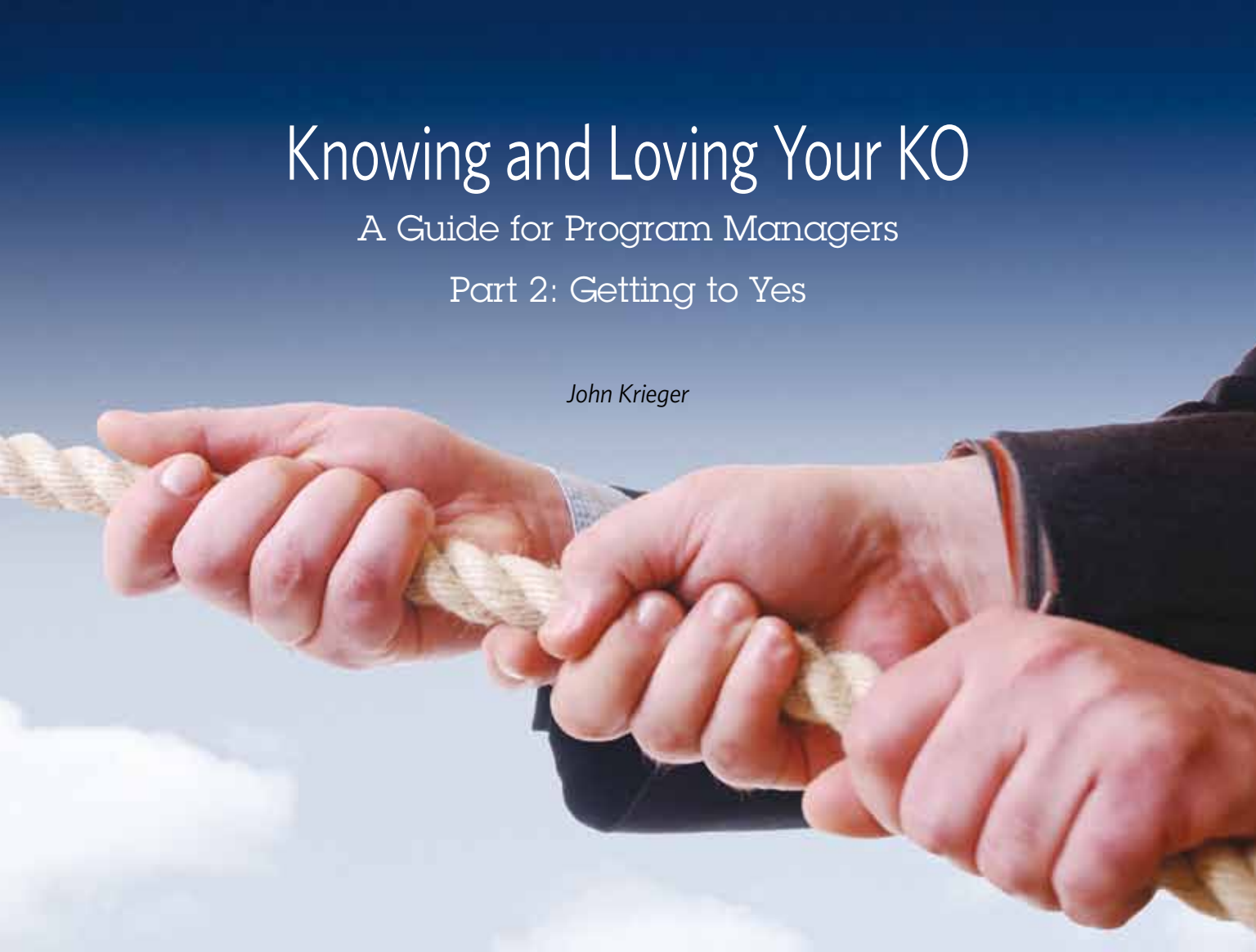
Knowing and Loving Your KO

A Guide for Program Managers

Part 2: Getting to Yes

John Krieger



Part 1 (*Defense AT&L* November-December 2011) outlined the challenges for DoD program managers (PMs) in working with contracting officers (KOs). It noted that the statement of guiding principles for the Federal Acquisition System gives acquisition teams the authority to make innovative and sound acquisition decisions unless specifically prohibited by law or the Federal Acquisition Regulation (FAR). How do you, as the PM, get your KO to say "yes"?

Read What They Read: The Program Manager One-Year FAR Reading Program

Read one part of the Federal Acquisition Regulation (FAR) per week. In addition, look at the referenced solicitation provisions and contract clauses (FAR Part 52) and any associated forms (FAR Part 53). Also look at how the FAR is

Krieger *is an independent acquisition consultant supporting DAU's Defense Systems Management College. He had 31 years of government experience in contracting and acquisition before retiring from the Civil Service and is a former assistant commander for contracts at the Marine Corps Systems Command.*

supplemented and implemented in the *Defense Federal Acquisition Regulation Supplement* (DFARS) and *Procedures, Guidance, and Information* (PGI). You can skip the appendix, unless you're really interested in cost accounting standards. Take a look at the index, to familiarize yourself with the three-column layout, in case you ever need to find something in the FAR.

That may seem to be a lot of reading, and it is. After all, the FAR is 2,007 pages, and the DFARS and is 1,237 pages. (The PGI is "only" 483 pages.) Both documents dwarf some of the great works of literature. Newton's *Mathematical Principles of Natural Philosophy* is 372 pages. *Moby-Dick* is 450 pages. Even *War and Peace* is a paltry 950 pages. There are 48 active parts of the FAR—meaning at one part per week, you can read them all in less than a year and still take a vacation.

PMs who might not be such enthusiastic readers can take the SAD approach to reading FAR parts and subparts—reading the Scope, Applicability, and Definitions. If you take this lesser road, be sure to read FAR Subpart 1.1—Purpose, Authority, Issuance—including all of section 1.102, "Statement of guiding principles for the Federal Acquisition System."

Turnabout is fair play, however. All contracting officers doing systems acquisition should read DoD Directive 5000.01, *The Defense Acquisition System* (10 pages), DoD Instruction 5000.02, *Operation of the Defense Acquisition System* (80 pages), and the *Defense Acquisition Guidebook* (952 pages). After all, these documents contain the DoD Implementation of FAR 34.003(a), the implementation of OMB Circular A-109, *Major System Acquisitions*. That would be 1,042 pages to implement one sentence in the FAR.

Of course, the problem with reading the FAR and the DFARS/PGI is that they are like the shifting sands of the desert.

Understand Your KO's Environment

Recognize that your contracting officer operates in a complex and ever-changing environment. Although the FAR might be the central focus of the contracting officer's role, it is only the tip of the iceberg. The contracting officer gets guidance and oversight from all sorts of places—including the three branches of the federal government.

The Legislative Branch

Yes, Congress has the power of the purse strings, but it also affects acquisition in other ways. It does so directly by passing legislation. For instance, the annual National Defense Authorization Act usually lays out the panoply of acquisition reform legislation in Title VIII, Acquisition Matters. Between fiscal years 1994 and 2011, Title VIII averaged 36 sections per year. And then there are specific pieces of legislation, like Public Law 103-355, the "Federal Acquisition Streamlining Act of 1994," which contained 203 sections.

Congress also affects acquisition indirectly, through program oversight and through the GAO. GAO reviews programs and processes and is the keeper list of federal programs and operations it deems at high risk for waste, fraud, abuse, and mismanagement or high risk of needing broad-based transformation. DoD Weapon System Acquisition and DoD Contract Management happen to be two items on the list. Unfortunately, the list is like the Black Flag Roach Motel, where "Roaches check in, but they don't check out!" In this case, you get on, and you never get off. In addition, GAO affects contracting through its authority to hear protests.

The Executive Branch

In the executive branch, we begin at the top, with the president of the United States. The president may issue executive orders that have an impact on acquisition (e.g., Executive Order 13494—*Economy in Government Contracting, Nondisplacement of Qualified Workers Under Service Contracts, and Notification of Employee Rights Under Federal Labor Laws*).

The Administrative Procedure Act (Public Law 79-404, 60 Stat. 237, enacted June 11, 1946) is the federal law that governs the way administrative agencies of the federal government may propose and establish regulations. The APA is the authority behind the FAR and the DFARS. But it is also the authority behind issuances of other departments and agencies (e.g., the Department of Labor, Small Business Administration, Office of Federal Contract Compliance Programs, GSA), which the contracting officer must follow, even if they are not incorporated into the FAR. Worse, some may argue, it also sets up a process for the federal courts to directly review agency decisions.

The OMB, and its acquisition arm, the Office of Federal Procurement Policy (OFPP), establish all sorts of requirements, and provide all sorts of guidance. The requirements and guidance come in the form of OMB Circulars (e.g., OMB Circular A-11 *Preparation, Submission and Execution of the Budget,* OMB Circular A-76, *Performance of Commercial Activities*, and OMB Circular No. A-109 *Major System Acquisitions*) and OFPP policy letters and memoranda.

The executive branch also has administrative forums for hearing contractor claims under the Contract Disputes Act (41 U.S.C. §§ 7101-7109). For those of us in the Department of Defense, that would be the Armed Services Board of Contract Appeals (ASBCA). The majority of matters on the ASBCA's docket involve appeals by contractors from government contracting officers' final decisions or failures to issue decisions. Contracting officers need to keep up with ASBCA decisions so that they will understand the limits of their authority.

The Judicial Branch

The Administrative Procedures Act gives the federal courts the authority to directly review agency decisions. What does that mean to the contracting officer? It means that they have to keep up with decisions of Court of Federal Claims, District Court, Court of Appeals, and U.S. Supreme Court. For instance, the Court of Federal Claims, in addition to the comptroller general, can hear protest cases. In addition, that same court can hear contractor claims cases. If your acquisition is personally involved, it can be quite traumatic. In a worst-case example, the A-12 Avenger II acquisition has been in almost continuous litigation since the Secretary of Defense canceled the program on January 7, 1991, for breach of contract.

Invite Your KO to the Party

No, this suggestion is not about partying, although that might not be a bad suggestion, either. At DAU, we joke about there being only two schoolhouse answers to any acquisition question, either "It depends" or "Up front and early on." Well, the PM needs to get the KO involved in the acquisition up front and early on. I'd suggest that point is when the requirement first arrives and before pen is put to paper on any documentation.

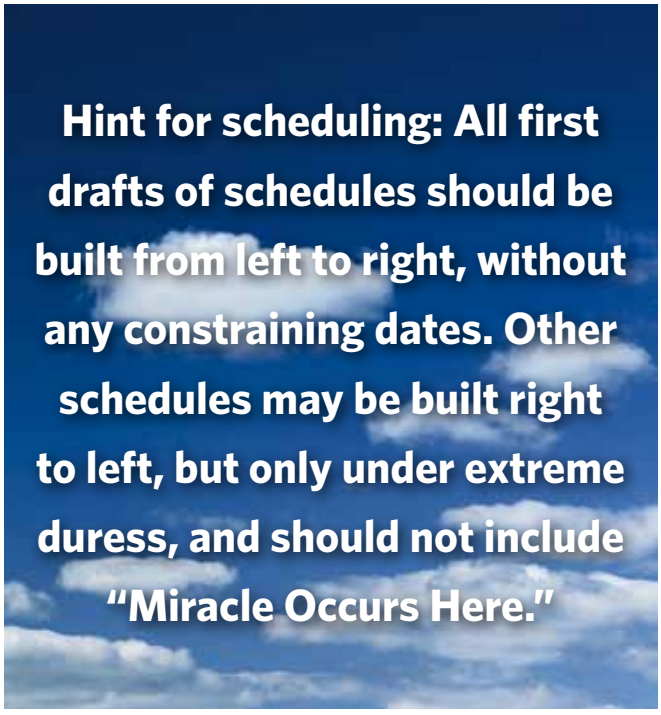
Tie Yourself at the Hip; You're Tied Together Anyway

On what I consider one of the most successful programs I ever worked, the Medium Launch Vehicle (MLV), part of the DoD Space Launch Recovery Program, designed to help recover access to space after the *Challenger* accident, there was only one office between the program manager and me, his chief of staff. Whenever the PM went TDY, his first question was, "Should I have orders cut for you?" (This was in the good old days before DTS.)

Make a date and mark it on the calendar

The program manager, the contracting officer, and other key members of the acquisition team should meet regularly and often. The FAR discusses the team at 1.102-3 Acquisition Team:

> The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified beginning with the customer and ending with the contractor of the product or service. **By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged**. Individual team members will participate in the acquisition process at the appropriate time. (Emphasis added) (2005, 1.1-2)



How regularly and how often depends on the individual requirements of the program. At the extreme end of the "meeting scale" was the MLV, where we had a daily "stand-up" in the PM's office and a weekly "sit-down" status meeting with extended staff.

Establish an SOP

Acquisition is a paper-driven process, whether we like it or not. My dad used to say, "When the weight of the paper equals the weight of the ship, it's time to launch." Dad was an optimist. The PM and the KO should establish a standard operating procedure (SOP) that addresses what constitutes a *complete* acquisition package to kick-off a contract action. In addition, it should address all the items in a contract file that require program office input (requirements document, new start validation, market research, acquisition plan, organizational conflict of interest, A&AS determination/decision document (DDD), make-or-buy decisions, etc.). One other thing the SOP might contain is a set of "normal" timelines for various kinds of contract actions.

Negotiate a contract

Although the SOP has that set of normal timelines, each contract action is unique. On large-dollar or critical actions, I recommend the PM and KO negotiate a contract that identifies each piece of documentation required for the contract file; identifies the final approval authority, if any; assigns responsibility for its development and coordination; and states a date by which it will be provided to the KO. A contract file requires a *lot* of documentation; the PM and the program office have a key role in much of that documentation.

PMs and KOs must work together; it's an imperative. (Hint for scheduling: All first drafts of schedules should be built from left to right, without any constraining dates. Other schedules may be built right to left, but only under extreme duress, and should not include "Miracle Occurs Here.") The contract should be signed by both the PM and KO, and then the work effort should be managed to the contract.

This can be a very effective tool. On one program in which the PM and I had a contract, the first time a milestone was missed, I called the O-6 PM and told him he was in breach of contract. Five minutes later, I had a call from a very anxious major asking me to never, ever do that again. I told him that if he never missed another delivery, I wouldn't have to. He never did. What goes along with this contract is the knowledge that when a program manager and a contracting officer keep their promises to one another, it makes for a much more efficient and effective organization and a happier relationship.

Beware day-for-day slips

This is a pet peeve of mine. I don't know how many times I've heard, upon delivery of an acquisition package that may have been in development in the program office for a year or more, that failure to meet the "current" schedule would constitute a day-for-day slip. An important document languishing in the program manager's in-box awaiting signature for 2 weeks while he goes salmon fishing in Alaska, hunting in Saskatchewan, skiing in Aspen, or sailing in Bermuda does not constitute a day-for-day slip on my part. Remember the contract? Remember about keeping promises?

Will all these things help the program manager know and love the contracting officer? Perhaps not, but they are critical first steps in an acquisition version of what Cold War psychologist Charles Osgood called "Graduated Reciprocation in Tension-Reduction."

So all you PMs, just grit your teeth and do it. And all you KOs, you do the same.

The author can be reached at **john.krieger@dau.mil**.