management	Defense Logistics Agency
Executive Director, Contracting and Acquisition Management	Defense Logistics Agency
Executive Director, Contracting and Acquisition Management	Defense Logistics Agency
Department of Defense Education Activity (DoDEA)	
Chief of Procurement	Department of Defense Education Activity
Defense Security Cooperation Agency (DSCA)	
Business Deputy, Defense Contracting	Defense Security Cooperation Agency
Defense Threat Reduction Agency (DTRA)	
Associate Director, Business Enterprise, CAE	Defense Threat Reduction Agency
Chief, Contracts Office and Head of the Contracting Activity	Defense Threat Reduction Agency
Missile Defense Agency (MDA)	
Director of Contracting	Missile Defense Agency
Deputy Director of Contracting/Competition Advocate	Missile Defense Agency
National Geospatial Agency (NGA)	
Director, Acquisition Contracts	National Geospatial Agency
Deputy Director, Acquisition Contracts, R&D, Major Systems	National Geospatial Agency
Deputy Director, Acquisition Contracts, Compliance &	National Geospatial Agency
National Security Agency (NSA)	
Chief, Contracting Group and Head of Contracting Activity	National Security Agency
Deputy Chief, Contracting Group	National Security Agency
Senior Contracts Advisor, Contracting Group	National Security Agency

Figure 7. Senior Leadership Positions in Contracting (page 7 of 87)



Senior Leadership Positions in Contracting Defense Agencies and Organizations, continued

OTHER DEFENSE AGENCIES AND ORGANIZATIONS	
Title	Organization
Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity (TMA)	
Director, Acquisition Management and Support	OASD(HA)/TMA
Washington Headquarters Services (WHS)	
Director, Acquisition and Procurement Office	Washington Headquarters Services
Deputy Director, Acquisition and Procurement Office	Washington Headquarters Services

Figure 7. Senior Leadership Positions in Contracting (page 8 of 8)



3. Capable Contracting Workforce

Chair: Director, Human Capital Initiatives, OUSD (AT&L).

This subcommittee reviewed GAO and other reports related to contracting workforce vulnerabilities associated with skill levels and the large numbers of retirement-eligible staff, along with Department plans and initiatives to mitigate the risk in these areas.

The Capable Contracting Workforce subcommittee found that the Department is working hard to ensure we have a highly capable contracting workforce, motivated to deliver warfighting capabilities with the highest standards of trust, integrity and ethics. Workforce shaping and workforce capability is a function of size, competence, training, processes, tools, policy, and structure. Although the size of the AT&L contracting workforce has been stable since 2001 significant mission demands (such as the Global War On Terror) and other factors, to include the impact of the pending departure of the Baby Boomer workforce, warrant a review of the appropriateness of the current workforce size. High certification levels, education levels, and experience indicators of the AT&L contracting workforce reflect a highly professional community. High demands continue on this community along with significant emphasis to improve contract management and contingency contracting.

To improve workforce-shaping results, the new Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) has initiated AT&L Strategic Thrust #3, Take Care of Our People, which includes focus on recruiting, developing and retaining people with the right skills to successfully accomplish the acquisition mission with integrity. Supporting initiatives include increased emphasis on leadership development; comprehensive workforce analysis and planning; and increased communication and knowledge sharing (DAU Living Library). Another key supporting initiative is updating functional competency models and enabling skill gap assessments of the AT&L workforce. The Contracting functional advisor (Director, Defense Procurement and Acquisition Policy) is proactively leading the contracting community on this initiative. The strategic framework provided by AT&L Strategic Thrust #3 and the proactive senior leadership initiatives across the contracting community will strengthen the contracting workforce and foster an environment of performance excellence with integrity.

This subcommittee's initial actions for implementation in 2008 are:

- DPAP and senior contracting leaders determine appropriate workforce size.
- DPAP and senior contracting leaders develop an initial human capital planning addendum to the AT&L Human Capital Strategic Plan.
- DPAP and senior contracting leaders resource and implement responsive human capital strategies and supporting recruiting, hiring and retention initiatives (including intern/coop programs).



4. Adequate Pricing

Chair: Director, Defense Contract Audit Agency

This subcommittee addressed the concerns raised by GAO that DoD faces risks associated with adequate contract pricing that can lead to contracting vulnerabilities. The Federal Acquisition Regulation (FAR) provides procedures for making price determinations, but DoD faces vulnerabilities because of the unusual range and complexity of its acquisition activities.

The Adequate Pricing subcommittee reviewed various risks and vulnerabilities identified by GAO and associated with obtaining adequate contract pricing. These include non-competitive contract actions; delays in setting requirements for undefinitized contracts; failure to use available pricing information for sole source awards; and misclassification of items as commercial items.

The subcommittee found that DoD has taken significant actions in addressing these contracting vulnerabilities. For example, DoD has emphasized the importance of competition, has focused significant attention on contracting in combat/contingent environments, and requires documentation of commercial item determinations for all acquisitions using FAR Part 12 that exceed \$1 million. In addition, DoD has revised the pertinent portions of the FAR, DFARS, DFARS PGI, and has issued guidance memoranda promulgating revised rules and procedures specifically designed to address vulnerabilities associated with contract pricing. The Director, Defense Procurement and Acquisition Policy, established the Cost, Price, and Finance division in the Defense Procurement and Acquisition Policy organization to reinvigorate pricing policy guidance and strengthen internal management and controls in this area.

However, the subcommittee concluded that additional actions are necessary to continue the Department's effort to address the identified risks. Therefore, the subcommittee developed recommendations for additional DoD actions to address these vulnerabilities, which include: changing the commercial item definition by deleting the "of a type" phrase and revising the language "offered for sale" to "has been sold;" developing a coordinated Contract Policy Execution Review Plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components; and endorsing and monitoring progress of FAR Case 2005-036, Definition of Cost or Pricing Data, and issuance of the revised rule which clarifies the need to obtain the necessary data (certified cost or pricing data or data other than certified cost or pricing data) to determine a fair and reasonable price.

This subcommittee's initial actions for implementation in 2008 are:

- Develop a coordinated Contract Policy Execution Review Plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components. Encourage peer review between services as an integral part of each component's Contract Policy Execution Review program.
- Assess the need for revised or additional training on (1) competition requirements and (2) differing pricing alternatives.
- Change the commercial item definition by deleting the "of a type" phrase and revising the language, "offered for sale" to "has been sold." If this requires a change to law, consider developing a legislative proposal.



5. Appropriate Contracting Approaches and Techniques

Chair: Deputy Assistant Secretary of the Air Force (Contracting)

This subcommittee addressed concerns raised by GAO in GAO-06-838R regarding vulnerabilities in the use of appropriate contracting techniques, including interagency contracting; misuse of multiple award indefinite delivery/indefinite quantity contracts and General Services Administration multiple award schedules; structure and implementation of award and incentive fees. In addition, the subcommittee addressed ancillary areas of interest including acquisition planning; selection of contract type; cost estimating; and performance based services contracting.

The Appropriate Contracting Approaches and Techniques subcommittee reviewed pertinent GAO and DoDIG reports and recommendations on the focus areas and the Department's corrective actions. The subcommittee provided a summary of the Department's corrective actions to date for each of the areas of vulnerability.

The subcommittee found that DoD has recognized that the growth in the dollar value of contracts and the increasing complexity of contracts has created unintended consequences. DoD has initiated steps to remedy these consequences: USD(AT&L) issued policy memos on the proper use of non-DoD contracts and the appropriate use of award and incentive fees, increased oversight of interagency contracts, and signed a memorandum of understanding with the General Services Administration, and other assisting agencies to address concerns related to interagency contracting. DoD has discussed similar controls on use of interagency contracts with the Department of Interior.

The subcommittee found that, in general, policy guidance and related training should be more complete and more thoroughly disseminated. Policy related to pre- and post-award oversight of interagency contracting should be more robust. Guidance regarding the application of "fair opportunity" policy for awardees of multiple award indefinite delivery/indefinite quantity contracts should be clarified. The Director, DPAP, should incorporate the memorandum "Award and Incentive Fees – Data Collection," of April 24, 2007 into the DFARS. DoD should amplify policy on acquisition planning and selection of contract type. The Department should provide more resources for personnel responsible for estimating costs of contracted efforts. The Department should clarify guidance regarding the appropriate use of performance-based services contracting.

This subcommittee's initial actions for implementation in 2008 are:

- In Interagency Contracting, DoD Components should take steps to strengthen pre- and post-award oversight processes, including implementation of October 8, 2007, policy to consider fees charged by assisting agencies during the business planning process.
- DoD should examine a Department-wide strategy to assess reliance on interagency contracts.
- In Multiple Award Indefinite Delivery/Indefinite Quantity contracts, the Department should explore means for strengthening competition advocate programs for multiple award IDIQ contracts across all components with a focus on increasing competition at the task order level.



6. Sufficient Contract Surveillance

Chair: Chief of Staff, Deputy Assistant Secretary of the Navy, (Acquisition & Logistics Management)

This subcommittee focused on the role of the Contracting Officer's Representative (COR) in the surveillance of services contracts. "You get what you inspect" is the watchword of contract surveillance to ensure that contracted goods and services are delivered according to the schedule, cost, quality, and quantity specified. The Department risks paying contractors more than the value of the goods and services provided if surveillance is insufficient, not conducted, or undocumented. Arduous or crisis conditions and increasing workload serve to create contract surveillance vulnerabilities in DoD.

The Sufficient Contract Surveillance subcommittee reviewed GAO and DoDIG reports and recommendations related to this focus area, and assessed the Department's progress to date in responding to the issues and concerns raised. The subcommittee's report contains a summary of these corrective actions.

The subcommittee found that between FY 2000 and FY 2005, spending on services contracts increased almost 100% from \$72 billion to \$141 billion—over 54% of the Department's contract obligations. This trend is expected to continue as DoD increasingly relies on the private sector to carry out aspects of the Department's mission. Because of the increased reliance on contractor support and the large expenditures involved, quality assurance and surveillance is important to ensure that contractors are providing timely and quality services and to help mitigate contractor performance problems. The subcommittee found that DoD lacks consistent guidance on COR functions; CORs that are not members of the Acquisition Workforce may have difficulty accessing appropriate training; CORs generally are expected to perform their COR duties in addition to their other duties in support of their organizations' missions; and the high turnover of CORs often creates gaps in assignments to fulfill surveillance responsibilities. Also, the subcommittee also found that CORs are often not held accountable for their performance as CORs, because their management is not fully aware of the significance of their COR responsibilities.

The subcommittee concluded that the Department should develop a DoD-wide standard for COR certification; DoD should re-emphasize the requiring organizations' responsibility to ensure continuity of surveillance in the face of high turnover of COR personnel; supervisors of CORs and contracting officers should exchange information for performance assessments of CORs; guidance on documentation should be clarified and added to existing COR training.

This subcommittee's initial actions for implementation in 2008 are:

- Review COR functions/responsibilities to develop a DoD standard for COR certification.
- Mandate COR assignment prior to contract award.
- Process COR nominations through management and require written assurance that CORs will be provided appropriate resources to perform their role and that COR performance will be included in performance reviews.



7. Contracting Integrity in a Combat/Contingent Environment

Co-chairs: Panel Executive Director; Deputy Director, DPAP/ Program Acquisition and Contingency Contracting

Contracting integrity is tested in a combat/contingent environment, and recent contracting for Iraq and Katrina has highlighted the need for improvement in this focus area. This subcommittee focused on the vulnerabilities and special needs in a combat/contingency environment: training for contracting integrity in combat/contingent environment; preserving checks and balances for contracting integrity in a combat/contingent environment; and providing tools for contracting integrity in a combat/contingent environment.

The Contracting Integrity in a Combat/Contingent Environment Subcommittee reviewed lessons learned and best practices to improve the Department's ability to maintain contracting integrity and use internal controls while responding to needs in a crisis. This subcommittee assessed the quality of DoD's ethics based contracting training provided to military and civilian contracting personnel prior to, during, and post- deployment into a combat/contingent environment. The subcommittee also considered the leadership and management of the contracting offices and personnel during deployment. In addition, the subcommittee asked the Military Departments and Defense Agencies and organizations with contracting authority for information regarding the type, method, location, and time when contracting integrity training is provided to its deployable military and civilian workforce. The subcommittee analyzed the responses in developing their assessment of the workforce to meet the demands placed on them in a combat/contingent environment.

The subcommittee found that the majority of the ethics based contracting training, specifically tailored to the military and civilian member deployed in a combat/contingent environment, is provided through the Defense Acquisition University as part of its Defense Acquisition Workforce Improvement Act (DAWIA) training and certification curriculum. In addition, the subcommittee found the annual DoD mandatory ethics training is not sufficiently tailored to the integrity issues found in a combat/contingent environment and that DoD should increase the quality, availability, and frequency of contracting integrity training provided prior to and during deployment in a combat/contingent environment. The subcommittee also found that the frequency and consistency of Procurement Management Reviews are not consistent across the Department; deployed contracting personnel do not always have functional independence; CORs are not adequately trained and prepared for their role; and not enough senior leadership positions in contracting are identified to support key mission requirements. Finally, the subcommittee found that deployed contracting personnel do not always train as they fight, and are not all adequately prepared with the appropriate skill-sets to perform effectively.

This subcommittee's initial actions for implementation in 2008 are:

- Improve training by leveraging Marine Corps and Air Force training capabilities.
- Improve training on how to run a contracting office in a combat/contingent environment.
- Establish two sub-groups to look at:
 - Fraud Indicator Training
 - Continuity Book/Contracting Office Transition Plans.



8. Procurement Fraud Indicators

Chair: Assistant Inspector General, Office of the Department of Defense Inspector General (Acquisition and Contract Management)

(Note: this is a newly formed subcommittee. A formal report and any specific recommendations will follow in 2008).

Training officials to recognize the symptoms of procurement fraud, waste, and abuse is critical to prevention. This subcommittee is identifying Procurement Fraud Indicators to strengthen oversight and provide DoD leaders with vital early warning signs that potential integrity issues in reviewing contracting activities. The DoDIG office has developed and tested a useful matrix of indicators and a training program for contracting officials.

9. Contractor Employee Conflicts of Interest

Chair: Director, Defense Contract Management Agency

(Note: this is a newly formed subcommittee. A formal report and any specific recommendations will follow in 2008).

The subject of conflicts of interest has many perspectives. Although the Department has addressed in detail concerns about conflicts of interest for government employees, similar standards of conduct may not be prescribed for contractor employees. This subcommittee seeks to address this gap.

10. Recommendations for Change

Chair: Deputy General Counsel (Acquisition & Logistics), DoD Office of General Counsel

a. Analysis of recommendations.

This capstone subcommittee developed a methodology and conducted an independent review of the recommendations developed by the other subcommittees. Their analysis identifies whether the recommendations would require changes to law, regulation, or policy (including a policy memorandum signed by the Director, Defense Procurement and Acquisition Policy). Figure 8 provides a summary of this subcommittee's analysis.



Analysis of Recommendations

Key: “√” indicates action required

Law Change	Regulation Change	Policy Change	Recommendation
Subcommittee 1, Current Structure of Contracting Integrity			
Chair: Component Acquisition Executive, DLA			
Not Required	Not Required	Not Required	DPAP should reinforce the reporting and evaluation requirements in DoD Instruction 5000.66 “Operation of the Defense Acquisition, Technology, and Logistics Workforce.”
Not Required	Not Required	Not Required	CAEs/SPEs should self-certify compliance with the reporting and evaluation requirements of DoDI 5000.66, identifying any exceptions, every two years.
Not Required	Not Required	Not Required	CAEs/SPEs should self-certify, every two years to DPAP, compliance with the separation of duties described at DFARS 203.170.
Subcommittee 2, Sustained Leadership			
Chair: Deputy Assistant Secretary of the Army (Policy & Procurement)			
Not Required	Not Required	Not Required	Develop metrics for Senior Leadership Positions in Contracting for application DoD-wide. OUSD issue policy memorandum to require DoD components to monitor and report these positions on a semi-annual basis to preclude allowing long-term “acting” leaders in senior leadership positions in Contracting. Using the metrics, OUSD should develop succession lists for temporary “acting” filling of positions; to monitor projected vacancies & initiate selection and nomination processes before vacancies occur.
Not Required	√	√	Performance plans for all senior leaders in the Department, whether under SES Pay for Performance System or NSPS, specifically include an integrity or ethics objective.
Not Required	Not Required	√	Implement processes to measure the consistency of tone at the top.
Subcommittee 3, Capable Contracting Workforce			
Chair: Director, Human Capital Initiatives, OUSD(AT&L)			
Not Required	Not Required	Not Required	DPAP and senior contracting leaders determine appropriate workforce size.
Not Required	Not Required	Not Required	DPAP and senior contracting leaders develop an initial human capital-planning addendum to the AT&L HCSP.
Not Required	Not Required	Not Required	DPAP and senior contracting leaders resource and implement responsive human capital strategies and supporting recruiting, hiring and retention initiatives (including intern/coop programs).

Figure 8. Analysis of Initial Actions for Implementation in 2008 (Page 1 of 3)



Analysis of Recommendations, continued

Key: “√” indicates action required

Law Change	Regulation Change	Policy Change	Recommendation
Subcommittee 4, Adequate Pricing Chair: Director, Defense Contract Audit Agency			
Not Required	Not Required	√	Develop a coordinated Contract Policy Execution Review Plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components. Encourage peer review between services as an integral part of each component’s Contract Policy Execution Review program.
Not Required	Not Required	Not Required	Assess the need for revised or additional training on (1) competition requirements and (2) differing pricing alternatives.
√	Not Required	Not Required	Change commercial item definition by deleting the “of a type” phrase and revising the language, “offered for sale” to “has been sold.” If this requires a change to law, consider developing a legislative proposal.
Subcommittee 5, Appropriate Contracting Approaches and Techniques Chair: Deputy Assistant Secretary of the Air Force (Contracting)			
Not Required	Not Required	Not Required	In Interagency Contracting, DoD Components should take steps to strengthen pre- and post-award oversight processes, including implementation of October 8, 2007, policy to consider fees charged by assisting agencies during the business planning process.
Not Required	Not Required	√	Examine Department-wide strategy to assess reliance on interagency contracts.
Not Required	Not Required	√	Explore means for strengthening competition advocate programs for multiple award Indefinite Delivery/Indefinite Quantity contracts DoD-wide, with focus on increasing competition at task order level.
Subcommittee 6, Sufficient Contract Surveillance Chair: Chief of Staff, Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)			
Not Required	√	Not Required	Review Contracting Officer Representative (COR) functions/responsibilities; develop DoD standard for COR certification.
Not Required	√	√	Mandate COR assignment prior to contract award.
Not Required	Not Required	√	Process COR appointment through management; require written assurance that COR performance will be included in performance assessments.

Figure 8. Analysis of Initial Actions for Implementation in 2008 (Page 2 of 3)



Analysis of Recommendations, continued

Key: “√” indicates action required

Law Change	Regulation Change	Policy Change	Recommendation
Subcommittee 7, Contracting Integrity in a Combat/Contingent Environments Co-Chairs: Panel Executive Director and Deputy Director, DPAP/ PACC			
Not Required	Not Required	Not Required	Improve training by leveraging Marine Corps and Air Force training capabilities.
Not Required	Not Required	Not Required	Improve training on how to run a contracting office in a combat/contingent Environment.
Not Required	Not Required	Not Required	Establish two sub-groups to review Fraud Indicator Training and Continuity Book/Contracting Office Transition Plan.
Subcommittee 8, Procurement Fraud Indicators Chair: Assistant Inspector General, DoDIG, Acquisition & Contract Management			
○ <i>Newly formed, will provide recommendations in next round</i>			
Subcommittee 9, Contractor Employee Conflicts of Interest Chair: Director, Defense Contract Management Agency			
○ <i>Newly formed, will provide recommendations in next round</i>			
○			

Figure 8. Analysis of Initial Actions for Implementation in 2008 (Page 3 of 3)



b. Additional Recommendations

Department of Defense-Wide Ethics Program

The Recommendations for Change subcommittee also recommended creation of a DoD ethics program. The Department has a robust and active compliance program but no similar ethics program. The Defense Science Board (DSB) Report on Management Oversight in Acquisition Organizations stated, “The department lags behind the “best in class” in creating a systematic, integrated approach and in demonstrating the kind of leadership necessary to drive ethics to the forefront of organizational behavior.”

Consider a Legislative Proposal to Amend the Program Fraud Civil Remedies Act of 1986

This subcommittee also recommended consideration of either a legislative proposal to amend the Program Fraud Civil Remedies Act of 1986 or a legislative proposal to remedy some of the impediments to implementation of the current Act. The Act provides for civil remedies of not more than \$5,000 per claim or statement for false claims and statements made to an agency for claims of \$150,000 or less. The law targets small claims that are not specifically addressed by other means, but, as currently structured, the statute simply is too complex and cumbersome.

Consider a Legislative Proposal to Amend the False Claims Act

Finally, the Recommendations for Change subcommittee recommends consideration of a legislative proposal that would permit agencies to retain amounts collected pursuant to any action under the False Claims Act or pursuant to any other action based upon fraud in obtaining or performing a contract with the United States, whether recovered as a result of a judgment by a court or in settlement of such action. Such a provision would permit agency Comptrollers to apply these amounts to pay an obligation that would properly have been chargeable to an account that has been closed and is no longer available for obligation. This concept requires coordination with the Comptroller community for further development.



Section III. Appendices

APPENDIX A

Subcommittee Reports

TABLE OF CONTENTS

1. CURRENT STRUCTURE OF CONTRACT INTEGRITY	38
2. SUSTAINED SENIOR LEADERSHIP.....	40
3. CAPABLE CONTRACTING WORKFORCE	51
4. ADEQUATE PRICING SUBCOMMITTEE.....	61
5. APPROPRIATE CONTRACTING APPROACHES AND TECHNIQUES.....	72
6. SUFFICIENT CONTRACT SURVEILLANCE SUBCOMMITTEE.....	87
7. CONTRACTING INTEGRITY IN AN COMBAT/CONTINGENCY ENVIRONMENT.....	95
8. PROCUREMENT FRAUD INDICATORS SUBCOMMITTEE.....	100
9. CONTRACTOR EMPLOYEE CONFLICTS OF INTEREST SUBCOMMITTEE	103
10. RECOMMENDATIONS FOR CHANGE SUBCOMMITTEE.....	104



1. Current Structure of Contract Integrity Subcommittee

Chair: Component Acquisition Executive, Defense Logistics Agency

Executive Summary

This subcommittee examined how the organizational structure supports contracting integrity and whether those structures offered opportunities for improvement. Oversight and management of DoD contracting activities are shared among numerous organizations. The primary organizations are the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L), the DoD Office of General Counsel, DoD Inspector General (DoD IG), the Defense Criminal Investigative Service, the Defense Contract Audit Agency, and the audit agencies, criminal investigation services, and offices of general counsel of the military departments. The acquisition organizations within each of the Military Services and Defense Agencies also have internal structures and procedures to assure contract integrity. Those internal structures should be relied upon as the primary method to provide integrity in the acquisition system, before external reviews and oversight.

Contracting Vulnerability:

Related GAO or IG Reports

None.

GAO Recommendations

GAO Report GAO-06-838R did not contain specific recommendations pertaining to the structure of contracting organizations; however, the Defense Science Board Task Force on Management Oversight in Acquisition Organizations report recommended specific processes:

- Oversight, source selection and contract negotiations should not all reside in one person. Acquisition organizations should provide many avenues for voicing concerns.

DoD Follow up Actions to Date or Pending Plans

Since there are no GAO or IG recommendations, there are no existing follow up actions.

Gaps Identified by Subcommittee

- No DoD-wide mechanisms reported to ensure continued adherence to structures providing appropriate separation of duties and evaluation as required by DFARS 203.170.
- No periodic verification or follow up to ensure that contracting personnel comply with the reporting and evaluation requirements of DoDI 5000.66.
- Existence of an ombudsman for procurement integrity not publicized.



Subcommittee Recommendations

- DPAP should reinforce the reporting and evaluation requirements in DoD Instruction (DoDI) 5000.66, Operation of the Defense Acquisition, Technology, and Logistics Workforce.”
- CAEs/SPEs should self-certify compliance with the reporting and evaluation requirements of DoDI 5000.66, identifying any exceptions, every two years.
- CAEs/SPEs should self-certify compliance with the separation of duties described at DFARS 203.170 every two years, and provide to DPAP.
- CAEs/SPEs should officially designate and publicize an ombudsman for procurement integrity.
- Follow on surveys or studies for the section 813 tasking should accumulate best practices and/or lessons learned and post them to the Panel on Contracting Integrity website for other organizations to refer to when encountering similar issues.

Conclusion

Although a formal organizational structure cannot ensure the integrity of all individuals and processes within it, the current structures of the contracting organizations within DoD appear to include sufficient accountability, controls, separation of duties, and oversight processes to assure reasonable integrity of the acquisition system without excessive increases in cycle time, complexity, or degradation of support to the warfighter. Institutionalization of some specific feedback, reporting, and oversight procedures should ensure that vulnerabilities do not occur in the system due to lack of adherence to appropriate principles of organization design, prudent oversight, and proper separation of duties.



2. Sustained Senior Leadership Subcommittee Chair, Deputy Assistant Secretary of the Army (Policy and Procurement)

Executive Summary

In the GAO-06-838R, dated July 7, 2006, the Government Accountability Office (GAO) reports that Department of Defense (DoD) continues to face vulnerabilities to contracting fraud, waste, and abuse due to management control weaknesses in five key areas. Sustained senior leadership is one of five key areas identified as a high-risk area. GAO reports that DoD faces vulnerabilities in aspects of its senior leadership because of certain disconnects, including senior positions that have remained unfilled for long periods of time, the acquisition culture fostered by management's tone at the top, and inadequate Government oversight of Lead Systems Integrator programs.

The Office of Under Secretary of Defense Acquisition, Technology and Logistics (OUSD-AT&L) Panel on Contracting Integrity chartered the Sustained Senior Leadership Subcommittee to examine progress made by DoD in three areas of vulnerability: 1) unfilled senior leadership positions, 2) tone at the top, 3) Lead Systems Integrator (LSI) programs.

For data needed to examine the current system, the subcommittee conducted a survey through the OUSD-AT&L. The survey, which was sent to all DoD Agencies/Services on September 4, 2007, included, in part, questions pertaining to senior leadership vacancies, staffing processes, and integrity or ethics objectives in performance plans. Through OUSD-AT&L, the subcommittee received responses from the Army, Navy, Air Force, U.S. Special Operations Command (SOCOM), Missile Defense Agency (MDA), Uniform Services University of Health Sciences (USUHS), U.S. Transportation Command (TRANSCOM), Defense Logistics Agency (DLA), Defense Commissary Agency (DeCA), National Geospatial-Intelligence Agency (NGA), Washington Headquarters Services (WHS), Counterintelligence Field Activity (CIFA), Defense Systems Intelligence Agency (DISA) and Defense Threat Reduction Agency (DTRA).

GAO and the Defense Science Board (DSB) Task Force recommended that the Secretary of Defense should place high priority on filling appointed acquisition positions through reforms in both the nomination and confirmation processes. Since 2004, the Office of Under Secretary of Defense initiated multiple efforts to address and improve GAO and DSB's findings concerning "unfilled" senior leadership. Recent study and assessment of the progress DoD has made in sustained senior leadership concerns indicate that DoD has successfully mitigated the risk associated with unfilled senior leadership positions. In order to augment this progress and build permanent checks and balances into the DoD acquisition integrity system, the subcommittee identified the need for dedicated resources to reform the nomination and confirmation processes for appointed senior acquisition positions. However, a high priority should be placed on providing newly appointed leaders with training on the unique contracting integrity and ethics legal and policy requirements that apply to them as employees of the federal sector in DoD. The Subcommittee also recognized a need to establish consistent criteria, DoD-wide, in filling vacant



positions on an “acting” basis. Office of the Under Secretary of Defense should task a group of people (Steering Group/Task Force) to work with Congress, Office of Personnel Management (OPM), military services, and other government agencies, as necessary, to coordinate new reform initiatives, improve and sustain senior leadership, and instill the highest ethical standards in the DoD acquisition culture.

Another senior leadership issue cited in the GAO report pertains to the tone at the top, which includes senior leadership's commitment or lack of commitment to sound acquisition practices. GAO found that DoD lags behind the "best in class" in creating a systemic, integrated approach to integrity and in demonstrating the kind of leadership necessary to drive ethics to the forefront of organizational behavior. In response to the findings and recommendations of the GAO and DSB Reports regarding tone at the top, the Department has been working to deploy an ethical culture through leadership, performance management, and training programs. Specifically, the Department has explicitly articulated its vision and values as a high integrity organization, made clear the performance expectations for each individual in supporting an ethical culture by implementing the National Security Personnel System (NSPS), and implemented and enhanced training programs for senior leadership. In addition, several military department-specific initiatives emphasizing the importance of value-based ethics at the top are in progress. In evaluating tone at the top, the Subcommittee has identified several gaps, including the lack of procedures to measure the success of the Department-wide initiatives and a plan to maintain a consistent message from the top despite inevitable changes in administration and senior leadership dynamics. In looking toward the future, the Subcommittee makes several recommendations with respect to the tone at the top. The Department should focus on the vehicle by which the Secretary's message promoting a high integrity organization is delivered, use the SES/Senior Leader 360 degree Leadership Feedback process to measure the Department's success in promoting an ethical culture, require the performance plans for all senior leaders to specifically include an integrity or ethics objective, and provide newly appointed leaders with training on the unique contracting integrity and ethics legal and policy requirements that apply to them as employees of the federal sector in DoD.

Lastly, the oversight of contracts that follow a lead system integrator (LSI) approach to system acquisition management has come under increased GAO scrutiny. Conducted research including a literature search on government/industry partnering. At the time of this report, the prospective FY 2008 NDAA includes a moratorium on the use of LSIs effective in 2010. This language supersedes the subcommittee's research in this area.

Contracting Vulnerability: Unfilled Senior Leadership Positions

Related GAO or IG Reports

GAO, Contract Management: *DoD Vulnerabilities to Contracting Fraud, Waste, and Abuse*, GAO-06-838R, July 7, 2007

Report of the Defense Science Board Task Force on *Management Oversight in Acquisition Organizations*, March 2005



GAO/DSB Recommendations

Citing the DSB Task Force March 2005 report, GAO reports that senior-level positions unfilled for significant periods of time has led to serious gaps in leadership and management continuity. This has contributed significantly to a lack of direction and leadership in the acquisition culture. Both GAO and DSB highlighted that the Senate confirmation process takes too long and it is a principal cause for the difficulty in filling senior acquisition positions for both political and Senior Executive Service appointments.

In the March 2005 report, the DSB Task Force recommended that the Secretary of Defense should place high priority on filling appointed acquisition positions through reform in both nomination and confirmation process, including working with the Administration and the Senate to streamline the process. In addition, DSB also recommended that the Secretary of Defense institute a succession planning process to establish a succession list so that the Department can start the selection and nomination process before the vacancy occurs.

DoD Follow Up Actions to Date or Pending Plans

In June 2005, the Acting Secretary of Defense chartered the Defense Acquisition Performance Assessment Project (DAPA) team to conduct an integrated acquisition assessment. In its January 2006 report, the DAPA team validated the GAO and DSB's finding that failure to fill senior acquisition leadership positions has resulted in instability in the decision-making process. The DAPA panel advises that the Department seek legislative changes to streamline nomination and confirmation process to 30 days and create other new initiatives to sustain senior leadership continuity and stability to the acquisition process. Such new initiatives include: establishing Service Acquisition Executives as five year, fixed-term presidentially-appointed and Senate-confirmed positions renewable for a second five year term; and working with the White House Liaison Office to create a pool of acquisition-qualified, pre-cleared non-career senior executives and political appointees to fill executive positions.

The subcommittee has found that the Department has made some progress on legislative changes and reform initiatives. Changes to the current nomination and confirmation process for senior acquisition leadership positions require coordination at the highest levels across multiple branches of government, i.e., Secretary of Defense, Congress, Office of Personnel Management, etc. In recognition of efforts required for a reform initiative, the Under Secretary of Defense addressed "unfilled" senior acquisition positions by issuance of a DoD-wide policy memorandum. On August 1, 2006, the Under Secretary of Defense required that all DoD Agencies/Services fill their senior acquisition positions on an "acting" basis until a permanent appointment is made, and directed that accretion of oversight duties not be accrued at the top.

The Under Secretary of Defense (OUSD), through the Director of Human Capital Initiatives, initiated expanded implementation of Key Leadership Positions (KLPs) to capture all major program critical positions, listed in Section 820 of the Fiscal Year 2007 National Defense Authorization Act, as well as lead major program contracting officers. In a memorandum dated



May 1, 2007, OUSD requested that DoD Agencies/Services provide lists of their KLPs with information on incumbents, including name, grade, acquisition position, service tenure, etc. by October 31, 2007. The objective of this initiative is to develop a comprehensive strategy for enhancing the role of DoD acquisition program management.

In addition, the subcommittee initiated development of a list of the senior leadership positions in Contracting. Figure 7 (located in Section II) provides this list, which will be reviewed and updated periodically.

Gaps Identified by Subcommittee

The subcommittee has identified two specific gaps. First, the term “senior acquisition leaders” is used inconsistently throughout both the GAO and DSB reports. It was generally understood that a senior leader refers to “Senior Executive Service” positions. However, there was also an implication that senior leader is defined by the decision making authority within the acquisition process. To establish a consistent definition of senior leaders and properly identify vacant senior leadership positions, the subcommittee defined senior leaders by a position (decision making authority) to include Senior Acquisition Executives, Senior Procurement Executives, Head of Contracting Activities (HCAs), Head of Contracting Organizations, such as Principal Assistants Responsible for Contracting (PARC), Chiefs, and Directors. This definition is consistent with the DoDD 5000.52 and the OUSD initiative on the KLPs.

Secondly, OUSD issued a policy memorandum requiring all DoD Agencies/Services to fill their vacancies on an “acting” basis until a permanent appointment is made. However, it lacks specific terms and conditions. For example, the policy neither requires DoD Agencies/Services to promptly fill a vacancy with a permanent official, nor specifies how long an individual can remain on a temporary promotion.

Subcommittee Findings and Recommendations

The results of the recent survey conducted in support of the Panel's work indicate that DoD has made significant improvement in this area. This improvement is a direct result of DoD Agencies/Services filling leadership positions through temporary promotion on an acting basis until the permanent official is selected and came on board. With the exception of the DLA, all DoD Agencies/Services that responded to the survey, reported no vacancies in senior acquisition leadership positions within their organization. The Army responded that when senior leader position became vacant, the position was filled through temporary promotion on an acting basis until the permanent senior official was selected and came on board. While on a temporary promotion to a higher-level position, an individual performs the duties and exercises the decisional authority required by the position he/she fills at the time. As such, integrity of the decision-making process is always ensured and maintained. WHS responded that it has no vacancies in operational senior leadership positions. However, their Enterprise Support Director's position has been vacant for about a year and the Acquisition and Procurement Office Director has assumed direct cognizance of this position that does not require acquisition decision making. The vacant position in the DLA is a new position recently created (less than three months ago) and the recruit action is in process.



The subcommittee also conducted a survey on staffing processes. The intent of the survey was to identify if any DoD Agencies/Services have initiatives to streamline the recruiting and selection processes, especially Senior Executive Service (SES) nomination and confirmation processes. The survey results show that all DoD Agencies/Services adhere to the Office of Personnel Management (OPM) guidance for filling their SES positions. The overarching hiring process for senior leadership positions is based on the agency procedures and OPM guidance. Generally, a panel is convened, based on the level of senior leadership positions, to review all qualified applicants and select the most highly qualified and capable candidate.

Staffing process for filling senior acquisition positions remains unchanged. Notwithstanding, the subcommittee's findings show that DoD has successfully mitigated the risk associated with unfilled senior leadership positions. In order to continue this progress and build permanent checks and balances into the DoD acquisition system, the subcommittee recommends that OUSD establish a Steering Group/Task Force to work on the following initiatives for the next fiscal year Panel:

- Champion reform initiatives to streamline nomination and confirmation processes.
- Develop metrics for Senior Leadership Positions in Contracting for application DoD-wide.

The metrics, at a minimum, should capture data on the number of Senior Leadership Positions in Contracting vacancies, length of time these positions are vacant, length of time these positions are filled on "acting" basis, length of time an individual can remain "acting" in a senior leadership position in contracting, average number of days required to fill the position, and the status of staffing actions. Leveraging on this initiative, metrics could also capture the incumbent information, including tenure, start date and expected date of rotation/retirement.)

The subcommittee also recommends that when the metrics are developed, OUSD issue a policy memorandum to require DoD Agencies/Services to monitor and report their KLPs on a semi-annual basis to preclude allowing long-term "acting" leaders in senior acquisition positions. Using the metrics, OUSD should develop succession lists for temporary "acting" filling of positions; to monitor projected vacancies & initiate selection and nomination processes before vacancies occur.

Contracting Vulnerability: Tone at the Top

Related GAO or IG Reports

GAO, *Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste, and Abuse*, GAO-06-838R (Washington, D.C.: March 1, 2006).

Defense Science Board. *Report of the Defense Science Board Task Force on Management Oversight in Acquisition Organizations*, Washington, D.C.; March 2005.



GAO Recommendations

GAO found that DoD lags behind the "best in class" in creating a systemic, integrated approach and in demonstrating the kind of leadership necessary to drive ethics to the forefront of organizational behavior. In its report, GAO cited recommendations made by the Defense Science Board report. Both GAO and the DSB Task Force explained that ethical behavior is, first and foremost, a function of leadership. In those organizations where ethics has become part of the culture, the commitment of organization's leadership is clearly visible.

Both GAO and DSB recommended that the Department, under the leadership of the Secretary of Defense, explicitly articulate its vision and values as an ethically grounded organization, in much the same fashion that the Department expects of its contractors. In doing so, GAO and DSB recommend that the Secretary of Defense include putting ethics at the forefront of DoD communications. Additionally, GAO and DSB recommend that the Department institutionalize an orientation program in the Office of the Secretary for incoming senior leadership that address the values and national security objectives of DoD and the Secretary, emphasizes the importance of leadership to sustain the ethical culture of the Department, and makes clear the performance expectations for each individual in supporting both achieving the objectives and promoting the ethical environment. Finally, senior DoD leadership should ensure flow-down of the tone at the top so that an ethical culture is pervasive throughout the Department.

DoD Follow up Actions to Date or Pending Plans

In response to the findings and recommendations of the GAO and DSB Reports regarding tone at the top, the Department has been working to deploy an ethical culture through leadership, performance management, and training programs. The Department has articulated more explicitly its vision and values as a high integrity organization and continues to expect the same of its contractors. Most notably, the first of seven goals in the fiscal year 2007 AT&L Implementation plan is a high-performing, agile, and ethical workforce. Additionally, senior DoD leadership has issued several memoranda addressing the Department's commitment to promoting an ethical culture. In September 2005, the Secretary of defense issued memorandum, "Ethics and Integrity," stressing to all members of the Department the importance of placing ethics at the forefront of our vision and values. Also in September 2005, the USD (AT&L) issued memorandum, "Acquisition Integrity and Ethics," affirming his personal commitment to integrity in acquisition, encouraging leaders in the community of acquisition professionals to continually review processes and procedures, examine decision-making, and promote a transparent and ethical culture. In January 2007, USD (AT&L) sent letters to leadership of the 100 Top Defense Companies and Trade Associations calling on them to take every opportunity to articulate the Department's shared expectation of high integrity and ethical conduct, and to speak out frequently on the importance of ethical behavior as part of their values.

The Department has made clear the performance expectations for each individual in supporting an ethical culture. For example, the National Security Personnel System (NSPS) assesses all managers and supervisors against a standard Leadership Contributing Factor, which expects a high standard of ethical performance and ethical behavior as a minimum baseline. By incorporating ethical behavior as a standard leadership factor, NSPS fosters ethics in the



leadership of the entire DoD civilian workforce. Additionally, In November 2005, the Department instituted an SES/Senior Leader 360 degree Leadership Feedback process. Since that time, over 73 Senior Leaders were rated by 789 participants.

In recognition of the importance of leadership to sustain the ethical culture, the Department has implemented and enhanced training programs for senior leadership. The USD (AT&L) established an SES orientation program that addresses the values and objectives of DoD and the Secretary and sustainment of an ethical culture. Moreover, selected senior leaders participate in continuous learning and periodic self, staff, and peer assessments. The Defense Acquisition University (DAU) provides an Ethics Learning Center of Excellence where rigorous ethics training is integrated with resources, emphasizing value-based and rules-based behavior throughout the DoD acquisition community. Senior level ethics seminars are provided quarterly by DAU faculty, and staff from the Office of General Counsel, ensuring that compliance and values-based ethics are imparted. Additionally, train-the-trainer workshops are conducted as needed to further enhance DoD's ethical culture. In Fiscal Year 2007, a train-the-trainer course was conducted for 34 senior ethics leaders to include senior level personnel from the Office of the Secretary of Defense, Military Department General Counsels, and the DAU leadership team and key faculty.

Several military department-specific initiatives emphasizing the importance of value-based ethics at the top are noteworthy. In particular, the Department of the Navy is implementing Secretary of the Navy Objective #5 (Ethics), which reinforces ethics as a foundation of exemplary conduct within the Department. In particular, the Objective #5 initiative calls for an ethics culture assessment, and examination of all ethics training, and a re-emphasis of values-based ethics. The Air Force is conducting a large culture and values survey that will focus future value-based education. In July 2007, the Assistant Secretary of the Army Acquisition, Logistics, and Technology (ASA(AL&T)) approved establishment of an Army Panel on Contracting Integrity. The panel will be chaired by Honorable Claude M. Bolton and membership will be comprised of representatives from twenty organizations involved with Army contracting. The panel will meet to examine the Army contracting system, develop corrective actions, and recommend changes to statute, regulation, and policy that it determines necessary to eliminate areas of vulnerability.

Gaps Identified by Subcommittee

In evaluating Tone at the Top, the Subcommittee has identified several gaps. First, the initiatives implemented thus far set the standards for what the tone at the top should be for ethics and integrity. However, these initiatives lack specific procedures for measuring whether the message is flowing down beyond senior leadership. Information gathered from cultural surveys may fill these gaps, however, the subcommittee has not found a Department-wide initiative that evaluates the tone at the top and measures whether a value-based ethical culture exists. The SES/Senior Leader 360 degree Leadership Feedback process initiative will provide insight into the Department's ethical culture.

Additionally, the nature of political appointments and the change of administrations is a factor that impacts the tone at the top. It is important for the Department to send a consistent, yet



evolving message despite changes in leadership. Inevitable changes in administration and senior leadership dynamics exposes the Department to a risk that the weight of importance current senior leadership places on an ethical culture may not be of equal importance to the senior leadership of the future.

Subcommittee Recommendations

The Secretary of Defense and other high level senior leaders have articulated, in writing, the importance of ethics and integrity in everyday decision making at all levels within the Department. Although the senior leadership's "ethics is important" message is undoubtedly its own, the formality of its delivery is unaffecting. Members of the Defense Industry Initiative, which include the 100 top defense contractors, have recognized not only the importance of leadership articulating the organization's commitment to ethics and integrity, but also that the vehicle by which that message is delivered can greatly alter its effectiveness. Therefore, the Subcommittee recommends that the Secretary give a short video ethics message, as a supplement to annual ethics training, at least once per year re-articulating the importance of ethics and integrity, highlighting the Department's initiatives toward that goal, and providing real examples of violations and consequences.

The SES/Senior Leader 360 degree Leadership Feedback process should be used to measure the Department's success in promoting an ethical culture. By incorporating specific questions about ethics and integrity into the 360 degree leadership feedback, the Department can evaluate how well the tone at the top is actually recognized and embraced by every employee.

The NSPS assesses all managers and supervisors against a standard Leadership Contributing Factor, which expects a high standard of ethical performance and ethical behavior as a minimum baseline. The Subcommittee recognizes that by incorporating ethical behavior as a standard leadership factor, NSPS fosters ethics in the leadership of the entire DoD civilian workforce. Nevertheless, approximately half of the contracting workforce that responded to the Panel's data call reported that none of the senior leaders in their organization is required to have an integrity or ethics goal or objective in their performance plans. The Subcommittee recommends that the performance plans for all senior leaders in the Department, whether under SES Pay for Performance System or NSPS, specifically include an integrity or ethics objective.

In order for the Department to sustain a culture that values ethics and integrity, the tone at the top should be consistent. As an executive agency, the Department of Defense experiences frequent changes of its most senior leadership. Therefore, the Subcommittee recommends that the Department implement processes to measure the consistency of tone at the top. In addition, the Department should emphasize its commitment to promoting and maintaining an ethical culture by providing presidential appointees with a training module that identifies for them the unique ethics and contracting integrity laws, rules and procedures that pertain to employees of the federal sector and the Department of Defense.



Contracting Vulnerability: Lead Systems Integrator (LSI)

Related GAO or IG Reports

GAO Report GAO - 07-380 (Jun 2007)
GAO Report GAO - 07-460T (14 Feb 2007)
GAO Report GAO - 06-838R (07 Jul 2006)
GAO Report GAO - 06-478T (01 Mar 2006)
CRS Report to Congress (26 Mar 2007)
CRS Report to Congress (20 Jun 2007)
OMB Circular No. A-76 Revised (29 May 2003)

GAO Recommendations

1. Reassess OSD's approach to overseeing the Future Combat Systems (FCS) program, including asserting its own markers for success, particularly in the areas of cost, technology maturity, design maturity, and production maturity. *
2. Assess whether the past experience of the LSI on the FCS has broader implications for acquisition management, such as the ability of the DoD workforce to manage a system-of-systems acquisition.*
3. Ensure that there is the best link possible between the fee events in the FCS contract and actual FCS demonstrations.*
4. Review major FCS program changes to ensure that determinations for the government to accept changes as being programmatic or scope-related in nature are carefully scrutinized. *

[*Source: GAO-07-380]

DoD Follow up Actions to Date or Pending Plans

- Interview with Mr. Shay Assad, Director, Defense Procurement and Acquisition Policy (DPAP), from Federal Computer Week (28 Aug 07):
 - Use of an LSI construct will be closely examined and used sparingly, if at all, on future programs;
 - DoD has the acquisition mechanisms in place to accomplish the tasks it needs to get done;
 - Use of an LSI raises questions of organizational conflicts of interest;
 - The whole issue of what's inherently governmental and what isn't gets clouded; and
 - When the working relationship is too close, shared decisions erode the ability to exercise proper oversight.



LSI Discussion by Subcommittee (Gap Analysis)

LSI Definition

Congress defined “Lead System Integrator” in the Fiscal Year 2006 NDAA, and the Department subsequently adopted this definition, as either:

1 - “*Lead system integrator with system responsibility*” means a prime contractor for the development or production of a major system if the prime contractor is not expected at the time of award, as determined by the Secretary of Defense for purposes of this section, to perform a substantial portion of the work on the system and the major subsystems.

2 - “*Lead system integrator without system responsibility*” means a contractor under a contract for the procurement of services whose primary purpose is to perform acquisition functions closely associated with inherently governmental functions with regard to the development or production of a major system.

LSI Discussion

The Department conducted a survey in 2006 on the use of Lead System Integrators for major system acquisitions. It established that very few of the Department’s contracts met the definition of a Lead System Integrator, as defined by Congress in the 2006 National Defense Authorization Act. For those functioning as prime contractors, only three programs met the definition. For those functioning as support contractors, adequate protections had been implemented to ensure that the government always retains responsibility for determining the performance requirements for the system as a whole. In general, the Department prefers to keep prime contractors responsible for the selection and management of subcontractors as they determine the best technical solutions to meet the Government’s need, which we strive to state in terms of performance requirements.

Whether or not the Department uses the term “lead system integrator” or establishes contracting relationships that meet the definitions in the Act, all contractors are subject to the same rules and regulations. A “lead system integrator” has the same duties and responsibilities as any other federal contractor, as defined through the standard clauses that are incorporated into the contracts awarded by the Department.

The Department issued guidance that limited the direct financial interests of contractors performing as LSIs, and insists on the use of appropriate checks and balances when it is necessary to contract for the performance of acquisition functions that are closely associated with inherently governmental functions. In every case, the government determines the needs for a system as a whole.

At the time of this report, the current language of the prospective Fiscal Year 2008 NDAA includes a moratorium on the use of LSIs after October 1, 2010.



Subcommittee Recommendations

1. In anticipation of the enactment of the moratorium on use of LSIs, the subcommittee has limited its recommendations to the post-award administration of the few existing DoD LSIs.
2. The subcommittee recommends that existing LSIs should receive post-award administration with the appropriate checks and balances to ensure protection for the Department against potential organizational conflicts of interest and to allocate appropriately roles and responsibilities between industry and government.

Conclusion

In response to the DSB's findings and recommendations of the DSB report, DoD initiated multiple efforts to address and improve decision-making process. In the case of sustained senior leadership, OUSD issued several policy memoranda and they sufficiently address "unfilled" senior leadership positions, tone at the top, and LSI program issues. The results of the subcommittee review and assessment show that DoD has made significant progress in addressing sustained senior leadership issues. In looking to the future, however, the subcommittee recognized a need for formal procedures to monitor and measure the success of DoD initiatives. As an action for the next year, the Sustained Senior Leadership Subcommittee recommends that DoD establish a consistent definition of the progress/improvement resulting from the DoD initiatives. This use of standard metrics to measure the success of the initiatives will enable DoD to take improvement steps to ensure that contracting integrity in the Defense acquisition process.



3. Capable Contracting Workforce Subcommittee

Chair: Director, Human Resources, OUSD(AT&L)

Executive Summary

The Department is committed to ensuring a highly capable Defense acquisition team, motivated to deliver warfighting capabilities with the highest standards of trust, integrity and ethics.

Recently, the Under Secretary of Defense, Acquisition, Technology and Logistics (USD(AT&L)) established the "Source Document," which includes Strategic Thrust #3 – Take Care of Our People. This blueprint calls for collaboration on goals and initiatives that will develop people and strengthen the entire acquisition community. This subcommittee report identifies key initiatives and collaboration by contracting leadership across the Department to strengthen its workforce and reduce vulnerabilities to fraud, waste and abuse. The report also addresses the current size and quality indicators of the AT&L contracting workforce. Three recommendations are provided to further enhance the contracting workforce.

To improve the focus of this report, the Director, Defense Procurement and Acquisition Policy (DPAP) asked the subcommittee to include all members of the 1102 occupational series regardless of AT&L career field and military reported as performing contracting duties.¹ In this report the term "AT&L contracting workforce" is used to represent this segment of the Defense acquisition team.

The AT&L contracting workforce size has been stable from 2001 through 2007. It is comprised of 22,345 members (18,822 civilians/1102s and 3,523 military). It is 18 percent of the AT&L workforce (22,345 of 126,033). The AT&L contracting workforce is comprised of mostly civilian members. The composition is 84 percent civilian and 16 percent military. In addition to the organic workforce, some contracting organizations contract for procurement services, primarily for flexibility in achieving their mission.

For FY07, the Army has reported² 5,408 1102s in the AT&L contracting workforce and 270 military (95%/5%); the Navy³ reported (including Marines) 3,719 1102s and 1,240 military (75%/25%); and the Air Force⁴ reported 4,716 1102s and 2,013 military (70%/30%). Approximately 57 percent of the 3,523 military contracting personnel are in the Air Force. The other defense agencies have 4,979 1102s in the civilian AT&L contracting workforce.⁵ Military members performing contracting duties in the defense agencies are accounted for in the Service numbers.

¹ The official size of the DoD AT&L workforce is the number of incumbents on positions designated by Components as acquisition positions.

² Army data submitted to the AT&L Workforce & Career Management (AWCM) office by the Army DACM office on 10/29/07 with a revision on 11/30/07.

³ Navy data submitted to the ATL Workforce & Career Management office by the Navy DACM office on 10/29/07.

⁴ Air Force data submitted to the AT&L Workforce & Career Management office by the Air Force DACM office on 10/30/07

⁵ Data source is Component-reported end-of-FY07 data in the AT&L Workforce Datamart



Although size has been stable, a significant concern is the ability to mitigate the impact of the pending departure of the Baby Boomer workforce. Seventy-three percent of the AT&L civilian contracting 1102 workforce is part of the Baby Boomer and Silent generations.⁶ From 2001 to 2007, there were 3,589 1102 new hires in the AT&L contracting workforce constituting 19 percent of 1102s.⁷ While data on hiring appears favorable today, overall net hiring and retention may need to increase to maintain (or increase) the current civilian strength level through 2016.

Key quality indicators of the AT&L contracting workforce include experience, education and certification levels. The AT&L contracting workforce has high certification and education levels and a large segment have many years of experience. To ensure a capable workforce now and in the future, DoD must hire, develop, and retain people with the right skills needed now and for the future. AT&L, the Office of the Deputy Under Secretary of Defense for Civilian Personnel Policy, DoD Functional leaders (e.g., the Director of DPAP for the AT&L contracting workforce) and the Components are collaborating to ensure responsive workforce strategies. Those strategies include using improved data analysis tools and a scientific-based competency modeling and skills assessment process to analyze, understand, and bridge gaps in current and future workforce capabilities. A key initiative under AT&L Strategic Thrust #3 is to establish a comprehensive workforce analysis capability to support targeted recruiting, development, and retention initiatives. High-quality data is a critical enabler for analyzing and projecting workforce trends, determining skill gaps, and devising succession planning strategies—all essential for effective workforce planning.

From a DoD strategic perspective, effective National Security Personnel System (NSPS) implementation and successful attainment of QDR-recommended outcomes will enhance DoD's ability to improve and ensure needed workforce capability. NSPS provides DoD with expanded flexibilities for assigning and reassigning employees in response to mission changes and priorities. Managers are better able to compete for the best talent using new hiring mechanisms and pay-setting flexibilities.

Almost every acquisition study, including the 2006 Defense Acquisition Performance Assessment review, concluded that DoD must continue to improve acquisition workforce quality. The Contracting Workforce Sub-Committee reviewed GAO reports related to contracting workforce vulnerabilities. GAO recommendations also were considered as the sub-committee evaluated identified gaps and made three additional recommendations to improve the overall state of the contracting workforce. The following captures key elements of the review.

Contracting Vulnerability: Skill Levels

Related GAO Report: GAO-06-838R *Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse*

GAO Recommendations

⁶ Same as Footnote 5

⁷ Same as Footnote 5



“DOD needs to have the right skills in its acquisition workforce to effectively implement best practices and properly manage the acquisition of goods and services.”⁸

“The acquisition workforce continues to face the challenge of maintaining and improving skill levels for using alternative contracting approaches introduced by acquisition reform initiatives of the past few decades.”⁹

DoD Actions and Plans

DoD Civilian Human Capital Strategic Plan

AT&L Source Document/Strategic Implementation Plan & Strategic Thrust #3 - Take Care of Our People

AT&L Human Capital Strategic Plan (June 2007)

AT&L Key Leadership Position (KLP) Initiative

AT&L DPAP Community Leadership & Competency Assessment Initiatives

To improve workforce-shaping results, the Under Secretary of Defense for Acquisition, Technology and Logistics, has initiated AT&L Strategic Thrust #3, Take Care of Our People, which includes focus on recruiting, developing and retaining people with the right skills to successfully accomplish the acquisition mission with integrity. These initiatives include increased emphasis on leadership development; comprehensive workforce analysis and planning; and increased communication and knowledge sharing (DAU Living Library). In addition, the USD (AT&L) supported initiatives to increase funding for recruiting, retention, workforce development, and other workforce initiatives. A major supporting initiative under AT&L Strategic Thrust #3 is to fully deploy a comprehensive, workforce analysis and decision-making capability. This tool will support targeted recruiting, development, and retention initiatives. Another critical supporting initiative is the AT&L competency management initiative which will update and standardize competency models across all AT&L functional areas and enable improved workforce gap assessments and planning. The Director, Defense Procurement and Acquisition Policy (DPAP), as the senior leader for the AT&L contracting community has provided benchmark leadership in this area. These initiatives will strengthen the entire acquisition community to include the AT&L contracting workforce.

Competency Management. A multidiscipline AT&L competency management initiative involving AT&L functional leaders, component acquisition leaders, field subject matter experts, Defense Acquisition University representatives and competency experts was deployed in October 2006. The objective of the AT&L initiative is to standardize and update functional competency models and enable skill gap assessments of the AT&L workforce. It includes identifying key behaviors and underlying knowledge, skills and abilities that contribute to superior performance. The Contracting functional advisor (Director, Defense Procurement and Acquisition Policy) is proactively leading the contracting community on this initiative. In May 2007 the Director, DPAP, led a contracting senior leader's community-wide summit to address

⁸ GAO-06-838R, Page 7

⁹ GAO-06-838R, Page 9



critical issues to include reviewing and further updating the contracting competencies. The contracting competency model update process enabled the start of the contracting workforce assessment which began in June 2007. Approximately 3,600 contracting personnel from the Defense Logistics Agency, Air Force and Army Corps of Engineers have completed the assessment. In early December 2007, the Director, DPAP hosted a second contracting senior leader summit and reviewed progress and plans for completing the AT&L contracting workforce-wide competency assessment which involves employees and their supervisors. Upon completion of the contracting workforce assessment, a comprehensive report will be developed and provided in October 2008. The report analysis will assist contracting senior leaders in refining workforce strategies to close skill gaps.

Key Leadership Positions. A key supporting initiative of Strategic Thrust #3, Take Care of Our People, is AT&L Key Leadership Positions (KLPs). KLPs are positions with a significant level of responsibility and authority and are key to the success of a program or effort. The KLP initiative increases attention to qualifications, tenure requirements, and succession planning for KLPs across the Defense acquisition team. Initial implementation policy required that, at a minimum, KLPs consist of Program Executive Officers (PEOs), Program Managers (PMs), and Deputy PMs (DPMs) for Major Defense Acquisition Programs including Major Automated Information Systems (MAIS); and PEOs and PMs of significant non-major programs, including MAIS.

In May 2007 the Department expanded the definition of required Key Leadership Positions (KLPs) to include the position of Lead Program Contracting Officer for MDAP/MAIS programs. This initiative will place increased, significant senior leadership emphasis on management of contracting personnel with significant levels of responsibility. The Director of Procurement and Acquisition Policy is also working with DoD-wide contracting senior leaders to identify a broader group of senior contracting leadership positions for increased succession planning and management attention purposes.

Gaps Challenges Reviewed:

Size and quality are two key dimensions of AT&L contracting workforce capability. Three available quality indicators are years of experience, education level and certification level.

Size. Currently, there is strong stakeholder-wide agreement that the size of the contracting workforce needs to be assessed in light of numerous changes such as increased acquisition of services, the impact of the GWOT; the increase in dollars obligated, and other challenges. The AT&L contracting workforce size has been stable from 2001 through 2007. It is comprised of 22,345 members (18,822 civilians/1102s and 3,523 military). Figure 1 below shows the DoD count of the civilian 1102 contracting occupational series from 2001 through 2007 both by DoD and major Component.¹⁰ From 2001 to 2007, the DoD-wide 1102 workforce has remained

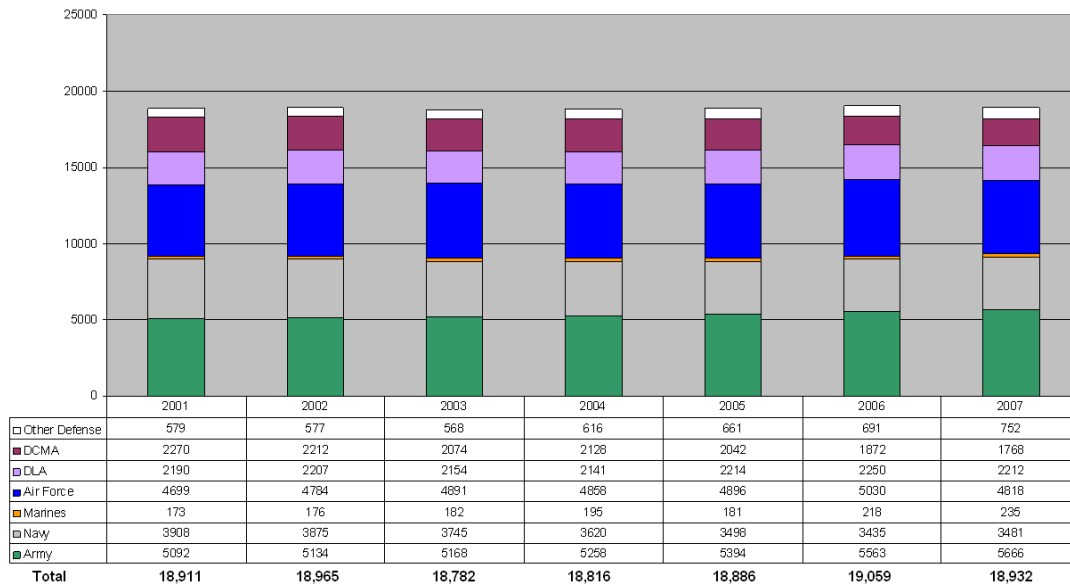
¹⁰ This DoD-wide count includes all 1102 incumbents in the end-of-fiscal year Master Civilian Personnel File regardless of whether the incumbent is identified as being a member of the AT&L workforce. As of the end of FY07 there were 18,932 1102 incumbents. This number is comprised of 18,822 incumbents that are on positions designated as AT&L positions and 110 incumbents that are not (18,822 + 110 = 18,932). In FY06 there were 366 1102 incumbents in the end-of-fiscal year Master Civilian Personnel File that were not on positions designated as



relatively stable, varying by 1.5 percent from a low in 2003 of 18,782 to a high of 19,059 in 2006.

The 1102 count for the Army, Marines, Air Force, DLA and other Defense agencies increased as follows: Army by 11.3 percent, Marines by 35.8 percent, Air Force by 2.5 percent, DLA by 1.0 percent, and other Defense agencies by 29.9 percent. The Navy 1102 count declined from 2001 through 2007 by 10.9 percent. DCMA decreased from 2001 through 2007 by 22.1 percent.

Figure 1. DoD Contracting Occupational Series
(Workforce Count FY01-FY07)



Source: FY01-FY06, DMDC DRS Report #16242; FY07, DMDC DRS Report #20716
(DMDC uses the 4th Quarter Master Civilian Personnel file for this count which reflects appropriation-funded positions)

Experience. Using years of service as a key indicator of experience, the civilian AT&L contracting workforce includes a large segment that have many years of experience. Fifty-one percent of the civilian AT&L contracting workforce have more than 20 years of service. This compares to 49 percent for the total civilian AT&L workforce and 40 percent of the DoD General Schedule workforce.¹¹ Many within this portion of the current AT&L contracting workforce supported acquisition of most major systems that led to the end of the Cold War, extended the life of many aging systems, supported Desert Storm, the Global War on Terror, and numerous other contingency operations. These mission demands generated a very experienced acquisition workforce. Of the 18,822 civilian members of the AT&L contracting workforce, 19 percent have five or less years of service. A recent DoD contracting leadership summit highlighted best practice examples of acquisition organization initiatives to accelerate development of these new members to the AT&L contracting workforce. These Component and

AT&L positions. The reduction from 366 to 110 is positive and is likely a reflection of improved Component attention to management of acquisition positions.

¹¹ Data source is Component-reported end-of-FY07 data in the AT&L Workforce Datamart; DoD General Schedule information from FEDSCOPE, September 2006, www.fedscope.opm.gov



local initiatives plus the continued expansion of available AT&L Performance Learning Model resources (training, online communities of practice, performance support, and other knowledge sharing resources) are equipping the new workforce for accelerated performance success.

Education. The civilian AT&L contracting workforce is highly educated, with 78 percent having bachelors or advanced degrees; 29 percent of this workforce possess advanced degrees. This is the same as the overall AT&L workforce percentages. Moreover, an analysis of 1102 civilian new hires during the past 5 years shows bachelors or advanced degrees at 93 percent; 26% of the new hires during this period have advanced degrees. This compares to 85 percent and 26 percent respectively for new hires across AT&L workforce.

Certification. Certification level is a key workforce quality indicator. The AT&L contracting workforce is subject to certification requirements established by DoD policy in response to the Defense Acquisition Workforce Improvement Act (DAWIA). Certification requirements are defined in terms of education, experience and training standards and a certification “level” requirement (Level 1, 2 or 3) is established for each position designated by the Components as contracting. New hires and workforce members assuming positions with higher level requirements have twenty-four months to meet the certification requirements of their position. In FY07, 84 percent of the civilian AT&L contracting workforce were reported as certified and 74% met or exceeded the certification requirements of their position. For military in the AT&L contracting workforce, 76 percent were reported as certified and 61 percent have met or exceeded the certification requirements of their position.

Total Force and Contractor Support. Contracting workforce capability and gaps are a function of various factors to include size of the “Total Force,” defined as active and reserve military members, civilian employees, and support contractors. Both the 2006 QDR and DoD Civilian HCSP call for managing from a Total Force perspective. The Strategic Plan for the Office of the Under Secretary for Personnel and Readiness focuses on developing the right mix of people and skills through seamless integration to capitalize on the strengths of those individuals comprising the Total Force.¹² The Components are responsible for force planning and in general, the force planning processes are similar. DoD Instruction 1100.22 provides guidance for determination of the appropriate mix of manpower (military and civilian) and private-sector support.¹³

The Department, Military Services and Agencies distribute skills among the four elements of the Total Force (Active Component, Reserve Component, civilians and support contractors) to optimize their contributions across the range of military operations, from peace to war. While an essential part of the Total Force, contractors supporting the acquisition mission are not counted and are not required to meet DAWIA-based training and certification requirements. DoD acquisition organizations are responsible for making effective use of these support contractors.

¹² *Office of the Under Secretary of Defense for Personnel and Readiness Strategic Plan 2006–2011, Goal 7: Integrate the active and reserve military, civilian employees, and support contractors into a diverse, cohesive total force and a rapidly tailored joint force structure.*

¹³ DoD Instruction 1100.22, *Guidance for Determining Workforce Mix*, September 7, 2006, implements the policies set forth in DoD Directive 1100.4, *Guidance for Manpower Management*, February 12, 2005, pp. 6-8.



Transformation to the Total Force Construct represents a significant cultural change for the Department, especially with regard to reporting and tracking of contractor support personnel. However, the Department is aggressively taking actions to fully understand its total acquisition workforce mix, including the support contractor component. On March 29, 2007 the USD(AT&L) sent a memorandum¹⁴ to the Services, Components and Defense Agencies to review and report acquisition support contractor workforce data.

With specific focus on the contracting workforce, on August 30, 2007 the Deputy Under Secretary of Defense for Acquisition and Technology sent a memorandum¹⁵ to the Services, Components and Defense Agencies to request information on various topics of interest by the Section 813 Panel including the Capable Contracting Workforce Subcommittee to gain a better understanding DoD's contracted out procurement services. For the purposes of this review, the term "contracted out procurement services" is defined as the use of private sector contractors to carry out actions associated with obtaining supplies or services (including construction), from initial description through solicitation and contract award and all phases of contract administration for the U.S. Government – i.e. hiring contractors to do contracting. The survey specifically applied to contracting out duties performed by the 1102 job series and equivalent military occupational codes and was not associated with support roles – i.e. administrative or statistical support.

Twenty-four organizations provided a variety of responses regarding contracted out procurement services. Fourteen indicated their organization contracted for procurement services primarily for flexibility in achieving their mission. Most respondents indicated, when they do contract out procurement services, they do so for the following functions: Procurement planning; Market research; developing statements of work; recommending procurement strategy; drafting solicitation documents; issuing solicitation packages; receiving and reviewing proposals in preparation for negotiations; performing price/cost analysis; supporting negotiations of price, terms, and conditions; processing award decisions and distributing contracts; reviewing performance and advising on the exercise of options; investigating reports of discrepancy; identifying orders for expedited delivery; and preparing contracts for closeout. The respondents did not include in the list of services contracted out, the functions of drafting and developing price negotiation memorandums and conducting contract negotiations.

Based upon the information received, the data, while incomplete, reflected a wide range in the extent of contractor personnel supporting the contracting workforce. Because of the variances in organization size and lack of complete information, it would be premature to generalize findings and make recommendations. Regarding future expectations of contracting for procurement services, six organizations indicated they would be increasing the practice; five said they would be decreasing contracting for procurement services; and three did not expect their level of contracting for procurement services to change. The practice of using contractors support the contracting mission merits further study because it gives rise to questions regarding potential conflicts of interest and appropriate designation of governmental vs. non-governmental

¹⁴ USD(AT&L) memorandum, *Review of Acquisition Support Contractor Workforce Data*, March 29, 2007

¹⁵ James I. Finley, Deputy Under Secretary of Defense for Acquisition and Technology, *Panel on Contracting Integrity*, August 30, 2007



functions. As such, potential vulnerabilities may exist that could result in fraud, waste and abuse. As a result of the review, the subcommittee concluded that DPAP should establish overarching guidance for the use of contractor support personnel within the contracting community.

The Contracting Workforce Sub-Committee also reviewed GAO reports related to contracting vulnerabilities associated with the large number of retirement eligible personnel in the Department. GAO recommendations were also considered as the sub-committee evaluated identified gaps. The following discussion addresses the review of:

Contracting Vulnerability: Large Number of Retirement-Eligible Staff

Related GAO Report: GAO-06-838R *Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse.*

DoD Actions and Plans

DoD Civilian Human Capital Strategic Plan
AT&L Source Document/Strategic Implementation Plan & Strategic Thrust #3 - Take Care of Our People
AT&L Human Capital Strategic Plan (June 2007)
AT&L DPAP Community Leadership & Competency Assessment Initiatives

Gap Challenges Reviewed:

A consideration in the adequacy of the size of the workforce is the demographic challenge of maintaining the current workforce size in light of the pending departure of the Baby Boomer workforce. Seventy-three percent of the DoD civilian contracting acquisition workforce (1102s) is part of the Baby Boomer and Silent generations. As the Level II and Level III certified employees depart the workplace, DoD must ensure entry and mid-level workforce members are achieving certifications to fulfill position requirements vacated by the Baby Boomer workforce. Improved demand management will ensure that training resources are optimized to maintain a high-quality workforce. Figure 2 provides a comparison of the generations between the AT&L civilian contracting workforce, the AT&L civilian workforce, the DoD civilian workforce and the national labor pool.



Figure 2. AT&L Civilian Contracting Workforce by Generations
(as of end-of-Fiscal Year 2007)

Generation	National*		DoD**		AT&L Workforce***		1102s****	
	Workforce (millions)	% Workforce	Workforce	% Workforce	Workforce	% Workforce	Workforce	% Workforce
Silent Generation (born before 1946)	11.5	7.8%	45,625	6.7%	6,624	5.9%	982	5.3%
Baby Boomers (1946-64)	61.5	41.6%	438,971	64.5%	74,887	67.3%	12,490	67.2%
Generation X (1965-76)	43.5	29.4%	132,948	19.5%	18,544	16.7%	3,131	16.8%
Generation Y (1977-1989)	31.5	21.3%	62,676	9.2%	11,286	10.1%	1,997	10.7%
Millenium (1990-present)	0	0.0%	153	0.0%	0	0.0%	0	0.0%
		100.0%		99.9%		100.0%		100.0%

Notes:

- * Source: Armour, Stephanie "Generation Y They've Arrived at Work with a New Attitude" USA Today, Nov 7, 2005, 18-28; noted is that the workforce increased from 148M in 2005 to 153.9M in 2007 (BLS -Employment Situation Summary Nov 2007)
- ** Source: OSD P&R Report: DoD Civilian Workforce Statistics/DoD Demographics/May2006 Edition
- *** Source: AT&L Datamart FY07 AT&L Workforce Count/AT&L workforce data contains 456 files with null for age
- **** Source: AT&L Datamart FY07 AT&L 1102 Count/AT&L workforce data contains 222 files with null for age (18,600+222=18,822)

Positioning DoD to successfully fill vacancies to maintain the contracting workforce at its current (or greater) strength through 2016 will require targeted recruiting, hiring and retention strategies (and supporting resources). Comprehensive workforce analysis and supporting tools are critical to selecting targeted strategies. An important initiative supporting AT&L Strategic Thrust #3, Take Care of Our People, is establishing a comprehensive workforce analysis and decision making capability to enable the Department to better address specific demographic challenges to maintaining workforce capabilities. AT&L and RAND have recently worked to improve upon a workforce inventory projection model. The preliminary model is based on experienced gains and losses as well as a probability of retirement by civilian year groups. The preliminary model is an example of the types of tools that, in addition to improved data management and quality, will support leadership workforce strategy and gap decisions. The Director, DPAP has asked contracting senior leaders to work with their acquisition organizations to understand the organizational and local impacts of all factors impacting workforce size, to include the departure of the experienced Baby Boomers of the AT&L contracting workforce. This issue was a primary focus of the recent December 2007 DPAP-hosted DoD contracting senior leadership summit.

Contracting Workforce Subcommittee Recommendations

The Contracting Workforce Subcommittee made neither Statutory nor DoD Policy or Regulatory recommendations. Three recommendations for initial actions for implementation in 2008 are:

- DPAP and senior contracting leaders determine appropriate workforce size.
- DPAP and senior contracting leaders develop an initial human capital planning addendum to the AT&L Human Capital Strategic Plan.



- DPAP and senior contracting leaders resource and implement responsive human capital strategies and supporting recruiting, hiring and retention initiatives (including intern/coop programs).

Conclusion

The Department is committed to ensuring a highly capable contracting workforce, motivated to deliver warfighting capabilities with the highest standards of trust, integrity and ethics. Although the size of the AT&L contracting workforce has been stable since 2001 significant mission demands (such as GWOT) and other factors, to include the impact of the pending departure of the Baby Boomer workforce, warrant a review of the appropriateness of the current workforce size. High certification levels, education levels, and experience indicators of the AT&L contracting workforce reflect a highly professional community. High demands continue on this community along with significant emphasis to improve contract management and contingency contracting. The Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) recently implemented Strategic Thrust #3 – Take Care of Our People. This strategic framework and the proactive senior leadership initiatives across the contracting community will strengthen the contracting workforce and foster an environment of performance excellence with integrity. The recommendations are logical (and in-progress) next steps to enhance contracting workforce capability across the AT&L enterprise.



4. Adequate Pricing Subcommittee Director, Defense Contract Audit Agency

Executive Summary

DoD is required to obtain fair and reasonable prices for the goods and services it procures. The Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) provide rules and procedures for making price determinations to achieve fair and reasonable prices. The GAO reported that DoD faces various risks associated with adequate contract pricing that can lead to contracting vulnerabilities. These pricing risks stem from non-competitive contract actions, delays in setting requirements for undefinitized contracts, failure to use available pricing information, and misclassification of items as commercial items.

In response to these identified risk and vulnerabilities, DoD has revised pertinent portions of the FAR, DFARS, the DFARS Procedures, Guidance and Information (PGI), and has issued guidance memorandums promulgating revised rules and procedures. DoD has emphasized the importance of competition and the need to dedicate greater resources toward promoting competition. In addition, DoD has focused significant attention on all aspects of contingency contracting and has established the Emergency Procurement Committee which is focusing on proper contracting in contingency operations. To address the risks associated with pricing of commercial items, DoD now requires documentation of commercial item determinations for all acquisitions using FAR Part 12 that exceeds \$1 million. DoD has initiated DFARS cases and has plans to issue additional guidance memorandums to continue to address the pricing vulnerabilities and risks identified by the GAO.

Based on the subcommittee's review, recommendations requiring additional DoD actions were developed to further address the vulnerabilities facing adequate contract pricing. The subcommittee's recommendations include: (1) Change the commercial item definition by deleting the "of a type" phrase and revising the language "offered for sale" to "has been sold," (2) developing a coordinated Contract Policy Execution Review plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components and encouraging peer review between services as an integral part of each component's Contract Policy Execution Review program, and (3) endorsing and monitoring progress of FAR Case 2005-036, Definition of Cost of Pricing Data, and issuance of the revised rule which clarifies the need to obtain the necessary data (certified cost or pricing data or data other than certified cost or pricing data) to determine a fair and reasonable price.

Contracting Vulnerability: Non-competitive Contract Actions

The GAO reported that the FAR emphasizes the use of competition in the acquisition process, but that the Department continues to utilize procurement practices that limit competition. The GAO found that competition requirements on multiple-award and Federal Supply Schedule (FSS) orders were frequently waived, in some cases in order to retain the incumbent contractor. The GAO concluded that DoD regulations lacked adequate safeguards for ensuring that these



waivers were granted only under appropriate circumstances. Furthermore, agency officials reportedly avoided competition by ordering work outside the scope of the underlying contracts.

In response to the recommendations included in these reports, DoD has revised pertinent portions of the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), and the related Procedures, Guidance, and Information (PGI) and issued a memorandum promulgating revised procedures. Contract specific changes have also been made to the LOGCAP program to address issues raised by GAO.

Related GAO or IG Reports

GAO: *Contract Management: Guidance Needed to Promote Competition for Defense Tasks Orders*, GAO-04-874, dated July 30, 2004

GAO: *Rebuilding Iraq: FY2003 Contract Award Procedures and Management Challenges*, GAO-04-605, dated June 1, 2004

GAO Recommendations

1. Develop additional guidance on the circumstances under which the logical follow-on and unique service waivers may be used.
2. Require all waiver determinations be supported by documentation, describing in detail the circumstances that warrant the use of a waiver.
3. Establish authority for approval levels for waivers under multiple-award contracts that are comparable to the approval levels for sole-source federal supply orders under FAR 8.4.
4. Ensure any future task orders under the LOGCAP contract for Iraq reconstruction activities are within the scope of the contract.

DoD Follow up Actions to Date or Pending Plans

In response to the GAO recommendation number 1, changes were made to DFARS 208.405-70(b) and 216.505-70(b), effective March 21, 2006, as well as to PGI 216.505-70 to incorporate circumstances described at FAR 16.505(b)(2)(i) under which competition waivers may be appropriate.

In response to the GAO recommendation number 2, the March 21, 2006 revisions to DFARS 208.405-70(b) and 216.505-70(b) also require that each order exceeding \$100,000 include a written determination that a statute expressly authorizes or requires that the purchase be made from a specific source or one of the FAR 16.505(b)(2) statutory exceptions applies.

In response to the GAO recommendation number 3, the changes to DFARS 208.405-70(b) and 216.505-70(b), effective March 21, 2006, revised approval requirements for placement of noncompetitive orders under Federal Supply Schedules and multiple award contracts for consistency with those at FAR 8.405-6.



In response to the GAO recommendation number 4, the Army has implemented checks and balances to ensure any future task orders under the LOGCAP contract for Iraq reconstruction are within the scope of the contract. The Procuring Contracting Officer for the LOGCAP contract now reviews each proposed Scope of Work which will result in a task order and makes a determination whether the action is within the scope of the contract. Legal advice is obtained as necessary to make this determination.

In addition, the Office of Federal Procurement Policy (OFPP) issued a memorandum, dated May 31, 2007, which requires the following:

- Reinvigorate the role of the Competition Advocate as required by FAR 6.5. This also requires that DoD submit their annual competition report to OFPP by December 2007;
- The FAR Council to strengthen FAR competition policies, including associated transparency and management practices;
- GSA to centralize market research for Government-wide use; and
- GSA to develop new standard Federal Procurement Data System (FPDS) to clearly differentiate types of actions for better trend analysis of competed contract actions.

In response to the OFPP memorandum on July 26, 2007, the Director, Defense Procurement & Acquisition Policy (DPAP), issued a memorandum “Enhancing Competition in Defense Acquisition” calling for greater emphasis toward promoting competition – including placement of orders against multiple award contracts to the maximum extent practicable. DPAP is currently working with the Defense Manpower Data Center to create periodic reports on the extent of competition and fair opportunity provided for orders against multiple award contracts for each Component. DoD Components’ annual competition reports, as required by FAR 6.5, will be submitted to DPAP for consolidation into a single DoD report that will be submitted to OFPP by December 2007. DoD is working with OFPP and the Civilian Agencies to standardize and improve procedures for reporting competition related information.

Gaps Identified by Subcommittee

The Subcommittee believes that DoD needs to focus on internal reviews/monitoring and peer reviews to ensure compliance with competition requirements. Also, training may be needed to ensure that contracting staffs are properly trained on competition requirements.



Subcommittee Recommendations

1. Develop a coordinated Contract Policy Execution Review plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components. Encourage peer review between services as an integral part of each component's Contract Policy Execution Review program.
2. Require competition advocates to periodically assess their own procedures for effectively fulfilling their duties and responsibilities under FAR 6.5.
3. Assess the need for revised or additional training on competition requirements.

Contracting Vulnerability: Delays in Setting Requirements for Undefined Contracts

In 2004, the DoDIG found that contracting officials did not justify the issuance of letter contracts and did not adequately definitize letter contracts within the required time frames. In addition, contracting officers did not properly document the reasonableness of negotiated profit rates for letter contracts, considering the risk was lessened with significant costs already being incurred. In a more recent report, the GAO reported that UCAs were not definitized within the required time frames and that contracting officers are not documenting, as required, the basis for the profit or fee pre-negotiation objective and the profit or fee negotiated. The GAO stated that DoD is generally using UCAs to rapidly fill urgent needs, as permitted, in a variety of circumstances. The most common reasons for the delays were untimely receipt of an adequate proposal from the contractor, acquisition workforce shortfalls, and changing requirements. In addition, the GAO reported that DoD faces a potentially large gap in its data and thus does not know the extent to which it is using undefinitized contractual actions (UCAs) because the Government's procurement system does not identify undefinitized task or delivery orders or undefinitized contract modifications.

DoD has initiated a DFARS case and will soon issue a policy memorandum in response to the GAO recommendations. The Department continues to review this area and is establishing a reporting requirement for UCAs over 180 days with plans for definitization. In addition, DoD is assessing overall contract profit and fee policy to include that associated with UCAs.

Related GAO or IG Reports

Department of Defense, Office of the Inspector General, Audit Report: *Undefinitized Contractual Actions*. Report Number D-2004-112, dated August 30, 2004.

Government Accountability Office, Audit Report: *Defense Contracting – Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met*. Report Number GAO-07-559, dated June 19, 2007.



GAO/DoDIG Recommendations

1. Services should develop and/or re-emphasize guidance requiring the contracting officers justify the use of a letter contract, definitize letter contracts within specified timeframes, and document the reasonableness of the negotiated profit. The Service acquisition executives should provide guidance to assess the adverse impact that will result if a contracting method other than an UCA is used. (DoDIG)
2. Issue guidance on how to comply with the requirement to definitize when 40 percent of work is complete. (GAO)
3. Establish reporting channel for UCAs over 180 days with plan/timeframes for definitization. (GAO)
4. Supplement acquisition personnel on an as needed basis to quickly definitize UCAs once they are awarded. (GAO)
5. Issue guidance to obligate less than the maximum allowed at UCA award to incentivize contractors to expedite the definitization process. (GAO)
6. Issue guidance to specify that the effect of contractor's reduced risk during the undefinitized period on profit or fee is documented in the price negotiation memorandum. (GAO)

Pending Legislation

At the time of this report, both the House and Senate have passed H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, and provided it to the President for signature. The Act includes section 809, Implementation and enforcement of requirements applicable to undefinitized contractual actions. Section 809 requires DoD to issue more effective guidance and implementation instructions to ensure compliance, implementation, and enforcement regarding, at a minimum, stipulated requirements applicable to undefinitized contract actions; to submit a report to Congress setting forth the guidance/instructions issued; and requires GAO to submit an assessment report within two years on the Department's actions.

DoD Follow up Actions to Date or Pending Plans

In response to recommendation number 1, the Military Departments have taken positive actions to improve the documentation, justification and milestones for definitizing contracts. On March 15, 2005, the Army issued guidance to contracting offices to reiterate the statutory requirements pertaining to issuance, definitization and documentation of UCAs. On October 15, 2004, the Navy issued guidance requiring its contracting personnel to comply with the requirements. The Air Force issued a memorandum dated June 13, 2005, on management and documentation of UCAs to field offices. In addition, the Air Force revised the Air Force Federal Acquisition Regulation Supplement (AFFARS) on August 18, 2005, requiring field offices to



submit written reports on UCA approving authorities that include details on any UCA that was not definitized within 180 days after the contractor submits a qualifying proposal.

The Director, Defense Procurement and Acquisition Policy (DPAP) has initiated consideration of appropriate actions in response to the GAO and DoDIG recommendations. However, the final language of the FY 2008 NDAA regarding requirements relating to undefinitized contractual actions will have to be considered as well. At the December 2007 Offsite, the Director, DPAP, set aside time for the senior leaders in contracting to begin developing a recommended plan for implementing section 809, should the legislation be enacted. Such implementation would address all of the GAO and DoDIG recommendations.

Gaps Identified by Subcommittee

The Military Services and Defense Agencies are considering a variety of alternatives to ensure quick definitization of UCAs. As noted above, significant policy guidance has and will be issued in response to the DoDIG and GAO reports and identified vulnerabilities. The subcommittee believes that the Services and Defense Agencies should consider implementing a monitoring process covering UCAs requiring a status report at specified time frames beginning with the time the UCA is awarded.

Subcommittee Recommendations

1. Develop a monitoring process of UCAs (starting with time of award).

Contracting Vulnerability: Failure to Use Available Pricing Information for Sole Source Awards

GAO reports have shown that, in some cases, DoD contracting officers did not obtain the data they needed and, in other cases did not sufficiently evaluate the data they had, to determine a fair and reasonable price for the item or service being procured. GAO states that DoD's failure to use available pricing information for sole-source contract awards leaves it vulnerable to waste. Furthermore, GAO highlighted situations where lack of access to technical drawings and data precluded the use of competition and that urgent and compelling needs limited the use of available pricing information.

The cognizant program officers have taken action to correct identified issues. Furthermore, DoD has added language to DFARS Procedures, Guidance, and Information (PGI) 215.4 to clarify requirements for obtaining necessary information to support determination of a fair and reasonable price and is currently working to publish a FAR rule to do the same. DoD has focused significant attention on all aspects of contingency contracting and has established the Emergency Procurement Committee which is addressing proper contracting in a contingency operation.



Related GAO or IG Reports

Government Accountability Office Report: *Contract Management: The Air Force Should Improve How it Purchases AWACS Spare Parts*, GAO-05-169, dated February 15, 2005.

Government Accountability Office Report: *Hurricane Katrina: Army Corps of Engineers Contract for Mississippi Classrooms*, GAO-06-454, dated May 1, 2006.

GAO Recommendations

1. Ensure available information is used to negotiate fair and reasonable prices.
2. Develop a strategy to promote competition, where practicable, in the purchase of AWACS spare parts; and
3. Clarify the Air Force access to AWACS drawings/technical data

DoD Follow up Actions to Date or Pending Plans

In response to recommendation number 1, DPAP issued a memorandum, dated March 8, 2005, to the Air Force emphasizing the need to use available information when pricing contracts. In addition, DoD has added language to PGI 215.4, Contract Pricing, to clarify existing FAR and DFARS requirements for obtaining necessary information or data to determine a fair and reasonable price. DPAP transmitted the guidance in a memorandum dated June 8, 2007.

DoD also established FAR Case Number 2005-036 to change the definition of Cost or Pricing Data and clarify requirements for obtaining necessary information or data for determining a fair and reasonable price. A proposed rule was issued on April 23, 2007, which included the following revisions: (i) revised the definition of "cost or pricing data," (ii) changed the term "information other than cost or pricing data" to "data other than certified cost or pricing data," (iii) added a definition of "certified cost or pricing data" to make the terms and definitions consistent with 10 U.S.C. 2306a and 41 U.S.C. 254b, (iv) changed terminology throughout the FAR regarding "cost or pricing data," and (v) clarified the need to obtain the necessary data (certified cost or pricing data or data other than certified cost or pricing data) to determine a fair and reasonable price.

Lastly, DoD has submitted a legislative proposal to permit obtaining certified cost or pricing data when commercial sales data is insufficient to determine a fair and reasonable price for sole source commercial items.

In response to recommendation number 2, the DPAP memorandum dated March 8, 2005 also required the Air Force to develop a strategy that promotes competition in the purchase of AWACS spare parts. As a result, Headquarters, Air Force Materiel Command, developed a strategy to promote competition. The details of this strategy were in an Office of the Assistant Secretary of the Air Force for Acquisition, Deputy Assistant Secretary for Contracting (SAF/AQC) memorandum to DPAP dated April 22, 2005.



On April 22, 2005, the Air Force also issued a memorandum to all commands emphasizing the specific requirements to obtain and evaluate information supporting the determination of fair and reasonable prices for all negotiated procurements. DPAP considered the Air Force response to sufficiently address the concerns and recommendations in the GAO report.

In response to recommendation number 3, the March 8, 2005 DPAP memorandum required the Air Force to clarify their access to AWACS drawings/technical data and rights to the data. The Air Force has a contract with Boeing that provides them with the rights to the data and allows the Air Force to use that data to promote competition for AWACS spare parts. As a result, SAF/AQC issued a memorandum, dated April 22, 2005, which outlines the Air Force's clarification of Air Force rights to technical data related to AWACS spare parts. The program office has continued to work with Boeing to improve the process for providing data on replenishment spares.

In the same April 2005 memorandum to DPAP, the Air Force stated that AWACS (E3) spare parts common to the DC135 and 707 were developed by Boeing for commercial application. The right to use the Boeing data to re-procure these parts on a competitive basis was acquired by the Oklahoma Air Logistics Center (OC-ALC) under a July 1, 2002, contract. The contract contains the DFARS clause 252.227-7027 that permits the Government to order any technical data generated under the contract for a limited period.

In addition, DPAP has established an Emergency Procurement Committee that is developing and implementing initiatives governing the procurement of emergency supplies/services to assist contracting officials in contingency operations. DPAP issued a memorandum on December 7, 2006 which discusses this committee. The committee has reviewed and submitted comments on proposed legislation and drafted DFARS language. The committee is currently overseeing creation of the Joint Contingency Contracting Guide which will be incorporated into DFARS Part 218 and a quick-reference, pocket-sized handbook for Contingency Contracting Officers in an effort to provide easy access to information that facilitates the contingency contracting process.

Gaps Identified by Subcommittee

The Pricing Subcommittee believes that DoD needs to assess existing management controls over policy execution related to contract pricing to ensure that issues reported in specific Air Force and Army acquisitions do not exist throughout DoD and, if they do, to address those issues on a DoD-wide basis. As discussed previously, the subcommittee believes that developing a coordinated Quality Assurance plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components will assist in addressing the risks associated with the failure to use available pricing information. In addition, the subcommittee believes the Department needs to assess the need for revised or additional training on the differing pricing alternatives faced by contracting officers. In addition, the DoD community needs to continue to endorse FAR Case 2005-036, Definition of Cost of Pricing Data, and issuance of the revised rule to ensure the regulations are clarified as to the need to



obtain the necessary data (certified cost or pricing data or data other than certified cost or pricing data) to determine a fair and reasonable price.

Subcommittee Recommendations

1. Develop a coordinated Contract Policy Execution plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components. Encourage peer review between services as an integral part of each component's Contract Policy Execution Plan program.
2. Assess the need for revised or additional training on differing pricing alternatives.
3. Endorse and monitor progress of FAR Case 2005-036, Definition of Cost of Pricing Data, and issuance of the revised rule which clarifies the need to obtain the necessary data (certified cost or pricing data or data other than certified cost or pricing data) to determine a fair and reasonable price.

Contracting Vulnerability: Misclassification of Items as Commercial Items

The GAO concluded that the Department sometimes uses commercial item procedures to procure items that are misclassified as commercial items and, therefore, not subject to the forces of a competitive marketplace. While use of commercial item procedures is an acceptable practice, misclassification of items as commercial can leave DoD vulnerable to accepting prices that are not the best value for the Department. Such misclassification has limited the Department's ability to assess the reasonableness of the contractor's price because it led to less information being submitted for determining a fair and reasonable price. In addition, the DoDIG found that contracting officials did not adequately justify the commercial nature of commercial contracts for defense systems and subsystems awarded in 2003 and 2004. As a result, contracting officials inappropriately awarded contracting actions that did not achieve the benefits of buying truly commercial products and relinquished price and other oversight protections under the Truth in Negotiations Act.

DoD now requires documentation of commercial item determinations for all acquisitions using FAR Part 12 that exceeds \$1 million. DoD has also issued PGI language addressing the need to obtain sufficient sales or cost data in determining fair and reasonable prices of commercial items.

Related GAO or IG Reports

DoDIG: Audit Report: *Procurement Procedures Used for F-16 Mission Training Center Simulator Services*, Report No. D-2006-065, dated March 24, 2004

Audit Report: *Contract for and Performance of C-130J Aircraft*, Report No. D-2004-102, dated July 23, 2004

Audit Report: *Commercial Contracting for the Acquisition of Defense Systems*, Report No. D-2006-115, dated September 29, 2006



DoDIG Recommendations

1. Recommend Air Force review and determine appropriate use of commercial item procurement strategies when procuring future simulator services for Air Force unique weapon systems.
2. Recommend that all modifications to the C-130J contract require the use of FAR Part 15.
3. Recommend (i) legislative changes to require items be sold in substantial quantities to the general public to qualify for exemption and (ii) that the commercial item determination be appropriately documented.

DoD Follow up Actions to Date or Pending Plans

In response to recommendation number 1, the Military Deputy of the Office of the Assistant Secretary of the Air Force (Acquisition) stated that Air Force will review the use of commercial item procurement strategies for future simulator services. The Air Force review group determined that a Federal Acquisition Regulation Part 15 Services contract would be the preferred approach to recompetes the F-16 Mission Training Center contract. The Air Force proceeded with a solicitation to recompetes the contract under a FAR Part 15 approach in January 2006.

In response to recommendation number 2, the Air Force agreed to procure future upgrades for the C-130J program under FAR Part 15. However, the Air Force actually went much further than this action. The Air Force ultimately agreed to renegotiate the prices for the remaining 39 aircraft on the 2003 multi-year procurement contract under a FAR Part 15 modification. On October 17, 2006, the Air Force issued a modification to the multi-year contract to incorporate the pricing change for Fiscal Years 2006 through 2008 aircraft buys under FAR Part 15, resulting in a reduction of approximately \$364 million.

In response to recommendation number 3, DPAP issued a memorandum, dated March 2, 2007, requiring documentation of the commercial item determination in the contract file for commercial item acquisitions exceeding \$1 million. Additionally, DPAP issued a memorandum, dated June 8, 2007, providing revised Procedures, Guidance, and Information (PGI) for determining fair and reasonable prices for commercial items.

Additionally, in September 2007, the Air Force issued new policies and procedures that will require program and contracting officials to provide additional documentation in order to support commercial acquisitions. Air Force officials must document the extent the use of commercial purchases will result in increased competition, greater access to commercial markets, and better prices and/or new market entrants or technologies. (Air Force Acquisition Circular (AFAC) 2007-0823)



Gaps Identified by Subcommittee

The subcommittee believes that DoD needs to increase management controls over the use of FAR Part 12 procedures. Furthermore, the subcommittee believes that the current definition of a commercial item in FAR 2.101, which comes directly from statute, is overly broad. The response to the FY 2007 DoD Contracting Integrity data call indicated that there was a general consensus that the definition of “commercial item” should be revised to better protect the Government’s interests.

Subcommittee Recommendations

1. Establish thresholds for higher-level approval of commercial item determinations based on “of a type.”
2. Submit a legislative proposal to change the commercial item definition by deleting the “of a type” phrase and revising the language “offered for sale” to “has been sold.”

Conclusion

DoD has taken aggressive actions to address the vulnerabilities identified in the GAO report in the area of adequate pricing related to non-competitive contract actions, delays in setting requirements for undefinitized contracts, failure to use available pricing information, and misclassification of items as commercial items. To address these issues, DoD has made several revisions to pertinent portions of the FAR, DFARS, and the DFARS Procedures, Guidance and Information (PGI). In addition, DoD has issued and plans to issue numerous guidance memorandums, emphasizing specific requirements as well as the proper execution of existing policies. To continue the effort to address the identified risks, the subcommittee recommends additional actions DoD should take in the area of adequate contract pricing.



5. Appropriate Contracting Approaches and Techniques Deputy Assistant Secretary of the Air Force (Contracting)

The Subcommittee for Appropriate Contracting Approaches and Techniques developed and issued a survey to assess the state of critical areas addressed in GAO Audit Report GAO-06-838R, Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse. Additionally, the survey explores several ancillary areas that have generated concern in the past. Survey respondents were asked to address the state of affairs in Interagency Contracting, the appropriate use of Multiple Award Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, the level of doctrinal underpinning for use of Award/Incentive/Award Term contracts in motivating appropriate outcomes, the current level of comfort with ability to perform appropriate degrees of Acquisition Planning, the current level of proficiency in selecting appropriate Contract Types, the level of proficiency in Cost Estimating, and the degree of comfort with Performance Based Services Acquisition.

Each of the identified survey elements were assessed first to determine what Audits and Reports had been issued to identify vulnerabilities, what new OSD Policy and Guidance had been issued to address the needs and vulnerabilities surfaced in the genesis audits for GAO Audit Report 06-838R. Finally, the subcommittee assessed the survey responses to identify recommendations based on practices of interest for further study currently in use across the Department, as well as areas of need that were surfaced by the surveys. Concerted effort will be expended during the coming year to fully study those processes identified as practices of interest for further study, and efforts will be initiated to replicate those processes where it is deemed appropriate. Where processes have lacked the appropriate degree of competency, areas of need are presented as elements which may be suitable for inclusion in a strategic initiative aimed at developing improved processes.

Based on the assessments described above the findings for each of the survey elements is hereby summarized below in terms of “Audits and Reports”, “GAO Recommendations”, “DoD Follow-up Actions to Date or Pending Plans”, “Gaps Identified by Subcommittee”, and “Recommendations by Subcommittee.” The “Recommendations by Subcommittee” section under each area is further subdivided to add findings identified as “Practices of Interest for Further Study” and “Areas of Need.” The analysis was performed with consideration of potential legislative initiatives; however at the present time the subcommittee believes it is premature to identify such needs. Legislative initiatives for this subcommittee will be addressed in the next Report to Congress.



Areas of Primary Interest to the Subcommittee for Appropriate Contracting Approaches and Techniques

Contracting Vulnerability: Interagency Contracting

Related GAO or IG Reports

GAO Report 05-456, *Interagency Contracting: Franchise Funds Provide Convenience, but Value to DOD is Not Demonstrated*

GAO Report 05-201, *Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*

DOD Report D-2007-106 - *Air Force Network-Centric Solutions Contract*

DOD Report D-2007-044 - *FY 2005 DoD Purchases Made Through the Department of the Interior*

DOD Report D-2007-042 - *Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies*

DOD Report D-2007-032 - *FY 2005 DoD Purchases Made Through the Department of the Treasury*

DOD Report D-2007-023 - *FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration*

DOD Report D-2007-007 - *FY 2005 DoD Purchases Made Through the General Services Administration*

DOD Report D-2005-096 - *DoD Purchases Made Through the General Services Administration*

GAO Recommendations

To ensure that DOD customers analyze alternatives when choosing contracting assistance from external organizations such as franchise funds, and to provide DOD with the measurable data it needs to assess the value of the franchise funds' contracting services, we recommend that the Secretary of Defense take the following three actions:

- Develop a methodology to help DOD customers determine whether use of franchise funds' contracting services is in the best interest of the government. The methodology should include analysis of tradeoffs.
- Reinforce DOD customers' ability to define their needs and desired contract outcomes clearly. This skill includes working with franchise fund contracting officers to translate their needs into contract requirements and to develop oversight plans that ensure adequate contract monitoring.
- Monitor and evaluate DOD customers' use of franchise funds' contracting services, prices paid, and types of goods and services purchased. Prices include franchise fund fees and fees for use of other interagency contracts.



Regarding issues relating to contracts awarded by the Department of Interior, the Secretary of Defense is to take the following action:

- Develop a mechanism to track implementation of the new policy that establishes procedures for reviewing and approving the use of non-DOD contracts and to ensure that the military services and defense agencies have the opportunity to share information on how they are implementing it.

DoD Follow up Actions to Date or Pending Plans

DFARS Final Rule on Approval of Service Contracts and Task and Delivery Orders (DFARS Case 2002-D024) issued on March 21, 2006 to satisfy the requirements of the National Defense Authorization Act for Fiscal Year 2002 – Section 801, and the National Defense Authorization Act for Fiscal Year 2005 – Section 854. Subject rule levies a requirement for all DoD activities to comply with review and approval requirements when acquiring supplies or services through the use of non-DoD contracts in amounts exceeding the simplified acquisition threshold. Provision also requires departments and agencies to report on the use of non-DoD contracts.

OUSD Comptroller Policy Directive, Advance Payments to Non-Department of Defense (DoD) Federal Agencies for Interagency Acquisitions, dated March 1, 2007. Subject directive was issued to direct all DoD Components to stop the practice of advancing funds to non-DoD federal entities unless the DoD Components are specifically authorized by law, legislative action, or Presidential Authorization.

OUSD Comptroller Policy Directive, Non-Economy Act Orders, dated October 16, 2006. Subject directive was issued to provide the revised financial management policy for processing Non-Economy Act Orders.

OUSD Comptroller Policy Directive, Proper Use of Interagency Agreements with Non-Department of Defense Entities Under Authorities Other Than the Economy Act, dated March 27, 2006. Subject directive was issued to require implementation of corrective actions associated with proper use and management of interagency agreements.

Joint Principal Deputy Under Secretary of Defense (Comptroller) (PDUSD(C)) and USD(AT&L) Policy Memorandum, Proper Use of Non-DoD Contracts, dated October 29, 2004. Subject memo was issued to require establishment of procedures for review/approval for use of non-DoD contract vehicles.

DFARS Interim Rule on Excessive Pass-Through Charges (DFARS Case 2006-D057) issued on April 26 2007 to satisfy requirements of the National Defense Authorization Act of Fiscal Year 2007 (Public Law 109-364), Section 852. Subject rule issued to ensure that pass-through charges on contracts or subcontracts that are entered into on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontract. Interim rule also adds a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of the work that will be subcontracted and, when subcontract cost will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit and value added with regard to the subcontract work.

DoD has entered into Memoranda of Agreement with the General Services Administration, Department of the Interior, National Aeronautics and Space Administration, and the Department of the Treasury to ensure that contracts entered into on behalf of DoD will adhere to the



appropriate policies and procedures. In addition, similar MOAs are being developed with the National Institutes of Health and the Veterans Administration.

Additionally, in FY08 the Department is piloting the Intragovernmental Value Added Network (IVAN) with the General Services Administration and Department of Interior. IVAN is planned to provide an automated method of tracking intragovernmental orders the Department places with these organizations and require appropriate approvals and data collection.

Gaps Identified by Subcommittee

The subcommittee believes that pre and post-award Oversight is not as robust as it should be. Furthermore, the degree of automation in financial tracking systems has not been exploited in a consistent manner across the Department.

Subcommittee Recommendations

1. In interagency contracting, components should take steps to further strengthen pre- and post-award oversight processes, including implementation of the October 8, 2007, policy to consider fees charged by Assisting Agencies during the business planning process.
2. DPAP should take steps to consolidate and streamline existing guidance, including supplementation of the joint PDUSD(C) and USD(AT&L) policy memorandum “Proper Use of Non-DoD Contracts” dated October 29, 2004. This memorandum stipulates that the Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles, including evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD considering factors such as cost effectiveness (taking into account discounts and fees) and contract administration (including oversight).
3. Department should assess state of automation for control and tracking of Interagency Contracts across the Department and expand where possible to improve control.
4. Department needs to examine a Department-wide strategy to assess reliance on Interagency Contracts.

Interagency Contracting - Practices of Interest for Further Study

Components within the Department should take steps to further strengthen pre- and post-award oversight have retained post award oversight via Procurement Contracting Officer and Contracting Officer Representative functions within the requiring agency significantly limiting the potential for abuses identified in earlier GAO Audits. Some components have also utilized internal agency, comptroller and contract post-award file reviews as a mechanism to ensure compliance with laws, regulations and policies. In an effort to gain insight and control over funding that passes through Interagency Contracts several components have developed automated controls such as the Enterprise Business System (EBS) and Automated Business Services System (ABSS) to effectively track and report obligation of funds and to prevent obligation of funds when appropriate authorities have not been provided financial, contract, legal, or contract management reviews. A few components also conduct Interagency Contract Suitability Analysis as a function of acquisition planning through a functionally integrated



Acquisition Review Board which ensures that the appropriate business goals are addressed in the acquisition strategy development process. Some components have MIPR and Economy Act guides that may be suitable for cross feeding and potential standardization across the Department. Examples include the AF developed Mandatory Procedure 5317.5; Interagency Acquisitions under the Economy Act, dated May 2007 and the AFFARS Information Guidance 5317.204, Ordering Procedures, dated May 2007; and the Air Force Purchases Using Military Interdepartmental Purchase Requests (MIPRs) Guide.

Interagency Contracting - Areas of Need

The subcommittee believes that effort needs to be expended to ensure that pre and post-award oversight processes at some level are strengthened for requirements executed through another agency. A degree of streamlining and consolidating existing guidance is needed to improve the ease of use. Acquisition planning activities may need to be modified to reinforce implementation of the October 8, 2007, policy to consider fees charged by Assisting Agencies during the business planning process. Finally, the degree of automation in financial tracking systems related to Interagency Contracting needs to be assessed for sufficiency across the Department and improved where possible.

Contracting Vulnerability: Misuse of Multiple Award Indefinite Delivery/Indefinite Contracts and General Services Administration Multiple Award Schedules

Related GAO or IG Reports

GAO-04-874 *Contract Management: Guidance Needed to Promote Competition for Defense Task Orders*

SARA Panel Report

GAO Recommendations

In order to promote more competition in the award of orders under multiple-award and federal supply schedule contracts and to ensure that waivers of competition are used only in appropriate cases, we recommend that the Secretary of Defense take the following three actions:

- Develop additional guidance on the circumstances under which the logical follow-on and unique services waivers may be used,
- Require that all waiver determinations be supported by documentation describing in detail the circumstances that warrant the use of a waiver, and
- Establish approval levels for waivers under multiple-award contracts that are comparable to the approval levels for sole-source federal supply schedule orders under subpart 8.4 of the Federal Acquisition Regulation.

The selection procedures for award of Task Orders across the Department were generated prior to the passage of section 803 requirements. GAO believes that these procedures were not



designed to maximize competition for individual orders, and question whether they are in fact consistent with section 803 requirements in terms of providing fair notice of intent to make a purchase and fair opportunity to responding contractors to submit an offer and have it fairly considered. GAO is reviewing this matter further.

DoD Follow up Actions to Date or Pending Plans

USD(AT&L) Policy Letter dated September 21, 2006, called attention to several compliance issues with Indefinite Delivery Contracts that surfaced with the transition to the Federal Procurement Data System – Next Generation (FPDS-NG).

OSD has initiated activity to review and study means to enhance competition, to include “fair opportunity” provisions and advised components of the work initiated by them via USD(AT&L)DPAP memo dated July 26, 2007. The memo advises of the initiation of efforts to gather data monthly on DoD Components relative to competitive contracts and fair opportunity orders placed against multiple award contracts.

DoD has opened a case to revise the Defense Federal Acquisition Regulation Supplement (DFARS) to develop the necessary changes to the DFARS and any additional supplemental guidance that may be appropriate for procedures, guidance, and information.

Gaps Identified by Subcommittee

The subcommittee believes that improved availability of guidance and training in Multiple Award Indefinite Delivery/Indefinite Quantity contracting is needed. In addition, clarity is needed in the DFARS with respect to the application of “fair opportunity” provisions.

Subcommittee Recommendations

1. Department needs to assess distribution of training across the Components.
2. Department needs to explore means for strengthening Competition Advocate programs for multiple award ID/IQ contracts across all Components with a focus on increasing competition at the Task Order level.
3. Department needs to take steps to foster improvement and standardization of “Fair Opportunity” documentation across Components to include providing clarity in the DFARS with respect to application of “Fair Opportunity” provisions.

Multiple Award ID/IQ Contracts - Practices of Interest for Further Study

A great deal of effort has been expended in recent years to provide educational guidance training in an effort to ensure more robust competitions under Multiple Award ID/IQ contracts. The guidance and training from some components may be suitable for replication across the Department as it is beginning to have an effect where it provided. Numerous components have established a very effective Task and Delivery Order Ombudsman program to ensure that the requirement for “fair opportunity” is available to all competitors. Very robust competition advocate programs exist within some components and may be worthy of benchmarking efforts. Multiple Award ID/IQ contracting issues have been successfully included in specialized training such as AMCOM and CECOM “Boot Camp” training sessions and may be easily packaged and transferred across the Department.



Multiple Award ID/IQ Contracts - Areas of Need

Many components identified a need for improved availability of guidance/training in this area and a need exists for greater standardization. The Department's competition advocate programs could be significantly strengthened through periodic cross-talks where component issues could be surfaced, confronted by the best minds from across the Department, and improvement ideas shared widely. Documentation of "fair opportunity" decisions is inconsistent within the department and often times lacking and needs to be strengthened and standardized. The Department needs to consider appropriate avenues for discussions and communications with contract holders before and after task order/delivery order issuance as a means of enhancing competition across the life of the multiple award contract.

Contracting Vulnerability: Structure and Implementation of Award and Incentive Fees

Related GAO or IG Reports

GAO Report 06-409T, *DOD Wastes Billions Through Poorly Structured Incentives*

GAO Report 06-066, *DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes*

GAO Recommendations

- Move toward more outcome-based award-fee criteria that are both achievable and promote accountability for positive acquisition outcomes.
- Ensure that award-fee structures are motivating excellent contractor performance by only paying award fees for above satisfactory performance.
- Issue DOD guidance on when rollover is appropriate.
- Require appropriate approving officials review new contracts to make sure award-fee criteria reflect desired acquisition outcomes and award-fee structures motivate excellent contractor performance by only providing fees for above satisfactory performance.
- Develop a mechanism for capturing award- and incentive-fee data within existing data systems, such as the Defense Acquisition Management Information Retrieval system.
- Develop performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes.
- Develop a mechanism to share proven incentive strategies for the acquisition of different types of products and services with contracting and program officials across DOD.



DoD Follow up Actions to Date or Pending Plans

USD(AT&L) Policy Memorandum “Award Fee Contracts” dated March 29, 2006. This memorandum requires that Award Fee Contracts must be structured in ways that will focus the government’s and the contractor’s efforts on meeting, or exceeding cost, schedule, and performance requirements with a direct link to achieving the desired program outcomes. The policy memo also states that award fee arrangements should be structured to encourage the contractor to earn the preponderance of fee by providing excellent performance; it maintains that paying a portion of the fee for satisfactory performance is appropriate to ensure that contractors receive an adequate fee on contracts, and reiterates that less than satisfactory performance is not entitled to any award fee. In addition, the memo provides guidance, and places limitations, on the use of rollover. Finally, the memo advises that Defense Acquisition University has developed an online repository for award- and incentive-fee policy information, related training courses, and examples of good award fee arrangements.

USD(AT&L) Policy Memorandum “Proper Use of Award Fee Contracts and Award Fee Provisions” dated April 24, 2007. This memorandum reinforces the requirement to take into account a number of factors when selecting the proper contract type such as price competition, price analysis, cost analysis, type and complexity of requirement, urgency of requirement, period of performance or length of production run, the Contractor’s technical capability and financial responsibility, the adequacy of the contractor’s accounting system, concurrent contracts, and the extent and nature of proposed subcontracting and acquisition history. Additionally, the memo reinforces the circumstances to reiterate when cost-plus-award-fee contracts are suitable. Finally the memo requires that objective criteria be utilized, whenever possible, to measure contract performance requiring HCA approval for use of Award Fee provisions in the absence of objective criteria.

USD(AT&L) Policy Memorandum “Proper Use of Award Fee Contracts and Award Fee Provisions” dated May 15, 2007. This memorandum requires HCAs to retain, in the contract file, the determination and finding (D&F) documenting approval to use Award Fee provisions in the absence of objective criteria on all programs with a value in excess of \$50M, and to forward such determinations for ACAT 1 Programs to DPAP.

USD(AT&L) Policy Memorandum “Award and Incentive Fees – Data Collection” dated April 24, 2007. This memorandum was issued in response to section 814 of the Fiscal Year 2007 National Defense Authorization Act. Section 814 required collection of data relevant to award and incentive fees paid to contractors and requiring the establishment of mechanisms to evaluate such data on a regular basis.

Gaps Identified by Subcommittee

The subcommittee believes that a great deal of progress has been made relative to Award and Incentive Fee contracting. Notwithstanding the progress, the subcommittee believes it is imperative to take action to formalize a process for reviewing data collected for analysis. This subcommittee also believes that DPAP Policy Letter of April 24, 2007, needs to be formally codified in the DFARS.



Subcommittee Recommendations

1. DoD needs to develop Department-wide Award/Incentive Fee/Award Term Guide.
2. DoD should seek independent assessment of Award/Incentive Fee use by using Award/Incentive Fee data currently being collected to support trend analysis and identification of potential course changes thereby providing Department level guidance to services and agencies.
3. DoD should further study ongoing improvements within the services and agencies and identify best practices that may have application across the Department.

Award Fees, Incentive Fees and Award-Term Contracts - Practices of Interest for Further Study Guidance has been significantly strengthened in recent years with issuance of the above cited memos. This retention of approval of award/incentive fee use and payout with senior acquisition level officials is providing significant specific award/incentive fee guidance at the individual acquisition level. Certain components within the Department provide governance on appropriate use of award/incentive fees during the acquisition planning process where application is discussed as it relates to desired behavior and should be studied for potential implementation across the Department. Certain components have well developed Award Fee Guidance that could potentially be replicated across the Department. Examples include the DoN Award Fee Guide, the SAF/AQ Policy Memorandum providing Air Force Policy for Award Fee Contracting, and the USAF Award-Term Contracting Guide, Award Term/Incentive Options, dated January 2003. Some components have already implemented the required award/incentive fee data collection to provide the needed trend analysis.

Award Fees, Incentive Fees and Award-Term Contracts - Areas of Need

The subcommittee recommends that the creation of DOD Award/Incentive Fee and Award Term Guide illustrating “Best Practices” be studied as a means of standardize the Departments approach to motivating appropriate contractor performance behaviors. Work needs to be done to develop the formal assessment process for the award/incentive fee data collection efforts. Verification is needed to ensure that Award/Incentive Fee and Award Term use approval levels are being implemented across the Department, and to assess the benefit of the approval levels.

Ancillary Areas of Ancillary Interest to the Subcommittee for Appropriate Contracting Approaches and Techniques

Contracting Vulnerability: Acquisition Planning

Related GAO or IG Reports

None identified.

GAO Recommendations

None identified.



Recent OSD Guidance

None identified.

Gaps Identified by Subcommittee

The subcommittee believes that current guidance and training may be insufficient to prevent late-to-need acquisition approaches resulting in an increased in the likelihood of using an Undefinitized Contract Action to meet warfighter needs.

Subcommittee Recommendations

1. Department needs to explore potential weaknesses in current Acquisition Planning Training/Guidance that may be leading to increases in “Late-to-Need” acquisition planning.
2. Department should examine need for development and deployment of broad multi-functional Acquisition Planning Training that is web-based and addresses desired Cost, Schedule, and Performance outcomes.

Acquisition Planning - Practices of Interest for Further Study

Component compliance with acquisition planning processes does not appear to be problematic. Management and oversight of the acquisition planning process appears to be well established in some components and has been strengthened by use of mandatory review thresholds. Dissemination of robust processes across the Department needs to be pursued.

Acquisition Planning - Areas of Need

Some components identified that the current guidance fails to prevent late-to-need acquisition approaches and have identified a requirement for additional targeted training in acquisition planning. It is recommended that the training focus on inculcating cross-functional involvement as early as a research, developmental, or operational needs are surfaced. It is recommended that any Acquisition Planning training be primarily web based to facilitate a distributed learning environment. The training needs to be multifunctional with an emphasis on how teams devise mission-responsive solutions for customers in areas of cost, schedule, and performance.

Contracting Vulnerability: Selection of Contract Type

Related GAO or IG Reports

None identified.

GAO Recommendations

None identified.

Recent OSD Guidance

DFARS PGI 216.1--SELECTING CONTRACT TYPES dated 11 July 2006 provides additional helpful guidance for selection of contract type for Research and Development.



DFARS Proposed Rule on Contracting Methods and Contract Type (DFARS Case 2006-D018) issued on November 9, 2006 to require a written determination before using a fixed-price type contract for a development program efforts. This proposed rule specifically is related to the Enterprise Software Initiative.

Gaps Identified by Subcommittee

The subcommittee did not identify any specific gaps in capability or policy associated with Selection of Contract Type.

Subcommittee Recommendations

1. Department should undertake a study to assess the push toward a preference for Fixed-Price Research and Development contracts and lead the way in advocating for a fact-based contract type selection decision.
2. Department should consider development of doctrine for selection of contract type in R&D environment aimed at better management of risk and cost growth.

Selection of Contract Type - Practices of Interest for Further Study

Guidance and training in this area was universally identified as being sufficient. While the selection of contract type is often questioned with available hindsight, the up front decision process is rarely flawed. Most components torture the available data at the time and market research most often makes the selection of contract type a topic of vigorous discussion. The acquisition planning process focuses considerable attention on selection of contract type and decisions are made with all available data. The selection of contract type only becomes an issue when performance is not as expected.

Selection of Contract Type - Areas of Need

There were misgivings about any moves to make the use of Fixed-Price arrangements for Research and Development (R&D) the default position of the Federal Government. Recent legislative initiatives to take such action could be problematic for the Department as it might result in a predisposition to award Fixed-Price arrangements for R&D when technology risks remain high placing greater risk on the Contractor and driving prices higher to accommodate the additional risk. Further analysis is needed to determine the appropriate mechanisms to assure this legislation does not preclude sound business approaches due to the approval requirements.

Contracting Vulnerability: Cost Estimating

Related GAO or IG Reports

GAO Report 07-096, *Space Acquisitions - DOD Needs to Take More Action to Address Unrealistic Initial Cost Estimates of Space Systems*

GAO Report 07-943T, *Defense Acquisitions - Realistic Business Cases Needed to Execute Navy Shipbuilding Programs*

GAO Recommendations



- To increase accountability and transparency of decisions, require officials involved in milestone decisions to document and justify the reasons for their choice and the differences between the program cost estimate and the independent cost estimate.
- To better ensure investment decisions for complex programs are knowledge-based, instill processes and tools necessary to ensure lessons learned are incorporated into future estimates.
- To optimize analysis and collaboration within the community, clearly articulate the roles and responsibilities of the various cost-estimating organizations, and ensure that cost estimators are organized so that the Components across the Department can gain the most from their knowledge and expertise.
- Ensure that technology is adequately developed prior to introduction into production programs.
- Employ enhanced and comprehensive cost surveillance during program execution.
- For ship and space construction projects consider greater use of fixed-price contracts.

DoD Follow up Actions to Date or Pending Plans

OSD concurred with the first three recommendations and partially concurred with the final recommendation. Action beyond concurrence has not been ascertained at this time.

Gaps Identified by Subcommittee

The subcommittee believes that cost estimating resources in support of programs across the Department are a limiting factor in program development and creates problems in tracking performance across the life of our contracts thereby increasing program vulnerability. Once resourced appropriately, training needs will need to be addressed.

Subcommittee Recommendations

1. Department should consider development of Doctrine for Cost Estimate Usage in Contract Award Process aimed at improving program level Cost, Schedule and Performance controls/results and examine workforce capabilities in this Area.
2. Department should undertake a study to determine needed improvements in Cost Estimating.
3. Department should study expansion of Cost Estimating Training and Guidance.
4. Department should explore degree of Cost Estimating Training and involvement needed by program personnel.

Cost Estimating - Practices of Interest for Further Study

NGA Independent Government Cost Estimate Template and Matrix Program Training and MDA directives/handbooks which enhance EVM could possess potential as benchmarks for the Department. MDA has also implemented an EVM Health program using an Assessment Checklist worthy of further review. MDA's use of the Common Cost Model Working Group, a



collaboration of Government and industry entities, to develop the best possible cost estimates during RFP formulation may be beneficial for application across the Department. MDA and other component use of Cost/Price Risk ratings that assess the degree to which an offeror's cost proposal compares with the Government's computed Most Probable Cost (MPC) for ACAT and non-ACAT acquisitions has potential to produce great benefits and should be considered for study.

Cost Estimating - Areas of Need

A consistently reported need in this area is for more knowledgeable and experienced estimators. Steps should also be taken to improve cost data collection. There is a need to train cost estimators to improve confidence levels for program cost estimates to 85%-90%. There are guidance needs in multiple areas such as: means of estimating risk., how Government Cost Estimates can best be used, and how to prepare estimates using a standard WBS and requiring a basis of estimate for each WBS category. Training and guidance is needed on development of sound programmatic and technical definitions program by program. Training and guidance is needed for the use of parametric analysis as a means of enhancing management decisions. Resources need to be applied to address Independent Government Cost Estimate concerns. Guidance is needed on the utilization of Government Cost Estimates when reliable cost data are not available. It would be prudent to consider development of cost acquisition standards as well. It is highly recommended that program management personnel be considered for more training in and become active participants in cost estimating to help improve the accuracy and rigor of future estimates.

Contracting Vulnerability: Performance Based Services Contracting

Related GAO or IG Reports

DOD Report D-2007-079 - *Performance Based Service Contract for Environmental Services at the Navy Public Works Center, San Diego, California*

IG Audit Recommendations

A.1. We recommend that the Commanding Officer:

a. Require the contracting team to:

- (1) Require *Contractor* to finalize a quality control program that addresses all contract performance standards and require that monthly performance reports address each performance standard.
- (2) Determine the adequacy of *Contractor's* system for measuring each performance standard, and if the requirements are not met, take appropriate action.
- (3) Notify *Contractor* that it is not in compliance with contract terms until the quality control plan is approved and all performance standards are measured and met, and withhold payment if necessary. If *Contractor* fails to make progress in the performance of contractual requirements, the contracting officer should consider what options are available, including terminating the contract for default.
- (4) Assess the reasonableness and necessity of the performance standards in the contract and revise or delete non-critical performance standards.



- (5) Ensure that the contract language regarding workload fluctuations in future contracts for environmental services is specific about contract pricing changes, should significant variations in workload occur.
 - (6) Negotiate reduced workload levels in accordance with the intent of the workload fluctuation contract language, and if the negotiations are unsuccessful, consider recompeting the requirements at the next option year.
 - (7) Evaluate alternative methods of billing customers for environmental services.
 - (8) Ensure that future performance-based service contracts include measurable performance standards in terms of quantity, quality, and timeliness.
 - (9) Determine whether it is in the Navy's best interest to continue with the performance-based service contract or whether the environmental services requirements should be recompeted under a different type of contract vehicle.
- b. Adequately staff the Government residual organization for the duration of the contract.

A2. We recommend that the Navy Director of Strategic Sourcing consider the issues with performance-based contracting for environmental services and the need for experienced contractor service providers identified in this report before issuing the solicitation for the Naval Facilities Engineering Command Mid-Atlantic environmental services public-private competition.

Recent OSD Guidance

USD(AT&L) Memorandum "Acquisition of Services Review and Decision Authority" dated July 19, 2007. This memorandum delegates authority to establish review procedures and approve acquisitions of services categorized as "USD(AT&L) Special Interest" and acquisition of services with a total estimated value greater than 1 billion dollars to the Director, Defense Procurement and Acquisition Policy (DPAP) pursuant to title 10, United States Code, section 2330, as amended by section 812 of the National Defense Authorization Act for Fiscal Year 2006 and the DOD Acquisition of Services Policy Memorandum dated October 2, 2006.

USD(AT&L) Policy Memorandum "Delegation of Decision Authority to Commanders and Directors of the DoD Components for Acquisition of Services" dated April 13, 2007. This memo delegated decision authority for Category I, II and III acquisition of services to certain officials identified in attachments to the memo. Authority to approve changes to the delegations is delegated to the Director, Defense Procurement and Acquisition Policy.

USD(AT&L) Memorandum "Acquisition of Services Policy" dated October 2, 2006. Subject memo established and implemented a management structure for the acquisition of services in the Department of Defense in satisfaction of Section 812 of the Fiscal Year 2006 National Defense Authorization Act.

Gaps Identified by Subcommittee

The subcommittee has identified a considerable need for guidance and training in the subject of Performance Based Services Contracting particularly in terms of practical application and specifically related to moving services from the non-performance based arena to the Performance Based Service arena.



Subcommittee Recommendations

1. Department should pursue strengthening Guidance and Training related to Performance Based Services Acquisition particularly in the area of practical application of theory.
2. Department needs to explore most effective means of moving acquisitions from Non-Performance Based Environment to Performance Based Environment when baseline performance data is sketchy or missing.

Performance Based Services Contracting - Practices of Interest for Further Study

This area continues to present significant challenges across the Department. Although a great deal of guidance has been issued, practical application has proved problematic in many components.

Performance Based Services Contracting - Areas of Need

Many components have identified a need for guidance and training. Current guidance and training are widely considered insufficient relative to producing quality Performance Based Service Contracts. While Performance Based Service Contracting appears to be great in theory, it is often seen as impractical largely as a result of missing baseline performance data at the point of initiation. Effort needs to be expended to determine the best means of moving services from the non-performance based arena to the Performance Based Service arena.

Conclusion

Considerable progress has been made in correcting the vulnerabilities addressed in earlier audits. In particular, great strides have been made in correcting deficiencies related to the appropriate use of Interagency Contracting, Multiple Award ID/IQ Contracts, and Award/Incentive Fees. The key vulnerabilities tend to be the lack of complete dissemination of guidance and training throughout the Department leading to improper execution of the guidance at the lowest levels. This lack of discipline is exacerbated by what is becoming a chronic lack of appropriate resources. The recommendations of the subcommittee will take time to fully vet and implement, and will require additional resource commitments in a constrained environment. The path ahead will require discipline to achieve the desired results.



6. Sufficient Contract Surveillance Subcommittee

Chair: Chief of Staff, Deputy Assistant Secretary of the Navy, (Acquisition & Logistics Management)

Executive Summary:

Between FY 2000 and FY 2005, spending on services contracts increased almost 100% from \$72 billion to \$141 billion—over 54% of the Department’s contract obligations. This trend is expected to continue as DoD increasingly relies on the private sector to carry out aspects of the Department’s mission. Because of the increased reliance on contractor support and the large expenditures involved, quality assurance surveillance is important to ensure that contractors are providing timely and quality services and to help mitigate contractor performance problems. Contract quality assurance is the joint responsibility of the Government and the contractor. The contractor is responsible for carrying out its obligations under the contract in terms of quality, timeliness and cost. The Government is responsible for ensuring that services acquired conform to the quality and performance requirements of the contract. Government surveillance is the joint responsibility of the requiring organization—the organization most familiar with the technical complexities and nuances of the requirement—and the contracting office. The requiring organization is responsible for prescribing contract quality requirements, such as the quality assurance surveillance plan for services contracts (FAR 46.103). The contracting office is responsible for verifying from the requiring organization that the contractor fulfills the contract quality requirements.

Surveillance is not a one-step process. It begins with the proper training of personnel for assignment of surveillance responsibility throughout the performance period of the contract. The need for familiarity with the requirement, the terms and conditions of the contract, and extent of surveillance responsibilities under the contract dictate that surveillance personnel should be included as early as practicable during the acquisition process, but not later than time of contract award. Surveillance includes creating an official record documenting the contractor’s performance.

For purposes of this assessment, the subcommittee focused on contract surveillance of contracts for research and services. Technical administration of Government contracts is an essential activity. As a practical matter, the contracting officer does not have the expertise in all areas necessary to ensure successful contract completion. The Contracting Officer’s Representative (COR)—or Contracting Officer’s Technical Representative (COTR)—functions as the ‘eyes and ears’ of the contracting officer and acts as the technical liaison between the Government and the contractor.



Contracting Vulnerability: Contract Surveillance Training

Related GAO or IG Reports

GAO *Contract Management – Opportunities to Improve Surveillance on Department of Defense Service Contracts*, GAO-05-274, Washington, DC: March 17, 2005,
GAO *High Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces*, GAO-07-145, Washington, DC: December 18, 2006

GAO Recommendations

Ensure Quality Assurance personnel are properly trained and assigned to service contracts prior to contract award.

Develop DoD-wide guidance and policy to help ensure accountability for personnel carrying out surveillance responsibilities.

DoD Follow up Actions to Date or Pending Plans

Director, Defense Procurement and Acquisition Policy memorandum of Dec 6, 2006, requests addressees to ensure "...that a properly trained COR is designated for contracts for services in support of DoD requirements before contract performance begins and that properly trained CORs are identified on active contracts for services in support of DoD requirements..."

Deployed the updated DAU web-based basic COR continuous learning module, CLC 106 – COR with a Mission Focus. The course includes Quality Assurance Surveillance Plan (QASP) training, emphasizes the requirement to develop QASPs for monitoring contractor performance and costs of service contracts. The learning module provides sample QASPs, discusses how to determine appropriate metrics and methods of performance assessment, and provides access to best practices at the COR knowledge sharing site. Students learn the importance of preparing a QASP along with the performance work statement, how to use a QASP in conjunction with a contractor's Quality Control Plan, and provides examples and connections to best practices at the DAU knowledge site.

Gaps Identified by Subcommittee

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) require surveillance on service contracts, however, specific direction on surveillance is not provided. It is up to individual DoD components to establish surveillance policies/procedures.

- Lack of consistent guidance on COR functions across DoD results in conflicting policies/procedures felt by industry.
- COR responsibilities are dependent on the nature of the service, type of contract and contractor's performance.

The contracting office is responsible for ensuring that contract quality assurance is planned for, however, to be most effective, personnel thoroughly familiar with the technical complexities and nuances of the requirement need to perform quality assurance. The COR represents the requiring activity.



- The COR is authorized by the contracting officer to monitor the contract performance contract expenditures, as appropriate. However, the COR, as a member of the requiring activity workforce, must continue to perform duties assigned in support of that activity's mission.

Surveillance personnel often are not part of the DoD acquisition workforce and encounter difficulties obtaining requisite training.

Subcommittee Recommendations

1. Incorporate DoD standard into appropriate acquisition regulations/ instructions/directives. Strive for consistency across the Department. Require designation of COR not later than time of contract award.
2. Review COR functions/responsibilities and develop a DoD standard for certification.
 - a. Contracting officer to delegate COR functions based on specifics of the contract.
 - b. Procuring Contracting officer advised to coordinate communication between COR/ACO/DCAA and other appropriate agency to ensure clear delineation of responsibilities.
 - c. COR expected to assess contract performance to ensure that the effort performed and billed is commensurate with progress of work completed.
3. Develop modular COR training curriculum (on-line training, handbook, etc.) to ensure the COR receives appropriate training based on complexity, contract type and dollar value.
 - a. Ensure appropriate training is available for personnel assigned COR responsibility regardless of membership in DoD DAWIA workforce.
 - b. Supplement structured training with one-on-one training between the contracting officer and the COR on contract specific matters.
 - c. Require completion of COR training before formal delegation of COR responsibilities.
 - d. Curriculum to include on-line module for COR supervisors to ensure COR is allowed necessary time/tools/materials to complete COR responsibilities.
 - e. Contracting officer to designate COR training based on specifics of the contract.
4. Require COR and COR supervisors to acknowledge in writing that they understand and accept the duties/responsibilities associated with performing COR duties.
 - a. COR supervisor to acknowledge responsibility for ensuring COR performance of delegated duties and maintaining training competency.

Contracting Vulnerability: Assignment of Personnel Before Surveillance Period Begins

Related GAO or IG Reports

Department of Defense, Office of the Inspector General, *Audit Report: Contract Surveillance for Service Contracts*, Report Number D-2006-010, Arlington, Virginia: October 28, 2005.



GAO, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, GAO-05-274, Washington, DC: March 17, 2005.

Department of Defense, Office of the Inspector General, *Audit Report: Contracts for Professional, Administrative, and Management Support Services*, Report Number D-2004-015, Arlington, VA: October 30, 2003.

GAO Recommendations

Ensure QA personnel are properly trained and assigned to service contracts prior to contract award.

Develop consistent DoD-wide guidance and policy to help ensure accountability for personnel carrying out surveillance responsibilities.

DoD Follow up Actions to Date or Pending Plans

Director, Defense Procurement and Acquisition Policy memorandum of Dec 6, 2006, requests addressees to ensure "...that a properly trained COR is designated for contracts for services in support of DoD requirements **before contract performance begins** and that properly trained CORs are identified on active contracts for services in support of DoD requirements..."

Published DFARS PGI Case 0000-P052, "Contracting Officer's Representative (COR) for Services Contracts." This case requires contracting officers to designate in writing a properly trained COR before contract performance begins for services contract actions awarded by a DoD component or by any other Federal agency on behalf of DoD.

Published Director, DPAP, policy memorandum "Interagency Acquisition: A Shared Responsibility," dated September 20, 2005. (This responds to a recommendation to clarify the October 2004 policy guidance to require that properly trained contracting officer representatives must be appointed for all contracts for services awarded by other federal agencies and for all orders placed against such contracts and that all government surveillance activity, or reason for the lack thereof, be fully documented by a DoD contracting officer.)

Gaps Identified by Subcommittee

Current coverage in DFARS PGI at 201.602-2 requires that contracting officers designate a properly trained COR in writing before performance begins for contract actions for services awarded by a DoD component or by any other agency on behalf of DoD.

There is a high turn over of COR personnel. Often the contracting officer is not notified that an individual is no longer available to fulfill surveillance responsibilities.

Subcommittee Recommendations

Reemphasize the requiring organization responsibility to ensure continuity of surveillance if the designated COR is no longer available.



Contracting Vulnerability: Accountability for Surveillance Duties

Related GAO or IG Reports

Department of Defense, Office of the Inspector General, *Audit Report: Contract Surveillance for Service Contracts*, Report Number D-2006-010, Arlington, Virginia: October 28, 2005.

GAO, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, GAO-05-274, Washington, D.C.: March 17, 2005.

GAO, *Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, GAO-04-854, Washington, D.C.: July 19, 2004.

Department of Defense, Office of the Inspector General, *Audit Report: Contracts for Professional, Administrative, and Management Support Services*, Report Number D-2004-015, Arlington, Virginia: October 30, 2003.

GAO, *Contract Management: High-Level Attention Needed to Transform DOD Services Acquisition*, GAO03935, Washington, D.C.: September 10, 2003.

GAO Recommendations

In its report, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, GAO-05-274, GAO recommended that the Secretary of Defense “develop practices to help ensure accountability for personnel carrying out surveillance responsibilities.”

DoD Follow up Actions to Date or Pending Plans

By letter dated March 11, 2005, the then Director, Defense Procurement and Acquisition Policy partially concurred with the GAO recommendation; stating that DoD would “review the feasibility of including a performance goal in a contracting officer’s representative (sic) (COR) annual performance evaluation which addresses the COR’s performance of their surveillance duties.” Subsequently, the current Director, Defense Procurement and Acquisition Policy sent a memorandum, dated December 6, 2006, to the senior contracting officials in each of the Military Departments and to the Directors of the other Defense Agencies concerning the designation of CORs for services contracts. Among other things, this memorandum requested the addressees to “ensure that the contribution of CORs in assisting in the monitoring or administration of contracts is addressed as appropriate in the performance reviews of individuals who perform COR duties.”

Consistent with this request, a number of DoD activities have established, or are in the process of establishing, policies to require supervisors who prepare annual performance appraisals for employees who serve as CORs to consider, as part of such reviews, the employees’ performance of their COR duties. Additionally, some DoD activities require the supervisors to acknowledge their responsibility for complying with the policy as part of the process by which contracting officers appoint individuals to serve as CORs. Some activities also require contracting officers to review their CORs’ files periodically (usually, at least annually) – there are indications, however, that compliance with these requirements is often spotty.



Gaps Identified by Subcommittee

Holding an individual accountable for his or her performance as a COR requires the person who is responsible for holding the COR accountable to have knowledge of: (i) the COR's duties and responsibilities, (ii) performance standards associated with these duties and responsibilities, and (iii) the extent to which the COR's actual performance meets the standards. It, also, requires that the responsible person use this knowledge to hold the COR accountable.

In practice, supervisors who are responsible for holding CORs accountable may not have knowledge of the COR's duties and responsibilities or of the performance standards associated with them. They, also, may not have knowledge of the COR's actual performance, particularly with respect to duties and responsibilities that are not directly tied to the contractor's performance, but, instead, are of an administrative nature and of importance to the contracting officer.

The Director, Defense Procurement and Acquisition Policy memorandum of December 6, 2006, referred to above, addresses the requirement for responsible supervisory personnel to hold CORs accountable for their performance as CORs. In accordance with the Director's request, this would, generally, be done as part of routine, cyclical employee performance appraisals. In some instances, there may be a need to hold CORs accountable separately from their routine performance appraisals in order to address immediate issues that arise during contract performance.

Subcommittee Recommendations

1. At the onset of contract performance, contracting officers should provide supervisors of CORs with a copy of the COR's appointment letter and any other information, as may be appropriate, to describe the contracting officer's specific expectations regarding the COR's performance as COR.
2. Prior to finalization of the appointment of an individual to serve as a COR, contracting officers should obtain written assurance from the individual's supervisor that the supervisor will consider the individual's performance as COR as part of routine employee performance reviews.
3. Supervisors of CORs, in coordination with the contracting officer, should establish mechanisms, such as COR reporting requirements or reviews of the COR's files, that will provide the supervisor and contracting officer's insight into the CORs' performance on a regular basis. The interval between inputs should be determined by such factors as the level of experience of the COR, the criticality of the requirement, and the dollar value of the requirement.
4. In support of routine assessments of a COR's performance, the contracting officer should provide the COR's supervisor with an input regarding the CORs' performance from the contracting officer's perspective. Such inputs should be required to be included with any performance appraisal documentation that is reviewed at a level above the COR's supervisor.



5. Procurement Management Reviews (PMRs) and Command Inspections, or similar reviews of activities' procurement and management functions, at all levels throughout DoD, should include special interest item for at least the next several cycles, compliance with these recommendations as implemented.

Contracting Vulnerability: Performing and Documenting Surveillance

Related GAO or IG Reports

Department of Defense, Office of the Inspector General, *Audit Report: Contract Surveillance for Service Contracts*, Report Number D-2006-010, Arlington, Virginia: October 28, 2005.

GAO, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, GAO-05-274, Washington, D.C.: March 17, 2005.

Department of Defense, Office of the Inspector General, *Audit Report: Contracts for Professional, Administrative, and Management Support Services*, Report Number D-2004-015, Arlington, Virginia: October 30, 2003.

GAO Recommendations

Develop practices to help ensure accountability for personnel carrying out surveillance responsibilities.

DoD Follow up Actions to Date or Pending Plans

Gaps Identified by Subcommittee

Documentation is an essential duty of the COR. COR records are an official part of the contract file. Memoranda documenting actions, discussions and decisions are part of the contract file. COR documents should be signed and dated and identify time, place and participants.

FAR Part 46 requires that agencies ensure that Government contract quality assurance is conducted by or under the direction of Government personnel. The type and extent of surveillance is dictated by the nature of the services being acquired and the complexity and dollar value of the specific contract. Under FAR 46.401, quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. It is essential that the COR be familiar with the specific surveillance procedures in the quality assurance surveillance plan and perform surveillance appropriately.

Subcommittee Recommendations

1. Develop clear guidance on documentation as part of the analysis of COR functions/responsibilities (Recommendation 1 under Contract Surveillance Training) to be included in appropriate training curriculum. Guidance should stress the importance and completeness of documentation.



2. To ensure that COR surveillance is completed in accordance with the quality assurance surveillance plan, COR compliance must be addressed, as appropriate, in performance assessments of the COR.

Conclusion

The Federal Acquisition Regulation requires that quality assurance be conducted to ensure that the supplies or services acquired under Government contracts conform to the contract's quality and quantity requirements. Contract quality assurance is the joint responsibility of the Government and the contractor. The contractor is responsible for carrying out its obligations under the contract in terms of quality, timeliness and cost. The Government is responsible for ensuring that services acquired conform to the quality and performance requirements of the contract.

Government surveillance is the joint responsibility of the requiring organization—the organization most familiar with the technical complexities and nuances of the requirement—and the contracting office. The requiring organization is responsible for prescribing contract quality requirements, such as the quality assurance surveillance plan for services contracts (FAR 46.103). The contracting office is responsible for verifying from the requiring organization that the contractor fulfills the contract quality requirements.

Establishing a DoD standard for COR and providing a modular COR curriculum will allow training tailored to the specifics of the designated contract. The COR should be designated prior to the start of performance. Improved COR training will be available to any individual preparing for appointment as COR, regardless of membership in the DoD DAWIA community. Improved training will promote better surveillance and documentation.

While the contracting officer is responsible for designating the COR, the requiring organization must nominate the individual(s) for COR assignment. Such nomination should include understanding of the responsibility of the requiring organization to conduct surveillance, including allowing the tools and time to complete surveillance. In the majority of cases, COR responsibility is viewed as an additional duty. This is possibly the most crucial misconception in COR performance. By appointment as a COR, the individual essentially becomes an accountable official as defined at 10 USC 2773, a concept often not recognized by the COR or COR supervisor. Ensuring that the COR and COR management recognizes the responsibilities of the COR and management's responsibility to provide the COR tools, resources and opportunity to fulfill those responsibilities will promote more effective surveillance to DoD services contracts.



7. Contracting Integrity in an Combat/Contingency Environment

Co-Chairs: Panel Executive Director and Deputy Director, DPAP/PACC

Executive Summary

The reliance upon our military and civilian contracting workforce in a combat/contingent environment to support the combatant commander's campaign plan has dramatically increased over the recent years. Recent reports of fraudulent contracting actions conducted in Iraq and Kuwait highlight a need to place renewed emphasis on ethics based training for the contracting workforce. Recent GAO and SIGIR reports identify gaps and weaknesses in the capability of the acquisition workforce. Specifically, ethics and fraud awareness training were two notable areas identified as needing increased emphasis.

The subcommittee for Contract Integrity in a Combat/Contingency Environment focused on assessing the quality of DoD's ethics based contracting training provided to military (both officer and enlisted) and civilian contracting personnel prior to, during and post deployment into a combat/contingent environment. It also considered the leadership and management of the contracting personnel and their offices while deployed. To better understand what training is accomplished today, a total of three questions were asked of the military services and DoD agencies regarding the type, method, location, and time when integrity training is provided to its deployable military and civilian workforce. The responses helped shape our assessment of the workforce to meet the demands placed on them in a combat/contingent environment.

The findings show the majority of the ethics based contracting training, specifically tailored to the military and civilian member deployed in a combat/contingent environment, is provided through the Defense Acquisition University as part of its Defense Acquisition Workforce Improvement Act (DAWIA) training and certification curriculum. DAU offers one resident course CON 234 – Contingency Contracting Course and one distance learning course, CLC114 - Contingency Contracting Refresher Course.

In conjunction with course offerings specially tailored for contracting in a combat/contingent environment, DAU offers 14 mandatory and 52 elective course offerings (both resident and distance learning) with contracting integrity instruction. The Departments of the Army, Air Force, and Navy; The United States Special Operations Command (USSOCOM); The Defense Logistics Agency (DLA); and The Defense Contract Management Agency (DCMA), all have identified contracting integrity training for military and civilian members in addition to what is required under DAWIA.



Contracting Vulnerability: Training for Contracting Integrity in Combat/Contingent Environment

Related GAO or IG Reports

- GAO-06-838R DOD Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, dated July 7, 2006
- SIGIR Quarterly and Semiannual Reports to Congress

GAO or IG Recommendations

- Identify and Share Best Practices
- Use mistakes and failures as case studies and communicate them broadly

DoD Follow up Actions to Date or Pending Plans

- Kuwait Boot Camp is proposed refresher training for deployed contingency contracting personnel to provide latest lessons learned and best practices, supplementing what was taught in the CON 234 – Contingency Contracting Course. Course offering is being proposed quarterly to be held at Camp Arifjan, Kuwait..

Gaps Identified by Subcommittee

- Though DoD Policy requires that every member of the workforce (Civilian, military, and contractor) complete annual ethics training, this training is very broad and not tailored to the integrity issues found in a combat/contingent environment.
- More emphasis needs to be placed on the quality, availability and frequency of contracting integrity training provided prior to and during deployment in a combat/contingent environment.

Subcommittee Recommendations:

- Focus DoD Integrity Training on How We Fight. Home station training to contracting employees, while not deployed, should be enhanced with real-world integrity scenarios and lesson's learned, from the battlefield. Training offerings should be established as a distance learning module at DAU and incorporated into annual requirements for all acquisition professionals.
- Expand fraud awareness and identification training. Establish a sub-group to look at recent techniques and training instructions from the DoDIG Defense Criminal Investigative Service and Defense Services Criminal Investigation Commands, Contract Fraud Divisions. Look at the Fraud Indicator training offered at the Navy Contingency Contracting Course, Navel Post-Graduate School for application DoD wide. Take the information and make recommendations to the Integrity Panel on how best to introduce to the workforce.
- Teach contracting personnel in a combat/contingent environment, "How to Run a Contracting Office". Core curriculum should be added and updated to the CON 234 – Contingency Contracting Course, as a prerequisite course offering prior to contingency contracting personnel deployment.



- Expand upon the training offered by the Defense Services and Defense Agencies and offer to entire military workforce. Build upon the best practices of the Defense Services and Agencies and open select course offerings to officers and enlisted personnel where beneficial. Evaluate the Department of The Navy course titled, "Ethics in Action" at the Naval Supply Center and School. See if this program of instruction can be shared across DoD in either a distance learning or resident course offering. Look at DCMA's BCOT - Basic Contingency Operations Training, for application to the entire DoD civilian workforce. Expand upon lessons learned and update DAU course material where appropriate.
- Expand the Office of Government Ethics (OGE) training curriculum and annual certification to address issues relating to contracting personnel in a combat/contingent environment.

Contracting Vulnerability: Preserving Checks and Balances for Contracting Integrity in a Combat/Contingent Environment

Related GAO or IG Reports:

- GAO-06-838R DOD Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, dated July 7, 2006.
- SIGIR Quarterly and Semiannual Reports to Congress

GAO and SIGIR Recommendations

- Implement Procurement Management Reviews to enhance monitoring of contract actions

DoD Follow up Actions to Date or Pending Plans

- DoD has issued policy requiring all Defense Services and Agencies to insure all pre-solicitation documents have Theater Business Clearance (TBC) of statements of work and terms and conditions of proposed contracts, prior to award. Joint Contracting Command – Iraq/Afghanistan (JCC-I/A) will perform TBC and validate that every contract with delivery or performance by contractors in Iraq and Afghanistan, will be cleared by them and the appropriate level of oversight applied. Additionally, upon award of all contracts with delivery or performance in Iraq or Afghanistan, contracting officers will assign all contract administration functions per FAR Part 42 and DFARS Part 242, to JCC-I/A. JCC-I/A can then re-assign some or all of the contract administration functions to The Defense Contract Management Agency (DCMA), as required.

Gaps Identified by Subcommittee

- The frequency and consistency of Procurement Management Reviews (PMRs) are not being applied consistently across DoD.
- Contracting personnel forward in a combat/contingent environment do not always have functional independence. Contracting personnel, to include Contracting Officer Representatives, are sometimes placed in positions where their direct supervisor is not in the contracting chain of command, thus possibly injecting risk into the integrity of the contracting process.
- CORs and COTRs are not sufficiently trained and prepared, and sometimes lack support from their operational chain of command, to perform effectively.



- Not enough senior contracting leadership positions identified to support key mission requirements.

Subcommittee Recommendations

- DoD should conduct annual inspections by a Joint Procurement Management Review (JPMR) Team to every contracting office, forward deployed, in a combat/contingent environment. This action will provide additional independent oversight and enhance the established checks and balances mechanisms in place to insure contracting offices in a combat/contingent environment are performing to standard.
- Standardized transition plans and checklists for each contingency contracting office. DoD shall evaluate the best practices being performed today in Iraq and Afghanistan, to insure that contracting office leadership transition plans are being performed to an established standard that insures optimal continuity of operations.
- Increase training opportunities for personnel outside the contracting career field so there is a better understanding of contract requirements and enhanced oversight and administration of contract actions. Specifically, offer greater courses of instruction, either by DAU or through the Defense Services and Agencies, to military and civilian members of DoD, who by their position in a combat/contingent environment, could benefit greatly by increased knowledge and understanding of the acquisition and contracting process.
- Increase the number of key contracting leadership positions at the General and Flag Officer grades for each of the services.
- Insure contracting personnel first-line leaders are members of the contracting workforce and that functional independence of the acquisition process is strengthened.

Contracting Vulnerability: tools for contracting integrity in a combat/contingent environment

Related GAO or IG Reports

- GAO-06-838R DOD Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, dated July 7, 2006.
- SIGIR Quarterly and Semiannual Reports to Congress

GAO Recommendations

- No specific recommended tools for contracting integrity identified.

DoD Follow up Actions to Date or Pending Plans

- Defense Acquisition University placed a link on its Contingency Contracting Community website to provide contracting personnel in a combat/contingent environment, appropriation integrity related and technical reach-back capability to all of the DoD resources available.

Gaps Identified by Subcommittee

- Not every member of the acquisition workforce deployed in a combat/contingent environment is adequately prepared with all the appropriate skill-sets to perform effectively.



- Military and Civilian contracting personnel do not always train as they fight. Some members of the workforce are performing functions in combat that they have not performed before.
- Manning size and composition:
 - The number of qualified, available, and deployable personnel to staff contracting offices in a combat/contingent environment, are not adequate for the size and complexity of the assigned missions.
 - The composition of forward deployed contracting offices may best be staffed with only military personnel, vice an expectation to fill critical short positions with civilian equivalents.

Subcommittee Recommendations

- Use the Contracting Competency Model to assess the preparedness of the contracting workforce, prior to deployment to a forward deployed contracting office. Not only will this assessment model help identify and match the workforce member to the skill required in the forward deployed office, it will aid DoD in determining if the acquisition member have appropriate integrity training to fill critical positions.
- Joint leadership, manning and training of contracting personnel should be a Joint Forces Command (JFCOM) core function. The Joint Contracting Command – Iraq/Afghanistan (JCC-I/A) is a model for how best to perform contracting in a joint environment. The recommendation is to create a permanent structure within DoD before a combat/contingent mission is established to avoid ad hoc mission planning, manning, and resourcing.
- Increase military contracting manning levels to meet wartime requirements. Currently the number of trained, qualified, available, and deployable workforce members does not match the current and projected mission demand. Recommendation is for each of the Defense Services to re-evaluate their manning requirements and adjust appropriately.
- Plan and assign reach-back contracting support from the United States or other forward positioned contracting offices (Europe or Asia), to augment manning and skill-set shortages forward in a combat/contingent environment. Possibly look at manning with military forward and augment with civilians in other regions.
- Focus military contracting training and development for wartime missions. Military contracting personnel careers should be managed closely to ensure experience and skills mastery match with requirements anticipated in a combat/contingent environment.



8. Procurement Fraud Indicators Subcommittee

Chair: Assistant Inspector General, DoD Office of the Inspector General (Acquisition and Contract Management)

Executive Summary

Procurement Fraud is a deception deliberately or intentionally practiced, usually in order to secure unfair or unlawful gain during the course of an otherwise lawful transaction. The Procurement Fraud Indicators subcommittee was established in response to the needs identified by the work and recommendations of other subcommittees, and therefore, was recently organized. The Chairman has assembled a team among members of the DoD community to determine what products or recommendations may be necessary to provide education on procurement fraud indicators and to ensure this information is included in future training programs. The Chairman and his staff are currently contacting investigative and policy personnel with the DoDIG, as well as reviewing information from various DoD and Government wide websites to determine what resources already exist and whether these resources are adequate to provide for comprehensive education programs. Additional evaluation of resources and training needs will be undertaken once the full team begins meeting.

Department of Justice National Procurement Fraud Task Force

The Department of Justice National Procurement Fraud Task Force was responsible for development of the Statement on Auditing Standards No. 82 (SAS 82); “Consideration of Fraud in a Financial Statement Audit.” The Task Force has coordinated standards for the Executive Branch. The Fraud Section leads the effort to combat fraud and works closely with the DoD IG. The Task Force has created working committees, which consist of representatives from multiple agencies and address common issues such as training, legislation, intelligence, information sharing, private sector outreach, grant fraud, and international procurement fraud. The National Procurement Task Force has developed specialized training for OIG agents and prosecutors on the investigation and prosecution of procurement fraud cases. In June 2007, the Task Force sponsored its first annual procurement fraud training course for prosecutors at the National Advocacy Center (NAC) in Columbia, South Carolina. It also developed a training course for investigators first offered in the fall of 2007.¹⁶

The National Procurement Fraud Taskforce Fraud Indicators:

The Task Force has established a public website, <http://www.usdoj.gov/criminal> that includes white papers with extensive lists of risk factors and fraud indicators used in their training.

Susceptibility of assets to misappropriation:

- Large amounts of cash on hand;
- Dealing in cash;
- Inventory characteristics, such as small size, high value or high demand;
- Easily convertible assets; and
- Fixed asset characteristics, such as small size, marketability, or lack of ownership identification.

¹⁶ “National Procurement Fraud Task Force Progress Report,” July 2007



Misappropriation of Assets Fraud Indicators:

- Transactions not recorded in a complete or timely manner or improperly recorded as to amount, accounting period, classification or entity policy;
- Unsupported or unauthorized balances or transactions;
- Last-minute adjustments that significantly affect financial results;
- Missing documents;
- Unavailability of other than photocopied documents when original documents should exist;
- Significant unexplained items on reconciliations;
- Inconsistent, vague or implausible responses from management or employees;
- Unusual discrepancies between the entity's records and confirmation replies;
- Missing inventory or physical assets of significant magnitude;
- Denial of access or records, facilities, certain employees, customers or vendors;
- Undue time pressure imposed by management to resolve complex issues;
- Unusual delays by the entity in providing requested information; and
- Complaints to the auditor regarding fraud.

Risk Factors Relating to Management Controls:

- Lack of appropriate management oversight;
- Lack of job applicant screening relating to employees with access to assets susceptible to misappropriation;
- Inadequate record-keeping regarding assets susceptible to misappropriation;
- Lack of appropriate segregation of duties or independent checks;
- Lack of appropriate system of authorization and approval of transactions;
- Poor physical safeguards over cash, investments, inventory or fixed assets;
- Lack of timely and appropriate documentation for transactions; and
- Lack of mandatory vacations for employees performing control functions.

Fraud Indicators:

- Capitalizing assets that should be expensed in an effort to make a company appear profitable;
- Providing financial statements to a financial institution for the purpose of obtaining a loan or letter of credit containing overstated income and/or assets and/or understated liabilities;
- Providing false collateral to secure a loan from the company or financial institution;
- Removing small amounts from petty cash;
- Failing to record sales and pocketing cash;
- Overloading expense accounts or diverting advances to personal use;
- Pocketing payments on customer accounts and issuing receipts on scraps of paper or in self-designed receipt books, or not giving receipts at all;
- Collecting an account, pocketing the money, and writing it off or collecting write-offs and then not reporting the collections;
- Failing to make bank deposits daily or depositing only part of the money;
- Altering dates on deposits slips to cover up stealing;
- Carrying fictitious extra help on payroll, increasing pay rates or hours worked per books, carrying employees on the payroll beyond severance dates, falsifying additions to payrolls, or withholding unclaimed wages;



- Destroying, altering, or voiding cash sales tickets and pocketing the cash;
- Using personal expenditure receipts to support false paid-out items;
- Paying false invoices, either self-prepared or obtained through collusion with suppliers;
- Increasing the amounts of suppliers' invoices through collusion or misstating discounts provided;
- Charging personal purchases to the company through the misuse of purchase orders;
- Billing stolen merchandise to fictitious accounts;
- Falsifying inventories to cover thefts or delinquencies using such creative approaches as stacking empty boxes
- Selling waste and scrap and pocketing the cash
- Obtaining unprotected blank checks and forging the signature. Other blank documents can similarly be abused.¹⁷

The DoDIG “Handbook on Fraud Indicators for Contract Auditors,” (IGDH 7600.3, dated March 31, 1993, is especially helpful in detecting fraud in contract, labor, and proposal pricing practices. It includes the following fraud indicators for labor costs and costs incurred:

- Distinctive charging patterns;
- Sudden, significant shifts in charging;
- Decrease in charges to projects/contracts in overrun or near ceilings;
- A disproportionate percentage of employees charging indirect;
- Large number of employees reclassified from direct to indirect or vice versa;
- Same employees constantly reclassified from direct to indirect or vice versa;
- Weak internal controls over labor charging, such as employee time cards signed in advance, employee
- Time cards filled in by the supervisor, time cards filled in pencil, or time cards filled in at the end of the pay period;
- Actual hours and dollars consistently at or near budgeted amounts;
- Use of adjusting journal entries to shift costs between contracts, IR&D, B&P, commercial work;
- Significant increases or decreases in charging to sensitive accounts;
- Employee's time charged differently than associated travel costs;¹⁸

Costs Incurred Procurement Fraud Indicators:

- Transfers from IR&D and B&P accounts;
- Transfers from fixed-price Government or commercial contracts;
- Transfers from or to cost-type Government contracts;
- Transfers from or to indirect accounts;
- Transfers to any type of holding or suspense account;

¹⁷ “Understanding & Detecting Business Fraud: Accounting & Legal Issues: the Auditor as a Financial Policemen,” Charles W. Blau, AMS Productions, Inc., August 21, 2002

¹⁸ DoDIG “Handbook on Fraud Indicators for Contract Auditors,” (IGDH 7600.3, dated March 31, 1993



9. Contractor Employee Conflicts of Interest Subcommittee
Chair: Director, Defense Contract Management Agency

This newly formed subcommittee will provide recommendations in 2008.



10. Recommendations for Change Subcommittee

Chair: DoD Deputy General Counsel (Acquisition and Logistics)

Executive Summary: Analysis of Recommendations

This subcommittee reviewed the recommendations of the other subcommittees to determine whether changes to law, regulation or policy (including a policy memorandum signed by the Director, Defense Procurement and Acquisition Policy) are necessary for implementation. Figure 8 summarizes the subcommittee’s assessments. Additional recommendations provided by this subcommittee follow Figure 8.

Analysis of Recommendations

Key: “√” indicates action required

Law Change	Regulation Change	Policy Change	Recommendation
Subcommittee 1, Current Structure of Contracting Integrity Chair: Component Acquisition Executive, DLA			
Not Required	Not Required	Not Required	DPAP should reinforce the reporting and evaluation requirements in DoD Instruction 5000.66 “Operation of the Defense Acquisition, Technology, and Logistics Workforce.”
Not Required	Not Required	Not Required	CAEs/SPEs should self-certify compliance with the reporting and evaluation requirements of DoDI 5000.66, identifying any exceptions, every two years.
Not Required	Not Required	Not Required	CAEs/SPEs should self-certify, every two years to DPAP, compliance with the separation of duties described at DFARS 203.170.
Subcommittee 2, Sustained Leadership Chair: Deputy Assistant Secretary of the Army (Policy & Procurement)			
Not Required	Not Required	Not Required	Develop metrics for Senior Leadership Positions in Contracting for application DoD-wide. OUSD issue policy memorandum to require DoD components to monitor and report these positions on a semi-annual basis to preclude allowing long-term “acting” leaders in senior leadership positions in Contracting. Using the metrics, OUSD should develop succession lists for temporary “acting” filling of positions; to monitor projected vacancies & initiate selection and nomination processes before vacancies occur.
Not Required	√	√	Performance plans for all senior leaders in the Department, whether under SES Pay for Performance System or NSPS, specifically include an integrity or ethics objective.
Not Required	Not Required	√	Implement processes to measure the consistency of tone at the top.

Figure 8. Analysis of Initial Actions for Implementation in 2008 (Page 1 of 3)



Analysis of Recommendations, continued

Key: “√” indicates action required

Law Change	Regulation Change	Policy Change	Recommendation
Subcommittee 3, Capable Contracting Workforce Chair: Director, Human Capital Initiatives, OUSD(AT&L)			
Not Required	Not Required	Not Required	DPAP and senior contracting leaders determine appropriate workforce size.
Not Required	Not Required	Not Required	DPAP and senior contracting leaders develop an initial human capital-planning addendum to the AT&L HCSP.
Not Required	Not Required	Not Required	DPAP and senior contracting leaders resource and implement responsive human capital strategies and supporting recruiting, hiring and retention initiatives (including intern/coop programs).
Subcommittee 4, Adequate Pricing Chair: Director, Defense Contract Audit Agency			
Not Required	Not Required	√	Develop a coordinated Contract Policy Execution Review Plan that recognizes Department-wide risks and promotes consistency in procurement policy execution across all components. Encourage peer review between services as an integral part of each component’s Contract Policy Execution Review program.
Not Required	Not Required	Not Required	Assess the need for revised or additional training on (1) competition requirements and (2) differing pricing alternatives.
√	Not Required	Not Required	Change commercial item definition by deleting the “of a type” phrase and revising the language, “offered for sale” to “has been sold.” If this requires a change to law, consider developing a legislative proposal.
Subcommittee 5, Appropriate Contracting Approaches and Techniques Chair: Deputy Assistant Secretary of the Air Force (Contracting)			
Not Required	Not Required	Not Required	In Interagency Contracting, DoD Components should take steps to strengthen pre- and post-award oversight processes, including implementation of October 8, 2007, policy to consider fees charged by assisting agencies during the business planning process.
Not Required	Not Required	√	Examine Department-wide strategy to assess reliance on interagency contracts.
Not Required	Not Required	√	Explore means for strengthening competition advocate programs for multiple award Indefinite Delivery/Indefinite Quantity contracts DoD-wide, with focus on increasing competition at task order level.

Figure 8. Analysis of Initial Actions for Implementation in 2008 (Page 2 of 3)



Analysis of Recommendations, continued

Key: “√” indicates action required

Law Change	Regulation Change	Policy Change	Recommendation
Subcommittee 6, Sufficient Contract Surveillance Chair: Chief of Staff, Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)			
Not Required	√	Not Required	Review Contracting Officer Representative (COR) functions/responsibilities; develop DoD standard for COR certification.
Not Required	√	√	Mandate COR assignment prior to contract award.
Not Required	Not Required	√	Process COR appointment through management; require written assurance that COR performance will be included in performance assessments.
Subcommittee 7, Contracting Integrity in a Combat/Contingent Environments Co-Chairs: Panel Executive Director and Deputy Director, DPAP/ PACC			
Not Required	Not Required	Not Required	Improve training by leveraging Marine Corps and Air Force training capabilities.
Not Required	Not Required	Not Required	Improve training on how to run a contracting office in a combat/contingent Environment.
Not Required	Not Required	Not Required	Establish two sub-groups to review Fraud Indicator Training and Continuity Book/Contracting Office Transition Plan.
Subcommittee 8, Procurement Fraud Indicators Chair: Assistant Inspector General, DoDIG, Acquisition & Contract Management			
○ <i>Newly formed, will provide recommendations in next round</i>			
Subcommittee 9, Contractor Employee Conflicts of Interest Chair: Director, Defense Contract Management Agency			
○ <i>Newly formed, will provide recommendations in next round</i>			
○			

Figure 8. Analysis of Initial Actions for Implementation in 2008 (Page 3 of 3)

Additional Recommendations

Department of Defense-Wide Ethics Program

The subcommittee also recommends creation of a DoD ethics program. The Department has a robust and active compliance program but no similar ethics program. The Defense Science Board (DSB) Report on Management Oversight in Acquisition Organizations stated: “The



department lags behind the “best in class” in creating a systematic, integrated approach and in demonstrating the kind of leadership necessary to drive ethics to the forefront of organizational behavior.”

Many of the Defense Science Board Report recommendations could be realized by a DoD-wide ethics program. For example, the ethics program could articulate more explicitly the Department’s vision and values as a high integrity organization and expect the same of its contractors. The Secretary could put ethics at the forefront of DoD communications through such a program. The ethics program could institutionalize an orientation for incoming senior leadership that addresses the values and objectives of DoD and the Secretary and the importance of leadership to sustain an ethical culture. Performance expectations would reinforce these expectations for senior leadership to ensure flow-down to all individuals.

A DoD ethics program could answer many of these recommendations by:

- Identifying the core values of the Department
- Assessing the broader culture and identifying means of sustaining integrity
- Appointing an individual to serve as the Lead Ethics Officer for the Department.
- Requiring evaluation of new employees on their ethical values during their period of probation
- Requiring that National Security Personnel System (NSPS) to make values part of the performance criteria
- Providing periodic training.

Consider a Legislative Proposal to Amend the Program Fraud Civil Remedies Act of 1986

The subcommittee also recommends consideration of either drafting a legislative proposal to amend the Program Fraud Civil Remedies Act of 1986 or drafting a legislative proposal to create a stand-alone statute.

The current Act provides for civil remedies for false claims and statements made to an agency. Any person who makes, presents or submits a claim or statement (of \$150,000 or less) that the person knows or has reason to know is:

- False, fictitious, or fraudulent,
- Includes or is supported by any written statement that asserts a material fact which is false, fictitious, or fraudulent;
- Includes or is supported by any written statement that omits a material fact; is false, fictitious, or fraudulent as a result of such omission, and is a statement in which the person making it has a duty to include such material fact, or is for payment for providing property or services that the person did not provide as claimed, shall, in addition to any other available remedy, be subject to a civil penalty of not more than \$5000 per claim or statement.

The difficulty, however, is in the details: as currently structured, the statute simply is too complex and cumbersome. Here are some examples of impediments to effective implementation of this statute:



- Allegations of violations of the Act must be submitted to an investigating official, who must be a grade 0-7 or above or SES in the Office of the Inspector General of a Military Department of the DoD Inspector General.
- The investigating official must submit his findings to a reviewing official, who is an individual in the same rank or grade and who works for an organization other than the IG.
- If the reviewing official decides the allegations have merit and wants to proceed, he must obtain the approval of the Attorney General or an Assistant Attorney General before doing so.
- If the reviewing official decides that there is adequate evidence of a violations of the Act, he or she must transmit to the Attorney General a written notice of the intent to refer the matter to a presiding officer in the agency that sets forth in detail the basis of his/her determination.
- Within 90 days of receipt of the notice, the Attorney General or an Assistant Attorney General must transmit a written statement to the reviewing official approving or disapproving referral to a presiding officer. Allegations may not be referred without this approval.
- If a hearing is requested by the individual alleged to be liable under the Act, the presiding officer, who must be an Administrative Law Judge, must conduct the hearing in accordance with agency regulations that include detailed due process requirements. DoD does not employ any Administrative Law Judges.
- The decision of the presiding officer may be appealed to the agency head, who may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer. The authority of the agency head to adjust the penalty or assessment may not be redelegated.
- The decision of the presiding officer also may be appealed to a U.S. district court, if the individual has exhausted all administrative remedies under the Act.
- The Attorney General may bring a civil action to recover any penalty or assessment imposed in a determination that has become final and the amount of the penalty or assessment shall be deposited as miscellaneous receipts in the Treasury Department.

The subcommittee is considering some of the following potential amendments:

- Creating a Pilot Program for DoD only
- Designating the DoD Component suspension and debarment officials to investigate and make determinations on allegations of violations of the Act.
- Increasing the dollar limitation from \$150,000 to \$500,000.

Consider Future Legislative Proposal under the False Claims Act

Finally, the Recommendations for Change subcommittee is considering recommending a legislative proposal to permit agencies to retain amounts collected pursuant to any action under the False Claims Act or pursuant to any other action based upon fraud in obtaining or performing a contract with the United States, whether recovered as a result of a judgment by a court or in settlement of such action. This proposal would permit agencies to apply these amounts to pay an obligation that would properly have been chargeable to an account that has been closed and is no longer available for obligation.



Current fiscal law provides that funds are available for obligation for limited periods of time. Collections received after expiration of the period of availability for those funds must be deposited in the Treasury as miscellaneous receipts.

Recoveries for false claims involve a very lengthy process. The time required to discover the existence of a false claim, investigate a false claim after it is discovered, and then pursue and obtain a recovery under the False Claims Act or other authorities can easily consume several years, and frequently leads to recoveries after appropriation accounts have been closed.

This concept would except fraud recoveries from the requirement that amounts received after an account has been closed must be deposited in the Treasury and would permit agencies to use the amounts collected to pay liabilities arising out of closed accounts. This may provide an incentive for agencies to pursue fraud recoveries aggressively and would not augment current appropriations. However, the concept requires further development and coordination with the DoD Comptroller community.





THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR: SEE DISTRIBUTION

FEB 16 2007

SUBJECT: Panel on Contracting Integrity

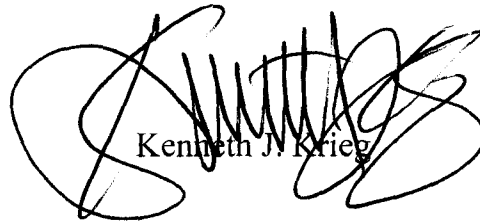
Section 813 of the John Warner National Defense Appropriations Act for FY 2007, Public Law 109-364, requires the Secretary of Defense to establish a panel to be known as the "Panel on Contracting Integrity." The Deputy Under Secretary of Defense (Acquisition & Technology) (DUSD(A&T)) is hereby designated as the Panel Chairman. Dr. James Finley will designate members to the Panel, as nominated by the Military Departments and Defense Agencies, and convene the Panel early in 2007. The Director, Defense Procurement and Acquisition Policy, will serve as Executive Director for the Panel and will provide staff assistance as necessary, to include responsibility for executing the annual reports to Congress. I request the Secretaries of the Military Departments and direct the Defense Agencies to submit the names of their nominees to DUSD(A&T) for his consideration within the next 30 days.

The duties of the Panel specified in the legislation relate to eliminating areas of vulnerability in the defense contracting system that allow fraud, waste and abuse to occur. The Comptroller General's report required by section 841 of the National Defense Authorization Act for FY 2006 identified weaknesses in five keys areas: sustained senior leadership, capable acquisition workforce, adequate pricing, appropriate contracting approaches and techniques, and sufficient contract surveillance. The Department has several initiatives underway to improve performance in each of the identified areas of weakness. The Panel is not viewed as an alternative management structure for those initiatives but rather as a formal body to take a holistic view of all these efforts as they relate to the underlying objective of combating contract fraud, waste and abuse.

In addition, section 813 requires the Panel to submit to the Secretary of Defense and the congressional defense committees a yearly report, not later than December 31 of each year, on the Panel's activities and a summary of its findings and recommendations. The Panel's first report must contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting.



The Panel will meet as necessary over the course of the next year, and I will be briefed on its progress. Your assistance when called for by the Panel Chairman will be important to the Panel's success. My point of contact is Mr. Andrew C. Obermeyer, Defense Procurement and Acquisition Policy, at 703-697-6710, andrew.obermeyer@osd.mil.



Kenneth J. Krieg

DISTRIBUTION:

SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
INSPECTOR GENERALS OF THE MILITARY DEPARTMENTS



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

July 7, 2006

The Honorable John Warner
Chairman
The Honorable Carl Levin
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Duncan Hunter
Chairman
The Honorable Ike Skelton
Ranking Member
Committee on Armed Services
House of Representatives

Subject: *Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse*

In recent years, the Department of Defense (DOD) has increasingly relied on goods and services provided by the private sector under contract. Since fiscal year 2000, DOD's contracting for goods and services has nearly doubled, and this trend is expected to continue. In fiscal year 2005 alone, DOD obligated nearly \$270 billion on contracts for goods and services. Given the magnitude of the dollar amounts involved, it is essential that DOD acquisitions be handled in an efficient, effective, and accountable manner. In other words, DOD needs to ensure that it buys the right things, the right way.

Enacted January 6, 2006, the National Defense Authorization Act for Fiscal Year 2006¹ required us to review DOD's efforts to identify and assess the vulnerability of its contracts to fraud, waste, and abuse. We reviewed the areas of vulnerability that DOD faces with regard to contracting fraud, waste, and abuse, and the recent initiatives that DOD has taken to address these vulnerabilities, including actions DOD has taken in response to a March 2005 Defense Science Board report on management oversight in acquisition organizations.

Because of the limited time available to conduct our work, we relied heavily on a review of GAO and DOD Office of the Inspector General (DOD IG) reports issued over the past 5 years (listed in app. I) supplemented by interviews with senior acquisition policy, general counsel, and investigative service officials at the Office of the Secretary of Defense level and within each of DOD's military departments. We also reviewed relevant studies prepared by or for DOD, the most notable of which is the report written by the Defense Science Board, a panel of high-level

¹ Pub. L. No. 109-163, sec. 841.

outside experts that conducts analyses and advises DOD's top leadership on such areas as scientific and technical issues and acquisition processes. We met with a Department of Justice task force established to address contract fraud. To identify recent DOD initiatives, we interviewed senior acquisition officials and reviewed applicable policy memorandums and management oversight reports. We focused on DOD activities and actions rather than on contractor actions and efforts. Several contracting-related terms are used in this report and are described in appendix II. We conducted our review between February and June 2006 in accordance with generally accepted government auditing standards.

Summary

DOD faces vulnerabilities to contracting fraud, waste, and abuse due to weaknesses in five key areas: sustained senior leadership, capable acquisition workforce, adequate pricing, appropriate contracting approaches and techniques, and sufficient contract surveillance. Because of numerous concerns about control weaknesses in these areas and others, GAO has had contract management on its list of high-risk² areas since 1992.³ DOD's recent reports and studies, plus our discussions with senior DOD acquisition officials, point to specific weaknesses in these five areas. One of the senior leadership issues pertains to the tone at the top, which includes leadership's commitment or lack of commitment to sound acquisition practices.⁴ DOD has emphasized making contract awards quickly; sometimes, however, the focus on speed has come at the expense of sound contracting techniques. Increased demands on the acquisition workforce have led to vulnerabilities in contract pricing and competition and in the selection of the most appropriate contracting techniques. Some practices have led to insufficient contract surveillance, and such surveillance is essential for ensuring that contractors provide quality goods and services as required by their contracts. For each instance in which an area of vulnerability affects a contract award or execution, DOD risks paying contractors more than the value of the goods and services they provide.

DOD has taken several steps to address the above contracting vulnerabilities. In particular, DOD initiated a Defense Science Board review in November 2004, after a high-level Air Force official pled guilty to a conflict-of-interest and admitted giving favorable treatment to a large DOD contractor in negotiations and contract awards involving billions of dollars. In March 2005, the Defense Science Board concluded that nothing in the department's existing general acquisition structure or policies would prevent contracting malfeasance such as that carried out by the senior Air Force official from happening again. The board also made 20 recommendations to address its concerns. In response, the Office of the Under Secretary of Defense for Acquisition, Technology, and

² GAO's high-risk designation is given to major programs and operations that need urgent attention and transformation in order to ensure that our national government functions in the most economical, efficient, and effective manner possible. It also emphasizes programs that are at high risk because of their greater vulnerabilities to fraud, waste, abuse, and mismanagement.

³ GAO, *High-Risk Series: An Update*, [GAO-05-207](#) (Washington, D.C.: January 2005).

⁴ "Tone at the top" refers to management's philosophy and operating style, which sets the degree of risk the organization is willing to take in its operations and programs, including the acquisition function.

Logistics (AT&L) has begun several initiatives, including issuing numerous memorandums to acquisition personnel reemphasizing their roles and responsibilities related to ethical conduct and revitalizing ethics training. AT&L also asked each military service in November 2004 to assess its own acquisition functions. In March 2006, AT&L completed its analysis of the military services' self-assessments and proposed six recommendations to address weaknesses in the oversight, source selection, and contract award processes to improve the integrity of DOD acquisition decisions. The military services and DOD have taken other steps to address fraud, waste, and abuse. Two of the military services established the Procurement Fraud Working Group, a DOD-wide grassroots forum for acquisition personnel to discuss ways to better address vulnerabilities to contracting fraud. The working group recently developed a Web-based community of practice to allow the immediate dissemination of information. Since September 2004, DOD has issued several policy memorandums to improve the oversight of the department's use of interagency contracts and time and materials contracts. In addition, the military services have each undertaken specific initiatives, which range from creating new offices to focus audit and investigative efforts on areas of vulnerability to promoting general awareness about fraud through training and newsletters. Because the recent initiatives are still in their early stages, it is too soon to determine what impact they may have on reducing vulnerabilities to contracting fraud, waste, and abuse. We provided a draft of this letter to DOD for comment. The Department concurred with our findings.

Background

DOD defines fraud, waste, and abuse in the following ways:

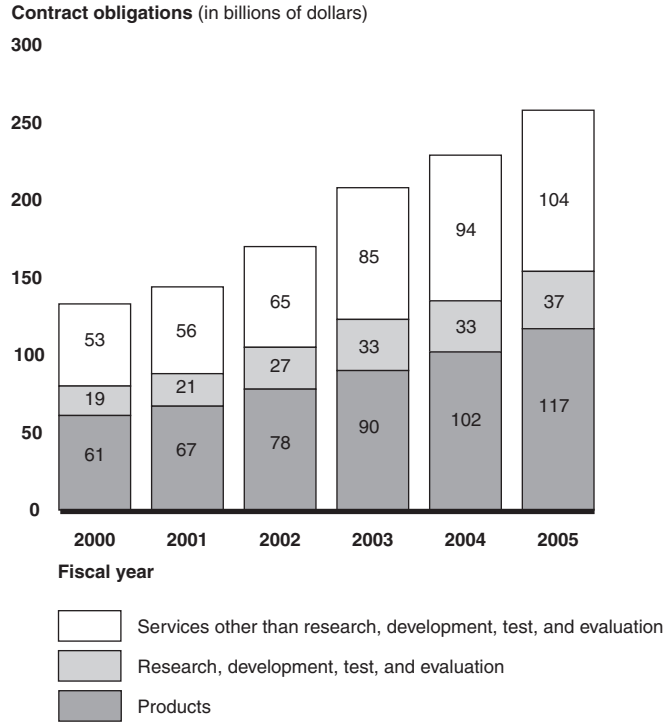
- **Fraud** is any intentional deception taken for the purpose of inducing DOD action or reliance on that deception. Fraud can be perpetrated by DOD personnel—whether civilian or military—or by contractors and their employees.
- **Waste** is the extravagant, careless, or needless expenditure of DOD funds or the consumption of DOD property that results from deficient practices, systems, controls, or decisions. Waste includes improper practices not involving prosecutable fraud.
- **Abuse** is the manner in which resources or programs are managed that creates or perpetuates waste or contributes to acts of fraud. Abuse is also called mismanagement.

Studies have shown that, generally speaking, the position a perpetrator holds within an organization will tend to have the most significant effect on the size of losses in a fraud scheme. Trust and access to funds and assets that come with senior leadership and tenure can become a vulnerability if the control environment in an organization is weak. Although waste and abuse are not as well defined as fraud, their effects can be just as profound.

The amount of DOD funding used to contract for goods and services continued to increase in the past 5 years, as shown in figure 1. If this trend continues, more and more

funds will be vulnerable to potential fraud, waste, and abuse unless effective controls are in place.

Figure 1: DOD Contract Obligations for Fiscal Years 2000 to 2005



Source: DD350 database, actions over \$25,000; GAO (analysis and presentation).

Oversight and management of DOD contracting activities is shared among numerous organizations. Collectively, these organizations help detect instances of fraud, waste, and abuse, try to prevent them from happening, or are involved in correcting policies and procedures when they occur. Table 1 shows DOD organizations involved in overseeing and managing contracting activities and what the primary responsibilities are.

Table 1: DOD Organizations Responsible for Oversight and Management of DOD Contracting Activities

DOD organization	Responsibility
Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L)	Provides policy, guidance, and oversight to acquisition functions
DOD Office of General Counsel	Establishes procedures to implement policies relating to prosecution of identified instances of fraud (Department of Justice has primary responsibility for handling prosecutions related to fraud in federal court system); oversees ethics programs throughout DOD
DOD Inspector General (DOD IG)	Conducts audits and oversees matters relating to detection and prevention of fraud, waste, and abuse; collaborates with numerous other DOD entities, as many activities are involved in addressing these issues across DOD; DOD IG does not issue policy regarding acquisition
Defense Criminal Investigative Service	Investigates fraud allegations
Defense Contract Audit Agency	Makes investigation referrals, usually to DOD IG or to Defense Criminal Investigative Service, regarding situations that reasonably appear to entail fraud that it encounters during its contract audits
Air Force, Army, Navy	Conduct audits and investigations; each military department has its own audit agency, criminal investigation service, and office of general counsel

Source: DOD (data); GAO (presentation and analysis).

Table 2 shows prosecutorial actions and monetary collections related to DOD procurement fraud cases for the last 5 fiscal years. Although fraud settlements are significant, it is likely that the amount of funds lost to DOD contracting waste and abuse exceeds those lost from fraud.

Table 2: DOD Procurement Fraud Case Results for Fiscal Years 2001-2005 (dollar amounts in millions)

Fiscal year	Criminal indictments ^a	Criminal convictions ^a	Military Article 15 ^b	Criminal judgment amount	Civil settlement amount	Administrative amount	Investigative recoveries and seizures
2001	177	137	6	\$38.6	\$103.5	\$4.9	\$0.6
2002	200	109	14	\$313.6	\$528.4	\$2.4	\$4.8
2003	176	121	10	\$40.7	\$492.4	\$19.3	\$3.8
2004	86	113	7	\$28.0	\$61.8	\$40.2	\$0.7
2005	79	85	2	\$27.1	\$263.6	\$23.7	\$0.0
Total	718	565	39	\$448.1	\$1,449.6	\$90.4	\$9.9

Source: DOD IG (data); GAO (presentation and analysis).

^a Convictions sometimes occur in the year or years following indictments and therefore may be less than or exceed the number of indictments. In addition, some indictments do not result in convictions.

^b For minor fraud committed by military personnel, punishment is usually levied by the commanding officer. Such non-judicial punishment is referred to as an Article 15 procedure.

DOD Continues to Face Vulnerabilities in Contracting Fraud, Waste, and Abuse

On the basis of our review of relevant GAO and DOD IG reports from the last 5 years, as well as current discussions with senior DOD officials, we found that DOD continues to face vulnerabilities to contracting fraud, waste, and abuse due to weaknesses in the areas of sustained senior leadership, capable acquisition workforce, adequate pricing, appropriate contracting approaches and techniques, and sufficient contract surveillance. While we believe the overwhelming majority of DOD acquisition professionals are ethical and hard-working, vulnerabilities in DOD's contract management organizations and functions are not new. GAO designated aspects of DOD's contract management as a high-risk area in 1992 because of the large amount of dollars involved and numerous concerns about control weaknesses over its management of contracts. Despite DOD efforts to address some of GAO's concerns, changes in the acquisition environment—such as increasing reliance on contractor-provided services, reductions in the acquisition workforce, and the introduction or expansion of alternative contracting approaches—have caused DOD's contract management to remain on GAO's high risk list.

Sustained Senior Leadership

DOD senior leadership is a critical factor in providing direction and vision as well as in maintaining the culture of the organization. As such, senior leaders have the responsibility to communicate and demonstrate a commitment to sound practices deemed acceptable for the acquisition function. Without sustained and prominent senior leadership, DOD increases its vulnerability to contracting fraud, waste, and abuse if it does not ensure that its decision makers, personnel, and contractors act in the best interests of DOD and taxpayers. DOD faces vulnerabilities in aspects of its senior leadership because of certain disconnects, including senior positions that have remained unfilled for long periods of time, the acquisition culture fostered by management's tone at the top, and the management approach used in new industry partnering relationships. In the March 2005 Defense Science Board report, DOD recognized that senior positions requiring confirmation by the U.S. Senate remain unfilled for significant periods of time.⁵ An environment in which senior positions remain vacant provides opportunities for determined individuals to circumvent established policies and procedures for their own personal gain or otherwise fail to act in the government's best interest. Vacant positions can allow a breakdown in one key internal control at senior leadership levels, that being separation of duties. For example, this type of environment allowed a former senior Air Force official's misconduct to go unchecked as the official amassed a significant amount of power and control within the acquisition function. When we recently discussed senior leadership issues with DOD officials, they acknowledged that some positions remain unfilled. In addition, an AT&L official emphasized that filling the senior-level vacancies requires assistance or actions beyond the Office of the Secretary of Defense.

DOD's tone at the top allows a certain level of vulnerability to enter into the acquisition process. Senior acquisition officials ultimately shape the environment that midlevel and

⁵Defense Science Board. *Report of the Defense Science Board Task Force on Management Oversight in Acquisition Organizations*, Washington, D.C.: March 2005.

frontline acquisition personnel operate within, and it is that tone that clearly identifies and emphasizes the values deemed acceptable within the acquisition function. The Defense Science Board report stated that the department lags behind the “best in class” in creating a systematic, integrated approach and in demonstrating the kind of leadership necessary to drive ethics to the forefront of organizational behavior. DOD officials told us that, in recent years, the tone set in DOD was one of streamlining acquisitions to get results as fast as possible. While this is a desired outcome of the acquisition process, the acquisitions should still be carried out within prescribed policies and practices. With regard to the situation involving the former senior Air Force official, the misconduct of that official occurred within a centralized acquisition process that was often praised for being streamlined. But the environment failed to provide sufficient management oversight and control, allowing the abuses perpetrated by this official to continue to override management controls, disregard organizational transparency of key decisions, and demonstrate unprofessional behavior toward other DOD personnel and contractor officials.

Effective senior leadership at DOD’s major program management level is also needed to minimize fraud, waste, and abuse. In recent years DOD has been using a lead systems integrator approach that allows one or more contractors to define a weapon system’s architecture and then manage both the acquisition and the integration of subsystems into the architecture. This new approach relies on contractors to fill roles and handle responsibilities that differ from the more traditional prime contractor relationship the contractors had with program offices and can blur the oversight responsibilities between the lead systems integrator and program management officials. For example, the Army’s Future Combat System program is managed by a lead systems integrator that assumes the responsibilities of developing requirements, selecting major system and subsystem contractors, and making trade-off decisions among costs, schedules, and capabilities. While this management approach has some advantages for DOD, we found that the extent of contractor responsibility in many aspects of the Future Combat System program management process is a potential risk.⁶

Moreover, if DOD uses a lead systems integrator but does not provide effective oversight, DOD is vulnerable to the risk that the lead systems integrator may not make its decisions in a manner consistent with the government’s best interest, especially when faced with potential organizational conflicts of interest. DOD acquisitions require that tough decisions and trade-offs be made when new technologies do not work out, available funding is reduced, or changes in performance expectations are made.

Capable Acquisition Workforce

DOD needs to have the right skills in its acquisition workforce to effectively implement best practices and properly manage the acquisition of goods and services. In the ever-changing DOD contracting environment, the acquisition workforce must be able to rapidly adapt to increasing workloads while continuing to improve its knowledge of

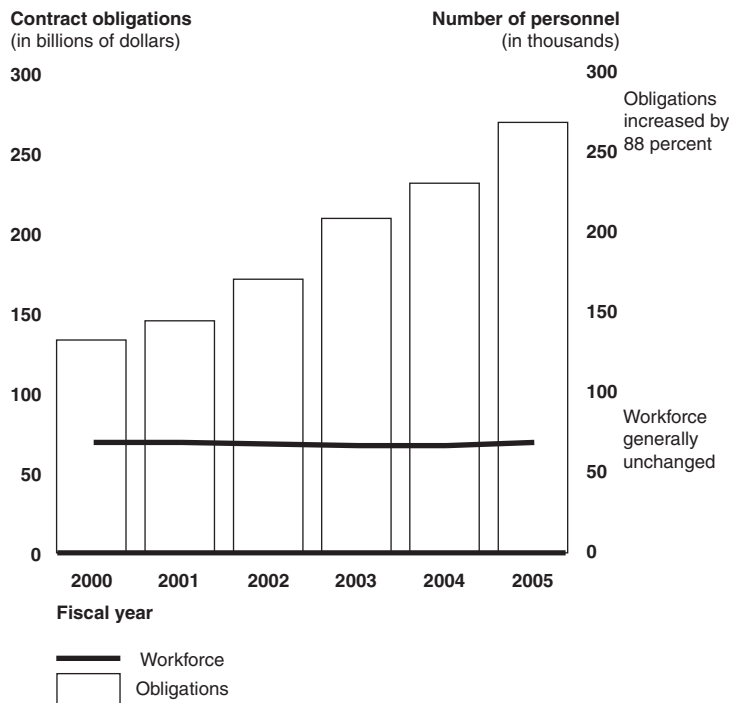
⁶ GAO, *Defense Acquisitions: Business Case and Business Arrangements Key for Future Combat System’s Success*, [GAO-06-478T](#) (Washington, D.C.: March 1, 2006).

market conditions, industry trends, and the technical details of the goods and services they procure. Moreover, effective workforce skills are essential for ensuring that DOD receives fair and reasonable prices for the goods and services it buys. However, DOD's acquisition workforce is subject to conditions that increase the vulnerabilities to contracting fraud, waste, and abuse:

- The overall contracting workload has increased.
- The demand for contract surveillance (addressed later in this report) continues to grow because of DOD's increasing reliance on contractors for services.
- DOD is making greater use of alternative contracting approaches, which offer the benefits of improved efficiency and timeliness for acquiring goods and services.
- Many contracting personnel are due to retire in the next few years, taking with them a wealth of experience and capabilities.

Between fiscal years 1989 and 2002, DOD reduced its civilian acquisition workforce by about 38 percent without ensuring the department had the specific skills and competencies needed to accomplish future DOD missions. The size of the acquisition workforce has remained relatively constant since fiscal year 2000. However, overall contract obligations and the number of contract actions processed by DOD have increased nearly twofold, as figure 2 illustrates.

Figure 2: DOD Contract Obligations and Workforce Size for Fiscal Years 2000-2005



Source: Contract obligations data from DD350 database; work force data from Office of Personnel Management for 14 acquisition-related job series, GAO (analysis and presentation).

Some of the DOD contracting workload increases can be attributed to post-September 11, 2001, acquisition demands, including increased deployments to support military

activities overseas. To handle some of the additional work, DOD has begun using contractors to provide technical support to its acquisition activities. In other words, contractors are helping carry out the contracting function.⁷

The acquisition workforce continues to face the challenge of maintaining and improving skill levels for using alternative contracting approaches introduced by acquisition reform initiatives of the past few decades. Because the contracting approach influences the type of contracting vehicle to be used and the pricing and payment options considered, this expanding universe of approaches requires DOD acquisition personnel to have the knowledge and skills to successfully select and implement each approach. For example, in the past several years, the workforce has been increasingly involved with the use of multiple-award indefinite delivery/indefinite quantity contracts, performance-based contracts, and interagency contracts. Participants in an October 2005 GAO forum on Managing the Supplier Base for the 21st Century commented that the current federal acquisition workforce significantly lacks the new business skills needed to act as contract managers.⁸

Finally, DOD will be subject to vulnerabilities in the next few years as experienced acquisition personnel are expected to retire from government service and significant amounts of acquisition knowledge and experience will be lost. As GAO reported in 2005, more than half of DOD's current workforce will be eligible for early or regular retirement in the next 5 years.⁹ More recently, Navy officials told us that they already are seeing a "hemorrhaging" of senior contracting officers as large numbers have started to retire.

Adequate Pricing

DOD is generally required to obtain fair and reasonable prices for the goods and services it procures.¹⁰ The Federal Acquisition Regulation provides procedures for making price determinations.¹¹ As our work has shown, DOD faces various risks associated with obtaining adequate contract pricing that can lead to vulnerabilities. These pricing risks stem from non-competitive contract actions, delays in setting requirements for undefinitized contracts, failure to use available pricing information, and misclassification of items as commercial items.

The Federal Acquisition Regulation emphasizes the use of competition in the acquisition process.¹² While a competitive environment provides more assurance of reasonable

⁷ Congress has recently placed certain requirements on contractor performance of DOD acquisition functions closely associated with inherently governmental functions. 10 U.S.C. 2383, added by sec. 804 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375.

⁸ GAO, *Highlights of a GAO Forum: Managing the Supplier Base in the 21st Century*, [GAO-06-533SP](#) (Washington, D.C.: March 31, 2006).

⁹ [GAO-05-207](#).

¹⁰ See Federal Acquisition Regulation 15.402(a).

¹¹ Federal Acquisition Regulation subpart 15.4.

¹² Federal Acquisition Regulation part 6.

prices than a noncompetitive one does, DOD continues to be exposed to contracting vulnerabilities due to practices that limit competition. For example, we have reported that DOD often did not promote competition when issuing task orders under General Services Administration schedule or multiple award indefinite delivery/indefinite quantity contracts.¹³

DOD's lack of timeliness in finalizing requirements for undefinitized contract actions, which are usually in the form of letter contracts, leaves DOD vulnerable to waste and abuse. In fiscal year 2004, DOD obligated nearly \$6.5 billion under letter contracts. While this type of contract may be necessary to initiate work quickly to meet urgent operational needs, costs on letter contracts are more difficult to control because information detailing the requirements and potential costs are likely vague or undefined. In August 2004, the DOD IG reported that contracting officials did not adequately definitize the acquisition requirements within the required time frames, and the report said the officials did not document the reasonableness of the profit rates charged by the contractors.¹⁴ In another example, an undefinitized contract action to support ongoing efforts to rebuild Iraq was modified nine times over a 6-month period, increasing costs from about \$900,000 to over \$200 million without DOD and the contractor reaching agreement on the scope of work or price. Delays in definitizing contract requirements can pose various risks and potentially increase DOD's costs and exposure to waste and abuse.

DOD's failure to use available pricing information for sole-source contract awards leaves it vulnerable to waste. In the case of sole-source awards, the contractor may be required to provide the department with pricing information to support proposed prices and to justify proposed costs. Furthermore, where such information is not required, DOD contracting officials should use other available information and techniques to determine price reasonableness and conduct price negotiations. DOD contracting officials are expected to review the information obtained and use appropriate techniques to ensure that DOD avoids paying unreasonable prices and questionable costs. Prior GAO reports show that, in some cases, DOD did not sufficiently evaluate the data or DOD waived the requirement for the contractor to provide the data. For example, when the Air Force purchased spare parts for the Airborne Warning and Control System aircraft program, it did not obtain sales information for the spare parts or similar items to justify the contractor's proposed price.¹⁵ Neither did the Air Force consider analyses performed by the Defense Contract Management Agency that showed a much lower price was warranted. Instead, the contracting officer relied on a contractor-prepared analysis. Similarly, the Army Corps of Engineers (the Corps) recently purchased portable

¹³ GAO, *Contract Management: Guidance Needed to Promote Competition for Defense Task Orders*, [GAO-04-874](#) (Washington, D.C.: July 30, 2004); *Interagency Contracting: Problems with DOD's & Interior's Orders to Support Military Operations*, [GAO-05-201](#) (Washington, D.C.: April 29, 2005); *Rebuilding Iraq: FY2003 Contract Award Procedures and Management Challenges*, [GAO-04-605](#) (Washington, D.C.: June 1, 2004).

¹⁴ Department of Defense, Office of the Inspector General, *Audit Report: Undefinitized Contractual Actions*. Report Number D-2004-112, Arlington, Virginia: August 30, 2004.

¹⁵ GAO, *Contract Management: The Air Force Should Improve How It Purchases AWACS Spare Parts*, [GAO-05-169](#) (Washington, D.C.: Feb. 15, 2005).

classrooms from a contractor to support Hurricane Katrina relief operations.¹⁶ The Corps accepted the contractor's proposed price of \$39.5 million although the Corps had information that the cost of the classrooms was significantly less than what the contractor was charging. We believe that by not using available information, the Corps could have, but failed to, negotiate a lower price. When various pricing information is not fully utilized, DOD contracting activities remain vulnerable to paying more than warranted.

Also, DOD sometimes uses commercial item procedures to procure items that are misclassified as commercial items and therefore not subject to the forces of a competitive marketplace. While the use of commercial item procedures is an acceptable practice, misclassification of items as commercial can leave DOD vulnerable to accepting prices that are not the best value for the department. When an item is designated as commercial, DOD should be able to determine if the price is reasonable on the basis of prices in the commercial sector. However, if DOD designates an item as being a commercial item when it is not readily available in the commercial market, DOD limits its ability to assess the reasonableness of the contractor's price because it might have less information on prices to make its decision. The DOD IG reported in the past few years on two cases in which a commercial item determination was unjustified.¹⁷

Appropriate Contracting Approaches and Techniques

When selecting contracting approaches and techniques for an award, the government's objective is to negotiate a contract type and price that will result in reasonable risk and provide the contractor with the greatest incentive for efficient and economical performance. While the full extent to which business like contracting approaches and techniques have transformed DOD's acquisition processes cannot be ascertained, data collected by GAO suggest that DOD's increased use of certain contracting approaches and techniques over the past few years has increased DOD's vulnerability to contracting fraud, waste, and abuse.

The interagency contracting approach enables DOD and other federal agencies to leverage their buying power and provide a simplified and expedited method of acquiring goods and services. DOD has the option to go to other federal agencies to carry out the contracting process for selected goods and services. When this contracting approach is not utilized properly, however, DOD is exposed to greater risk of fraud, waste, and abuse. In January 2005, GAO designated the use of interagency contracts as a governmentwide high-risk area.¹⁸ GAO and DOD IG have identified instances in which acquisition personnel were provided insufficient training and guidance on the use of

¹⁶ GAO, *Hurricane Katrina: Army Corps of Engineers Contract for Mississippi Classrooms*, [GAO-06-454](#) (Washington, D.C.: May 1, 2006).

¹⁷ DOD, Office of the Inspector General, *Audit Report: Procurement Procedures Used for F-16 Mission Training Center Simulator Services*, Report Number. D-2006-065, Arlington, Virginia: March 24, 2006, and *Audit Report: Contracting for and Performance of the C-130J Aircraft*, Report Number D-2004-102, Arlington, Virginia: July 23, 2004.

¹⁸ [GAO-05-207](#).

interagency agreements and a lack of effective management control and oversight over these contracts occurred. In our high-risk report, we reported that instances of insufficient oversight of contractor services occurred because of blurred lines in the shared contract management responsibilities between DOD and the awarding agency. The DOD IG also reported that the department used interagency contracts to “park”¹⁹ several hundred million dollars in funds, a violation of DOD funding policies and regulations.²⁰ Additional vulnerabilities arose when the non-DOD agency providing acquisition support did not follow prescribed policies and regulations. For example, DOD obtained interrogator services in Iraq through a Department of the Interior acquisition center that used a General Services Administration contract for information technology services. In this situation, the contracted services were not within the scope of the contract and were not subject to competition.

DOD also faces vulnerabilities when it misuses multiple-award indefinite delivery/indefinite quantity contracts and General Services Administration multiple-award schedules. For multiple award indefinite delivery/indefinite quantity contracts, DOD is required to provide all contractors a fair opportunity to be considered for each order unless certain exceptions apply.²¹ This is meant to provide an ongoing competitive environment in which each awardee would be fairly considered for each order issued.²² When ordering from the General Services Administration schedules, agencies are required to follow certain ordering procedures, which, for services, can entail a comparison of quotations from multiple schedule contractors. But in practice, DOD officials have on numerous occasions avoided the time and effort necessary to compete individual orders and instead awarded all the work to be performed to a single contractor. GAO work shows that this practice resulted in the noncompetitive award of many orders that have not always been adequately justified.²³ Without competition for individual task orders (or adequate justification for awarding them noncompetitively), DOD faces increased vulnerability to fraud, waste, and abuse.

DOD faces additional vulnerability to fraud, waste, and abuse in the way it structures and implements award and incentive fees. These monetary incentives are intended to motivate excellent contractor performance and improve acquisition outcomes. However, GAO recently reported that DOD paid an estimated \$8 billion in award fees for contracts in the study population regardless of the outcomes of the contract.²⁴ Furthermore, DOD

¹⁹ The term to “park” funds refers to the transfer of budgetary funds by DOD officials to another agency’s acquisition center for the procurement of goods and services under circumstances where the bona fide need determination is in doubt.

²⁰ DOD, Office of the Inspector General, *Acquisition: DOD Purchases Made Through the General Services Administration*, Report Number D-2005-096, Arlington, Virginia: July 29, 2005.

²¹ 10 U.S.C. 2304c.

²² H.R. Conf. Report No. 103-712, at 178 (1994), reprinted in 1994 U.S.C.C.A.N. 2607, 2608; Senate Report No. 103-258, at 15-16 (1994), reprinted in 1994 U.S.C.C.A.N. 2561, 2575-76.

²³ GAO, *Contract Management: Guidance Needed to Promote Competition for Defense Task Orders*, [GAO-04-874](#) (Washington, D.C.: July 30, 2004).

²⁴ GAO, *Defense Acquisitions: DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes*, [GAO-06-66](#) (Washington, D.C.: Dec. 19, 2005).

gave contractors a second opportunity to earn an estimated \$669 million of initially unearned or deferred fees on approximately half of the award-fee contracts. GAO believes these practices, along with paying significant amounts of fees for “acceptable, average, expected, good, or satisfactory” performance, undermine the effectiveness of fees as a motivational tool, marginalize their use in holding contractors accountable for acquisition outcomes, and waste taxpayer funds. As our report noted, DOD has little evidence to support its belief that these fees improve contractor performance and acquisition outcomes.

Sufficient Contract Surveillance

The role of the acquisition function does not end with the award of a contract. It requires continued involvement throughout contract implementation and closeout to ensure that contracted services are delivered according to the schedule, cost, quality, and quantity specified in the contract. The Federal Acquisition Regulation requires that quality assurance, such as surveillance, be performed at such times and places as necessary to determine that the goods or services satisfy the contract requirements.²⁵ If surveillance is insufficient, is not conducted, or is not documented when appropriate, DOD risks paying contractors more than the value of the goods and services provided.

In the past 4 years, GAO and DOD IG have reported that DOD’s contracts have been subject to insufficient surveillance. In July 2004, we reported that DOD did not have a sufficient number of trained personnel in place to provide effective oversight of its logistics support contractors.²⁶ These contractors provide many of the supplies and services needed to support the Logistics Civilian Augmentation Program, which has been used to support operations in both Kuwait and Afghanistan. In another example, we reported in March 2005 instances of inadequate surveillance on 26 of 90 DOD service contracts we reviewed.²⁷ In each instance, at least one of the key factors to ensure adequate surveillance did not take place. These factors are (1) training personnel in how to conduct surveillance, (2) assigning personnel at or prior to contract award, (3) holding personnel accountable for their surveillance duties, and (4) performing and documenting surveillance throughout the period of the contract. The DOD IG reported similar findings in its reports issued in October 2003 and October 2005. Officials we met with during this review expressed concerns about the current state of the acquisition workforce to support surveillance. The comments included those of Air Force officials who told us that they are concerned that surveillance remains an “other duty as assigned” and, consequently, is a low-priority task.

Recent DOD Initiatives to Address Contracting Fraud, Waste, and Abuse

DOD recognizes that its contracting practices leave the department vulnerable to misusing or wasting taxpayer dollars and is taking some actions to mitigate the risk. In

²⁵ Federal Acquisition Regulation subpart 46.4.

²⁶ GAO, *Military Operations: DOD’s Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, [GAO-04-854](#) (Washington, D.C.: July 19, 2004).

²⁷ [GAO-05-274](#).

addition to the Defense Science Board review, we identified several DOD-wide and military service initiatives taken since the fall of 2004 that address aspects of the acquisition process in an effort to deal with vulnerabilities to fraud, waste, and abuse. These include a DOD analysis of the self-assessments of the acquisition function made by each military service, the establishment of the Procurement Fraud Working Group, and issuance of policy to address concerns about the use of interagency contracting. The Defense Science Board review and the DOD analysis of the military service self-assessments are directed primarily at senior leadership and oversight vulnerabilities and do not deal with the other areas of vulnerability we identified above. While the initiatives are positive steps, several DOD officials we spoke with agreed that it is too soon to see an impact, particularly from those memorandums dealing with the acquisition culture.

DOD-wide Initiatives

AT&L initiated the Defense Science Board task force review of management oversight in acquisition organizations in November 2004 to examine the checks and balances of the processes to ensure the integrity of acquisition decisions. In the resulting March 2005 report, the Defense Science Board identified weaknesses in the acquisition function related to processes, oversight, leadership, and people, and provided 20 recommendations to address these issues. In response, AT&L initiated multiple efforts to address each recommendation, including the issuance of several policy memorandums to the defense agencies and the largest defense contractors to address the issue of ethics. For example, beginning in fiscal year 2005, AT&L began trying to shift the tone at the top by issuing a series of memorandums to acquisition personnel and contractors with the intent of changing the culture and reinforcing the importance of ethics in the acquisition function. In addition, AT&L issued other memorandums emphasizing the need for the contracting officer to remain independent from the program office and stressing acquisition personnel's responsibility to report unusual practices. Other actions created an overarching fraud awareness and ethics training program. To assist in this effort, the Defense Acquisition University, a DOD-run training institute for the AT&L workforce, appointed a performance learning manager for ethics who is responsible for ensuring that ethics issues are addressed not only in the traditional acquisition courses but also in the executive-level courses. The Defense Acquisition University also added specific ethics-related information to its Web site, including discussion vignettes that pose ethical dilemmas or questions for readers to test their judgment. Appendix III provides a detailed account of the Defense Science Board recommendations and AT&L's responding actions.

Also in November 2004, AT&L issued a memorandum to the military services and other defense agencies directing them to perform a self-assessment of their acquisition organization and processes for use in a DOD-wide Acquisition Integrity Analysis. In March 2006, AT&L completed the analysis and proposed six recommendations to address weaknesses in the oversight, source selection, and contract award processes to improve the integrity of DOD acquisition decisions. AT&L's recommendations included the need for several new policies to address (1) specifically prohibiting senior leaders from performing multiple roles on major acquisition projects, (2) filling vacant positions from below on an acting basis until permanent appointments are made, (3) requiring

documentation of the source selection processes, and (4) requiring legal review of the source selection documentation prior to award. AT&L also recommended that Acquisition Process Reviews, which are currently performed for other defense agencies, be instituted for the military services.

In late 2004, the Air Force's and the Army's general counsel offices initiated a grassroots effort that resulted in the Procurement Fraud Working Group. The goal of the working group is to provide a discussion forum that will develop closer working relationships among the relevant DOD activities and agencies that identify, investigate, and prosecute contracting fraud—the contracting officers, quality assurance personnel, investigative staff, and legal staff—and provide an exchange of information and ideas among these DOD agencies, the Department of Justice, and other government agencies. The working group, which is hosted by the Defense Contract Management Agency, recently established a Web site that allows working group members to solicit advice and share good practices. The working group held its second annual conference in March 2006. The conference provided attendees with information on current issues, future trends, investigative strategies, and enforcement remedies related to contracting fraud. Although the working group includes members from levels within various acquisition and investigative functions across DOD, the working group does not have formal sponsorship or authority from AT&L.

DOD has issued several policies directed at strengthening controls over these types of contracting approaches and techniques. In September 2004, AT&L issued policy on the department's surveillance of cost-reimbursable and time and materials contracts. DOD also issued policies on the use of interagency contracts in October 2004, March 2005, and March 2006.

Military Department-Specific Initiatives

Each of the military departments has taken steps to address some of the vulnerabilities related to contracting fraud, waste, and abuse. These initiatives range from creating new offices to focus resources on the most vulnerable areas to promoting general awareness about fraud through training and newsletters.

In December 2005, the Navy centralized its approach to addressing vulnerabilities to contracting fraud, waste, and abuse by creating its Acquisition Integrity Office. The office links the legal, audit, and investigative resources by dedicating units from both the Naval Audit Service and the Navy Criminal Investigative Service to work alongside the Office of the General Counsel in a coordinated effort to detect, investigate, and correct instances of fraud. The idea for this office grew out of the General Counsel's interest in pursuing fraud and the low number of suspension and debarment cases involving Navy contractors. The Acquisition Integrity Office conducts risk assessments of acquisition functions and has begun data-mining efforts to focus the investigative and audit resources to areas they deem as being most vulnerable to fraud. The Acquisition Integrity Office is also developing a newsletter and a "desk book" reference to educate and assist acquisition personnel in identifying and addressing fraud. In addition, the office is

responsible for issuing fraud alerts to acquisition personnel, as necessary, to inform them of identified instances of fraud.

During 2005, the Air Force initiated several changes to its acquisition policies and procedures to address vulnerabilities identified during the investigation of the senior level acquisition official convicted of violating a conflict-of-interest law. To begin, the Air Force made changes to the Air Force Federal Acquisition Regulation Supplement to require further documentation of source selections. The Air Force also issued memorandums regarding ethics and postemployment restrictions as part of an effort to shift the acquisition culture from the previous emphasis on streamlining procurement to “doing the right thing.” As an additional initiative, the Air Force created a Special Assistant for Acquisition Governance and Transparency position to monitor new weapon acquisition programs and ensure that all weapon acquisitions are fully explained to Congress and the public. The goal of the special assistant position is to ensure procurement integrity and adherence to procurement guidance in all weapon acquisition programs. The Air Force also created an ombudsman program to handle concerns of government and contractor employees.

Also during 2005, the Army set up new procurement fraud advisers’ offices that are deployed alongside units in Afghanistan and Iraq to address the high vulnerability to fraud in contracts to support the war and reconstruction efforts. The advisers’ offices also coordinate with Special Inspector General for Iraq Reconstruction. In addition, the Army created a Fraud Fighters Web site to promote fraud awareness and discuss various issues related to fraud as they arise.

Conclusions

With awards to contractors large and growing, DOD will continue to be vulnerable to contracting fraud, waste, and abuse. As the last several years have shown, those vulnerabilities have resulted in numerous cases in which taxpayer dollars were misused or wasted. As these cases have come to light, DOD has begun to respond. As in other areas, the impact of DOD actions to make corrections will be evident as policies get translated into effective practices. Otherwise, DOD will remain at risk. Ongoing monitoring of results will be the prudent course of action. To do this may be a challenge because no single office within DOD maintains responsibility to monitor the efforts related to detecting and preventing fraud, waste, and abuse across all organizations in DOD.

Agency Comments and Our Evaluation

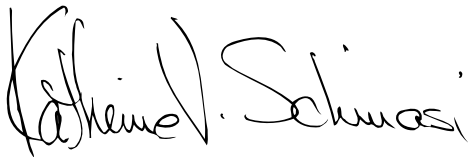
The Department provided written comments, which are reproduced in appendix IV. DOD concurred with our findings and stated that it shares our concern about the areas of vulnerability to contracting fraud, waste, and abuse that we cited in this letter.

We are sending copies of this report to the Secretary of Defense and interested congressional committees. We will also make copies available to others upon request. In

addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions about this report or need additional information please contact me at (202) 512-4841 or schinasik@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were James E. Fuquay, Assistant Director; Noah Bleicher; Lily Chin; R. Eli DeVan, Tim DiNapoli, Matthew T. Drerup, Jean K. Lee, and Adam Vodraska.

Sincerely,

A handwritten signature in black ink that reads "Katherine V. Schinasi". The signature is written in a cursive style with a large initial 'K'.

Katherine V. Schinasi
Managing Director, Acquisition and Sourcing Management

Appendix I: GAO and DOD Inspector General Reports Reviewed

Senior Leadership

GAO, *Highlights of a GAO Forum: Managing the Supplier Base in the 21st Century*, [GAO-06-533SP](#), Washington, D.C.: March 31, 2006.

GAO, *Agency Management of Contractors Responding to Hurricanes Katrina and Rita*, [GAO-06-461R](#), Washington, D.C.: March 15, 2006.

GAO, *Defense Acquisitions: Business Case and Business Arrangements Key for Future Combat System's Success*, [GAO-06-478T](#), Washington, D.C.: March 1, 2006.

GAO, *Defense Ethics Program: Opportunities Exist to Strengthen Safeguards for Procurement Integrity*, [GAO-05-341](#), Washington, D.C.: April 29, 2005.

GAO, *Defense Acquisitions: Future Combat Systems Challenges and Prospects for Success*, [GAO-05-428T](#), Washington, D.C.: March 16, 2005.

GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, [GAO-05-325SP](#), Washington, D.C.: February 1, 2005.

Acquisition Workforce

Department of Defense, Office of the Inspector General, *Audit Report: Report on the DoD Acquisition Workforce Count*, Report Number D-2006-073, Arlington, Virginia: April 17, 2006.

GAO, *DOD Civilian Personnel: Comprehensive Strategic Workforce Plans Needed*, [GAO-04-753](#), Washington, D.C.: June 30, 2004.

GAO, *March 19 Hearing on Sourcing and Acquisition—Questions for the Record*, [GAO-03-771R](#), Washington, D.C.: May 23, 2003.

GAO, *Federal Procurement: Spending and Workforce Trends*, [GAO-03-443](#), Washington, D.C.: April 30, 2003.

Pricing

GAO, *Contract Security Guards: Army's Guard Program Requires Greater Oversight and Reassessment of Acquisition Approach*, [GAO-06-284](#), Washington, D.C.: April 3, 2006.

Department of Defense, Office of the Inspector General, *Audit Report: Procurement Procedures Used for F-16 Mission Training Center Simulator Services*, Report Number D-2006-065, Arlington, Virginia: March 24, 2006.

Appendix I: GAO and DOD Inspector General Reports Reviewed

GAO, *Contract Management: The Air Force Should Improve How It Purchases AWACS Spare Parts*, [GAO-05-169](#), Washington, D.C.: February 15, 2005.

Department of Defense, Office of the Inspector General, *Audit Report: Undefined Contractual Actions*, Report Number D-2004-112, Arlington, Virginia: August 30, 2004.

GAO, *Contract Management: Guidance Needed to Promote Competition for Defense Task Orders*, [GAO-04-874](#), Washington, D.C.: July 30, 2004.

Department of Defense, Office of the Inspector General, *Audit Report: Contracting for and Performance of the C-130J Aircraft*, Report Number D-2004-102, Arlington, Virginia: July 23, 2004.

GAO, *Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, [GAO-04-854](#), Washington, D.C.: July 19, 2004.

GAO, *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges*, [GAO-04-605](#), Washington, D.C.: June 1, 2004.

Contracting Techniques

GAO, *Defense Acquisitions: DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes*, [GAO-06-66](#), Washington, D.C.: December 19, 2005.

GAO, *Interagency Contracting: Franchise Funds Provide Convenience, but Value to DOD Is Not Demonstrated*, [GAO-05-456](#), Washington, D.C.: July 29, 2005.

Department of Defense, Office of the Inspector General, *Acquisition: DOD Purchases Made Through the General Services Administration*, Report Number D-2005-096, Arlington, Virginia: July 29, 2005.

GAO, *Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*, [GAO-05-201](#), Washington, D.C.: April 29, 2005.

GAO, *High-Risk Series: An Update*, [GAO-05-207](#), Washington, D.C.: January 2005.

Contract Surveillance

Department of Defense, Office of the Inspector General, *Audit Report: Contract Surveillance for Service Contracts*, Report Number D-2006-010, Arlington, Virginia: October 28, 2005.

GAO, *Defense Logistics: High-Level DOD Coordination Is Needed to Further Improve the Management of the Army's LOGCAP Contract*, [GAO-05-328](#), Washington, D.C.: March 21, 2005.

Appendix I: GAO and DOD Inspector General Reports Reviewed

GAO, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, [GAO-05-274](#), Washington, D.C.: March 17, 2005.

GAO, *Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, [GAO-04-854](#), Washington, D.C.: July 19, 2004.

Department of Defense, Office of the Inspector General, *Audit Report: Contracts for Professional, Administrative, and Management Support Services*, Report Number D-2004-015, Arlington, Virginia: October 30, 2003.

GAO, *Contract Management: High-Level Attention Needed to Transform DOD Services Acquisition*, [GAO-03-935](#), Washington, D.C.: September 10, 2003.

Appendix II: Contracting-Related Terms

Delivery order: An order for supplies placed against an established contract or with government sources.

Indefinite delivery/indefinite quantity contract: A kind of contract used to acquire goods and services when the exact date of future deliveries is unknown but a recurring need is likely to arise. There are three types of indefinite delivery contracts: definite quantity contracts, requirements contracts, and indefinite quantity contracts. Indefinite quantity contracts provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period.

Interagency contract: Agencies may use another agencies' contracting services to purchase goods and services. Typically, such contracts are used to provide agencies with commonly used goods and services, such as office supplies or information technology services. Agencies that award and administer interagency contracts usually charge a fee to support their operations.

Lead systems integrator: Typically, the lead systems integrator is the prime contractor with increased program management responsibilities. These responsibilities may include greater than usual involvement in requirements development, design, and source selection of major system and subsystem subcontractors.

Letter contract: A written preliminary agreement authorizing the contractor to immediately begin manufacturing supplies or performing services.

Obligation: As used here, a definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received. An agency incurs an obligation, for example, when it places an order, signs a contract, or purchases a service.

Performance-based contract: Performance-based contracting emphasizes that all aspects of an acquisition be structured around the results of the work to be performed as opposed to the manner in which the work is to be performed. When using this type of contract, the contracting agency specifies the outcome or result it desires and leaves it to the contractor to decide how best to achieve the desired outcome.

Sole-source acquisition: A contract for the purchase of goods or services that is entered into by an agency after soliciting and negotiating with only one source.

Task order: An order for services placed against an established contract or with government sources.

Time and materials contract: A contract that provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and materials at cost.

Appendix III: Status of DOD Actions in Response to March 2005 Defense Science Board Recommendations

#	Recommendation	Action/status
1	For major procurements, Acquisition, Technology, and Logistics (AT&L) should codify best practices into policy (written recommendations by advisory bodies to the source selection authority [SSA] and the SSA decision and rationale)	<p>AT&L is fielding a Best Practices Clearing House. It is also initiating implementation of Acquisition Process Reviews.</p> <p>Air Force issued new Air Force Federal Acquisition Regulation Supplement changes in August 2005 requiring documentation of recommendations made to the SSA, mandatory independent contract clearance approvals, notification of solicitation release for source selections over \$100 million; and expansion of the Ombudsman Program.</p>
2	AT&L should ensure a process for meaningful feedback to bidders	The Acquisition Process Review Working Group is reviewing the military departments'/agencies' use of debriefings.
3	AT&L should ensure distribution of delegated acquisition responsibilities for major procurements	<p>AT&L issued a memorandum, "Acquisition Integrity," requiring services/agencies to prepare policy that reflects procedures for ensuring the separation of functions in all acquisitions, so that authority does not reside in one person. AT&L's Acquisition Integrity Analysis was completed in March 2006, but has not been issued.</p> <p>AT&L recommended issuing a new policy specifically prohibiting a senior leader from performing multiple roles for any one major weapon systems or major service acquisition. AT&L also recommended that vacant positions be filled from below to avoid accretion of duties at the top.</p>
4	Oversight, source selection, and contract negotiations should not reside in one person	<p>Addressed by actions in response to number 3 above.</p> <p>AT&L issued a memorandum, "Change in Milestone Decision Authority" (MDA), March 2005, reducing the Air Force's MDA authority during management organization instability. In January 2006, AT&L redesignated MDA authority for 10 major programs back to the Air Force, but limited the authority to the Secretary of Air Force until a Senior Acquisition Executive is appointed and confirmed.</p> <p>Air Force eliminated the Acquisition Principal Deputy position, restructured the contracting and program management decision authority, and realigned its Program Executive Officer (PEO) structure. Air Force also updated the Air Force regulations. The Secretary of the Air Force appointed a Special Assistant for Governance and Transparency.</p>
5	Provide many avenues for voicing concerns (Ombudsman and ethics offices set up to address concerns)	<p>The Acquisition Process Review Working Group is reviewing the military departments' oversight initiative.</p> <p>AT&L is gathering best practices from the Defense Acquisition University (DAU) and other sources.</p> <p>Air Force incorporated new Ombudsman program in August 2005.</p>
6	AT&L should oversee processes as well as programs	<p>Defense Acquisition Performance Assessment (DAPA) study and Acquisition Process Review study in AT&L. DAPA report was released January 2006.</p> <p>Acquisition Process Review Working Group met with SAEs and outlined plan of action March 2006.</p>
7	Identify and share best practices	<p>In fall 2004, AT&L fielded the Defense Acquisition Guidebook, which contains repository of best practices.</p> <p>Best Practice Clearing House effort is in progress.</p>
8	Question unusual practices and organizational structures	<p>DAU is incorporating the policy and identified Best Practices in Acquisition Oversight into the content of Acquisition Executive Courses.</p> <p>Air Force eliminated the Acquisition Principal Deputy position, restructured the contracting and program management decision authority, and realigned its PEO structure. Air Force also updated its regulations. The Secretary of the Air Force appointed a Special Assistant for Governance and Transparency.</p> <p>AT&L issued a memorandum, "Question Unusual Practices," in October 2005.</p>

Appendix III: Status of DOD Actions in Response to March 2005 Defense Science Board Recommendations

#	Recommendation	Action/status
9	Use mistakes and failures as case studies and communicate them broadly	DAU plans to incorporate case studies based on mistakes and failures in senior-level courses and is reviewing level III courses in all functional areas for the appropriate use of similar case studies. AT&L developed ethics on-line training for the Acquisition Professional Community (APC). All APC staff were required to complete training by October 2005 (over 124,000 took the training as of December 2005).
10	Require defense components to perform periodic self-assessments and demonstrate continuous self-improvement	AT&L developed 360-degree assessments for key leaders. Pilot program was launched in October 2005.
11	Develop and periodically review metrics roll-up on senior acquisition leaders	Plan to submit proposed metrics in October 2005 was delayed due to request for "framing" paper to send to Deputy Secretary for decision.
12	DOD should articulate more explicitly its vision and values as a high-integrity organization and expect the same of its contractors	Issued memorandum, "Ethics and Integrity," signed by Secretary of Defense in September 2005. AT&L memorandum, "Acquisition Integrity and Ethics," issued in September 2005.
13	DOD should put ethics at the forefront of Department communications	Issued memorandums, "Ethics and Integrity" and "Growth and Development," signed by Secretary of Defense September 2005.
14	Institutionalize an orientation program in Office of Secretary of Defense (OSD) for incoming senior leadership that addresses: <ul style="list-style-type: none"> values/objectives of DOD, importance of leadership to sustain an ethical culture, and performance expectation tied to both of the above 	AT&L sent unsigned letter to P&R requesting OSD Orientation Program for Senior Leaders July 2005. AT&L and P&R met December 2005 to discuss. Washington Headquarters Services is now the lead on an orientation program. OSD Director of Administration and Management (ODA&M) is coordinating with DAU to provide quarterly leadership orientation program to address the Defense Science Board recommended objectives. Course material developed March 2006.
15	Senior DOD leadership should ensure flow-down	AT&L and Secretary of Defense issued memorandums to articulate promotion of ethical behavior, encourage prudent risk taking, and distinguish it from illegal and unethical behaviors in September 2005. AT&L issued memorandum on ethics to top 100 companies and trade associations in January 2006. AT&L issued memorandum addressing tanker and leasing issues in March 2006.
16	Secretary of Defense should place priority on filling appointed acquisition positions: <ul style="list-style-type: none"> champion reforms to streamline nomination and confirmation processes, institute a succession planning process, and avoid more restrictions that would limit interest by experienced personnel 	This effort requires coordination at the very highest levels (i.e., Secretary of Defense, President, Senate) across multiple branches of government. DOD supports the efforts of the administration to correct these findings. DAPA study recommended that the Secretary of Defense ask the White House Liaison Office to create a pool of White House precleared, non-career senior executives and political appointees to fill executive positions in acquisition.
17	P&R modernize Senior Executive Service performance management practices: <ul style="list-style-type: none"> institute 360-degree feedback, implement 5-year DOD-wide rotation policy, and reissue bonus and new award system 	AT&L 360-degree pilot program is serving as a pilot for the departmentwide initiative. AT&L memorandum on rotation and tenure is in process. P&R discouraged changes to tenure/rotation policy in light of the need for balance between accountability/retention and "too much authority" concern. Addressed by DAU actions in response to number 10 above.

Appendix III: Status of DOD Actions in Response to March 2005 Defense Science Board Recommendations

#	Recommendation	Action/status
18	Standards of Conduct—add disclosure requirement for employment of majority children	AT&L is developing memorandum, "What you do sends a message about your ethics."
19	DOD should undertake a top-town internal assessment to simplify and streamline the acquisition system and better align workforce as a result	DAPA report was issued in December 2005.
20	AT&L should closely monitor the new defense component services acquisition oversight processes, especially in confirming that these contracts represent the best use of DOD resources	AT&L Acquisition of Services Policy Review is in progress.

Source: DOD (data); GAO (analysis and presentation).



ACQUISITION
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 06 2006

Ms. Katherine V. Schinasi
Managing Director, Acquisition
and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Schinasi:

This is the Department of Defense response to the GAO draft report, "Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste and Abuse," dated June 19, 2006 (GAO Code 120518/GAO-06-838R).

The Department wishes to thank you for the report. The Department concurs with the report statement that "it is essential that DoD acquisitions be handled in an efficient, effective, and accountable manner" and that "DoD needs to ensure that it buys the right things, the right way." The Department shares your concerns in the specific areas identified in the report: Sustained Senior Leadership, Capable Acquisition Workforce, Adequate Pricing, Appropriate Contracting Approaches and Techniques, and Sufficient Contract Surveillance.

The Department specifically wishes to thank you for recognizing some of the Department's initiatives in these areas, including the efforts of each military department, the establishment of the Procurement Fraud Working Group, and our aggressive efforts in the area of interagency acquisition. We look forward to working with you in our continued efforts to identify and eliminate DoD vulnerabilities to contracting fraud, waste, and abuse.

My point of contact for this action is Michael Canales and he can be reached on (703) 695-8571 or via e-mail at michael.canales@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy



This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Current Structure of Contracting Integrity		
<p>FY 2007 NDAA, Sec. 813: "(2) FIRST REPORT- The first report under this subsection shall be submitted not later than December 31, 2007, and shall contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting."</p>	<p>1. DPAP should reinforce the reporting and evaluation requirements in DoDI 5000.66.</p>	<p>3. AT&L should ensure distribution of delegated acquisition responsibilities for major procurements.</p>
	<p>2 . CAEs/SPEs should self-certify compliance with the reporting and evaluation requirements of DoDI 5000.66, identifying any exceptions, every two years.</p>	<p>4. Oversight, source selection, and contract negotiations should not reside in one person.</p>
	<p>3. CAEs/SPEs should self-certify, every two years to DPAP, compliance with DFARS 203.170 separation of duties.</p>	<p>5 . Provide many avenues for voicing concerns (Ombudsman and ethics offices set up to address concerns).</p>
		<p>11. Develop and periodically review metrics roll-up on senior acquisition leaders.</p>
		<p>13. DOD should put ethics at the forefront of Department communications.</p>
		<p>14. Institutionalize an orientation program in Office of Secretary of Defense (OSD) for incoming senior leadership that addresses: values/objectives of DOD, importance of leadership to sustain an ethical culture, and performance expectation tied to both of the above.</p>
<p>15. Senior DOD leadership should ensure flow-down.</p>		

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Sustained Senior Leadership		
<p>GAO 06-838R: Sustained Senior Leadership: Fill Senior Vacancies- An environment in which senior positions remain vacant provides opportunities for determined individuals to circumvent established policies and procedures for their own personal gain or otherwise fail to act in the government's best interest. Vacant positions can allow a breakdown in one key internal control at senior leadership levels, that being separation of duties. For example, this type of environment allowed a former senior Air Force official's misconduct to go unchecked as the official amassed a significant amount of power and control within the acquisition function. When we recently discussed senior leadership issues with DOD officials, they acknowledged that some positions remain unfilled. In addition, an AT&L official emphasized that filling the senior-level vacancies requires assistance or actions beyond the Office of the Secretary of Defense.</p>	<p>4. Develop metrics for Senior Leadership Positions in Contracting for application DoD-wide. OUSD issue a policy memorandum to require DoD Agencies/Services to monitor and report these positions on a semi-annual basis to preclude allowing long-term "acting" leaders in senior leadership positions in Contracting. Using the metrics, OUSD should develop succession lists for temporary "acting" filling of positions; to monitor projected vacancies & initiate the selection and nomination processes before vacancies occur.</p>	<p>16. Secretary of Defense should place priority on filling appointed acquisition positions:</p> <ul style="list-style-type: none"> • champion reforms to streamline nomination and confirmation processes, • institute a succession planning process, and • avoid more restrictions that would limit interest by experienced personnel
<p>GAO 06-838R: The Acquisition Culture Fostered by the Tone at the Top: Senior acquisition officials ultimately shape the environment that midlevel and frontline acquisition personnel operate within, and it is that tone that clearly identifies and emphasizes the values deemed acceptable within the acquisition function.... The tone set in DOD was one of streamlining acquisitions to get results as fast as possible. While this is a desired outcome of the acquisition process, the acquisitions should still be carried out within prescribed policies and practices</p>	<p>5. Performance plans for all senior leaders in the Department, whether under a SES Pay for Performance System or NSPS, specifically include an integrity or ethics objective.</p>	<p>18. Standards of Conduct—add disclosure requirement for employment of majority children.</p>
	<p>6. Implement processes to measure the consistency of tone at the top.</p>	<p>12. DOD should articulate more explicitly its vision and values as a high-integrity organization and expect the same of its contractors</p>

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Sustained Senior Leadership, Cont'd		
<p>GAO 06-838R: Sustained Senior Leadership: Partnering with Lead Systems Integrators: In recent years DOD has been using a lead systems integrator approach that allows one or more contractors to define a weapon system's architecture and then manage both the acquisition and the integration of subsystems into the architecture. This new approach relies on contractors to fill roles and handle responsibilities that differ from the more traditional prime contractor relationship the contractors had with program offices and can blur the oversight responsibilities between the lead systems integrator and program management officials.</p>	<p>At the time of this report, the prospective FY 2008 NDAA contains a moratorium on use of Lead Systems Integrators effective in 2010. The anticipated enactment of this language superseded the subcommittee's research in this area.</p>	<p>8. Question unusual practices and organizational structures</p>

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Capable Contracting Workforce		
<p>GAO-06-838R: Capable Contracting Workforce: DOD needs to have the right skills in its acquisition workforce to effectively implement best practices and properly manage the acquisition of goods and services.... Effective workforce skills are essential for ensuring that DOD receives fair and reasonable prices for the goods and services it buys. The size of the acquisition workforce has remained relatively constant since fiscal year 2000. However, overall contract obligations and the number of contract actions... have increased nearly twofold. The acquisition workforce continues to face the challenge of maintaining and improving skill levels for using alternative contracting approaches.... Because the contracting approach influences the type of contracting vehicle to be used and the pricing and payment options considered, this ... requires DOD acquisition personnel to have the knowledge and skills to successfully select and implement each approach... multiple-award indefinite delivery/indefinite quantity contracts, performance-based contracts, and interagency contracts.</p>	<p>7. DPAP and senior contracting leaders determine appropriate workforce size.</p>	<p>19. DOD should undertake a top-down internal assessment to simplify and streamline the acquisition system and better align workforce as a result.</p>
	<p>8. DPAP and senior contracting leaders develop initial human capital-planning addendum to the AT&L Human Capital Strategic Plan.</p>	<p>17. P&R modernize Senior Executive Service performance management practices: institute 360-degree feedback, implement 5-year DOD-wide rotation policy, and reissue bonus and new award system.</p>
	<p>9. DPAP and senior contracting leaders resource and implement responsive human capital strategies supporting recruiting, hiring and retention initiatives (including intern/coop programs).</p>	

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Adequate Pricing		
<p>GAO-06-838R: Adequate Pricing: Pricing risks stem from non-competitive contract actions, delays in setting requirements for undefinitized contracts, failure to use available pricing information, and misclassification of items as commercial items. DOD's failure to use available pricing information for sole-source contract awards leaves it vulnerable to waste....DOD often did not promote competition when issuing task orders under General Services Administration schedule or multiple award indefinite delivery/indefinite quantity contracts.DOD's lack of timeliness in finalizing requirements for undefinitized contract actions, which are usually in the form of letter contracts, leaves DOD vulnerable to waste and abuse. DOD's failure to use available pricing information for sole-source contract awards leaves it vulnerable to waste.... DOD sometimes uses commercial item procedures to procure items that are misclassified. Misclassification of items as commercial can leave DOD vulnerable to accepting prices that are not the best value.</p>	<p>10. Develop a coordinated contract policy Executive Review Plan that recognizes Department-wide rerisks, promotes consistency in procurement policy execution across all component, and encourages peer review.</p>	<p>6. AT&L should oversee processes as well as programs</p>
	<p>11. Assess need for revised or additional training on competition requirements and differing pricing alternatives.</p>	<p>7. Identify and share best practices.</p>
	<p>12. Change commercial item definition by deleting the "of a type" phrase and revising the language, "offered for sale" to "has been sold." If this requires a change to law, consider developing a legislative proposal.</p>	<p>10. Require defense components to perform periodic self-assessments and demonstrate continuous self-improvement.</p>

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Appropriate Contracting Approaches and Techniques		
<p>GAO-06-838R: Appropriate Contracting Approaches: When selecting contracting approaches and techniques for an award, the government's objective is to negotiate a contract type and price that will result in reasonable risk and provide the contractor with the greatest incentive for efficient and economical performance. ... GAO and DOD IG have identified instances in which acquisition personnel were provided insufficient training and guidance on the use of interagency agreements and a lack of effective management control and oversight over these contracts occurred.... Insufficient oversight of contractor services occurred because of blurred lines in the shared contract management responsibilities between DOD and the awarding agency...(and) the non-DOD agency providing acquisition support did not follow prescribed policies and regulations. Multiple-award indefinite delivery/indefinite quantity contracts and General Services Administration multiple-award schedules: DOD officials have ... awarded all the work to be performed to a single contractor.</p>	<p>13. In Interagency Contracting, strengthen pre- and post-award oversight processes including implementation of October 8, 2007, policy to consider, during the business planning process, fees charged by assisting agencies</p>	<p>1. For major procurements, Acquisition, Technology, and Logistics (AT&L) should codify best practices into policy (written recommendations by advisory bodies to the source selection authority [SSA] and the SSA decision and rationale).</p>
	<p>14. Examine department-wide strategy to assess reliance on interagency contracts.</p>	<p>2. AT&L should ensure a process for meaningful feedback to bidders.</p>
	<p>15. Explore means for strengthening competition advocate programs for multiple award Indefinite Delivery/Indefinite Quantity contracts DoD-wide, with focus on increasing competition at the task order level.</p>	<p>20. AT&L should closely monitor the new defense component services acquisition oversight processes, especially in confirming that these contracts represent the best use of DOD resources.</p>

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Sufficient Contract Surveillance		
<p>GAO-06-838R: Sufficient Contract Surveillance: In the past 4 years, GAO and DOD IG have reported that DOD's contracts have been subject to insufficient surveillance. In July 2004, we reported that DOD did not have a sufficient number of trained personnel in place to provide effective oversight. In each instance, at least one of the key factors to ensure adequate surveillance did not take place. These factors are (1) training personnel in how to conduct surveillance, (2) assigning personnel at or prior to contract award, (3) holding personnel accountable for their surveillance duties, and (4) performing and documenting surveillance throughout the period of the contract.</p>	<p>16. Review Contracting Officer's Representative (COR) functions/responsibilities; develop DoD-wide COR certification standard.</p>	<p>9. Use mistakes and failures as case studies and communicate them broadly</p>
	<p>17. Mandate COR assignment prior to contract award.</p>	<p>10. Require defense components to perform periodic self-assessments and demonstrate continuous self-improvement.</p>
	<p>18. Process COR appointment through management; ensure performance reviews include COR performance.</p>	

**Fiscal Year 2007 NDAA, GAO, Panel, and DSB
Comparison of Recommendations**

FY 2007 NDAA, Section 813/GAO Recommendations	21 Initial Panel Actions in 2008	DSB Recommendations
Combat /Contingent Environment		
GAO-06-838R: Contracting in a Combat/Contingent Environment: DOD did not have a sufficient number of trained personnel in place to provide effective oversight of its logistics support contractors. These contractors provide many of the supplies and services needed to support the Logistics Civilian Augmentation Program, which has been used to support operations in both Kuwait and Afghanistan.	19. Improve training by leveraging Marine Corps and Air Force training capabilities	Not Addressed by DSB
	20. Improve training on how to run a contracting office in a combat/contingent environment	
	21. Sub-groups review Fraud Indicator Training and Continuity Book / Contracting Office Transition Plan.	
Procurement Fraud Indicators		
Not addressed - Emerging Issue	Newly formed, will provide recommendations in next round.	Not Addressed by DSB
Contractor-Employee Conflicts of Interest		
Not addressed - Emerging Issue	Newly formed, will provide recommendations in next round.	Not Addressed by DSB
Recommendations for Change		
NDAA 2007, Sec. 813: "(2) FIRST REPORT- The first report under this subsection shall be submitted not later than December 31, 2007, and shall contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting."	Assessed the level of implementation required (e.g., law, regulation, or policy) for the recommendations of other sub-committees.	The 20 DSB Recommendations for Change have been organized in the appropriate subject areas.