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### **Contracting Out Government Procurement Functions: An Analysis**

**18 September 2007**

**by**

**David V. Lamm, Professor Emeritus, and**

**E. Cory Yoder, Lecturer**

**Graduate School of Business & Public Policy**

**Naval Postgraduate School**

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# Abstract

This report presents the results of a study investigating the issues surrounding contracting out of Government procurement functions to private firms. Surveys were completed by and interviews were conducted with contracting and program office personnel in the Department of Defense as well as State and local government procurement officials. The primary focus of the research was the effectiveness of contracts which have been used to perform contracting functions, but also included are several problem areas related to the award and administration of these contracts.



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Disclaimer: The views represented in this report are those of the author and do not reflect the official policy position of the Navy, the Department of Defense, or the Federal Government.



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# Table of Contents

<b>Executive Summary .....</b>	<b>xiii</b>
A.    Introduction .....	xiii
B.    Findings and Conclusions .....	xiii
C.    Recommendations .....	xiv
<b>I.    Introduction .....</b>	<b>1</b>
<b>II.   Methodology .....</b>	<b>3</b>
A.    Introduction .....	3
B.    Literature Sources .....	3
C.    Survey Questionnaires .....	4
D.    Interviews .....	6
E.    Terminology .....	7
F.    Government versus Industry .....	7
G.    Impediments to this Study .....	7
<b>III.  Literature Review .....</b>	<b>9</b>
A.    Introduction .....	9
B.    Office of Federal Procurement Policy and Office of Management and Budget .....	10
C.    Federal Acquisition Regulation/Defense Federal Acquisition Regulation Supplement .....	11
D.    Government Accountability Office .....	12
E.    Acquisition Advisory Panel .....	15
F.    Defense Acquisition University .....	17
G.    U.S. Air Force .....	17
H.    Defense Logistics Agency .....	18



I.	Naval Postgraduate School .....	18
J.	Logistics Management Institute .....	23
K.	Contract Management Institute.....	24
L.	Professional Associations .....	25
<b>IV.</b>	<b>Background .....</b>	<b>27</b>
A.	Introduction .....	27
B.	Statutory and Regulatory Issues.....	28
C.	Acquisition Issues .....	36
D.	Chapter Summary.....	49
<b>V.</b>	<b>Survey and Interview Results from Policy and Senior Management Personnel .....</b>	<b>51</b>
A.	Introduction .....	51
B.	Policy and Senior Leadership Surveys and Interviews .....	51
C.	Chapter Summary.....	104
<b>VI.</b>	<b>Survey and interview Results from Management and Operating Level Personnel .....</b>	<b>107</b>
A.	Introduction .....	107
B.	Management and Operating Level Personnel Surveys and Interviews.....	107
C.	Chapter Summary.....	157
<b>VII.</b>	<b>Analysis.....</b>	<b>159</b>
A.	Introduction .....	159
B.	Statutory and Regulatory Issues.....	159
C.	Acquisition Issues .....	171
D.	Chapter Summary.....	198
<b>VIII.</b>	<b>Conclusions and Recommendations.....</b>	<b>199</b>



A.	Introduction .....	199
B.	Conclusions .....	199
C.	Recommendations .....	210
D.	Areas for Further Research .....	216
<b>List of References .....</b>		<b>217</b>
<b>Appendix A. Survey for Policy and Senior Management Personnel .....</b>		<b>221</b>
<b>Appendix B. Survey for Management and Operating Level Personnel .....</b>		<b>225</b>
<b>Appendix C. Contracting System Metrics .....</b>		<b>229</b>
<b>Initial Distribution List .....</b>		<b>241</b>



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# Executive Summary

## A. Introduction

This report presents the results of a study investigating the issues surrounding contracting out of Government procurement functions to private firms. Surveys were completed by and interviews were conducted with contracting and program office personnel in the Department of Defense as well as State and local government procurement officials. The primary focus of the research was the effectiveness of contracts which have been used to perform contracting functions but also included are several problem areas related to the award and administration of these contracts.

## B. Findings and Conclusions

The study concludes that contracts for procurement services are generally considered to be very effective, but robust metrics to measure and assess contractor performance are lacking; buying organizations are acquiring contracted services due to the lack of organic resources; the boundaries of inherently governmental functions continue to be fuzzy and have been severely tested; some organizations are not procuring contracted services because they believe such services are an inherently governmental functions; significant conflict of interest and ethical issues exist; personal services relationships are evitable due to the necessary close working circumstances between Government contracting employees and contractor personnel; contractor employees performing procurement functions should be co-located with Government contracting personnel; contracted services should be acquired on a temporary basis, will have a negative affect on the development of Contracting Officers, and could have a positive affect on the ability of organizations to consider procurement options; industry's willingness to participate in the competitive marketplace may suffer; contractor personnel performing procurement functions for the Government should be held to the same training, experience and educational requirements as civil servants; civil and criminal penalties for



wrongdoing that pertain to Government contracting personnel do not apply to contractor personnel performing the same functions; a policy statement concerning the procurement of contracting functions is needed; and specific measures must be taken to protect the integrity of the contracting process.

### C. Recommendations

The study recommends the following: metrics must be developed and robustly utilized to monitor and assess contractor performance of Government contracting functions; DOD should issue a policy statement regarding the contracting out of procurement functions; safeguards to protect the integrity of the contracting process when using contractor support to accomplish contracting functions should be strengthened and vigorously enforced; the prohibition on the use of personal services should be removed; sanctions and penalties for violation of statutes and ethical standards of conduct should be extended to contractor personnel performing Government procurement functions; and DOD and the Services/Defense Agencies should adopt a proposed model as a method for classifying contracting functions.





# I. Introduction

The Deputy Assistant Secretary of the Navy for Research, Development & Acquisition (DASN (RDA) (Acquisition Management)), requested the Acquisition Chair, Graduate School of Business and Public Policy (GSBPP) at the Naval Postgraduate School (NPS) analyze the contracting out of procurement functions currently being performed by Navy, Marine Corps, and other DOD Activities. The request specifically focused on assessing the degree of effectiveness and shortcomings of such contracting out efforts.

Contracting in the Federal Government has been continually challenged throughout the last several decades. It is a very public process that has undergone myriad changes intended to effect improvements. The process of procurement reform has proceeded continually in an attempt to make the system more efficient while balancing its goals and objectives.

The key focus of this study is to provide DASN (RDA) (Acq Mgmt) with thoughts and ideas as elements of a strategy concerning the nature and extent to which the contracting out of procurement functions should occur. Ultimately, ASN (RDA) may find it necessary to issue an integrated policy regarding such actions, or, in the alternative, recommend to the Office of the Secretary of Defense that such a policy be issued. Some Navy organizations have proactively endorsed contracting for procurement services while others have rejected any such contracts on the basis that all contracting functions are inherently governmental. The reasons for contracting out, or not, are varied and require integration into a corporate level Navy strategy.

This research sought to answer the following questions in order to ascertain how effective contracting out of the contracting process has been. First, which contracting functions are now being contracted out by Navy and other DOD organizations? This is explored in order to establish the nature and extent of



procurement functions currently being performed under contract. Second, how effectively have contractors performed on these contracts and is there room for improvement? Which of the functions have been performed most successfully and which functions should remain with Government personnel? Third, what metrics are being used and could be used to assess the quality of both the Government's management of these contracts and contractors' quality of performance?

Although the primary focus of this study is the effectiveness of contracts used to procure contracting services, several closely related subjects have been explored. In any discussion of contracted procurement services, the issues of inherently governmental functions, personal service relationships, organizational conflicts of interest, and ethics will almost certainly be included. Further, questions regarding the impact on the contracting system, the development of Contracting Officers, the participation of competing companies in the marketplace, training and experience qualifications, and agency procurement decision-making and policies will also most likely surface.

Several factors have led to an increased reliance upon the private sector to provide services. One of the most critical factors has been the lack of adequate numbers of civil servants to perform the functions required of buying organizations. The number of Government employees has been significantly reduced due to retirements or transfers to other agencies and, in certain metropolitan areas, the number of qualified applicants available to fill vacant positions has fallen to a seriously low level. Another of the principal factors has been to further reduce cost of providing services. With competition and a more efficient process of producing services, it is widely believed that significant savings have and will continue to accrue.. Another factor has been the ability to obtain certain skills which the Government workforce does not possess. This has become more critical as agencies have reduced the size of their workforce. Yet another is the ability to obtain services on an emergency or surge basis. DOD has come to rely more and more extensively on service contractors during recent military conflicts.



The reader is encouraged to examine each of the following chapters to gain an appreciation for the conclusions and recommendations made by the researchers.

## II. Methodology

### A. Introduction

This study attempted to gain the understanding of the issues surrounding the contracting out of procurement functions. The researchers felt this could be accomplished by: (1) delving into studies, reports and articles on this subject as well as related topics; (2) evaluating results produced by survey questionnaires and interviews; and (3) talking to selected individuals about specific comments and observations they have made about the subject.

### B. Literature Sources

Several organizations involved in acquisition research were consulted, including the following: reports issued by the Government Accountability Office (GAO); theses and master's degree projects from students at the Naval Postgraduate School (NPS) and the Air Force Institute of Technology (AFIT); student reports from the Naval War College, Army War College, and Air War College; reports and studies from the RAND Corp, the Project on Government Oversight (POGO), the Defense Science Board, the Contract Management Institute, the Professional Services Council and the Logistics Management Institute (LMI); papers presented at the NPS Annual Acquisition Research Symposium; and student and faculty reports from the Defense Acquisition University and the University of Maryland. Various periodicals were examined including the *Defense Acquisition Review Journal*, *Contract Management*, *Defense AT&L*, and the *Journal of the National Contract Management Association*.



### C. Survey Questionnaires

Two survey questionnaires were developed. The first focused on participants at the policy and senior management levels and asked questions about the broader issues involved in contracted procurement services. The second survey focused on management and operating level personnel. Although some of the same questions were posed as on the first survey, the second mainly asked questions regarding the effectiveness of contracts that are being or had been used to procure contracting support services.

The research was announced and the surveys were initially released during the 4<sup>th</sup> Annual Acquisition Research Symposium at NPS on 16-17 May 2007. Following the symposium, surveys were distributed via e-mail to a variety of Navy/Marine Corps, Army, Air Force, and Defense agency contracting offices, and selected State and local government procurement offices.

Surveys were completed by a total of one hundred contracting professionals and thirty-two program management and technical personnel. A comparison of organizational affiliation of the contracting participants completing surveys is presented in Table 2-1. All thirty-two program management and technical personnel are from the Air Force located at Tinker Air Force Base, Oklahoma.



**Table 2-1. Contracting Survey Participants by Organization**

<b>Organization</b>	<b>Number of Participants</b>	<b>Percentage</b>
Army	16	12
Navy/Marine Corps	35	26
Air Force	7	5
Defense Agencies	38	29
Non-Federal Agencies	4	3
<b>Contracting Personnel Total</b>	100	76
<b>Program Management and Technical Survey Participants</b>		
Air Force	32	24
<b>Total Survey Participants</b>	132	100

Seventy-six percent of survey respondents are from the contracting community, while twenty-four percent are from the program management and technical community. It is understood that some bias has been introduced into this study by the large number of program management and technical personnel not only from one Service but also from the same location. To account for some of this bias, survey responses from the Air Force group have been separately identified and discussed within each issue/topic area.

In answering questions, some respondents submitted multiple responses, although only one response was required. For example, if a “Yes” or “No” answer was needed, the respondent may have checked both. In such cases, the researchers selected one of the responses based on the explanation provided in



support of the answer. If a predominant response could not be discerned, the answer was recorded as “NA” for no answer.

In some instances, survey responses represented a consensus opinion from several individuals in an organization. In more than one case, the senior managers of a major acquisition organization provided their collective views. Thus, the number of individuals participating in the survey responses are greater than the number of surveys received, but the researchers have no way of knowing the total number of persons involved. Although a collective response was received from some, the views expressed on surveys and during interviews are considered to be those of the participant and not their organization, their Service or DOD.

Chapters V and VI present the results of the surveys and interviews. The researchers have tried to remain faithful to the intent and attitude expressed therein, however, because many respondents said essentially the same thing, a combination of their thoughts and opinions occurred. It is hoped that the flavor of their opinions and views is not lost in the consolidation of responses. Also, the survey asked if the respondent would consent to allowing citation of their responses with attribution in the final report. Although some replied in the negative, the majority of participants indicated agreement. The researchers have decided however, not to identify any participant in this study even though several quotations have been used. Materials used, on the other hand, from reports, studies, documents, books, articles and other similar sources have been appropriately referenced.

#### D. Interviews

Face-to-face interviews were conducted with nineteen senior contracting personnel (over 80 percent of whom are from the Navy Department), many of whom also completed a survey. Phone interviews were conducted with ten personnel.

Generally, phone interviews were conducted with those who had indicated a willingness on their survey responses to clarify or expand upon their answers. All information and data obtained from interviews have been combined with survey



responses in the results and analysis chapters. Therefore, during the discussion in subsequent sections, respondents or participants will refer to both those who returned a survey as well as those who served as interviewees.

#### E. Terminology

Throughout the study, the terms “procurement” and “contracting” are used interchangeably. Also, the terms “function,” “task” and “duty” are used interchangeably. The terms “contracted services,” “contracted support services,” and “procurement services” refer to those contracting functions or tasks that are typically performed by civil servants and are now, or might be, performed by contractor employees. “Outsourcing” refers to accomplishment by contractors and does not include other Federal Agencies.

#### F. Government versus Industry

This research work was undertaken with the intent of exploring and evaluating only those actions and efforts initiated by the Government side of the buyer-seller relationship. Although there are a significant number of companies who provide contracted support services, as well as industry and professional associations who have intimate knowledge and understanding of the process, the present research was limited to the issues and problems experienced only by Government personnel.

Although the research has specifically avoided obtaining input from private industry, some of the discussion will certainly bear the views and observations that industry holds regarding the issues. This is particularly true in those cases in which respondents’ opinions somewhat reflect how contractors and their employees view the situation.

#### G. Impediments to this Study

A few situations arose which dampened the numbers of surveys and interviews that might otherwise have been obtained.



One situation existed due to the impression that this study was attempting to determine those contracting functions which could be prime targets for contractor performance which, in turn, could lead to a reduction in contracting workforce personnel. Some potential participants explained that this had occurred a few years ago and it appeared to have resulted in further reductions of the workforce. Although the researchers attempted to clarify that this was not the intent, it is probable that only a few individuals who held this impression were willing to participate.

A second situation occurred wherein some agency officials were concerned about negative responses to their procurement practices. Specifically, some agencies are contracting out functions which other agencies may even consider to be inherently governmental, and they felt they would be criticized for having placed these functions on contract. Some agencies appear to others to be aggressively using contractors to perform a significant number of contracting functions.

A third situation involved a general feeling that top agency management was against placing contracting functions on contract, which made our study a moot point. These potential participants felt the decision had already been made about this issue and further discussion was meaningless.

Lastly, a few organizations simply said they were too busy to participate in the research and declined to respond.





### III. Literature Review

#### A. Introduction

A significant degree of research and study has gone into the topic of outsourcing and contracting out in the Federal Government. One of the major policies of the Federal Government is to rely on the private sector for goods and services. Over the years, this policy has forced aggressive actions to evaluate what the Government performs and which functions accomplished by Government personnel could be acquired from commercial sources.

The idea of contracting out the contracting process is a more recent subject of discussion. Some of the early studies and reports touched on this area by addressing the problem of contracting for functions considered to be inherently governmental. Through the decades, functions performed by Federal Government contract specialists were automatically classified as inherently governmental and were judged “off limits” to any performance by commercial firms. Over the last few years, however, various dynamics have caused Federal Government buying organizations to rethink this position. A significant draw down of the acquisition workforce, coupled with an increase in contract actions, has compelled the acquisition leadership to seek alternative methods for accomplishing mission-critical procurement functions. One line of thinking has been that, taken in its totality, the contracting function is basically an inherently governmental function. But when this perspective is decomposed and analyzed more carefully, some believe that certain tasks within the broad framework of the contracting process are not inherently governmental and could be accomplished by the private sector. As buying organizations attempt to apply the policies and definitions, this issue is clouded by the fact that there is a significant difference of opinion among all involved as to what constitutes an inherently governmental function.



Recent studies on the subject were reviewed, the most important of which are examined in this chapter. The literature review consisted of analyzing several sources found to have some relevance to this study; including: (1) recent Federal Government agency studies; (2) Government Accountability Office (GAO) reports and testimony; (3) *Federal Acquisition Regulation (FAR)* and *Defense Federal Acquisition Regulation Supplement (DFARS)* policies and procedures; (4) reports and studies from Congressional commissions and panels; (5) Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP) and other Executive Branch documents; (6) student theses and faculty reports from the Naval Postgraduate School (NPS), the Air Force Air War College, the Defense Acquisition University (DAU), and other educational institutions; and (7) studies and reports from research groups such as RAND, the Logistics Management Institute (LMI) and the Contract Management Institute (CMI).

#### B. Office of Federal Procurement Policy and Office of Management and Budget

In September 1992, the Office of Federal Procurement Policy (OFPP) issued *Policy Letter 92-1* (OFPP, 1992), which established Federal Government policy relating to service contracting and inherently governmental functions with the purpose of assisting Government officials in avoiding an unacceptable transfer of official responsibility to Government contractors. *Policy Letter 92-1* defined an inherently governmental function as a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in reaching decisions for the Government.

OFPP *Policy Letter 93-1* (OFPP, 1994) was issued in May 1994, establishing policy and providing guiding principles in managing the acquisition and use of services. This Policy Letter was prompted by a review that found uneven service contracting practices and capabilities across the Executive Branch with the need to



address various common management problems. The Policy Letter addressed issues of conflicts of interest, effective management best practices, inherently governmental functions, best value and cost effective acquisition of services, competition, and the management and oversight needed during contract administration. Appendix A of the Policy Letter set forth a series of questions addressing these issues intended to help agencies analyze and review requirements for service contracts.

In May 2003, *OMB Circular A-76* (revised) (OMB, 2003) superseded *Policy Letter 92-1* and, although it reduced the list of functions involved, it retained basically the same definition of “inherently governmental function.” It clarified the idea of substantial discretion and stated that its use is inherently governmental if it commits the Government to a course of action when two or more alternative courses of action exist which are not already limited by policy, procedures or other guidance and not subject to final approval by agency officials at a higher level.

#### C. Federal Acquisition Regulation/Defense Federal Acquisition Regulation Supplement

The *Federal Acquisition Regulation (FAR)* (2005) addresses the acquisition of services and the issue of inherently governmental functions in a few places. *FAR* 2.101 explains that the definition of inherently governmental function is a policy determination, not a legal determination, and includes activities that require either the exercise of discretion in applying Government authority or the making of value judgments in Governmental decisions. Inherently governmental functions involve, among other things, the interpretation and execution of the laws of the U.S. but do not normally include gathering information for or providing advice, opinions, recommendations or ideas to Government officials or functions that are primarily ministerial and internal in nature. *FAR* 7.5 applies to all contracts for services and specifically prohibits the use of contracts for the performance of inherently governmental functions. It provides a non-inclusive list of examples of functions considered to be inherently governmental as well as a non-inclusive list of examples



generally not considered inherently governmental but which may approach that category due to their nature. *FAR* 37.2 speaks to advisory and assistance services (A&AS) and states that the acquisition of these services is a legitimate way to improve Government services and operations and, therefore, may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

The *Defense Federal Acquisition Regulation Supplement (DFARS)* (2005) addresses inherently governmental functions in *DFARS* 207.5 and service contracting in *DFARS* 237. The former states that an agency may enter into contract performance of acquisition functions closely associated with inherently governmental functions only after the Contracting Officer has determined that military or civilian DOD personnel: (1) cannot reasonably be made available to perform the functions, (2) will oversee contractor performance, and (3) will perform all inherently governmental functions associated with contract performance. The latter does not specifically address contracts for procurement services but does mention some issues related to personal services contracts and limitations on the procurement of audit services.

Both the *FAR* and *DFARS* language cited above will be explored more completely in Chapter IV.

#### D. Government Accountability Office

The Government Accountability Office (GAO) (formerly known as the General Accounting Office) has issued several reports over the years concerning outsourcing, contracting out, and the acquisition of services.

GAO (1981) published a report which discussed “contractors’ excessive involvement in executive branch agencies’ basic management functions.” The review was conducted “because we were concerned about agencies using contractors to do work that should be done by Federal employees. GAO believes that Federal employees’ performance of this work would assure that agencies



control the direction of Government programs. (p.i)” The report went on to describe the rapid growth in the contract workforce, the difficulty of distinguishing between advice from a contractor and the performance of a Government function, and that many Government employees were performing commercial services that could be contracted out, thus lessening contractor involvement in management functions. One of GAO’s recommendations was that OMB should issue guidelines that will better distinguish between contractors’ advice on Government functions and their performance of such functions. Ten years later, GAO (1991) issued a report regarding the potential performance of inherently governmental functions by contractors. It found that the concept of “governmental functions” is difficult to define; some service contractors appeared to be administering governmental functions; some Federal agencies may be using service contractors rather than Government employees due to a lack of authorized Federal positions or a lack of Federal employees with sufficient expertise to perform the work; and, in some instances, agencies appear to have relinquished Government control to contractors. GAO recommended that OMB, among other things, clarify its guidance on contracting for consulting services, compile a short, generic list of Government-wide functions that, as a matter of policy, should never be contracted out, and require agencies to issue implement instructions unique to their circumstances.

By and large, GAO has been very critical of DOD’s acquisition of services. In testimony before the Senate Armed Services Subcommittee on Readiness and Management Support, (GAO, 2007) it criticized DOD’s lack of skills and competencies to manage the rapidly growing volume of service acquisitions by stating:

As service acquisition spending has grown, the size of the civilian workforce has decreased. More significantly, DOD carried out this downsizing without ensuring that it had the specific skills and competencies needed to accomplish DOD’s mission. For example, the amount, nature, and complexity of contracting for services have increased, which has challenged DOD’s ability to maintain a workforce with the requisite knowledge of market conditions and



industry trends, the ability to prepare clear statements of work, the technical details about the services they procure, and the capacity to manage and oversee contractors. In addition, new skills have been required to use alternative contracting approaches introduced by acquisition reform initiatives. (p. 3)

In recent testimony before Congress concerning services acquisition, GAO (GAO, 2007,b) summed up its findings by stating that:

The lack of sound business practices-poorly defined requirements, inadequate competition, the lack of comprehensive guidance and visibility on contractors supporting deployed forces, inadequate monitoring of contractor performance and inappropriate use of other agencies' contracts and contracting services-expose DOD to unnecessary risk, waste resources, and complicate efforts to hold contractors accountable for poor service acquisition outcomes.

Overall, DOD's management structure and processes overseeing service acquisitions lacked key elements at the strategic and transactional levels.

At this point, DOD does not know how well its services acquisition processes are working, which parts of its mission can best be met through buying services, and whether it is obtaining the services it needs while protecting DOD's and the taxpayer's interests. (p. i)

In recent testimony (GAO, 2007c) before the Senate Committee on Homeland Security and Governmental Affairs regarding the use of contractors to replace civilian or military personnel, the Comptroller General cautioned that:

The proper role of contractors in providing services to the Government is currently the topic of much debate. In general, I believe there is a need to focus greater attention on what type of functions and activities should be contracted out and which ones should not, to review and reconsider the current independence and conflict-of-interest rules relating to contractors, and to identify the factors that prompt the Government to use contractors in circumstances where the proper choice might be the use of civil servants or military personnel. Possible factors could include inadequate force structure, outdated or inadequate hiring policies, classification and compensation approaches, and inadequate numbers of full-time equivalent slots. (p. 12)





In examining the effects of contracted support services, GAO provided an example of what can happen in a career field when Government personnel are reduced and the work is taken over by contractors (GAO, 2007d). In the critical area of cost estimating, some Government officials believed that acquisition reform cost savings could be realized by reducing technical staff, including cost estimators, due to the initiative of greater reliance on commercial-based solutions. The Services, particularly the Air Force, saw significant reductions in the number of their best and brightest cost-estimators. Cost estimating organizations are now more dependent on support contractors who generally prepare cost-estimates while Government personnel provide oversight, guidance and review of the cost estimating work. This reliance on support contractors has raised questions from the cost estimating community about the sufficiency of numbers and qualifications of Government personnel to provide oversight of and insight into contractor cost estimates.

#### E. Acquisition Advisory Panel

In a very thorough Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy (AAP, 2007), the Panel examined the issues of inherently governmental functions, personal services contracts, and organizational and personal conflicts of interest in its chapter on the appropriate role of contractors supporting the Government. The Panel cited an increased reliance on private sector contractors for goods and services due to a variety of reasons including the need “to acquire hard to find skills, to save money, to have the private sector do work that is not inherently governmental, to augment capacity on an emergency basis, and to reduce the size of government.”

The Panel’s findings centered on: (1) the several developments that have led Federal agencies to increase the use of contractors as service providers; (2) the existence of a multisector workforce with co-located Federal employees and contractor employees that has blurred the lines between governmental and commercial functions, as well as personal and non-personal services; (3) an affirmation that agencies must retain core functional capabilities; (4) the inconsistent



application of the term “Inherently Governmental”; (5) a very wide degree of difference in the use of contractors within and across agencies; (6) an increased potential for organizational conflicts of interest; (7) a need to assure that increased contractor involvement does not undermine the integrity of the Government’s decision-making processes; (8) the unnecessary need for additional laws or regulations controlling Government employee conduct, notwithstanding highly publicized violations that were, in fact, adequately dealt with through existing remedies; (9) the fact that most statutory and regulatory provisions applying to Federal employees do not apply to contractor employees; (10) the potential that a blanket application of the Government’s ethics provisions to contractor personnel would create issues related to cost, enforcement, and management; and (11) the current prohibition on personal services contracts, has forced agencies to create unwieldy procedural safeguards and guidelines to avoid such contracts.

The Panel recommended the following: (1) OFPP should update the principles for agencies to apply in determining functions that must be performed by Government employees; (2) agencies must ensure that functions which must be performed by Government employees are adequately staffed; (3) the current prohibition on personal services contracts should be removed; (4) OFPP should provide specific policy guidance related to procurement of personal services; (5) the FAR Council should consider developing standard OCI and ethics clauses which set forth contractor responsibilities; (6) the FAR Council should provide additional regulatory guidance for the protection of contractor confidential and proprietary data; (7) the FAR Council, DAU [Defense Acquisition University] and FAI [Federal Acquisition Institute] should jointly develop and provide OCI and ethics training, as well as tools for the protection of confidential data; (8) No agencies should consider mandatory ethics training for all service contractors operating in a multisector workforce environment; and (9) agencies should ensure that existing remedies, procedures, and sanctions are fully utilized against contractors who violate ethical standards.





## F. Defense Acquisition University

A well-written DAU report (2005) concluded that: (1) it is reasonable to contract out non-inherently governmental functions or tasks when an increased workload suddenly appears, when a requirement for extra workload is only temporary, or when special expertise is required; (2) DOD agencies and other Federal agencies seem to be contracting out procurement functions more widely than the Services, but contracting out similar functions; (3) for most organizations, mission accomplishment drives the use of contractor support; (4) growth of future Contracting Officers should not be a problem if contracted out procurement support is kept at a reasonable level; (5) no laws are violated as long as inherently governmental functions are not contracted out, unauthorized personal services are avoided, core procurement capability is retained, and consistency with the *FAIR Act* [Federal Activities Inventory Reform Act] submissions are maintained; (6) many organizations' missions would be severely impacted if they were suddenly unable to contract out; and (7) understaffed conditions tend to weaken the argument against contracting out procurement functions.

The report recommended that, instead of a restrictive list of do's and don'ts each DOD activity be limited to no more than twenty-five percent of their workforce that may be contracted out. The report stated that this would provide flexibility for each activity to react to surge workload situations, would result in management assignment of lower priority and less sensitive tasks to contractors, and help address the concern over growing future Contracting Officers.

## G. U.S. Air Force

An Air Force Material Command (AFMC) study found that laws and regulations allow DoD wide latitude to outsource, but controls and approvals would be required if other than general administrative tasks not requiring contracting knowledge or contracting series personnel were outsourced. Further, the study found administrative support for contracting could be outsourced with some controls,



advisory and assistance services support had potential for outsourcing with controls and special approvals on a case-by-case basis, and contracting functions are inherently governmental functions and were not recommended for outsourcing.

An Air War College (AWC) paper by LtCol John Cannaday (2004) proposed that the Air Force develop a Contracted Procurement Services (CPS) strategy that would define limits, at a corporate level, on the use of contractors in performing procurement functions. He recommended the Air Force: (1) more thoroughly uncover the potential for using contractors on a cyclical basis to process purchase orders and delivery orders in the last quarter of each year, (2) ask DAU to provide early training on the determination of activities performed by Government personnel as inherently governmental or commercial, (3) ensure that contracted procurement services (CPS) contracts do not contradict DOD inventory of “exempt from competition” or “inherently governmental” functions, (4) establish policy regarding the conditions for use of CPS, and (5) assess the root cause of CPS thus far in the Air Force.

#### H. Defense Logistics Agency

A Defense Logistics Agency (DLA) study evaluated the numbers of Government and contractor full-time equivalents (FTEs) at two Defense Supply Centers. Procurement contractor support was classified as either pre-award (29%) and post-award (54%). The study examined workload changes and potential workload transfer. The study concluded that contractor FTEs cost more and that DLA had too many contractor FTEs compared to Government FTEs.

#### I. Naval Postgraduate School

Over the years, several theses and Master of Business Administration (MBA) projects at the Naval Postgraduate School (NPS) have addressed procurement and contracting issues. Some of these are pertinent to this research effort and are briefly explained below.



In his thesis entitled *A Taxonomical Structure for Classifying the Services Procured by the Federal Government*, Scott Allen (1991) developed a taxonomical scheme that practitioners may employ in classifying services procured by the Federal Government along a continuum from procurements that are strategically complex. A secondary research objective was to determine what characteristics are appropriate for classifying services on a strategic basis. A literature review, expert interviews, and survey using twenty heterogeneous sample services were conducted to determine the relationship between characteristics and services. Cluster analysis was used to group services into categories with similar compositions of selected characteristics. A taxonomical structure was developed for classifying services into five categories. Potential benefits may arise via application to staffing and directing of procurement functions and refinement of procurement policy.

In an Acquisition Research Sponsored Report and MBA project entitled *Department of the Navy Procurement Metrics Evaluation*, and published as Acquisition Research Sponsored Report Series NPS-PM-05-17, Christopher G. Brianas (2005) investigated and provided a comprehensive evaluation of current Department of the Navy Procurement Metrics. The purpose of the project was to determine if the current metrics are the appropriate procurement performance measures. This work capitalized on the analytical framework provided by Robert Simon's *Levers of Control* model, including metric objectiveness, completeness and responsiveness. The main parameters of the metric alignment were the customer, people (within the organization), process, financial, and value. The specific work of Brianas and his advisors related primarily to an overarching strategy within the Department of the Navy, and not specifically to individual operating units. Brianas concludes that the overarching metrics align with the Navy strategy, however, the level of objectivity and completeness of the metrics varied. Additionally, Brianas observed there was a high degree of variation and subjectivity in the metrics, and in many cases, the value of the metrics currently in use, and as observed in the study, provided little value to the Heads of Contracting Activities (HCAs). Finally, he



recommended that a working group be established to review all the metrics and revise them to ensure they provide true value to the agency.

In his thesis entitled *Development of a Procurement Task Classification Scheme*, Clark Fowler (1987) utilized a classification structure to categorize procurement tasks performed by the contracting professional. His work classified tasks into one of the following five groups: (1) searching for and receiving information; (2) identifying objects, actions, and events; (3) information processing; (4) problem solving and decision making; and (5) communicating. He found that over thirty-eight percent of the time was involved in problem solving and decision making. The next closest activity was communicating which occurred twenty-seven percent of the time.

In her thesis entitled *An Examination of Acquisition Ethical Dilemmas: Case Studies for Ethics Training*, Joycelin Higgs (1995) identified common ethical dilemmas faced by DOD acquisition employees, the decision-making skills and ethical values used to reach resolution and the consequences of the decisions made. She concluded that most of the ethical dilemmas faced by acquisition personnel come from their role as a liaison between their customers and contractors, an improper influence of contractors over their customers, the potential appearance of conflict of interest rather than actual conflicts, and the desire to conduct business fairly while acting in their role as protector of the taxpayer's interests.

In his thesis entitled *The 12-phase Acquisition Process: A Comparison of Theory vs Practice*, Chris Lehner (2001) utilized a 12-phase model which shares commonalities with Stanley N. Sherman's Generic Procurement Model and OMB Circular A-76's Major Systems Acquisition Cycle. One of the differences in the 12-phase model from other similar models is that it provides distinct phases required to procure equipment and hardware, primarily from a contracting officer/specialist's perspective. Lehner used the existing 12-phase model and framework to examine specific acquisitions at the 1<sup>st</sup> Special Forces Group to determine whether there were flaws in this procurement process. Lehner concluded that better process



controls by program offices and requirement generators, and particularly in the preliminary missions needs assessment, would greatly improve the entire procurement process. Although Lehner's thesis did not specifically address metrics associated with the 12-phases, the ability to identify and utilize a consistent process framework proves valuable in defining process points and potential areas for further study related to metrics.

Contractor past performance information was examined extensively by Roger D. Lord (2005) in an Acquisition Research Sponsored Report entitled, *Contractor Past Performance Information (PPI) in Source Selection: A Comparison Study of Public and Private Sector*. Lord examined the *Federal Acquisition Regulation (FAR)* section which mandates the use of contractor past performance information as an evaluation factor in all source selections involving negotiated procurements above \$1,000,000, and examined the capabilities of the Federal Government to effect decision-making with data collected as they relate to source selection. Using PPI as a factor in all source selections is modeled after industry best practices. Lord explored the current PPI collection and evaluation process used by DOD and by those employed in industry. The goal behind the research was to determine best practices and improve DOD's use of PPI as a tool in the acquisition process. This work is relevant to the contracting out procurement function analysis in that PPI is one of the mandatory metric tools utilized to measure and record contractor performance data under prescribed conditions.

Mary A. Malina and Frank H. Selto published *Choice and Change in Measures in Performance Measurement Models* in an Excerpt from the *Proceedings of the Second Annual Acquisition Symposium* (Malina & Selto, 2005). This paper uses management control, resource-based, systems-based, and contingency-based strategy theories to describe a large U.S. manufacturing company's efforts to improve profitability by designing and using a performance-measurement model (PMM). Malina and Selto defined key performance measure attributes essential for companies, to include: (1) measures should be diverse in nature, (2) measures



should be objective and accurate, (3) measures must be informative, (4) benefits of measurements should outweigh costs of collection, (5) measures can have greater benefit if they reflect causality, (6) measures can communicate strategy, (7) measures create incentive for behaviors, and (8) measures improve decision-making. Although their work was designed to examine corporate profitability parameters, elements of this work may benefit any researcher and practitioner interested in determining efficiencies and effectiveness of organizations and processes, including contracting functions.

In a slide presentation (Naegle, 2007) entitled *Software Measurement and Metrics* developed for the Software Acquisition and Management class at the Naval Postgraduate School, Senior Lecturer Brad Naegle emphasized the importance of measuring software development. He states that, “Software development, perhaps more than any other component, requires effective measurement techniques.” His presentation highlighted the critical role of metrics in design, development and management. Naegle placed metrics in three categories or types: management, process, and quality. He concluded the presentation with sound ground rules for use of metrics.

In his thesis entitled *A Taxonomic Approach to Contracting Officer Tasking*, Asa Page (1989) sought to develop an appropriate behavioral classification scheme which will accurately describe in relevant terms contracting officer taskings. He utilized an existing taxonomy to categorize tasks required of Contracting Officers in the *FAR* as being either mandatory (using such words as “will”, “must” or “shall”) or discretionary (using such words as “may” or “should”) and either explicitly or implicitly set forth. He concluded, among other things, that a significant number of procurement tasks in the *FAR* are implicit in nature, thus requiring the contracting officer to exercise, to a large degree, decision-making and judgmental skills.

In his thesis entitled *An Analysis of the Feasibility of Outsourcing Contract Administration Functions Within the Defense Contract Management Command*, Douglas Porter (1998) explored the potential for contracting out contract





administration functions performed by Government civil servants as an efficient and effective option for meeting mission requirements in the face of resource constraints. He concluded, among other things, that outsourcing does not always result in savings; thirty of the eighty contract administration tasks performed by DCMC are inherently governmental, while the remaining fifty were not and could be outsourced; other Federal agencies have successfully outsourced their contract administration functions; and there are a sufficient number of firms able and willing to perform contract administration functions. Although many of the tasks identified by Porter were not contracting functions, several of those described as inherently governmental were Contracting Officer tasks.

In her thesis entitled *Outsourcing Market Research in DOD Commodity Acquisition: The Issues, Concerns, and Private Industry Capabilities*, Michelle Skubic (2001) assessed market research in Department of Defense commodity acquisitions. She examined the feasibility of outsourcing market research functions in the commodity acquisition arena, focusing on which elements of market research would be most practicable to outsource and what capacity exists in private industry to provide market research services for the Federal acquisition environment. Skubic concluded that because of current circumstances (reductions in acquisition workforce, budgetary constraints, and acquisition reforms emphasizing effective market research for commercial items), market research enhances and optimizes the use of available resources. Further, she concluded that while there are issues and concerns to be addressed when considering outsourcing market research, private industry does offer a viable alternative for conducting market research functions in DOD commodity acquisitions.

#### J. Logistics Management Institute

In a report (Macfarlan, 2003) entitled *The Role of the Business Manager or Advisor in Federal Acquisition*, the Logistics Management Institute (LMI) conducted an independent research project regarding the environment in which contracting and purchasing professionals will be working over the next five to ten years, the skills



and competencies needed to meet the emerging acquisition management needs, and performance metrics for contract managers. The information gathered during the research was used as the basis for developing a case study intended to assist organizations examine, build, and institutionalize practical business management skills and competencies for those in the contracting career field.

#### K. Contract Management Institute

In a study (CMI, 1999) entitled *Survey of Contracting and Purchasing Professionals: Emerging Demands on a Changing Profession*, the Contract Management Institute (CMI) reported on a survey performed by PricewaterhouseCoopers that focused on professional activities that define the contract management profession, the skills and competencies that contract managers must possess to excel in their field, and standards (or benchmarks) that form the basis for measuring performance in contract management.

The study presented core activities most frequently recognized by contracting personnel at the transactional level. Eight core activities considered to be basic process components were identified. These core activities are: (1) proposed evaluation and source selection, (2) structuring the business arrangement; (3) preparing solicitation documents, (4) conducting negotiations; (5) conducting price/cost analysis, (6) developing requirements statements, (7) executing contracts, and (8) planning the acquisition. It can be argued that experience with each of these core activities is essential to developing the mechanical skills and abilities eventually needed by competent Contracting Officers.

This study also asked respondents to select strategic components from a list of elements of the contracting process. Most frequently cited were: (1) pursuit of innovative contracting or business approaches, (2) decision-making, (3) building strategic relationships internally and externally, (4) acquisition reform and continuous improvement, (5) training and continuing education, (6) strategic planning and sourcing, (7) participation in cross-functional or integrated process teams, and (8)





collaborative acquisition planning. Many of these strategic components require more advanced understanding of the challenging elements of the contracting process. They require business management acumen not easily acquired without intense involvement in the day-to-day activities of contracting.

In another study entitled *Performance Metrics for the Contract Management Discipline*, CMI (2001) reported on a Stratecon analysis which focused on performance metrics and evaluation systems by which organizations measure the work of contracting professionals, performance standards that might be appropriate for future use, and the types of performance metrics that motivate or enhance productive performance. The study found that metrics suggested for future use in the contracting profession were: (1) business judgment, (2) decision-making, (3) problem-solving ability, (4) negotiation skills, (5) customer service (external), (6) integrity/ethical standards, (7) education, (8) human/interpersonal relations, (9) responsiveness, and (10) communications.

## L. Professional Associations

### 1. National Association of State Procurement Officials

The National Association of State Procurement Officials (NASPO) adopted a resolution (2005) opposing privatization or outsourcing of public procurement. The resolution affirmed, in part, that state procurement: (1) is an inherently governmental function; (2) has a strategic role in every function of government; (3) requires specialized skills, knowledge and ability; (4) requires a transparent process with clearly stated rules to ensure equity and fairness in awarding contracts and instill public confidence; (5) protects public funds from conflicts of interest, anti-trust violations, fraud and abuse; (6) ensures that contracting decisions serve the best interests of the government and its citizens; and (7) mandates that officials maintain public trust and confidence and be accountable to the public. It resolved that: (1) any effort to outsource or privatize state procurement is opposed by NASPO; (2) outsourcing state procurement functions is contrary to sound public and fiscal policy;



and (3) outsourcing state procurement presents an opportunity for significant waste, fraud and abuse.

## **2. National Institute of Governmental Purchasing**

The National Institute of Governmental Purchasing (NIGP) issued a resolution (2005) opposing the proposed privatization of the procurement and contracting function in the state government of Alaska. In response to legislation introduced into the Alaska Legislature, the resolution mirrored many of the NASPO statements cited above and also affirmed that: (1) the unique benefits of the public procurement function include the promotion of a transparent system that ensures the fair and equitable treatment of all persons, that provides unfettered access to public dollars by all qualified suppliers, that leverages public spending to enhance socio-economic principles, and that assures integrity through ethical behavior; (2) the public procurement and contracting function is a public trust; as such, the State of Alaska has previously adopted the Model Procurement Code for State and Local Governments to ensure that trust; (3) the complex and dynamic environment of the public procurement function requires personnel with relevant, professional experience, continuity, and institutional knowledge; and (4) it is essential that those individuals who manage the public procurement and contracting function be fully committed to serving the public trust and fully accountable to the public rather than being committed and accountable to a for profit business.



## IV. Background

### A. Introduction

Outsourcing has been a delicate and controversial issue for several years. It involves a variety of stakeholders, each of whom has emotional attachments to an organization, a professional community, an ideological viewpoint, or a deep seated feeling. Over time, outsourcing has been studied from numerous perspectives by research institutes, investigative bodies, operational organizations, and policy personnel. It will continue to engage our collective psyche for years to come.

Conventional wisdom suggests that attempting to outsource a commercial function performed by Federal Government personnel, be they military or civilian, forces the element of competition into its performance (regardless of who ultimately carries out the function), thus improving quality and/or lowering cost. With competition comes an impetus to find ways to reduce the labor hours required, to shorten turnaround time, to use fewer personnel, and to manage more efficiently. These are just some of the actions organizations take, be they in private industry or governmental, when competition is present. Although businesses must be profitable to survive while Government organizations can exist while being highly inefficient, competition forces both types of organizations to examine their functions and costs in order to become more economical.

Outsourcing of commercial activities introduces an element of competition into the mix. Some outsourced functions come very close to being considered “inherently governmental.”

Several measures, in both dollars and numbers of contract actions, have recently shown that the Navy contracting workload is steadily increasing while personnel to perform contracting functions have decreased. There has also been a shift from an emphasis on contracts for supplies and goods to contracts for services.



Excessive backlogs are being created that have significantly delayed the procurement process.

Concern has also arisen over the last several years regarding the skill sets held by the Navy contracting workforce. Significant time and expense have been invested in training and educating the workforce to bring skills to the level required of 21<sup>st</sup> century contracting challenges. Much remains to be accomplished in the initiative to improve workforce knowledge, skills and abilities.

In order to relieve the pressures of too few personnel and a lack of contracting skills in certain areas, some organizations have begun to contract out selected contracting functions associated with the acquisition process. For various reasons, some organizations have done nothing to contract out procurement functions. Other organizations have actively promoted contracting out efforts and see this as an integral part of their corporate strategy.

Some contracts for contracting or procurement services have been successful and have contributed to meeting organizations' mission needs. Other efforts have been less than successful and demand closer investigation into what factors contributed to this outcome. Reliable metrics that easily and accurately assess the progress contractors make in performing procurement services are an important part of monitoring these contracts.

## B. Statutory and Regulatory Issues

### 1. Inherently Governmental Functions

It is well known that Federal employees have performed a variety of functions that provide myriad items and services required by the Government. In the 1950s, the Administration adopted a policy that agencies would rely on the private sector, to the maximum extent practical, to obtain needed goods and services. This policy became more formalized when the Bureau of the Budget (later reorganized to become the Office of Management and Budget) issued *Bulletin No. 55-4*, which



stated that “the federal government will not start or carry on any commercial activity to provide a service or product for its own use, if such product or service can be procured from private enterprise through ordinary channels” (p. 1). By this time, many of DOD’s weapons arsenals had been closed or transferred to private management following the height of production in World War II, save for selected Navy shipyards. Most of the arsenals not closed or transferred were generally used for maintenance and repair operations. This resulted, in essence, in the performance of services by Federal employees with very little production of goods accomplished in-house. When *OMB Circular A-76*, “Performance of Commercial Activities,” was issued in 1967, it principally identified services as the commercial activities upon which its policies were focused. In clarifying commercial activities, A-76 recognized that certain “functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees.” (p.A-2)

In order to afford more helpful guidance as to what were inherently governmental functions (IGFs), OFPP issued *Policy Letter 92-1* (later superseded by the 29 May 2003 revision of *OMB Circular A-76*). The Policy Letter cautioned that agencies “have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. (p.3)” It expanded on IGFs by stating:

These functions include those activities that require either the exercise of discretion in applying Government authority or in the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation of the laws of the United States. (p. 1)

The Policy Letter listed examples of specific functions that are inherently governmental as well as those which generally are not, but require “closer scrutiny” together with examples and explanations. Appendix A of the Policy Letter provided an illustrative list of functions which were considered to be inherently governmental.



Germane to acquisition is the section on Federal procurement activities regarding prime contracts which cites the following as inherently governmental: (1) determining what supplies or services are to be acquired; (2) participating as a voting member on any source selection boards; (3) approval of any contractual documents to include documents defining requirements, incentive plans, and evaluation criteria; (4) awarding contracts; (5) administering contracts; (6) terminating contracts; and (7) determining whether contract costs are reasonable, allocable, and allowable.

Appendix B of the Policy Letter listed services and actions that, although not considered inherently governmental, may approach that categorization due to the manner in which a contractor performs a contract or the manner in which the Government administers contractor performance. It advised vigilance concerning the terms of the contract, contractor performance and contract administration to ensure preservation of agency control. The explanatory list of such functions included services that: (1) relate to the evaluation of another contractor's performance; (2) support acquisition planning; (3) provide assistance in contract management, such as where a contractor might influence official evaluations of other contractors; (4) provide technical evaluation of contract proposals, (5) provide assistance in developing statements of work; (6) require participation as technical advisors to a source selection board or participation as voting or nonvoting members of a source evaluation board; (7) have a contractor serving as an arbitrator or other method of dispute resolution; and (8) provide legal advice and interpretations of regulations and statutes to Government officials.

The *FAR* also speaks to the issue of IGF. The term is defined in *FAR* Section 2.101, and a prohibition against contracting for IGFs is contained in *FAR* Sections 7.503 (a) and 37.102 (c). *FAR* Subpart 7.5 applies the OFPP Policy Letter and A-76 policies. It also states that "Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials." Specifically, FAR 7.505 states the following regarding IGF:



The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

In Federal procurement activities with respect to prime contracts —

- (i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);
- (ii) Participating as a voting member on any source selection boards;
- (iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
- (iv) Awarding contracts;
- (v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);
- (vi) Terminating contracts;
- (vii) Determining whether contract costs are reasonable, allocable, and allowable; and
- (viii) Participating as a voting member on performance evaluation boards.

Although policy and regulations have attempted to more clearly define IGF, the blurred distinctions between inherently governmental and non-inherently





governmental functions caused by the discretionary ability of agencies to decide its boundaries will continue to plague the acquisition process for the foreseeable future.

## **2. *Federal Activities Inventory Reform Act***

In 1998, Congress passed the *Federal Activities Inventory Reform Act* (FAIR Act) intended to provide a process for classifying Federal Government functions. Using the same definition of IGF as the OFPP Policy Letter, the Act requires executive agencies to develop annual inventories identifying commercial activities performed by Federal employees. OFPP believes that by annually reviewing and revising workforce inventories, agencies are better able to understand the functions their workforce is performing. Functions identified as inherently governmental or commercial, but not suitable for competition, may undergo reengineering efforts or management reviews. Functions deemed suitable for competition may be examined as potential candidates for competitive sourcing.

## **3. *Conflict of Interest***

FAR 9.5 addresses organizational conflicts of interest. It suggests that good judgment, common sense and sound discretion is required in the decision whether a significant potential for conflict of interest exists and, if so, the proper means for resolving it. Two underlying principles are identified. First, prevention of conflicting roles that could bias a contractor's judgment and, second, precluding a contractor's unfair competitive advantage, such as through the use of proprietary information from Government sources or source selection information not available to all competitors.

Several conflict of interest issues have arisen with the increase in service contracting. A particularly important organizational conflict of interest (OCI) concern occurs when contractors are involved in assisting the Government in developing requirements which are then open to market competition. Those contractors, or affiliates of these firms, might then be potential participants in the competitive marketplace. Further, when contractors are used to evaluate contract proposals and





have access to confidential or proprietary data, they may have an unfair advantage in future competitions.

#### **4. Personal Services**

In order for an organization to accomplish its work, it can either hire employees or contract with other organizations. The process involved in deciding whether to perform the work in-house or out-of-house is frequently referred to as the make vs buy decision. Both industry and government continually face this decision process. It may be driven by economics, competencies, productivity, or policy.

In the Federal Government, it is important to recognize the distinction between the buyer-seller relationship and the employer-employee relationship (sometimes referred to as the master-servant relationship). The former relates to the contractual relationship established by a legally binding contract under which the Government contracts for work to be performed. The two parties to the relationship have privity of contract with each other, and each retains loyalty and commitment to their own organization. Each party should avoid any conflicts of interest that would impair the association. The relationship should be characterized by trust, cooperation, continuous communications and a professional respect for each other. Some use the analogy of a “partnership” where both parties are in the endeavor together and must look out for the other’s best interests. Adversarial aspects in the affiliation are to be avoided. In this case, the relationship created with those who will perform the work effort is nonpersonal.

The latter relationship refers to the situation in which the Government hires (appoints) individuals to perform the work involved. As employer, the Government supervises, directs and controls the effort of the employees including promotion, discipline, and dismissal. In the role of employer, the Government must conform to civil service rules which set parameters in the employment of individuals. The relationship created with those who will perform the work is personal. Generally, if work is performed on a personal services basis by a person not employed in



accordance with the civil service statutes and procedures, it is a violation of Federal law.

The issue of personal versus non-personal services becomes most important when the Government establishes a contractual relationship with a private firm for the performance of services but, in fact, directs the contractor personnel in such a manner as to create an employer-employee relationship. Herein occurs the violation of Federal law.

## **5. Ethics**

Ethical conduct is absolutely essential to any organization. It is part of the public character of an entity and demonstrates to others the extent to which principled behavior is part of its moral fabric. DOD has stated that ethics is a critical part of its core values and, to protect the health of the acquisition process, must be continually emphasized in everyday decision-making at all levels. In some cases, unethical behavior may also be illegal. In Federal Government acquisition, flagrant violations of ethical boundaries have frequently resulted in statutes that outlaw such behavior. To assist members of the acquisition workforce in understanding their responsibilities and obligations as public servants, standards of conduct have been developed and widely publicized. One of the principal tenets of ethical behavior is not only the avoidance of compromising situations but also the appearance or perception of such relationships or actions.

One aspect of Federal procurement is the fact that contracting officials, in creating and maintaining the buyer-seller relationship, are the central interface between Government and industry. As such, these officials step into the commercial marketplace and perform their tasks under the light of market rules and norms, some of which may be in conflict with Government policies and standards. One facet of the marketplace is the intense competitive pressure created by rapidly changing technology and the need to be “first to market” with the latest product or service. Mergers and acquisitions have reduced the number of competitive participants and



have served to increase the forcefulness of this pressure. To counter this phenomenon, some firms have resorted to less-than appropriate trading practices. Such a business model can only serve to undermine the integrity of the marketplace. Government procurement officials must be vigilant in monitoring the marketplace and, when necessary, take swift and decisive action to counter any adverse effects that may result from firms engaging in unacceptable business practices.

With the above-mentioned pressures in mind, one of the major concerns in Federal contracting is the potential for use of improper business practices by both Government and industry. In Government, some of these practices are addressed by standards of conduct, such as gratuities, while others are covered by long-standing laws, such as public officials benefiting from their position or prime contractors receiving subcontractor kickbacks. In the mid-1980s, a major breach of public trust involved allowing competitors access to proprietary source selection and contracting information by current and former Government employees. This abuse led to Congressional enactment of the *Procurement Integrity Act*, which imposed safeguards and sanctions on both Government officials and contractors that went beyond those that were currently in place. It is DOD's policy that contractors conduct themselves with the highest degree of integrity and honesty supported by standards. For industry's part, the Defense Industry Initiative (DII) was formed to encourage companies to publicly profess their commitment to an ethical culture and to take appropriate action when their employees have failed to follow their ethical standards. DOD's policy is that contractors conduct themselves with the highest degree of integrity and honesty; the Department has issued contractor standards of conduct in the DFARS. Management control systems should provide, among other things, a written code of business ethics, an ethics training program for all employees, periodic reviews of company procedures to ensure compliance with standards, a mechanism for employees to report suspected breaches of ethical conduct, internal and external audits, a method for appropriate corrective action, disciplinary action for improper conduct, and timely reporting to appropriate



Government officials of any suspected or possible violation of law in connection with Government contracts.

The above discussion concerning ethics is extremely important to this study. As will be detailed in coming sections, the additional access provided to private industry by contracting out procurement functions could, if not vigorously protected, result in both actual and perceived unethical behavior extremely detrimental to the Federal acquisition system.

## C. Acquisition Issues

### 1. Acquisition Principles

The acquisition process can be characterized by its principles and concepts. It is the structure of these principles that identifies the culture within which acquisition and contracting are undertaken. In order to execute the responsibilities of acquisition, one must have a firm grasp of the basic concepts and underlying fundamentals of the process that form the framework upon which strategies, actions, ideas and change are implemented. Although not an exhaustive accounting of acquisition principles, some of the more important of these to this study are presented here. Because Federal Government procurement is a public activity exercised on behalf of the taxpayer to accomplish Government missions, the business of procurement should always be conducted with fairness, openness and integrity. Ethical conduct that captures and maintains the public's trust at all times is essential. Fairness and reasonableness for both the Government and industry must prevail. Although the primary function of procurement is to acquire needed goods and services, it must also recognize public policy objectives, particularly those that are obtained through the contracting vehicle. The contracting system should promote competition, maximize the use of commercial products and services, nurture cooperative relationships between the Government and suppliers, and use public resources efficiently. Risk management should be employed judiciously. Best practices, such as the use of the best value continuum and past performance,



should be consistently adhered to. All members of the acquisition team should continually seek innovative and creative methods to accomplish their responsibilities. Judgment and decision-making should utilize sound business practices and concepts. The buyer-seller relationship should be identified in the contract and preserved in its execution. The health of this relationship is the most critical factor in successful contract performance.

## **2. Contracting Process and Contracting Functions**

The researchers were tasked with examining the contracting process and the tasks or functions performed by Government employees within this process. Valuable to this examination would be a definition of the contracting process used by those in the contracting community. Although there are various opinions about this definition, a useful starting point would be relevant definitions found in the *FAR* and other sources. The *FAR* defines “contracting” as follows:

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.(FAR 2.1)

One of the principal officials in the contracting process is the warranted Contracting Officer. The *FAR* defines the “Contracting Officer” as follows:

“Contracting officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. (FAR 2.1)



In a broader context, “acquisition” encompasses “contracting” but begins with some critical steps before the contracting process is fully engaged. The *FAR* defines “acquisition” as follows:

“Acquisition” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

### **3. Integrity of the Contracting Process**

It is essential that the Federal Government acquisition process maintain a culture considered to be of the highest integrity. The process is governed by a complex set of rules and regulations many of which allow, or even demand, remedies for situations considered unfair to one or more of the parties involved. The contracting process is woven around bedrock principles and precepts that should be recognized and protected in every action taken by process participants. The integrity of the contracting process should be first and foremost in whatever decision-making mechanism is employed. One of the key elements of this integrity is trust. Trust extends to several dimensions including: (1) trust between buyers and sellers; (2) public trust and confidence that Government officials will always hold the best interests of the Government uppermost; (3) Congressional trust that the Executive Branch will carry out their responsibilities with loyalty and honesty; and (4) trust among contracting professionals that each will judiciously perform their tasks with sincere regard for their fellow Federal employees. It is axiomatic that the contracting process be conducted with impartial, fair and equitable treatment of contractors. It is critical that public servants conduct business with fairness, openness and honesty while pursuing public policy objectives in the most effective and efficient manner they are able. Conditions which challenge the integrity of the



contracting process should be vigorously attacked. Opportunities for actual or perceived conflicts of interest must be recognized and carefully avoided. Situations which might place the process at risk must be carefully analyzed before deciding to undertake these risks. Actions which might take the Government outside ethical boundaries are to be seriously evaluated. Contracting officers should be continuously asking if the decision before them would have any affect on enhancing or detracting from the process' integrity. Innovation and resourcefulness should be the hallmarks of a healthy and robust contracting process continually stimulated by vision and ingenuity.

In assessing the consequences of using contractors to perform procurement functions, the Acquisition Advisory Panel (AAP) stated:

the cost and delay associated with resolving potential OCIs after-the-fact adversely affects agency programs and the public interest. Yet, "the more we integrate non-Federal employees, contractors or call them blended workforce, into the actual governing and administration of our agencies, the larger the gap we have and the more difficult it is for us to insure the integrity of Government decision making."(p.407

An example of Congressional mistrust has to do with the General Services Administration's Mission Oriented Business Integrated Service (MOBIS) and Representative Henry Waxman's position that this program may "cause conflicts of interest and result in unnecessary waste, fraud and abuse." Although GSA claims the MOBIS program contains "safeguards" to avoid conflicts of interest, Waxman believes that given past performance on these types of contracts, promised safeguards "[do] not generate confidence in this approach."(p.1)

The integrity of the contracting process is forced and shaped by these very types of events.

#### **4. Defense Acquisition Workforce Improvement Act**

The *Defense Acquisition Workforce Improvement Act (DAWIA)* has been in force for over sixteen years. *DAWIA* imposes mandatory training, experience and





educational requirements on those Government employees who occupy positions identified as part of the acquisition workforce. These requirements were established by Congress in order to improve the knowledge, skills and competencies of those involved in acquiring goods and services. These requirements are categorized by functional areas, e.g., Contracting and Purchasing, as well as by certification levels denoting qualifications as follows: (1) Basic or Entry level, (2) Intermediate or Journeyman level, and (3) Advanced or Executive level. Special baccalaureate degree requirements were established for Contracting Officers with warrants above the simplified acquisition threshold. Critical acquisition positions (CAPs) within the acquisition corps were also established to recognize the unique qualifications required of senior procurement professionals. Workforce members must also participate in meaningful continuous learning activities to stay current and proficient in their functional discipline, policy initiatives, and leadership and management skills.

## **5. Contractual Remedies**

During the performance of a contract, differences of opinion may arise between Government personnel and the contractor. Such potential conflicts may have to do with the quality of performance, specific provisions in the contract with which the Government believes the company has not complied, the extent to which the firm has put forth its best efforts to cooperate in recognizing unique conditions and circumstances encountered by the Government, or one or both parties may even believe the other has breached the contract. These and many more situations might occur between the buyer and seller. When the Government believes the contractor has failed to perform in accordance with the terms and conditions of the contract, appropriate remedies exist. Many of the rules, regulations and literature concerning contractor failure to perform involve the delivery of goods with far less focus on the performance of services. The latter is much more difficult to address because it frequently involves subjective assessment of contractor performance. Clear contractor failure to perform, or even repudiation of the contract, are probably easier to confront as breach of contract situations than the quality level of service





provided in a services contract. If contractors are performing procurement functions for the Government and at the same time are suffering differences of viewpoint about that effort, such complications may cast an undesirable shroud over the entire working relationship. Even beyond this, other contractors' perception of how their confidential data and information is being handled by both parties might be highly questioned.

## **6. Advisory and Assistance Services**

It is the policy of the Federal Government that Advisory and Assistance Services, utilized at all organizational levels to assist managers in achieving maximum effectiveness or economy in their operations, is a legitimate method to improve Government services. The procurement of Advisory and Assistance Services (A&AS), whether contracts are made with individuals or organizations that involve either personal or nonpersonal services, is governed by *FAR* Subpart 37.2.

When essential to an agency's mission, contracts for A&AS are permitted for a range of reasons, including: (1) to obtain points of view on critical issues; (2) to obtain advice concerning developments in industry, university or foundation research; (3) to obtain opinions, special knowledge or skills held by noted experts; (4) to enhance understanding and develop alternative solutions to complex problems; (5) to support and improve organizations' operations; and (6) to ensure the more efficient or effective operation of managerial or hardware systems.

There are several particular cases in which A&AS cannot be used, including the following: (1) to perform work of a policy, decision-making, or managerial nature which is the responsibility of agency officials; (2) to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; (3) awarded to former Government employees on a preferential basis; (4) to aid in influencing or enacting legislation; and (5) to obtain professional or technical advice readily available within the agency or another Federal agency.



## 7. Metrics and Measures of Effectiveness and Efficiency

Measures of effectiveness and efficiency are key elements in the assessment of any procurement function. Since one of the key questions being addressed by this research is the effectiveness of contracting out the procurement function, the researchers developed a framework for analysis that lends itself as a sound mechanism to assess the results of surveys and interviews conducted in the body of this work. Among common themes throughout the effectiveness and efficiency discussion are two essential and universal questions. First, *what* do we need to measure? Second, *how* do we measure it?

*Framing* the measures or metrics set is essential to ensure the “what” and the “how” questions are tailored to the specific business level to maximize the utility of the measure. Framing is simply ensuring the business element and level within the broader agency context have the correct measures. The utility is the ability of the measure or metric to be of use in monitoring and controlling the behavior of participants and processes within the business unit.

Several levels of analysis are available. First, the metric is gathered and/or utilized at the organizational *level or strata*. Second, the metric can be framed according to its *application association*—whether workforce, work process, or work product output. Third, the metric can be defined by its *nature or type*. Within this context, two primary types of metrics exist: *quantitative* metrics and *qualitative* metrics. Fourth, the contract action itself can include specific performance measurements and metrics designed to monitor process integrity, process and outcome qualities and quantities—all as a means of determining effectiveness and efficiency.

### a. Level or Strata of the Business Entity

Metrics (measures of effectiveness and efficiencies) can be developed and utilized at all levels of an organization. For contracting and acquisition within the Federal Government, the most appropriate and expedient levels are at the strategic



level, the macro-organizational level, the business unit level (which can be subcategorized at the activity level), and the branch or division levels.

The strategic level can be defined as DOD. Strategic measures at DOD level related to contracting and outsourcing procurement functions can be utilized to affect policy decisions, strategic manpower alignment, and other similar activities.

The macro-organization level is simply the specific agency. The Department of the Navy, Department of the Army, and the like, is the macro-organizational level. Within this level, specific major commands can utilize metrics for efficiency and effectiveness within their organization as consolidators of metric information being fed to higher-level strategic uses at DOD, and for providing general guidance to subordinate levels.

GAO recently published a report (2005b) which provides a valuable framework for both a strategic and macro-organizational analysis of acquisition functions. It promotes four cornerstones for assessing the acquisition function, defines key elements of each cornerstone, and further identifies critical success factors for each of the key elements supporting the four cornerstones. The four cornerstones are: (1) organizational alignment and leadership; (2) policies and processes; (3) human capital; and (4) knowledge and information management. Although the assessment is designed for the entire acquisition process, it contains many elements specifically related to contracting.

The business unit level is where the “production floors” are located. The Navy’s Fleet and Industrial Supply Centers (FISCs) are examples of organizations at this level. Within the business-unit level are all the activities and commands within each major organization. For example, FISC Jacksonville has imbedded divisions and branches supporting customers, which can have metrics in place for each of the divisional and unit levels.



Among the varying levels, metrics can be assigned, measured and utilized as immediate control and process measures, or for consolidation to higher-levels for broader evaluation and control of the larger organization.

**b. Application Association of the Metric**

By combining the work of Naegle (2007) and Brianas (2005), the researchers can assign metrics within the framework of their application to three primary areas: workforce measures, work process measures, and work output measures.

Workforce metrics, as the name implies, clearly deal with the capacity and capability of the workforce. One key measure is the number of workers expressed as FTEs. Other, more specific, measures of workforce can align the numbers against descriptors such as personnel classifications, certification levels and experience levels. Within DOD, the civilian personnel system has specific classifications related to the acquisition workforce, one of the most common being the 1102 Series Contract Specialist. Among a specific series is the level or banding, which can be a further descriptor of capability. *DAWIA* provides an additional capability component, often linked to the level or banding.

Work process metrics can measure quantitatively and qualitatively across specific processes. This capability can be particularly useful when making determinants of efficiencies and effectiveness through specific business processes required to effect a business transaction. For example, transaction cost analysis is a type of work process metric that combines a quantitative/cost component to specific actions required to conduct a business transaction, and is particularly useful at measuring the extent to which costs have been reduced. Within this framework is a specific subset entitled control measures, which can be utilized to affect consistency and predictability in processes to ensure greater efficiencies and effectiveness, along with compliance with specific statutes, regulations, instructions, and desired protocols. This is related to compliance in that the process and protocol integrity are examined, along with the conduct and assignment of work within the processes, and not just an after-the-fact determination of compliance. In



other words, it is the assurance that the proper business protocols are utilized based on sound business judgments, as the requirement is being processed, not just when it is completed.

Process metrics can span all the functions required within procurement functions. The acquisition process itself has a number of sub-processes, or phases—all of which can have unique sets of metrics. Lehner (2001) identified twelve phases of the acquisition process. Phases five through ten are the traditional contracting functions in which there are myriad processes, all of which can be measured. Those six phases are: (1) acquisition planning; (2) solicitation; (3) proposal/bid evaluation; (4) negotiations; (5) contract award; and (6) contract administration. This framework is important because in defining measures of effectiveness and efficiency, the specific phase may help to frame the nature, type, level and detail of the metrics needed. The complexities of defining metrics across all the phases should be of note.

Work output and outcome metrics can assign *quantitative* and *qualitative* measures to outputs or specific outcomes or the end-state of an effort. This type of metric, to a large degree, is directly related to the construction and management of the contract itself, and the contract is the vehicle to achieve an end-state. To a large degree, performance-based contracting is predicated on this type of metric. Since performance-based contracting is now required under the *FAR* for all service contracts, it is a given that this output- and outcome-based metric should be of critical concern to activities conducting, or considering, contracting out procurement functions.

Related to the control measures indicated above in the process metrics is a subset within the output and outcome framework of metrics: compliance. In this context, compliance is viewed in a past-tense manner, to determine after-the-fact whether statutes, regulations, instructions, and desired business protocols were adhered to, as indicated by the auditable final product and its associated documentation.



Business entities, which either are or are contemplating contracting out procurement functions, should have metrics that can evaluate the efficiency and effectiveness of such action. These measures should include appropriate baseline data, or standards, against which any organizational and/or protocol change is made. Just as important would be an Acceptable Quality Level (AQL) measure which is used to monitor and control processes and outputs.

Brianas (2005) identified several metrics under output and outcomes which are applied to: (1) customer; (2) people; (3) process; (4) financial; and (5) value. He argues that any procurement analysis must incorporate these five major elements. His metrics within these five major categories are presented in Table 4-1.



**Table 4-1. Procurement Metrics**

<b>Category</b>	<b>Metric</b>
1. Customer	Customer Satisfaction Index
2. People	Employee Survey
	Workforce Stability
	Continuous Learning
	DAWIA Certification
	Acquisition Professional Community
3. Processes	E2E Metrics
	P-Card Delinquency
	DD1716
	Interest Penalties
	Cycle Time
	Consolidate Service Contract
4. Financial	Procurement Direct/Indirect Ratio
	Industry Spend Analysis—Competition
	Industry Spend Analysis—Small Business
	Industry Spend Analysis—Commercial Items - Actions
	Industry Spend Analysis—Commercial Items - Dollars
	Industry Spend Analysis—PBSA - Actions
	Industry Spend Analysis—PBSA - Dollars
5. Value	Performance Unit Costing—Large Contracts
	Performance Unit Costing—Simplified Acquisition Proc.

These are the main areas being monitored under current procurements by the Navy. However important these data are, it may not give specific information for adequate management and control of the myriad of functions under contracts for procurement functions. These will require specifically tailored metrics for individual



functions identified and called forth at the contract level. Notwithstanding this deficiency, these are valuable measures to consider.

**c. Quantitative and Qualitative Metrics**

Metrics spanning the other genres of classification (whether organization level or strata, application association, or any other classification), may further be defined as quantitative or qualitative, or as a hybrid of the two. This classification can also be characterized or labeled as a specific attribute measure. Quantitative metrics can encompass an organization's productivity, such as total contract actions (e.g., by type of action, award, modification) or dollars. These are, by nature, relatively easy to measure with existing systems. Qualitative measures may be less tangible in nature than quantitative measures, and as such, may be more challenging to adequately define and measure. Such measures may include customer satisfaction, which can vary from customer to customer, and can be dependent on factors not specifically subject to the immediate measurements themselves.

**d. Contract Metrics**

The last area of measurement within the specific contract action may embrace the quantitative and qualitative measures indicated above in addition to other contract-unique requirements. This last measurement is of great importance, and often one of the most challenging for contract professionals to adequately utilize. The challenge comes from the diversity and complexity of the myriad types of procurements within DOD organizations—varying from base operating support to advisory and technical assistance, and a whole spectrum of services and commodities. Add the mandate for the use of performance-based service contracting, and the emphasis in this area becomes even more critical.

Naegle's software measurement and metrics presentation highlights many of the challenges in developing sound metrics in software acquisition, and is important in this discussion to highlight the challenges in creating contract-specific metrics. While software development is unique in numerous ways (lack of physical dimensions, highly complex, logic-intensive, difficult interfaces, human intensive, and





critical to the systems it operates), it has many similarities to service contracts involving complex processes. Government procurement functions have several of these features. Naegle emphasized three main types of metrics: management, process, and quality. There are clear parallels that can be drawn between these software metrics and the contracting out of procurement functions.

Notwithstanding the challenges of creating metrics for individual contracts, using the Malina and Selto work first presented in Chapter III, all construction of metrics for individual contract actions should consider whether the metrics contemplated for use are diverse and complementary, objective and accurate, informative, more beneficial than costly, causality related, strategic communicators, create incentive for improvement, and are supportive of improved decisions. Many recent studies have indicated that DOD needs continued emphasis to create sound and objective measures and metrics in its contracts.

#### D. Chapter Summary

This chapter provided essential background and foundational information necessary for understanding key aspects of contracting out the contracting function, and some of the complex issues germane to any further examination and analysis. Specifically, brief discussions concerning inherently governmental functions, conflicts of interest, the *FAIR Act*, personal services, ethics, acquisition principles, the contracting process, the integrity of the contracting process, the *Defense Acquisition Workforce Improvement Act*, contractual remedies, advisory and assistance services, interagency procurement, and metrics and measures of effectiveness and efficiency were presented. The following chapter will present specific results from the Policy and Senior Management surveys and interviews with senior contracting officials. Chapter VI will provide results from the Management and Operating Level surveys.



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## V. Survey and Interview Results from Policy and Senior Management Personnel

### A. Introduction

This chapter addresses research results from the surveys and interviews involving Policy and Senior Management personnel. Most sections are focused around one or more survey questions. All interviewee comments related to that area have been integrated into the discussion. Survey responses and interviews involving Management and Operating Level personnel are presented in Chapter VI.

The Policy and Senior Management surveys and interviews speak to the following subject areas: (1) the contracting process; (2) inherently governmental functions; (3) personal services relationships; (4) conflicts of interest; (5) legal issues; (6) ethical issues; (7) workforce experience and qualifications; (8) the necessity for a policy statement, (9) the authority used for procuring contracting services; (10) reasons for acquiring procurement functions; (11) impact on the contracting system; (12) integrity of the contracting process; and (13) workforce and workplace issues.

### B. Policy and Senior Leadership Surveys and Interviews

#### 1. Contracting Process and Contracting Functions

In querying participants about contracting functions, it was felt that their perception of the process was an underlying element needed to discern the issues to be explored. In order to obtain this insight, the first survey question focused on the respondent's perception of which contracting functions are included in the contracting process. **Question 1** asked:

**“What is your understanding of the scope of the term ‘contracting functions’ or ‘procurement functions?’”**



Some respondents provided an explanation of the contracting process and listed specific steps which occur, while others listed functions performed by contracting personnel in executing their procurement responsibilities. Still others made a general statement that it covers all actions taken by an 1102-series Government employee, or that it covers all functions required to satisfy a customer's needs via a contract. Respondents recognized that it included the acquisition of goods and services to include all elements of planning, executing, administering and closing out a contractual action. Acquisition means obtaining these goods and services either through lease or purchasing. A few distinguished between pre-award and post-award tasks which were recognized as contract formation and contract administration respectively. Some suggested that it could include grants, cooperative agreements and other transaction authority, while others specifically excluded grants and cooperative agreements. The *FAR* definition excludes both grants and cooperative agreements. One response pointed out that, unlike the commercial sector, Government contracting is governed by statutory and regulatory requirements imposed by higher authority, such as Congress, DOD, the Services and major buying Commands.

Some responses were from a Systems perspective and suggested that these terms denote a broad range of contracting support to DOD requirements generators including: (1) procurement planning and business advisory services that usually occur very early on in the acquisition process; (2) contract execution, including developing and executing solicitations and contracts and obligating procurement dollars; and (3) contract administration. All these functions can occur at every stage of the acquisition process, from Concept and Technology Development to System Development and Demonstration to Production and Sustainment to Removal of equipment from the inventory. In addition to Systems contracting support, these functions also cover other types of services that require contracting support, such as installation and Service contracting needs.



Most responses were generally consistent with the *FAR* definition of “contracting,” and some even referenced the definition. Only a few included the action of determining requirements, a function which precedes contracting and is specifically excluded from the contracting process by the *FAR*. A couple of respondents took the question to be asking about their experience and knowledge of the contracting profession and explained their credentials and background. A few respondents specifically included actions involving other agencies, such as the Defense Contract Audit Agency (DCAA), the Department of Labor (DOL), the Courts, and the General Services Administration (GSA).

One respondent provided an extremely articulate definition of procurement that captures several of the business concepts involved in contracting and depicts the cultural approach needed to successfully accomplish acquisition.

Partnering with a requiring activity to understand requirements and develop an acquisition strategy. Translate that requirement into a solicitation assuring that all applicable statutes, regulations and policies are included. Develop a business strategy for soliciting offers and negotiate the best deal on that strategy to satisfy the requiring activity’s needs. Partnering with industry and the customer to assure performance with contract terms and conditions and assure performance of the contract. Negotiate changes as needed and determining an equitable adjustment for same. Close out the contract at completion.

The *FAR* definition of the contracting process was explored in Chapter IV.

## **2. Inherently Governmental Functions**

Central to the issue of contracting for procurement functions is the idea held by many that the entire contracting function is inherently governmental. As found in the literature, there is a growing opinion that, although the entire function may be considered inherently governmental, there are certain tasks within the overall contracting responsibility that definitely should not be considered inherently governmental. These tasks might be considered candidates for performance by



private industry. Also, as noted in Chapter II, there is not complete agreement as to exactly what are and what are not inherently governmental functions. One organization's call as to inherently governmental is another organization's call as to non-inherently governmental. It is up to each organization to decide for itself what it will include on the IGF list.

Three questions on the survey address the issue of inherently governmental functions. These questions attempted to discover the following: the extent to which an organization has ever wrestled with the distinction between IGF and non-IGF due to a capability deficiency; the extent to which IGFs are being performed by contractors; and, from a non-exhaustive list of contracting functions, which are deemed inherently governmental and which are not.

**a. Capability Deficiency**

Many organizations have had to face a decision concerning what is and what is not an inherently governmental function because, for one reason or another, they were unable to accommodate performance of the function. To determine the extent to which organizations were forced to make this distinction because a capability deficiency existed, the survey questioned respondents on this point. **Question 6** asked:

**“Has a capability deficiency in your organization ever caused you to have to assess and determine whether a function was inherently governmental or non-inherently governmental? \_\_\_\_Yes \_\_\_\_No If yes, briefly explain.”**

The results are displayed in Table 5-1.



**Table 5-1. Capability Deficiency has Caused Organizational Determination of Inherently Governmental Functions**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	2	3		5
Navy/Marine Corps	8	10		18
Air Force	2	3		5
Defense Agencies	5	8		13
Non-Federal Agencies	1	3		4
<b>Total Surveys</b>	18	27		45
<b>Percentage</b>	40%	60%		

The results indicate that forty percent of the respondents have had to determine if a function was inherently governmental as a result of a capability deficiency. In most cases, the reasons were a shortage of personnel (frequently expressed in terms of full time equivalents) to perform the workload, high personnel turnover, the loss of corporate expertise and experience through attrition and retirement, or a temporary shortage in the skills needed to provide full contracting effort. One respondent explained that because they are careful to evaluate contract requirements for organizational conflicts of interest, this sometimes results in an analysis of the types of tasks necessary for the requirement and whether they are inherently governmental. Another respondent found that the desire to use a consultant caused an examination of the entire procurement process to ensure there were no integrity issues. Some expressed that the determination was caused by a capacity deficiency rather than a capability deficit. They have labor dollars to hire contractors but are unable to recruit and retain Government contract specialists. Some respondents stated they consider the entire contracting function to be



inherently governmental and any movement toward contracting out this function will have serious long-term ramifications.

**b. Inherently Governmental Functions on Contract**

Without attempting to find specific cases in which the restriction on contracting for inherently governmental functions was being contravened, a question was asked about the respondent's knowledge where functions identified as inherently governmental, or exempt from competition, were in fact being placed on contract. **Question 7** asked:

**“To your knowledge, are any functions that have been determined to be inherently governmental or exempt from competition being performed by contractors? \_\_\_\_\_ Yes \_\_\_\_\_ No”**

The results are displayed in Table 5-2.

**Table 5-2. Are Inherently Governmental Functions Being Performed by Contractors?**

Organization	Yes	No	NA	Totals
Army	0	5		5
Navy/Marine Corps	2	16		18
Air Force	1	4		5
Defense Agencies	4	9		13
Non-Federal Agencies	1	3		4
<b>Total Surveys</b>	8	37		45
<b>Percentage</b>	18%	82%		

The results indicate that slightly less than twenty percent of the respondents know of IGFs or functions considered exempt from competition that are being





performed by contractors. Some of this is accounted for by the fact that the respondent believes it is an IGF, but those who decided to contract out the function do not. Even within the same organization, there are differences of opinion as to what can be appropriately performed by contractors and where they should not be permitted to participate. Nonetheless, there are some who believe the rules concerning contracting for IGFs are being violated.

**c. Identifying Inherently Governmental Functions**

Most reports and studies consulted during this research specifically avoided trying to determine which contracting functions are inherently governmental and which are not. Although not comprehensive, the researchers constructed a list of functions typically cited as being one or the other. Knowing that the decision as to the status of a function as being one or the other is a matter of policy, and could, therefore, differ among organizations, the researchers nevertheless asked respondents to state their position on this selected list. **Question 8** asked:

**“Within the context of your organization, which of the following functions are inherently governmental and should not be contracted out and which are non-inherently governmental and could potentially be contracted out? Provide qualifying comments if needed”**

The results are displayed in Table 5-3.



**Table 5-3. Inherently Governmental vs Non Inherently Governmental Functions**

<b>Function</b>	<b>Inherently Governmental</b>	<b>Non-Inherently Governmental</b>	<b>No Answer</b>
Requirements determination	36	9	
Developing Statements of Work	13	32	
Structuring market research	14	31	
Conducting market research	10	35	
Performing acquisition planning	27	18	
Developing solicitation documents	14	31	
Issuing solicitation documents	30	15	
Developing and applying evaluation criteria	32	12	1
Member of Source Selection Evaluation Board	32	13	
Evaluation of proposals/offers	24	20	1
Performing cost and price analyses	16	29	
Negotiating contract prices, terms & conditions	36	9	
Structuring and approving incentive plans	39	6	
Preparing price negotiation memoranda	26	19	
Awarding contracts	44	1	
Negotiating contract modifications	34	11	
Determining cost allowability	38	7	
Exercising options	37	8	
Assessing contractor performance	31	14	
Implementing action based on contractor performance	35	9	1
Accepting or rejecting goods and services	40	5	
Terminating contracts	45	0	
Preparing contracts for closeout	9	34	2

There is unanimous opinion that terminating contracts is an inherently governmental function, while only one individual believes that awarding contracts is not. These two functions are very closely identified as requiring a Contracting Officer's decision and demand specific action by a warranted Contracting Officer.



Developing statements of work, structuring and conducting market research, developing solicitation documents, performing cost and price analyses, and preparing contracts for closeout are predominantly considered non-inherently governmental. All other functions listed in Table 5-3 tend to be considered inherently governmental. Several respondents commented that the administrative and support effort leading up to many of the functions they listed as inherently governmental are tasks that could be performed by contractors.

In commenting about their replies, several respondents cautioned that the potential for organizational conflicts of interest must be properly managed. Some suggested that although a function, e.g., requirements determination, was inherently governmental, contractors could assist in its performance if the Government provided proper scrutiny and the potential for OCI was controlled. Others stated that requirements determination is a non-IGF and could be performed by contractors, but that issues of OCI must be closely watched. While citing some functions as non-inherently governmental, several respondents made caveats about their selection, such as: contractors should have a very limited role, contractors must use Government policies and procedures, procurement can be performed with Government oversight to assure transparency, and other similar statements.

### **3. Personal Services**

The issue of personal versus non-personal services has plagued the contracting process for several years. Contracts for personal services are prohibited with certain exceptions; performance of procurement functions under contract is *not* one of the exceptions. Although a carefully crafted services contract may appear to avoid the problem of personal services, it generally becomes the manner in which the contract is performed that determines the actual relationship that exists between the buyer and seller. If there is a definite employer-employee relationship that, de facto, exists, a personal services contract has been created.



As noted in Chapter IV, personal services distinctions have become extremely blurred. To get at the issues involved, **Question 11** asked:

**“Is there a potential problem with personal services relationships when contracting out procurement functions? \_\_\_\_Yes \_\_\_\_No”**

The results are displayed in Table 5-4.

**Table 5-4. Potential Personal Services Problem?**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	4	1		5
Navy/Marine Corps	17	1		18
Air Force	4	1		5
Defense Agencies	10	3		13
Non-Federal Agencies	4	0		4
<b>Total Surveys</b>	39	6		45
<b>Percentage</b>	87%	13%		

An overwhelming majority of the respondents believe there are potential personal services relationships that could become problematic when acquiring procurement functions. Some believe that poorly defined Performance Work Statements (PWSs) or Statements of Work (SOW) will almost automatically lead to a personal services relationship in order to accomplish the contractual effort. They emphasize that this can be avoided if the requirement is properly structured. Others have noted that a performance-based SOW is very difficult to develop and implement. Even if the SOW is written precisely, the danger is that management will openly engage in direction to contractor employees in order to get the work done on schedule. Contract award requires much higher level review and interaction with the



author of documents. These exchanges, if done by Contracting Officers and contractors, could be interpreted as personal services. The co-location of contractor employees in Government facilities certainly creates the appearance that they are Government employees, if not actual treatment as such. Personal services relationships will occur no matter how often people are counseled on the “arm’s length” relationship that must be maintained. Some pointed out that this same problem is also faced in other Government disciplines.

Some believe that many of the contracting functions that might be contracted out are so closely intertwined with functions that must be performed by Government personnel (e.g., a Contracting Officer) that a personal services relationship will almost certainly develop since it will be so easy for the Government to assume the role of “supervisor.” Contracting Officers, by nature, are used to giving directions and instructions to those performing acquisition functions. Their authority places them in a decision-making role.

In turn, for expediency reasons, contractor personnel may start asking for guidance from Government employees and lose all sight of the contractor relationship. Contracting approval relies on the research and preparation of contractor employees. Over time, a relationship develops due to the close nature of the work and a certain level of trust needed to be an effective team. Yet, participants must remain mindful that a line still exists between the Government and the contractor.

Some respondents are resigned to the fact that improper personal services relationships will exist even under the best of circumstances.. With a blended workforce, it is easy to forget that contracted employees sitting next to Government employees answer to and work for their company instead of the organization. They believe that the only effective way to work in a contracting environment that is constantly changing and responding to the issues of the day is for Contracting Officers to be able to interface directly with contract specialists and support staff. If



these specialists and support staff are contractor employees, this will be personal services.

Respondents stress that the Government needs to ensure that the factors that prevent it from becoming personal services must be tightly controlled. This includes the supervision of contractor personnel by a contractor manager (e.g., project manager), the requirements are clearly defined as expected outcomes, and the organizational structure and location of contractor employees is such that Government personnel and the general public (including other vendors and other agency Government employees) can easily discern contractor personnel. The organization should maintain a training program to heighten awareness of the potential for personal services and to ensure that everyone adheres to the limitations regarding inherently governmental functions.

#### **4. Conflicts of Interest**

There is always concern regarding actual or perceived conflicts of interest in Federal Government procurement. The Government's policy is that procurement officials in all phases of the process be carefully alert to identify and avoid both personal and organizational conflicts of interest. In services contracting, particularly where contractor employees are performing services at a Government facility in close proximity to Federal employees, the opportunity for both types of conflict increase significantly. Most of the examples of circumstances in which conflicts of interest could occur cited in *FAR* 9.5 are very closely related to contracting and acquisition tasks. In attempting to recognize specific conflict of interest conditions that might exist in obtaining procurement services, **Question 12** asked:

**“How could a conflict of interest situation arise when contracting for procurement services?”**

Although a few individuals indicated that conflict of interest situations should not be a problem if due diligence is exercised, most respondents identified situations which caused them concern.



The obvious organizational conflict of interest cases wherein contractors possess proprietary information that might give them an unfair competitive advantage were cited quite often. A contractor cannot be involved in requirements determination and then, in turn, bid on a resulting solicitation. A sole source contract to the company who helped develop the requirement would, at the very least, appear to be a conflict of interest. A contractor could be delivering procurement services to a Government office and, at the same time, bidding on other contracts from that office. Access to procurement-related information which may possibly unduly assist the contractor's competitive status could be a potential conflict. The contractor could pass on privileged, proprietary, and/or sensitive business information that could be used to create an unfair competitive advantage for his or another competing company. A contractor could gain insight into how requirements were developed, future procurements, or the details of other contractors' operations. The more a contractor performs contracting functions, the greater the opportunity for access to such proprietary and sensitive business information. Obviously, a support contractor who is also an offeror cannot evaluate its own company's proposal, but offerors who are being evaluated by direct competitors on other solicitations could have a bias against giving them work.

The integrity of the contracting process is called into question when support contractors are performing evaluations and assessments of other contractors, particularly when the firms involved are "competitors." Contractors who are performing quality assurance on others, negotiating with firms, evaluating performance, accepting products or services, and other similar interactions with companies create an opportunity for an impression that the support contractor is performing in its own best interests. When a contractor's "contract specialist" is negotiating with an offeror with whom it has a financial interest, this could lead to a conflict of interest. The question is, would the Government even know that a financial interest existed? Some believe that it is important for contractor personnel to disclose their interests in the same manner as Government contracting personnel. Some believe that contractor development of a preliminary SOW in a program office



could lead to a conflict of interest with the effect of excluding the most knowledgeable contractors and reduced competition.

Some observe that there is real potential for abuse in that a contracted support person has access to intellectual property and proprietary business matters of competitive firms. After that individual leaves the firm engaged to provide the contracted services, he/she takes that knowledge to the open market. Government personnel have post-employment prohibitions that restrict the potential to abuse such information. Contracted personnel have no such limitations. Said one respondent, there are myriad opportunities for conflicts of interest to occur, such as: company loyalties and biases, and stock ownership and self-interests that are currently addressed for Federal employees and would have to be addressed in a very detailed fashion with legitimate and strong consequences for breeches. Another echoed this concern with the financial interests of spouses, minor children, general partners or an organization in which they have an arrangement for prospective employment. In addition, this relationship would raise the appearance of loss of impartiality.

Some respondents pointed to organizational relationships and associations as posing a critical problem. With the considerable amount of mergers and acquisitions that have occurred and might occur in the future among various companies, the organizational affiliations are often not quite so obvious. A support contractor performing contracting services where no organizational conflicts appear to exist might acquire, or be acquired by, a company which presents an immediate conflict. The competitive status may not be direct, but might occur subtly through divisions of complex corporate structures, wholly owned subsidiaries, partnerships and alliances, and other similar arrangements that are transparent to the cursory observation.

Day-to-day activities could be affected by the careful adherence to potential conflicts of interest. Those who call meetings to discuss contracting issues or strategy which may affect a support contractor must be attentive to exclude those





company employees who would otherwise be in attendance. There are less internal controls over contractor employees which lead to less process integrity.

Issues regarding source selection sensitive information are always a concern. The potential disclosure by support contractors of information related to their contracting tasks to interested vendors could certainly provide an unfair advantage.

Some respondents commented that personal conflicts of interest could also arise on the part of Government employees. Working so closely with contractor employees, they could observe individuals performing contracting functions for which they are paid at a far lower Government rate. Future employment opportunities might be very attractive and could cloud their judgment and decision-making ability toward the best interests of the Government. This may become particularly acute when the support companies are staffed with former Government employees who are well-known to the Government personnel, possibly having even supervised or are close friends of these workers. Making it even more complicated would be situations in which former Government workers obtained employment with a support contractor's competitor.

## **5. Legal Issues**

The DAU report concluded that there were no legal or statutory restrictions concerning contracting for procurement services. To determine if this was generally understood among contracting professionals, the survey inquired about such restrictions or limitations. **Question 9** asked:

**“Are there any legal issues or impediments associated with contracting for procurement functions? \_\_\_\_Yes \_\_\_\_No”**

The results are displayed in Table 5-5.



**Table 5-5. Legal Issues?**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	4	1		5
Navy/Marine Corps	16	2		18
Air Force	5	0		5
Defense Agencies	12	1		13
Non-Federal Agencies	2	2		4
<b>Total Surveys</b>	39	6		45
<b>Percentage</b>	87%	13%		

Over eighty-five percent of the respondents reported that legal issues existed in the process of contracting for procurement functions. The majority of these responses, however, related to either: (1) contracting out of inherently governmental functions or (2) organizational and personal conflicts of interest. The responsibility of the Contracting Officer to perform certain decision-making functions was frequently cited. Some respondents commented that making decisions about contractor status, such as determining competitive range or consideration for not meeting performance metrics, must be made by a warranted Contracting Officer. Decisions that could benefit or be harmful to an offeror or contractor must be made by responsible Government employees. Some highlighted their response by indicating that there would be potential legal issues only if the Government did not carefully manage the situation with appropriate firewalls, confidential disclosure agreements from contractors and their personnel, and careful training of Government personnel. Having contractor employees involved in the process could lead to situations where these employees provide their employer with information prior to issuance of a solicitation, during the evaluation process, or after award that could give the company an unfair competitive advantage.



Several respondents brought up the need for non-disclosure statements or agreements from support contractors, both from the corporation as an entity and from individuals within the corporation, in order to avoid the improper, and potentially illegal, release of proprietary or classified information, including inappropriate transfer of technology.

An important issue raised by some survey respondents and mentioned by interviewees is the fact that most of the statutes regarding improper, and possibly illegal, procurement actions apply to Government employees but not to contractors. There is even discussion as to whether one or more of the rules which apply to Federal employees should be extended to contractors performing contracting functions. Further, pondered one respondent, would the Government be liable if court action was taken by a harmed competitor due to the contractor's improper disclosure of proprietary information while acting as a Government "contracting agent"?

## **6. Ethical Issues**

Ethical considerations are important in every contracting action. Although the circumstances in a particular contractual action might not be cause for apprehension, procurement officials should be constantly attuned to the ethical pattern surrounding an action and immediately express any hesitation or uneasiness sensed. In order to determine the extent to which individuals felt procuring contracting functions might be an ethical problem, **Question 10** asked:

**"Are there any ethical issues associated with contracting for procurement functions? \_\_\_\_Yes \_\_\_\_No If yes, please explain"**

The results are displayed in Table 5-6.



**Table 5-6. Ethical Issues?**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	3	2	0	5
Navy/Marine Corps	16	2	0	18
Air Force	5	0	0	5
Defense Agencies	7	5	1	13
Non-Federal Agencies	4	0	0	4
<b>Total Surveys</b>	<b>35</b>	<b>9</b>	<b>1</b>	<b>45</b>
<b>Percentage</b>	<b>78%</b>	<b>20%</b>	<b>2%</b>	

Almost eighty percent of the respondents believe that ethical issues are associated with contracting out of procurement functions. Many of the respondents cited organizational conflicts of interest, both actual and perceived, as the key ethical concern. OCI issues can arise very quickly in this scenario and must be mitigated as soon as possible. Another issue is contractor access to proprietary or sensitive data. Obviously, data from other contractors, particularly technical and cost information, can be easily compromised without careful safeguards and restrictions. Non-disclosure statements may provide some level of security to prevent contractors from divulging proprietary data, but one instance of inappropriate release of data can put a black cloud over the entire process. If co-located, contractor employees working alongside 1102s would be more likely to have access to procurement-sensitive information, even though they are not using the information and, therefore, have no need for access. There is a real issue of overhearing advanced acquisition information if located in a contracting office or even a Government technical office. Some respondents felt that firm firewalls would have to be established to prevent such occurrences, which only lead to greater inefficiencies in the system.



Several respondents stressed that loyalties of employees rested with their employers. Government personnel are expected to demonstrate their allegiance to their Federal employer and, one would assume, contractor employees are likewise faithful to their firm. Contractor personnel are responsible for obtaining the best return for their owners. Their jobs, salary and bonuses may be tied to the viability of the company. Their allegiance is first to the company and second to their customer. This can easily come in conflict with the protection of the interests of the United States.

One respondent believed that this situation allows Government personnel to easily abdicate to others the responsibilities they hold to protect taxpayers. Another stated that to maintain total trust in the system, minimal or no contractor participation should occur. Supporting this, another believed the judgment of a Government employee, not someone with motivations other than doing what is best for the Government, should be employed in these decisions. Substituting someone else's judgment is defaulting on our responsibilities as stewards of the citizens' trust. Ethically, there is a need to ensure the integrity of the process and ensure fairness and objectivity to both Government and contractor.

One individual who responded with a "No" believed that it is important that companies doing business with the Government understand that private firms are assisting with contract specialist functions. Our solicitations carefully make known that contractors will be assisting with contract award documentation, administration and close out documentation functions. Another felt that ethical issues are not involved as long as contractors do not make direct decisions outside the expressed guidance of the cognizant Government person they are representing.

Some respondents cited the Government's requirement for financial disclosure by certain Federal employees to ensure senior officials do not have interests that might be counter to the Government. These same financial disclosures, however, do not currently apply to contractor personnel who may be participating substantially in Government contracting processes. Furthermore, who



monitors the contractor to this level? Obvious OCI relationships might be easier to recognize, but contractor procurement specialists who hold private interests with business associates or even family members are not so easily observed.

Some interviewees mentioned the effect that has taken place as a result of the Darleen Druyun case. It caused the Services to immediately examine their internal checks and balances to ensure that safeguards existed and were working to prevent reoccurrence of such a situation. Another effect has been suspicion on the part of industry that other individuals in Government with similar “power” might also be less than upstanding in their actions. Not since “Operation Ill Wind” has the procurement profession seen such an egregious transgression of responsibilities to the Government.

## **7. Experience, Qualifications and Training**

### **a. *Defense Acquisition Workforce Improvement Act Requirements***

One might consider that because Government employees entrusted with contracting responsibilities are required to comply with *DAWIA* provisions, the individuals to whom these responsibilities could be transferred might also be required to have the necessary qualifications to accomplish contracting tasks. This consideration generated two *DAWIA* questions on the survey. **Question 13** asked:

**“Do the *DAWIA* requirements have any bearing on the procurement of contracting functions? \_\_\_\_Yes \_\_\_\_No”**

The results are displayed in Table 5-7.



**Table 5-7. Do *DAWIA* Requirements Have Any Bearing on Contracting Out Procurement Functions?**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	3	2	0	5
Navy/Marine Corps	12	5	1	18
Air Force	4	1	0	5
Defense Agencies	11	1	1	13
Non-Federal Agencies	2	1	1	4
<b>Total Surveys</b>	32	10	3	45
<b>Percentage</b>	71%	22%	7%	

The majority of respondents believe that there are *DAWIA* implications in acquiring procurement services. *DAWIA* provides minimum statutory professional standards for individuals performing contracting responsibilities. They state that personnel involved in forming and awarding contracts must have attained appropriate levels of training and experience demonstrated by certification to ensure a professional and competent workforce. These requirements are important elements to ensure that individuals working in the field have the ability to think logically and have the training to execute the acquisition. When using contractor personnel, where there is not a similar commercial certification, it is difficult to determine whether these personnel have the appropriate education and training to perform certain procurement functions. We should insist that contractors providing procurement services have the same level of competence, which *DAWIA* certification measures, as Government personnel. Because the expectations for Government contracting personnel have been raised over the last fifteen years, the same should be true for any contractor employees who are hired to perform these functions. The job has become more complex and minimum standards have been



established. If responsibilities are to be handed over to contractors, taxpayers have a right to expect the same level of expertise. One respondent looked at the *DAWIA* implications as an issue of inhibiting the growth of Contracting Officers, since many of the functions contractors are likely to perform are the more junior-grade level tasks. A lack of *DAWIA* requirements at the lower levels would leave a significant experience gap. Another felt that because *DAWIA* requirements are so demanding, it has become more difficult to hire Government employees into the field.

Some Government organizations have used *DAWIA* qualifications, or equivalent, as an evaluation criterion in assessing offerors who seek to perform contracting functions. Subsequently, these qualification requirements are placed in the Statement of Work which is incorporated into the contract. Others use *DAWIA* language to describe desired qualifications and expertise sought by the agency, or include them as part of labor category descriptions. One respondent felt the impact could require significantly greater *DAWIA* training resources if contractors need to be certified.

In supporting a negative response, some respondents do not believe that *DAWIA* applies to contractor personnel. For some, *DAWIA* only comes into play for the inherently governmental duties. Contractor personnel will not be Contracting Officers and will not be taking DAU courses. If training is needed, there are plenty of commercial courses available. Further, most contractor specialists are former civil servants or military who already hold *DAWIA* credentials.

**b. Imposing Certification Requirements on Contractors**

To explore the feasibility of applying *DAWIA* certification or requirements similar to *DAWIA* qualifications to contractors, **Question 17** asked:

**“Should contractors be required to comply with *DAWIA* or ‘*DAWIA*-like’ certification requirements as a condition for receiving contracts for the performance of procurement functions? \_\_\_\_ Yes \_\_\_\_ No”**





The results are displayed in Table 5-8

**Table 5-8. Should Contractors be Required to Comply with DAWIA Requirements?**

Organization	Yes	No	NA	Totals
Army	4	1	0	5
Navy/Marine Corps	8	9	1	18
Air Force	3	2	0	5
Defense Agencies	12	1	0	13
Non-Federal Agencies	2	1	1	4
<b>Total Surveys</b>	29	14	2	45
<b>Percentage</b>	65%	31%	4%	

Almost two-thirds of the respondents believe that some form of *DAWIA*-type certification should be imposed as part of the contractual arrangement for these services. Curiously, some respondents replied “No” to question 13 and replied “Yes” to this question.

If these requirements are essential for DOD employees in the acquisition career field, some say, it is not practical to lower the standards for contractor personnel. DOD needs to assure that its total workforce, inclusive of contractors, is the best trained to perform all functions. All working in this field should have the same minimum standards of proficiency set by *DAWIA*, which provides a common understanding and definition. These standards are both beneficial and useful for setting expectations of the contracting workforce; they also help keep everyone current in the latest practices in the acquisition field. Just as in any other performance-based acquisition, the personnel that the offeror is proposing to employ will have to meet certain qualifications as a condition for receiving a contract to



perform procurement functions. To ensure qualification of contractor employees, *DAWIA*-like certification requirements should be properly described in the solicitation and be a valid evaluation criterion. The knowledge is required to perform the function, so why make a distinction based on the badge the individual happens to wear?

One respondent stipulated that *DAWIA*-like requirements should only apply to contractor employees acting as Government contract specialists to ensure the same level of capability and professionalism. Narrow portions of the process, however, such as market research, should not require *DAWIA* since the Government is typically using contractors to gain more professional capabilities than could be obtained within its own workforce. For example, the fact that a contract specialist has *DAWIA* certification would not make him/her a better market researcher than a person working for a commercial firm that specializes in market research for specific industries. Requiring a similar *DAWIA* certification would limit competition for market research needs and drive up the price to obtain the support.

Those responding “No” claim that *DAWIA* applies only to Government military and civilian personnel, particularly Contracting Officers who have the responsibility for obligating the Government. Unless we authorize personal services for this work, we should not use Government standards to qualify contractor employees. Offerors may propose employees who have been *DAWIA* certified as a prior Government employee and the Government agency may rate previous *DAWIA* certification higher than the competition without it, but *DAWIA* standards as currently written in statute do not apply to employees of private industry. Instead of attempting to impose *DAWIA* requirements, say some, make the requirement performance-based and apply best value concepts.

Other individuals responding “No,” point to the fact that most contractor personnel already have *DAWIA* credentials or are learning on the job. Some suggested that they would hate for some program which is designed to get better trained contractors be the reason for sending those employees out the door because



they didn't "measure up." Applying a Go/No-Go standard to who can work on the actions makes the Government's mission more difficult to accomplish. A simpler solution is the power of the marketplace. When a contractor fails to perform in accordance with expectations, the Government warns the contractor. If performance does not improve, options are not awarded, contracts are terminated, and past performance documentation impedes the contractor from winning new awards. One respondent stated that since contractors are not permanent employees, it would be a waste of resources to attempt to mold them into Contracting Officers with a detailed knowledge of the procurement process.

A few respondents said contractors should not be performing any Government procurement functions, which makes *DAWIA* certifications a moot point.

## **8. Policy Statement**

A policy serves to guide and direct those who are to take specific actions. It is usually written in broad terms in order to point out the general parameters within which operating procedures should be developed. Although policies and procedures exist regarding contracting for services, none specifically address the acquisition of contracting or procurement services. Given the volatility of this subject, the need to issue a policy as well as the essential elements such a policy should contain, were explored.

### **a. Issuing a Policy**

The use of contractors to perform procurement services is relatively new. Although buying organizations appear to be appropriately using contractual methods to obtain these services, the fact that there is such a difference of opinion regarding the correctness of acquiring procurement services begs the question as to whether the general guidelines that a policy would define should be established. In order to address this issue, **Question 14** asked:

**“Should DOD or the Services issue a policy statement regarding the use of contractors to perform procurement functions? \_\_\_\_ Yes \_\_\_\_ No”**



The results are displayed in Table 5-9.

**Table 5-9. Should DOD or the Services Issue a Policy Statement?**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	3	2	0	5
Navy/Marine Corps	14	4	0	18
Air Force	1	4	0	5
Defense Agencies	7	5	1	13
Non-Federal Agencies	2	1	1	4
<b>Total Surveys</b>	<b>27</b>	<b>16</b>	<b>2</b>	<b>45</b>
<b>Percentage</b>	<b>60%</b>	<b>36%</b>	<b>4%</b>	

A majority of the survey respondents and interviewees indicated that a policy statement issued at senior DOD levels would be useful, perhaps even essential. Supporting their position, some asserted that agencies are getting too close to crossing the line regarding IGF and are risking compromising the integrity of the procurement process. They state that we need to define the threshold limits. One interviewee suggested that senior DOD leadership should question the need for a policy and, in so doing, solidify its position on the primary reasons supporting the necessity for a policy. Other interviewees asked “where is the playing field?” What are the “swim lanes?” What is acceptable and what is frowned upon? Contracting Officers don’t always think these issues through clearly and need appropriate guidance. DOD should bring the contracting leaders together to analyze and determine what the policy should state. It really depends on DoD’s overall goals and vision across the contracting workforce. One respondent believed a policy statement would disseminate information about procuring contracting services since not enough Commands are aware that this is an option for getting resources to



accomplish the job. Another affirmative respondent placed a caveat that the problem with blanket policy is that it often creates unintended consequences. One stated that the policy should prohibit the practice of contracting for procurement services.

Some of the negative replies maintain that sufficient policy exists in the *FAR* and from the Services; thus, additional guidance is unnecessary. Some stated that a policy is not needed, but that further guidance regarding conflicts of interest could be useful. Indeed, methods to reduce the road blocks to obtaining additional Government billets would be extremely helpful. A qualified “Yes” suggested that this is appropriate only if the agencies are fully supported with Government resources and give the activities time to hire and train to replace contractors. It appears this individual believed the policy would require such functions to be brought back in-house for Federal employee performance. Some respondents answered “No” but explained that it really depends upon what the policy would contain.

#### **b. Elements of a Policy**

Expecting that some respondents would reply to Question 14 positively, a follow-on question to determine the essential elements that should be included in such a policy was posed. **Question 15** asked:

**“If DOD or the Services were to issue a policy statement regarding contracting for procurement functions, what key elements should be included?”**

Almost all of the respondents who answered this question immediately stated the need for a clear definition of what is and what is not an inherently governmental function, although a few cautioned that a policy should not attempt to identify specific functions appropriate for contractor performance. Because there is so much diversity of opinion concerning many contracting functions, the need to identify Government-only functions was emphatic. The definition is needed in order to establish consistency among buying organizations and to serve as a benchmark for



threshold limits regarding work to be contracted out. Further, respondents felt it important to know what functions should not be contracted out even though they are not defined as inherently governmental.

Besides the IGF definition, respondents generally wanted to know the broad boundaries within which contracting out could occur. They point to the need for acceptable performance standards that will help mitigate the problem of actual or apparent personal services relationships. They also want to know to whom the policy will apply. Such a policy needs to take a management approach. It should incorporate limitations on the degree to which contractors should be used and allow organizations to opt in or out of the process. If they opt in, they should develop both short- and long-range plans which address the use of contractors and how they will develop future Contracting Officers. Tailored plans are more useful than a blanket policy because each organization has different issues, different requirements and different recruitment challenges.

Respondents felt the policy should: (1) identify the extent to which DOD endorses the continued use of contractor support, particularly in high-risk areas, but should not prohibit the use of contractors; (2) use language that provides flexibility and will allow each activity to implement the policy in their own way; (3) express “preference” for certain organizational actions as opposed to “dictating” actions to be performed; (4) provide clarification as to the generally acceptable instances for the use of contracted service and specifically identify the extent to which contractors can perform procurement functions; (5) identify an “order of precedence” from which functions are selected as workload increases or personnel levels decrease; (6) define the situations under which performance must be temporary or may be on a permanent basis (although many stated it should be temporary only); and (7) show how the inability to obtain contracting personnel affects the policy.

Respondents felt several key elements related to the security, safeguards and sanctions were essential to protect against improper behavior. These included the following: (1) a strict organizational conflict of interest clause in contracts which



prohibits contractors from bidding on any other agency work, (2) an identification of the organizational conflicts of interest that may become problematic and potential conflict of interest mitigation strategies, (3) a caution to protect procurement-sensitive information, (4) a list of those situations in which legal statutes or precedent applies, (5) a reminder of post-employment restrictions on former Government employees now working for contractors, and (6) an enumeration of disciplinary action or sanctions to be taken for failure to follow the policy.

Some key elements suggested by respondents focused on the use of authority and approval levels that should be put in place. These included: (1) identify the approval authority for using contractor workforce together with possible exceptions and extensions; (2) clearly state that contractors shall have no decision, determination or signing authority and cannot commit the Government or appear to be a Government employee; (3) emphasize and make clear that no Government personnel are to be working for or to be supervised by contractors; (4) specify levels of authority for contractor personnel; and (5) make no reference to quotas or numerical limitations.

Still other key elements focused on characteristics of the acquisition process that should be addressed. These included: (1) identify the risks and dangers of using contractors to perform procurement functions and how to minimize and manage these risks, (2) require a business case to determine if it is economically justifiable before using contractor support, (3) identify best practices in using contractors, (4) ensure all solicitations issued include a clause letting perspective offerors know that a contractor may be reviewing their proposal, (5) suggest measures or metrics to be used in evaluating and assessing contractor performance of procurement functions, (6) plan for phase out (exit plan) of the reliance on contract support as soon as possible, (7) use it for low-risk and low-visibility functions, (8) identify the types of contracts that should be used and those that should be avoided, and (9) provide language regarding potential problems with pay differentials.





Lastly, some key elements were suggested that should be specifically imposed on contractors. These included: (1) ensure corporations and their employees sign non-disclosure agreements; (2) restrict contractors to providing support or advisory services only; (3) require a specified level of training and experience that must be possessed by contractor employees (perhaps in terms of *DAWIA* requirements); and (4) identify the extent to which contractor personnel should and should not be involved in Government employee activities, such as social get-togethers, after-hours work functions, and similar events.

A few respondents maintained their position that the contracting out of procurement functions should be strictly prohibited in all cases and answered this question by stating the policy should forbid such contracting.

## **9. Authority**

As noted earlier in this report, a major policy of the Federal Government is that it will rely on the private sector for goods and services. *FAR 37* prescribes the policy and procedures that are unique to the acquisition and management of services obtained by contract. Commercial services are governed by the provisions of *OMB Circular A-76*. Agencies generally cite *A-76* as the authority for contracting out services previously performed in-house. The DAU report cited earlier in this report concluded that the acquisition of procurement services did not fall under *A-76*, but rather the provisions of advisory and assistance services (A&AS) found in *FAR 37.2*. In order to determine the authority buying organizations believe is appropriate, **Question 5** asked:

**“If your organization contracts out procurement functions, what authority does it cite? \_\_\_\_\_OMB A-76 \_\_\_\_\_Advisory & Assistance Services (*FAR 37*) \_\_\_\_\_Other”**

The results are displayed in Table 5-10.





**Table 5-10. Authority for Procuring Contracting Functions**

<b>Organization</b>	<b>A-76</b>	<b>A&amp;AS</b>	<b>Other</b>	<b>NA</b>	<b>Totals</b>
Army	0	2	1	2	5
Navy/Marine Corps	1	3	2	12	18
Air Force	0	1	0	4	5
Defense Agencies	0	8	2	3	13
Non-Federal Agencies	0	0	0	4	4
<b>Total Surveys</b>	1	14	5	25	45
<b>Percentage</b>	2%	31%	11%	56%	

Several individuals pointed to A&AS as the proper authority for obtaining contracting services. Over half of the respondents marked “Not Applicable” or did not provide an answer. Of those that responded “Other,” one questioned whether an authority citation was required. Most responses involved an explanation of what the agency was currently doing, such as using transition employees in support of an enterprise renewal, or that Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts were utilized for the skill sets needed. It appears that most believed the general authority for meeting requirements by contract is sufficient authority for obtaining procurement services.

## **10. Acquiring Procurement Functions**

A series of questions was asked to determine the extent and types of contracting functions being contracted out, the reasons why they may or may not be so obtained and the permanency with which contractors should be involved in performing contracting functions.



**a. Procurement Functions Contracted Out**

To determine the extent to which organizations might be contracting out various procurement functions, **Question 2** asked:

**“Are procurement functions being contracted out in your organization?  
\_\_\_\_Yes \_\_\_\_No If yes, which functions?”**

The results are displayed in Table 5-11.

**Table 5-11. Are Procurement Functions Being Contracted Out in Your Organization?**

Organization	Yes	No	NA	Totals
Army	4	1	0	5
Navy/Marine Corps	5	13	0	18
Air Force	1	4	0	5
Defense Agencies	11	2	0	13
Non-Federal Agencies	0	4	0	4
<b>Total Surveys</b>	21	24	0	45
<b>Percentage</b>	47%	53%		

This question was asked of policy and senior procurement personnel and, since many are located in headquarters or policy offices which have few, if any, procurement responsibilities, it was anticipated that some would respond in the negative. This was the case. From those who responded in the affirmative, the predominant function was contract closeout with performance on either a periodic or continuing basis. Also cited were market research, requirements development, statements of work, acquisition planning, drafting policy, developing evaluation criteria, evaluation of offers, technical advisors during source selection and a range



of contract specialist-type functions in preparation for a Contracting Officer's review and approval.

Some respondents stated that every function performed by existing 1102s is also performed by a contractor on-site, except for inherently governmental functions, such as decision-making or signing as a Contracting Officer with a warrant. These tasks include research and analysis leading to the preparation of positions and documents for the Contracting Officer's consideration up to the point of award or a decision. Some stated that all of the contract specialist's functions are performed, but then made some exceptions. These exceptions included negotiating prices and structuring incentive plans.

**b. Reasons for Contracting Out Procurement Functions**

To understand the basic reasons why contracting functions are procured, **Question 3** asked:

**“If you are contracting out contracting functions, what are the primary reasons for doing so?”**

The most frequently cited reasons for procuring contracting services were the lack of sufficient organic resources to meet workload demands and the lack of expertise. Over the past several years, continual downsizing and the failure to hire new personnel have put a heavy strain on contracting professionals. Funds seem to be more readily available for contracts than for Government employees. Further, contracted support allows flexibility to expand or shrink the numbers of personnel based on workload volumes. Also, due to the demands for qualified contracting specialists in certain metropolitan areas, (e.g., the National Capital Region), there is much less turn over on the contract personnel side when compared to the churn with Government personnel. Another reason is the unstable work environment currently driven by Base Realignment and Closure movements. After citing workload increases and the inability to get additional Government billets as the reasons for using contractors, one respondent wanted to make it clear that he did not really



desire to contract out for contract specialists. “My preference is to fill this need with Government 1102 civilians.”

In some cases, the very low priority assigned to contract closeout, which is viewed as an administrative burden, almost assures that it would not receive attention unless performed by contractors. Contract closeout is viewed as a repetitive specialty in which there is little risk to the Government. This frees up Contracting Officer teams to concentrate on pre- and post-award functions, where their business acumen and technical skills can add value.

Another reason for contracting out is to obtain technical and business practice insight into commercial capabilities that could be applied to Government requirements. One respondent stated the following:

Typically this expertise does not reside within the organization and there are commercial firms who specialize in researching specific industries and providing/selling that information to commercial and governmental organizations. The investment in the use of these firms is justified by the return via the effective implementation of commercial best practices and technology, better contract and pricing relationships and better selection processes that focus on past experience and technical, performance and cost/price risk.

**c. Reasons for Not Contracting Out Procurement Functions**

If organizations are not procuring contracting services, it would be important to understand the fundamental reasons. **Question 4** asked:

**“If you are not contracting out contracting functions, what are the reasons?”**

Respondents provided a variety of replies, however, the main themes were that sufficient organic resources existed and/or all contracting functions are considered inherently governmental and are, therefore, prohibited from being contracted out. *FAR* Part 7 and OMB regulations were cited as making these prohibitions. In some cases, although the organization did not define the functions



as inherently governmental, there is a preference or philosophy against contracting them out. Some felt their unique mission did not provide any advantages if the functions were outsourced. Some cited lack of funding as a reason. Some offices replied that they are small and are responsible for determining agency policy and the application of regulations, both areas which are considered inherently governmental. One respondent believed that anyone other than civil servants performing these functions could be biased. This belief was coupled with the concern that Government employees held responsible for approving and signing an award would be denied essential experience (e.g., negotiations) because these roles were contracted out. Taking an opposite position, one respondent stated, “Although I personally believe that many more functions could safely be contracted out, there is great resistance within both the leadership and the workforce in this HCA [Head of Contracting Activity] to using contractors in any of the contracting processes.”

**d. Using Contractors Temporarily or Permanently**

Many organizations have reported that they use contractors only on a temporary basis to perform contracting functions. Some personnel have complained, however, that even though the policy is to acquire such services on a temporary basis, these contracts have gone on for several years and appear to be permanent. To determine how respondents felt about limiting the length of time such contracts are used, **Question 16** asked:

**“Should the contracting of procurement services be permitted only on a temporary basis or allowed to be a permanent part of an organization’s acquisition resources? \_\_\_\_\_Temporary \_\_\_\_\_Permanent”**

The results are displayed in Table 5-12.



**Table 5-12. Use Contractors on Temporary or Permanent Basis?**

<b>Organization</b>	<b>Temporary</b>	<b>Permanent</b>	<b>NA</b>	<b>Totals</b>
Army	3	1	1	5
Navy/Marine Corps	15	3	0	18
Air Force	2	3	0	5
Defense Agencies	6	7	0	13
Non-Federal Agencies	2	1	1	4
<b>Total Surveys</b>	28	15	2	45
<b>Percentage</b>	63%	33%	4%	

Over sixty percent of the respondents believe that obtaining contracting services should be on a temporary basis only. Some wanted it limited to surge demands, while others felt a periodic reevaluation of need and internal capability should be the deciding point to continue under contract. One respondent suggested that it depends on the agency's policy. If the long-term plan is to convert back to the Government any functions contracted out after sufficient staff has been recruited and hired, then the timeframes could be in years. If the contracts are for certain functions, e.g., market research or requirements development, in which the contractor is typically engaged in a specific acquisition under a task order, then these are of a more temporary nature. One respondent felt that because different organizations have different requirements, it could be temporary for some and permanent for others. A good gauge would be an organization's ability to recruit skilled professionals.

Some of those who responded "permanent" felt they were recognizing reality. Since we have a long-term problem of getting additional Government billets, contracts should be placed on a permanent basis until and unless we can recruit and



retain a steady cadre of trained Government 1102s, which will take years. Contract closeout is an example of a recurring need where we may never be caught up and contracted services are, out of necessity, integrated into the normal workload.

## **11. Impact on the Contracting System**

Another set of questions was asked in an attempt to assess the affect contracting out of procurement functions would have on Government procurement decision-making and the development of Contracting Officers as well as the impact on companies that are or might be market participants pursuing Federal contracts.

### **a. Procurement Options**

*OMB Circular A-76*, in discussing inherently governmental activities, cautions that although a contractor does not have the authority to decide on a course of action, with agency oversight it might be tasked to develop options or implement a course of action. In such cases, private sector involvement might be so extensive that the ability of agency management to develop and consider options is or would be inappropriately restricted. To determine if there is a perceived affect on the Government's procurement decision-making ability to contemplate procurement options, **Question 18** asked:

**“Could contracting out of procurement services either (1) limit or (2) expand an organization’s decision-making ability to develop and consider procurement options? \_\_\_\_\_Limit \_\_\_\_\_Expand  
\_\_\_\_\_Neither Please explain.”**

The results are displayed in Table 5-13.



**Table 5-13. Could Contracting Out Limit or Expand an Organization's Decision-Making Ability Regarding Procurement Options?**

<b>Organization</b>	<b>Limit</b>	<b>Expand</b>	<b>Neither</b>	<b>NA</b>	<b>Totals</b>
Army	0	3	2	0	5
Navy/Marine Corps	5	6	7	0	18
Air Force	2	2	1	0	5
Defense Agencies	0	9	4	0	13
Non-Federal Agencies	0	3	0	1	4
<b>Total Surveys</b>	<b>7</b>	<b>23</b>	<b>14</b>	<b>1</b>	<b>45</b>
<b>Percentage</b>	<b>16%</b>	<b>51%</b>	<b>31%</b>	<b>2%</b>	

Slightly over half of the respondents believe the Government's decision-making ability would be expanded as a result of engaging in the procurement of contracting services. Responses focused on the benefits to be gained by having contractors involved. Some said the Government could hire the exact expertise (trained and experienced) rather than having to develop it in-house over time. Others indicated that the contractual avenue provides more options to accomplish the work, particularly when it frees Government personnel from mundane and repetitive tasks and allows them to focus on value-added functions which are the more time-intensive and issue-complex tasks that support customer needs. Perhaps the most compelling argument is that it opens the Government to industry business methods and practices, which gives added depth and breadth to the acquisition process. Contractors may be able to accomplish and supply market research and planning alternatives that would be more difficult for Government personnel to provide. Some believe the value obtained depends on the quality of the contractor workforce performing the procurement functions. If you have a robust contractor





group, then you are more likely to have an enhanced ability to consider procurement options.

One respondent pointed out that the Government has dedicated an entire part of the *FAR* to commercial item acquisition that encourages use of commercial practices. Having members from the private sector employed in a contractual supporting or advisory capacity may expose the Government to industry practices that may benefit many areas of contracting. Having people from differing backgrounds and diversity should improve the quality of discussions and considerations for acquisition options. Contracting out provides another tool for accomplishing the mission which gives us a better chance for success. Another stated that for market research and technical support, an expansion of our decision-making ability is the expected outcome and the reason why we hire these types of firms. Often within an organization, a method or process was developed and continues to be used without an update or the consideration of better alternatives. The Government needs to expand its efficiency capability when it comes to procurement practices.

A few respondents felt that contracting out would limit the Government's decision-making ability. Their reasoning basically centered on the experience and development that would be denied the Government workforce. We would be unable to cultivate fully competent journeymen or senior employees because they have not performed the range of procurement functions early in their careers. One cautioned that we are rapidly losing the expertise and historical knowledge base of our programs. Government personnel are potentially losing the ability to evaluate the adequacy of contractor work. Others felt a contractor might not have the Government's best interests in mind and would pursue only avenues that benefited them. "I would question input from a contractor performing procurement functions. Is the input based on what is the best approach or what is best for the company?" Some felt the support contractor might have made recommendations about alternatives, but that these never made it to the Government decision-maker. This



limits the options. A few respondents pointed to the limiting factors of conflicts of interest and personal services that would inhibit the sharing of ideas.

Some believed that contracting out procurement services would neither expand nor limit the Government's decision-making ability. They believe that experience is what gives an organization options and it should not matter if experienced personnel are Government employees or contractors, as long as the Government is making the decisions. One felt it was a staffing issue. The Government can add either contractor support or civil servants to handle contracting functions, but civil servants give more flexibility. Others saw it as dependent upon the situation and felt it would be leadership driven.

#### **b. Developing Contracting Officers**

Some studies and reports have cited concern regarding the professional development of Government personnel to competently perform contracting functions, specifically at the Contracting Officer level. To assess the impact on the Government's ability to fully develop Contracting Officers, **Question 19** asked:

**“Would contracting out of procurement services have either (1) a negative affect on or (2) a positive affect on an organization’s ability to develop Contracting Officers? \_\_\_\_\_Positive \_\_\_\_\_Negative \_\_\_\_\_No affect Please explain.”**

The results are displayed in Table 5-14.



**Table 5-14. Would Contracting Out Have a Positive or Negative Affect on Developing Contracting Officers?**

<b>Organization</b>	<b>Negative</b>	<b>Positive</b>	<b>No Affect</b>	<b>NA</b>	<b>Totals</b>
Army	4	1	0	0	5
Navy/Marine Corps	12	2	4	0	18
Air Force	4	1	0	0	5
Defense Agencies	8	2	3	0	13
Non-Federal Agencies	1	0	2	1	4
<b>Total Surveys</b>	29	6	9	1	45
<b>Percentage</b>	65%	13%	20%	2%	

Approximately two-thirds of the policy survey respondents and almost all of the interviewees believed there would be a negative affect on the development of Contracting Officers. Many respondents cited the loss of training opportunities for new employees and interns as the primary reason. There would basically be no entry point and a very limited career progression. Where would mentors come from? You must be able to “grow” Contracting Officers up through the ranks while providing them with hands-on experience. If the lower level functions were contracted out, then personnel may be ill-prepared to do the more complex tasks later in their careers. A career field in which the function could be contracted out at any time would not help in the recruitment and retention of top level talent. If an agency “cuts off the pipeline,” how does it replace Contracting Officers and first-line supervisors when they retire? One respondent stated that they had seen some very complex work “pushed” to contractors, such as developing business cases and pricing strategies. This severely detracts from the learning and experience base available to develop Contracting Officers. Another stated that as the decision is



made to increase the number of contractors in the field, there will be less full-time Government employees hired, which ultimately reduces the pool of potential Contracting Officers. There is no way for an agency to know as it selects individuals for acquisition positions if their professional development will be such that they will be qualified to hold a warrant. As Contracting Officers move on or retire, there is a reduced group of candidates from which to choose their successors. One respondent suggested that the potential negative impact could be mitigated through establishment of robust intern programs much like those that existed during the 1980s and early 1990s.

One interviewee commented that it takes away from the ability to groom and train contracts professionals. They need judgment skills, cultural awareness and the ability to make trades. These are lost if contractors do the work. Another stated that we need a solid base of Government employees to be developed into future Contracting Officers. Having a contractor compete for resources can result in their “cherry picking” of the best and pay them salaries more lucrative than they might get under Government auspices. This can create a two-tier system within the office that will not help retain the best and brightest. Another interviewee believed that in order to become a qualified Contracting Officer, one must do the mechanics. If contractors perform the specialist’s functions, “it is like buying software and inserting it into the contracting process. You see an end product, but you don’t know what assumptions were used to structure the product and you certainly don’t know the logic behind the actions taken.” Competent Contracting Officers need to thoroughly understand the logic underlying the procurement decision-making process. A survey respondent stated that specialists learn from each other, and with contractor specialists as part of the workforce we degrade control over the influence Government specialists receive in developing their skills.

Other respondents explained that the role of the Contracting Officer has gone significantly beyond the traditional duties typically performed in the 1990s and earlier. Back then, they had skills and abilities needed for a process-oriented



regulatory function driven by statute. With an expanded role, the Contracting Officer is now a business advisor to program managers and acquisition organizations. The business management skills needed for such a role exceed those which would be acquired while just doing contracting functions. Knowledge of the marketplace and industry conditions integrated with contracting processes would not be obtained if contractors were to be performing the procurement functions involved. The training ground within the Government is needed for these business skills.

Others believe that by segmenting out some of the functions which lead up to a Procuring Contracting Officer's (PCO's) decision for contractor performance, the Government has lost some efficiencies. For example, if cost and price analysis is performed by one contractor and handed off to another contractor who performs negotiations which, when completed, is submitted to a PCO for signature, the Government has lost the integrated aspects these functions would provide. There is a view that Contracting Officers may just be "ratifying" actions taken by contractors who present one position for approval. Certainly the PCO can review the work performed by the contractor, but by this time, "it is almost a 'done deal,' and it is very hard to reverse course."

The issue of training and skill development goes beyond just Contracting Officers and contract specialists. Over the years, there has always been serious concern regarding the knowledge and abilities of Contracting Officers' Technical Representatives (COTRs), also known as Contracting Officers' Representatives (CORs). In most cases, COTRs have a week or less of training concerning their responsibilities, are usually fairly junior and new to their organization, and are assigned COTR functions as a secondary or tertiary duty. Paul Denett, OFPP administrator, has promised to issue a memo requiring agencies to provide more COTR training and experience.

Supporting the position that it would have a positive effect, a respondent said that Contracting Officers are the front line to receiving and understanding commercial practices that may be effective in Government contracting. Exposing



Contracting Officers to this element by using contractors should have only a positive impact on developing their effectiveness in contracting. Another stated that it allows contractor personnel to come in and develop junior Government employees. The good contractor personnel are most likely retired Government Contracting Officers who can step in and properly train and mentor Government employees. The Government's ability to hire very skilled contracted personnel to assist Contracting Officers has greatly improved the abilities of the Government workforce. One respondent remarked that it would have a positive affect by freeing up Contracting Officer's from non-inherently governmental duties and allow them to devote more time to true acquisition functions that have a much higher value-added importance.

One respondent felt that there would be little affect on training and development if contractors were used on a temporary basis such as during a surge. Another stated that use of the option to contract out should not mean the lack of consideration of other options such as local and/or Service intern programs. The Government should use all options rather than relying on a chosen few.

### **c. Market Participation**

Expecting that companies participating in the marketplace may have a negative view of situations in which private firms are involved in their procurements,

**Question 20** asked:

**“Might contracting out of procurement services have a real or perceived negative impact on market participants? \_\_\_\_Yes \_\_\_\_No If yes, what are these negative aspects?”**

The results are displayed in Table 5-15.



**Table 5-15. Might Contracting Out Have a Real or Perceived Negative Affect on Market Participation?**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	4	1	0	5
Navy/Marine Corps	15	2	1	18
Air Force	2	2	1	5
Defense Agencies	0	13	0	13
Non-Federal Agencies	2	1	1	4
<b>Total Surveys</b>	<b>23</b>	<b>19</b>	<b>3</b>	<b>45</b>
<b>Percentage</b>	<b>51%</b>	<b>42%</b>	<b>7%</b>	

Slightly over half of the respondents felt there would be a negative impact on companies participating in the marketplace. Two individuals did not understand the question.

In maintaining an outlook regarding a negative impact, one respondent stated that he could see firms questioning the integrity of the process far more if non-Government personnel handle proprietary information and participate in or influence acquisition strategies and source selections. There would certainly be perceived biases by contract employees. Some felt that it could scare industry and question their trust in the procurement system. Vendors will lose confidence in the fairness and objective treatment of offerors. There are more likely to be cases of conflicts of interest or preferential treatment by contractors for certain businesses or affiliates. Competition could be suppressed since industry will not invest marketing or administrative dollars for requirements they perceive as slanted or earmarked for a specific company. They will not compete if they perceive it as “locked in” for the incumbent because competitions are costly. Employees ultimately answer to their



profit focused company which may not always be in the best interest of the Government.

Some respondents stated that an obvious danger is the releasing of procurement sensitive information that a contractor employee can be exposed to on a daily basis. It would not be a stretch for someone without vested interest to conceive a plot to act as a broker of such information. Vendors are leery about sending sensitive information to contract support contractors. Private companies have concerns about exposing proprietary data and prices to non-Government entities. Some will not do it, so it impedes competition and the Government's ability to choose from the best offers. One respondent felt that the perceived negative impact might lead to an increase in protests. Another remarked that a corporate buy-out of a firm which performs a contracting function may create an instant conflict of interest.

Several respondents believe there would not be a negative affect on market participation. Some of these have had experience with procurement services contractors for many years and have not seen any perceived or real impact on market participants. They feel offerors are willing to do business with us. Some feel that if companies want to be players, they'll play regardless.

## **12. Integrity of the Contracting Process**

Contracting professionals should be continually vigilant regarding the health and vitality of the acquisition process. This includes maintaining high quality standards for actions performed within the process and for maintaining the integrity of the procurement system. In order to understand how respondents proposed to enforce these standards when procurement functions are outsourced, **Question 21** asked:

**“What steps should be taken to ensure the integrity of the contracting process is protected when contracting out for procurement functions?”**





All participants in the survey answered this question. A few respondents said “Don’t do it” or “Prohibit the practice,” while others said that we should be performing contracting functions (pre- and post-award and Contracting Officer’s representative functions) only with Government resources. Some respondents wanted to limit the functions placed on contract to just a few, such as contract closeout and market research, and then only on a temporary basis. Several respondents cited again the need to ensure that IGFs are not placed on contract. Also, respondents pointed to the need for clear rules concerning conflicts of interest, including strong OCI provisions in applicable contracts, and the actions needed to address such conflicts if they do arise. The Government should ensure that firms proposing to supply contract procurement personnel have no direct corporate relationship, no matter how insignificant, with potential contractors. Part of this would include having corporate officials and employees sign procurement integrity statements.

Some stated that the Government should hold contract employees to the same high standards as Government employees, including minimum education and experience requirements. They felt agencies should establish standards of mission effectiveness and efficiency within contracting statutes, regulations, policies and guidance and ensure training and continued professional education to that level and beyond. They also felt the Government should perform periodic reviews by both independent internal reviewers and outside knowledgeable reviewers. One respondent felt that the integrity could not be ensured without tremendous oversight, which would negate the savings anticipated in the contracting out process. Others said that a key element is Government oversight, with periodic reviews or audits to ensure contractors are not exceeding their authority. One suggested increased public access to procurement records.

Said one:

The cornerstone of the procurement function performed by the Federal sector is that all participants competing for Government business be treated equally, that the procurements be conducted fairly and results are unbiased. If competitors believe that the integrity is being compromised, then the system



will fall apart quickly. Favorable treatment of one competitor over another will ruin Government procurement.

One individual felt that a legal opinion stating that all statutory requirements were reviewed and that the acquisition is compliant should be part of every contract file. Some expressed the need to establish a clear policy for the use of contractors to augment the acquisition workforce and a proper framework for oversight and review. Once specific functions to be performed by contractors are established, develop measures to evaluate contractor performance. One said that we must stress the ultimate responsibility of Contracting Officers to critically evaluate products and support provided by contractors. One interviewee was very concerned with the integrity of the contracting process. The problems of proprietary information, access to confidential data, leaks to contractors, the need for non-disclosure statements, the necessity to lock everything up at the end of the day, etc., all pose too many risks for our integrity. It is better not to have contractors doing this in the first place. A few respondents stated that the Government needs legal remedies and statutory authority to bring criminal and civil sanctions against contractor employees for violating the same trust issues to which we hold a Government employee accountable.

Some viewed this as no different than any other procurement. They felt that the integrity of the contracting process is always a top priority, not just in this special circumstance. They saw no need to distinguish this from any other advisory and assistance services process, other than to ensure that the Statement of Work or Performance Work Statement did not include inherently governmental functions.

From an organizational point-of-view, some respondents were very concerned about their image and reputation. Some expressed that they had a very good ethical reputation and absolutely did not want to do anything to tarnish it. They perceived their organization's good name to be an integral part of the integrity of the contracting process.

Said one:



You can't necessarily teach integrity in the workforce, however, you can promote an environment of high integrity through constant awareness and zero tolerance. Effective leadership is key, too. In the end, ensuring integrity from contractors is not much different than ensuring integrity from Government employees, although the motivating factors for a lack of integrity might be slightly different.

### **13. Workforce and Workplace Issues**

#### **a. Workforce Competencies**

The Director, Defense Procurement and Acquisition Policy (DPAP) is piloting a Competency Model which is an attempt to look at the collective capability of the contracting workforce in DOD. The process is an evaluation of one's skills, together with the supervisor, that contribute to the organization's buying capability. From this assessment, "capability gaps" can be determined and focused upon by the organization, the Service and OSD. Preliminarily, OSD has found capability gaps in two major areas: (1) cost and price analysis skills, and (2) market research skills, primarily in the procurement of services. There is recognition by some that, in the short term, we may have to concede the need to rely on contractors to meet gap requirements.

Currently, organizations do not have sufficient human resources to effectively accomplish their buying missions. Not one contracting organization has stepped forward to claim they have enough personnel to do the job. One of the problems is that resource deficiencies have generally been expressed in terms of numbers of employees rather than skill or competency deficiencies. Once the Competency Model is launched DOD-wide, it is expected that a clearer picture of capability gaps will greatly assist personnel restructuring efforts.

Interestingly, the necessity to define acceptable boundaries for contractor performance of procurement functions has caused us to focus more on the lack of skills and competencies than we have in the past. Previously, there has been a greater focus on the numbers of workforce personnel reductions compared to the numbers of contract actions and the dollar value of procurement increases.



## **b. Compensation Differentials**

Several surveys and interviews surfaced an issue concerning the significant differences that could exist in compensation between Government employees and contractor employees performing the same or very similar functions. This situation can become even more acute when these individuals are working side-by-side in a “blended” environment. Due to statutory pay limitations, the Government cannot usually match contractor compensation levels. Even if the company is not paying higher amounts, if the contractor employee is a retired civil servant or military, the two incomes push the remuneration to much higher levels in the performance of the same functions. This disparity can lead to dissatisfaction on the part of Government employees and potentially give them some motivation to consider looking elsewhere for employment. Those Government employees usually comparing their situation to contractor employees regarding compensation are generally not at the more senior levels but, rather, are junior contract specialists. These personnel are of the generation that tends to be highly mobile and more easily moves from one organization to another for pay and professional reasons. They are more likely to change organizations if dissatisfied with their level of pay compared to others performing the same functions. This also becomes a morale problem.

Another personnel issue that surfaced involves the flexibility afforded some Government organizations because they have the authority to utilize pay banding. Those Government organizations that do not have this authority perceive that they are limited in their ability to attract or retain qualified 1102s when they must compete with organizations that do have this authority. This was specifically identified as a problem for those seeking qualified 1102 applicants in the National Capital Region (NCR) and was pinpointed as one of the reasons for the drain of 1102 talent.

## **c. Government Employee Unions**

A few interviewees surfaced the issue of employee unions as a potential problem. They did not report that union activities had directly impacted any efforts (that they were aware of) concerning contracts for procurement services, but



suggested that this may become a concern if Government organizations began to aggressively pursue efforts to contract out procurement functions, particularly if employee reductions are occurring at the same time.

**d. Personnel Policies**

Several survey respondents and interviewees pointed to the personnel policies of the past ten to fifteen years as one of the root causes of our workforce dilemmas today. Almost every participant who acknowledged that their organization is using contracted support services explained that the critical shortage of 1102 personnel is the principal reason they are relying on contractors. Some admitted that recent endeavors to rectify the lack of younger entry level personnel have started to correct the problem, but they are still left with a significant gap between the five- and fifteen-year point where very few professionals fill the ranks. This, coupled with the fact that over fifty percent of the contracting workforce is eligible for retirement in the next few years, generates considerable anxiety on the part of senior contracting leadership.

**e. Nature of Contractor Personnel**

One respondent expressed concern regarding the inability of the Government to fully integrate contractors as part of the acquisition team. It was explained that we cannot recognize contractor employees with awards, provide incentives or “bring them into the fold.” On Government holidays, Federal employees are off, but in many cases contractor employees must work. Sometimes they have problems getting on base, they wear different color badges, and feel they are second-class citizens and not really part of the team.

**f. Government Employment Culture**

A particular phenomenon has emerged that demonstrates the nature of Government work and the desire of individuals to be part of Government acquisition dynamics. There have been instances in which individuals have worked in Government acquisition, perhaps held a Contracting Officer’s warrant, made important decisions and felt they made a significant contribution to the organization’s



success. Some have left Government employment to work as contract specialists for contractors only to miss the professional achievement they felt when in Government. The self-identity they enjoyed in the Government is missing and cannot be overcome by higher pay or benefits. Some have even returned to the Government in order to recapture that sense of personal excitement and passion in accomplishing acquisition.

#### **14. General Remarks**

**Question 22** solicited comments not covered by any of the other questions on the survey. It was hoped that respondents would speak freely regarding their opinions. Most of the statements projected an attitude of vigilance.

One respondent believed that with the continual push to reduce the number of full-time Government employees and replace them with contractors, the Government must proceed in this area with caution. As the Government's business face to industry, it is imperative that we continue to recruit highly qualified, energetic men and women into the career field. Failure to replenish the workforce with sufficient numbers of highly qualified and dedicated permanent employees will have a long-term, detrimental affect on DOD's ability to procure adequate products and services to support the warfighter. Supporting this, another suggested removing impediments to hiring retired annuitants with incentives to encourage them to return if only on a part-time basis. "They are a fertile source of expertise that could be used to bridge the gap between workload and experienced, available personnel. Using them would re-enforce the perception that the people doing the work are fair and unbiased while possessing the necessary training and experience."

Another said that contracting out contracting is a necessary evil in many cases. It allows us to get today's job done but at the expense of growing seasoned Contracting Officers for the future.

Yet another stated that, "we hire a lot of retired Government employees back as contractors, which only prolongs their reign as experts in certain areas. The



natural transfer of responsibility is disrupted, and the folks that should be moving to a senior mastery level, if only informally, do not do so.” Giving a slightly different perspective, an interviewee noted that some contract specialists, and even Contracting Officers, leave the Government with “baggage” that seems to follow them right back into the Federal workplace when they are hired by contractors to perform contracting functions. Also, since contractor employees tend to be retired Government personnel, they are older and are participating in a blended workforce that really needs to be cultivating a younger generation of professionals.

A senior contracting official stated that if DoD really wants to, or needs to, contract out our buying, it should do it by awarding large, performance-based contracts that require the delivery of similar (or appropriately grouped) commodities on an as-required basis. “The prime contractor is then responsible for issuing subcontracts to buy what we require and we won’t end up having a quasi-personal services contract having contractor employees trying to buy to our rules.”

Another senior official stated that he/she has a difficult time justifying contractors in contracting, primarily in the contract formation phase. “We make fundamental procurement decisions about what to buy, from whom, where to buy it and what is a fair price. Perhaps one could live with contractors in some areas of contracting due to surge requirements and there are some post-award functions that might be acceptable for contractor performance.” The real breakdown is in the requirements determination process, which has caused significant frustrations in the customer base.

Yet another senior official said:

Suggest your introduction discuss the root causes of why Agencies/Services have to use contracting out services for procurement functions. Our Agency would be at “mission failure” if we did not have our contracted out support. Policy makers should identify long-term consequences of their decisions and not just the short-term impact to make them look like they’ve achieved something worthwhile. Notwithstanding the work that won’t get done; the work that does get done is not sometimes of the quality that it should be





because 1102s are CONSTANTLY under the gun to get the contract/mod awarded. [Individual does not want to be cited with attribution]

To quote a senior contracting official:

If I had to sum up my thoughts on this topic, I believe the crux of the issue is growth of Contracting Officers. Integrity is also a critical area of concern, but that really exists in any job that is contracted out; and really, applies to Government personnel as well. The conviction of Darleen Druyun is a good example of this. Contracting Officer responsibilities are clearly inherently Governmental; this is not a gray area. And Contracting Officers are not grown overnight; nor are they grown in just a few years. It takes several years of training, experience, education and mentorship to entrust someone with this huge responsibility. The more you contract out, the less options or opportunity you have to develop Contracting Officers. However, we need specialists, too. They are the real work horses. If you don't have them, then sometimes you have to acquire them through other means, such as contracting out. The greatest challenge is striking a balance between the two.

One respondent asked how the Government would maintain proper separation of function (SOF) responsibilities if all of the procurement functions listed in Table 5-3 were contracted out.

A non-Federal respondent replied that the procurement laws and regulations in all fifty States vary in regards to outsourcing of procurement functions, however, most, if not all, State procurement directors oppose any attempt to outsource procurement functions. In two States, experience has demonstrated it is very costly to use contractors over State employees.

## C. Chapter Summary

This chapter has presented survey and interview responses from those contracting personnel at the policy and senior management levels. Questions were asked regarding several issues surrounding the procurement of contracting services. Briefly, the following areas were presented and discussed: (1) respondents' understanding of the scope and nature of the contracting process and related functions; (2) what has caused an organization to evaluate functions and, from a list of representative functions, which are considered inherently governmental versus





non-inherently governmental; (3) the magnitude of personal services relationships that may have been created; (4) the difficulties with organizational and personal conflicts of interest; (5) what are judged to be legal issues in these procurements; (6) ethical dilemmas; (7) workforce experience and qualifications primarily from application of *DAWIA*; (8) the necessity for a policy statement and, if so, the elements that should be included in such a statement; (9) the authority used for procuring contracting services; (10) reasons for either acquiring procurement functions or deciding not to contract for such services; (11) the likely impact on the ability to develop Contracting Officers, to consider various procurement options, and participation by companies in the competitive marketplace; (12) the effect on the integrity of the contracting process; and (13) critical workforce and workplace issues raised by contracting for procurement functions. An analysis of all these areas, together with responses from management and operating level personnel, is presented in Chapter VII.

The next chapter will present the results of surveys and interviews involving management and operating level personnel. Whereas this chapter included responses from people only in the contracting community, the next chapter includes responses from both those in contracting as well as the program management and technical communities.



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## VI. Survey and interview Results from Management and Operating Level Personnel

### A. Introduction

This chapter presents the results of surveys of management and operating-level personnel from two separate groups. The first group consists of contracting personnel from all Services and various Defense Agencies. The second group consists of personnel from Air Force program management organizations at Tinker Air Force Base, Oklahoma. The latter group was selected to participate primarily to determine if there were any marked differences in responses between contracting personnel and that of program management offices. Responses throughout this chapter from the two groups will be identified separately in order to preserve the variation between the two and to permit comparison.

A total of thirty-two program office personnel participated in the management and operating level survey from Tinker AFB. Several logistics and support group wings were represented in the sample, including the 327<sup>th</sup> Aircraft Sustainment Wing (Contractor Logistics Support) and subordinate sustainment elements which included the 727<sup>th</sup> Aircraft Sustainment Wing (Contractor Logistics Support) and the 747<sup>th</sup> Aircraft Sustainment Wing (Combat Systems). Additional personnel participated from other Wings based at Tinker, such as the 540<sup>th</sup> ACSS (B-52 System Program Office).

### B. Management and Operating Level Personnel Surveys and Interviews

#### 1. Acquiring Procurement Functions

Similar to the survey used with policy and senior management personnel, questions were asked to determine the extent and types of contracting functions being contracted out and the reasons why they may or may not be so obtained.



**a. Procurement Functions Contracted Out**

To determine the extent to which organizations might be contracting out various procurement functions, **Question 1** asked:

**“Are procurement functions being contracted out in your organization?  
\_\_\_\_Yes \_\_\_\_No If yes, which functions?”**

The results are displayed in Tables 6-1a and 6-1b.

**Table 6-1a. Are Procurement Functions Being Contracted Out in Your Organization? (Categorized by Department)**

<b>Organization</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Army	8	3		11
Navy/Marine Corps	6	11		17
Air Force	2	0		2
Defense Agencies	22	3		25
<b>Contracting Response Totals</b>	38	17		55
Percentage	69%	31%		
<b>Air Force Prgm Mgmt/Tech Totals</b>	18	14		32
Percentage	56%	44%		

**Table 6-1b. Are Procurement Functions Being Contracted Out in Your Organization? (Total all Surveys)**

<b>Responses</b>	<b>Yes</b>	<b>No</b>	<b>NA</b>	<b>Totals</b>
Number	56	31		87
Percentage	64%	36%		



Almost seventy percent of the contracting respondents were from organizations involved in procuring contracting services. These functions ranged across pre- and post-award contracting phases, including preparing statements of work, issuing solicitations, evaluating bids and proposals, negotiations, contract award and contract administration through contract closeout. Specifically mentioned were contract requirements packages, market research, acquisition strategy and acquisition planning, award-fee management, preparation of business clearances, participation in fact-finding, discussion of profit/fee with contractors, evaluation of offers, contract policy, source selection facility, executive management, procurement analyst functions, and cost and price analysis. Several respondents merely stated all contract specialist functions in support of the Contracting Officer as a comprehensive way to capture the totality of functions performed by contractors. A number of buying organizations reported that they contracted out only the contract closeout process and had gone no further in obtaining contracting services. Some who responded “No” indicated that they were considering the possibility of obtaining contract closeout services under contract. Many respondents were careful to state that Contracting Officer functions involving decisions, approvals and requiring a signature were not performed by contractor support personnel.

Although technically not part of the contracting functions per se, secretarial and administrative tasks such as establishing and maintaining files, document distribution and receiving functions were also identified.

Slightly over fifty-five percent of Air Force program office personnel indicated they were contracting out procurement functions. Several procurement functions were described including (in no order of precedence):

- Developing and/or defining requirements,
- Developing acquisition plans,
- Conducting market research,
- Identifying potential sources of supply/contracting,
- Developing cost estimates,



- Preparing Contract packages (including preparing Statement of Work (SOW) and Performance Work Statements (PWS),
- Preparing Purchase Requests (PR) for submission to the contracting office,
- Qualifying potential sources of supply and/or support,
- Conducting technical evaluations,
- Conducting contract negotiations,
- Developing and writing contract modifications,
- Budget planning, formulation, and tracking,
- Performing contract management functions,
- Performing contract reconciliations and closeout,
- Providing technical management, and,
- Providing overarching program management and oversight.

Of those answering “Yes,” one respondent stated:

Contractors participate in every phase of the acquisition process, from requirements generation, market research, concept development, system design development, installation and fielding. They [contractors] work as integral parts of our Integrated Product Team. Documentation created by imbedded contractors runs the gamut from annexes, J&A’s [Justification and Approval] to SOW’s and CDRL’s [Contract Data Requirements List] and [more].

While respondents answering “No” were not specifically requested to qualify their responses, several did. One respondent indicated that their office had utilized contracted personnel in the past, but that they were, “not well received.” Some other “No” respondents qualified the response with statements indicating they were not aware that procurement functions were being contracted out.

One particularly interesting response indicated that the program office offered to fund a contract to provide “buyers” without warrants for support to the contracting office due to manpower shortages, but the supporting contracting office declined the offer.



**b. Reasons for Contracting Out Procurement Functions**

To understand the basic reasons why contracting functions are procured,

**Question 2** asked:

**“If you are contracting out contracting functions, what are the primary reasons for doing so?”**

The predominant and predictable reason from contracting personnel for obtaining contracting services is the lack of Government personnel to perform all of the contracting functions required of the buying organization. Seasoned Government personnel are either retiring or going into the private sector where compensation is greater than the Government can afford. The inability to retain personnel in the acquisition workforce means that those remaining are severely overworked. Some suggested that the shortage of resources is the result of a conscious strategy to reduce the numbers of Government personnel and, thereby, save money. This shortage is especially prevalent at the intern and junior specialist levels. If you cannot attract and retain young talent, it is difficult to develop a well-trained and experienced Government acquisition workforce.

Many stated that hiring contractors is easier and faster than trying to obtain qualified Federal employees through the civil service process. The restrictions and lengthy processes placed on the Government make hiring personnel a long, drawn-out process. Further, salaries are not flexible enough to allow for the experience and quality of an individual. Companies give adaptability in adjusting the size of the workforce on a real-time basis, particularly in surge situations or other rapidly changing requirements. Some expressed that Government employees are far more expensive than contractors.

Numerous respondents were pleased to report that contractors provide a significant value added to buying organizations. They have considerable expertise and knowledge in the areas of their support. They are dedicated and motivated to perform at very high quality levels.



The Base Realignment and Closure (BRAC) process was blamed by some as causing an organization to lose some of its contract specialists and making it fairly difficult to fill vacancies knowing they were moving. Contractors in these cases are desperately needed to augment the civilian workforce.

Several respondents cited contract closeout as a function frequently contracted out. In most of these offices, the closeout backlog was growing, money was being lost, more and more pressure from the Service leadership was focused on this area, and the resources to perform this function were dwindling and were needed in more urgent areas requiring business acumen and technical skills. All of these aspects, plus the fact that a contractor could concentrate on closeout actions which were performed “on the fly” by contract specialists, contributed to the outsourcing of this function.

Air Force respondents indicated manpower shortages and/or lack of organic skill sets as the primary reasons for contracting out. Specifically, responses included (in order of precedence);

- Manpower shortages,
- Lack of skill sets and filling capability gaps,
- Speeding acquisition processes,
- Saving money, and
- Providing program continuity.

Manpower and capability issues dominated the responses. Respondents indicated that FTE restrictions, civilian hiring freezes, and (when there wasn't a civilian hiring freeze) the low pay scales offered for civilian positions created and sustained the manpower, skills and capabilities shortfalls within their organizations. Contracting out was a way to capture the personnel and capabilities required to perform the missions.





**c. Reasons for Not Contracting Out Procurement Functions**

If an organization is not procuring contracting services, it is important to understand the fundamental reasons why this is the case. **Question 3** asked:

**“If you are not contracting out contracting functions, what are the reasons?”**

Approximately one-fourth of the contracting respondents indicated that they were not contracting out procurement functions. Among these respondents, there was a general consensus that, other than administrative tasks, contracting functions are predominantly inherently governmental. Also, the specter of organizational conflicts of interest was raised by a few.

In one organization, most contracting functions were performed by Contracting Officers in situations in which it would be difficult and inefficient to attempt to separate out the non-inherently governmental functions. Additionally, loss of adaptability and interchangeability of personnel was cited as a reason for not contracting out. In some cases, it was reported that the current workload was accommodated by existing personnel resources or that sufficient personnel could be made available as needed from other organizations. Some indicated that as a fee-for-service organization, they were paid a percentage of the contract value for contracting functions they performed, and they were unlikely to turn around and place this effort on contract. A couple of respondents stated that although their organization does not currently contract out, they are considering it for contract closeout.

Among Air Force respondents, most replies stated either that contracting functions were inherently governmental or contracting out procurement functions may create a conflict of interest. Responses included (in order of precedence):

- Procurement functions are inherently governmental,
- Conflicts of interest may exist,



- Command desires to maintain managerial and authoritative control,
- Command is not allowed to contract out and is pushed to keep functions “in house.”
- Costs to contract out are too great (too expensive to do so),
- Respondent is not too sure why they’re not contracting out.

Of interest are statements that their commands wished to maintain managerial and authoritative control, and there is a push to retain the functions in-house.

**d. Why Not Using Contracting Out Authority**

In order to specifically hone-in on the reasons organizations might not be using their authority to contract out procurement functions, **Question 10** asked:

**“Given that you have authority to contract for procurement services, for what reasons are you not utilizing this authority when needed?”**

\_\_\_\_\_ **Fuzzy area**

\_\_\_\_\_ **Timing**

\_\_\_\_\_ **Lack of protocols to distinguish effort from inherently governmental functions**

\_\_\_\_\_ **Organic workforce perception of contracting out these functions**

\_\_\_\_\_ **Other”**

The results are displayed in Table 6-2.



**Table 6-2. Reasons for Not Using Authority to Contract Out Procurement Functions When Needed? (Multiple responses acceptable)**

Organization	Fuzzy Area	Timing	Lack of Protocols	Workforce Perception	Other	NA
Army	1	0	3	1	4	3
Navy/Marine Corps	5	1	7	9	5	3
Air Force	0	0	0	0	1	1
Defense Agencies	1	1	0	0	8	15
<b>Contracting Response Totals</b>	7	2	10	10	18	22
<b>AF Prgm Mgmt/Tech Totals</b>	9	0	14	13	9	2
<b>Total All Surveys</b>	16	2	24	23	27	24

Although several contracting responses to earlier questions claimed contracting functions to be inherently governmental, this question made the assumption for respondents that they do have authority to contract for procurement services but are not currently using that authority. Although not originally intended, this question resulted in multiple answers. For many respondents, this question was not applicable. For those to whom it might have applied, the most frequent response was other than the four reasons provided. Probably because the question did not ask for an explanation of the answer, only a few respondents offered reasons for their reply.

Citing the lack of protocols and the perception held by the workforce, one respondent indicated that there are too many hurdles in *FAR* and other policies that need to be eliminated or overcome. The most frequent responses from those checking the “Other” category were “lack of funds” or “no need to contract out at this time.” Another offered that contracting out was a short-term solution that fails to provide on-the-job training for future Contracting Officers. Another stated that it is



hard to view this as other than personal services since the Contracting Officer must work so closely with the contract specialist, on a daily basis, continually providing personal direction. One respondent's headquarters has a plan to minimize contractor support and one individual did not understand the question.

Air Force program office respondents cited "Lack of Protocols" and "Workforce Perception" as the primary reasons for not using authority to contract out procurement functions when needed. The third greatest citation was "Fuzzy Area," indicating a potential lack of clarity on the issue of contracting out the procurement function. The most frequent responses from those checking the "Other" category were budget constraints, lack of money and/or funding required, and that contracting out these functions did not fit with the long-range strategy of the organization.

## **2. Impact on the Contracting System**

Similar to the Policy survey, two questions were asked regarding the affect contracting out of procurement functions would have on developing Contracting Officers and the options available in procurement decision-making. Both of these were raised in previous studies as areas potentially affected in a negative fashion.

### **a. Developing Contracting Officers**

To assess the impact on the Government's ability to fully develop Contracting Officers if organizations contracted out procurement functions, **Question 14** asked:

**"Would contracting out of procurement services have either (1) a negative affect on or (2) a positive affect on an organizations' ability to develop Contracting Officers?"**

**\_\_\_\_\_ Positive    \_\_\_\_\_ Negative    \_\_\_\_\_ No affect    Please explain"**

Table 6-3a presents the results categorized by "Department," comparing contracting responses to program management/technical responses. Table 6-3b presents the totals for both groups.



**Table 6-3a. Would Contracting Out Have a Positive or Negative Affect on Developing Contracting Officers? (Categorized by Department)**

Organization	Negative	Positive	No Affect	NA	Totals
Army	9	1	0	1	11
Navy/Marine Corps	11	1	3	2	17
Air Force	0	0	2	0	2
Defense Agencies	17	0	7	1	25
<b>Contracting Response Totals</b>	37	2	12	4	55
Percentage	67%	4%	22%	7%	
<b>AF Prgm Mgmt/Tech Totals</b>	19	4	7	2	32
Percentage	59%	13%	22%	6%	

**Table 6-3b. Would Contracting Out Have a Positive or Negative Affect on Developing Contracting Officers? (Total all Surveys)**

Responses	Negative	Positive	No Affect	NA	Totals
Number	56	6	19	6	87
Percentage	64%	7%	22%	7%	

Over sixty-five percent of the contracting respondents and almost sixty percent of the program office respondents believed that contracting out procurement functions would have a negative affect on developing Contracting Officers.

From contracting responses expressing a negative affect, the principal concern was the absence of all the factors considered crucial to the cultivation of Contracting Officers. They are matured over several years of exposure to a variety



of experiences that require a large and diversified skill set. It takes a significant amount of time to become an effective journeyman contract specialist and, ultimately, a Contracting Officer. In order to be an effective Contracting Officer, you must gain experience through the work that you have encountered during your career as a contract specialist. This is what knowledge is built upon and critical in making sound business decisions. Experience, mentoring, and emulation from good leadership establish excellent Contracting Officer capabilities. Courses alone cannot develop the necessary skills. As young and less-experienced Government employees become key decision-makers, the agency assumes greater risk that mistakes will occur resulting from inexperience and lack of mentoring. It is already difficult to develop and grow our Contracting Officers under the current conditions.

Agencies that rely on contract personnel to perform the day-to-day workload fail to provide on-the-job training and experience that good Contracting Officers fall back on. Contracting out procurement functions means that pieces of the procurement process may not be available for contract specialists to perform, thus providing them no experience in these areas. Said one, "Working in a 'cradle-to-grave' contracting office has taught me every aspect of the contracting function. If some of the procurement functions were given to another, there would be less opportunity to learn where my duties fit into the big picture. Fragmentation of duties does not help in creating a well-rounded Contracting Officer." One mentioned the "trust" factor with contracted out specialists and suggested that there is no incentive to teach lessons to persons that one is uncertain he can trust.

Some felt the Government needs to focus on methods to attract, retain and develop qualified Government acquisition personnel who will be future Contracting Officers. If not, do you hire from an agency that doesn't contract out? There is no incentive for fresh contract specialists to come into the Government workforce. The training and certification requirements for contract specialists would not be there if all future specialists only worked through the contracting out of procurement functions under a contract. Suggested one:



The only way to fix this is to make sure we organically grow our contract support and that would include getting rid of contractors and using such methods as the Outstanding Scholars Program, Internship Programs, and the Presidential Management Fellows Program. This would then require less reliance on contractor support.

The position of Contracting Officer is an inherent Government position and cannot be delegated to a contractor. The goals and objectives of contractors and Government personnel are different. Agencies that contract out procurement services can lose focus on mentoring Government people. Oftentimes, we get so wrapped up in the day-to-day operations of the agency and mission, that mentoring is put on the bottom of the list. Since it is so easy to obtain the talent and expertise that is needed through the contractor, the Government takes that option instead of taking the time to teach and grow intern/junior level personnel who are interested in making a career in contracting.

With fewer and fewer Government contract specialists, there is a smaller pool of Government employees to “grow” into the Contracting Officer role. Without a sufficient number of junior Government employees to mentor, that pool of Contracting Officers is rapidly decreasing. One respondent stated that there is an inverse triangle of Government personnel in their organization. The contracting office is very top heavy with Government personnel but has no base of contract specialists from which to draw. Another stated that if the Government is paying to contract out some procurement services, this, in itself, would impede the progress of developing Contracting Officers. If there were enough contract specialists and interns available, there would be no requirement for contractor employees, with the exception of some to perform administrative functions. Said one, “This is a vicious cycle. We’re relying on support contractors to fill positions because we don’t have Government employees to do it, but we also don’t have Government contracting employees because we’re hiring contractors to do specialist work that would usually be done by a lower-level Government employee.”



Other respondents cited inequalities in pay and benefits that will encourage people to go where it is most advantageous for them. There can be a negative affect if there is a perception that there is a pay inequality with little contractor accountability for decision-making.

Even some of those who checked “No Affect” leaned toward a negative impact in their comments. Though they stated that Government personnel still need to remain knowledgeable about how the work is accomplished, there was acknowledgment this could diminish under contractor support.

On the positive side, one respondent stated that contractors can serve as mentors and guides for Government contracting personnel while developing a better team. In explaining both the pros and cons, one respondent thought that utilization of contractors provides a consistent, knowledgeable framework for developing contract specialists and that they bring a broad range of expertise and experience to support the contracting mission. One individual who felt there was no affect explained that their organization uses contractor support to supplement the workforce, not replace it. Another suggested that if managed properly, the contractors could assist in developing Government Contracting Officers.

Among the Air Force program office participants, there was a clear majority who believed that contracting out procurement functions would have a negative affect on developing Contracting Officers. Comments from respondents indicating a “negative” affect cited some common themes and qualifications of their responses. These include: (1) disengagement from process weakens the entire capability to develop personnel, (2) skills are developed over time with considerable experience an essential component of good Contracting Officers, (3) PCO functions are very complex and require organic capabilities, and (4) organic capability provides the “biggest bang for the buck.”

Several respondents indicating that contracting out procurement functions would have “No Affect” stated that this is predicated on whether the functions were





permanently contracted out or were done so on a temporary basis. If contracts were temporary, there would be no appreciable negative affect; but if they were deemed long-term, there likely would be a negative affect on developing Contracting Officers.

**b. Procurement Options**

To determine the affect on the Government's procurement decision-making ability, **Question 15** asked:

**“Could contracting out of procurement services either (1) limit or (2) expand an organization's decision-making ability to develop and consider procurement options?**

\_\_\_\_\_ **Limit**    \_\_\_\_\_ **Expand**    \_\_\_\_\_ **Neither**    **Please explain”**

The results are displayed in Tables 6-4a and 6-4b.



**Table 6-4a. Could Contracting Out Limit or Expand an Organization's Decision-Making Ability Regarding Procurement Options? (Categorized by Department)**

Organization	Limit	Expand	Neither	NA	Totals
Army	1	4	6	0	11
Navy/Marine Corps	6	6	4	1	17
Air Force	0	1	1	0	2
Defense Agencies	6	7	8	4	25
<b>Contracting Response Totals</b>	13	18	19	5	55
Percentage	24%	33%	35%	9%	
<b>AF Prgm Mgmt/Tech Totals</b>	10	14	4	4	32
Percentage	31%	44%	13%	13%	

**Table 6-4b. Could Contracting Out Limit or Expand an Organization's Decision-Making Ability Regarding Procurement Options? (Total all Surveys)**

Responses	Limit	Expand	Neither	NA	Totals
Number	23	32	23	9	87
Percentage	26%	37%	26%	11%	

One third of the contracting respondents believed that contracting out procurement services would expand an organization's decision-making ability. Those who maintained that options would be limited expressed concern regarding the extent to which objectivity would be applied by contractors. A contracted out "procurement specialist" doesn't have the best interests of the Government at heart.



They work for a company that has shareholders to whom they must remain loyal. Further, they are not delegated decision authority but rather primarily function on contract execution with guidance from the Contracting Officer.

Supporting the position that procurement options would be expanded, contracting respondents felt that contractors would bring fresh ideas with respect to acquisition strategies. Firms can bring the industry perspective to the table when considering solutions. They are responsive, focused and conscientious, and draw on diverse expertise. They can be hired to meet specific needs, so skill sets can be more closely aligned with mission requirements. Contractors may have more experience and ability than that possessed by Government organizations. With so many civil servants retiring over the past few years, the experience level of people applying for Government jobs is very low. Some respondents felt that the options were expanded because more resources are available to complete the mission. Contracting out allows the Government workforce to concentrate on truly “inherently governmental functions” (such as decision-making) and on mission essential and core efforts. Another suggested that with contractor support in administrative areas of a contract specialist’s functions, the latter would be able to spend more time on effective strategic planning. One replied that it depended on how contractor support is used. Contractors have years of experience and if they are used as acquisition strategy advisors and contract specialists for higher and more complex actions, then their expertise expands an organization’s procurement options. If, however, they are used for low-level tasks, such as administrative duties and contract closeout, contractor support is not adding much to the overall process. One respondent felt that it would definitely expand, but might have unintended consequences. The contracts office is a “sounding board” for other codes in the organization in attempting to ensure everyone stays out of jail. Would that same due diligence be there from contractor specialists? It is difficult now for contractors to say no to technical customers. The very nature of being a contractor is that they are profit driven.



In explaining why contracting out would limit options, one respondent stated that he has problems with a partially contracted out workforce, such as conflicts of interest and other potential issues that would limit solutions. Correspondingly, with an all Government workforce, he is limited only by laws and regulations, as well as his own imagination, in crafting approaches and solutions to contracting issues. Another stated that trying to manage the firewalls required to ensure procurement integrity would severely limit the organization's decision-making and options. Yet another respondent felt that contracting out procurement services could lead to limited use of best business practices, standardization, and not lend itself to flexibility in the workforce to move personnel where they are needed. This respondent added that if a contractor is performing poorly, the Government has the right to default and get consideration but, that process will greatly interfere in timely awards for the stakeholders waiting for their procurements to be completed. Another respondent stated that, in their experience with contractor personnel, they contracted personnel really do not offer options but merely wait to be told the strategy and then execute it on paper. Others worried that the expertise within the Government is impacted. If contractors have been performing all of the functions, when it comes time to recompet, who is going to develop the requirement, acquisition plans, perform the source selection and other functions?

Thirty-five percent of the responses cited "Neither." The comments supporting this answer centered primarily on an individual's capability and talent regardless if they were employed by the Government or a contractor. Can a person think outside the box? Are they and the organization open to change and innovation? Differing backgrounds provide a broader experience base and will yield further options, but both would be available from either a contracted out workforce or an organic workforce. One respondent felt that contractors should not be made part of the decision process because it is strictly a Government function. Another offered that although contractor personnel providing input are bright and talented, success depends upon how the Government manager acts on that advice, if at all. Echoing a comment from a respondent who felt options were expanded, others stated that it



really depends on which services are contracted out, what experiences the contractor brought into the organization, and how well the contractor performs those services. If the contractor is filling gaps in internal resources, then the contracting office may be able to focus on innovative acquisitions, solutions, and improvements to the process in lieu of solely focusing on expediency and efficiency. Believing the issue might be that of Government workforce capabilities, one respondent felt that if there is a problem with Government employees not being creative enough, perhaps their management should become more involved with the process. Hiring private firms will not be a panacea. They will not be any better equipped to handle complex contracting decisions than Government employees. In order for private firms to be more creative than Government employees, they will need to take short cuts and will eventually disregard the laws that govern competition, social programs and labor rights.

Air Force program office respondents generally believed that contracting out could expand an organization's decision-making ability regarding procurement options. Participants indicating "expand" commented that contractors bring new ideas and options to the table because they may traditionally operate in competitive environments that reward innovation. One respondent stated, "We are largely limited by our ability to expand or contract our organizations due to end strength, hiring freezes, personnel system limitations, [and] skill mix required. Use of additional contracting out would afford an ability to react to short - and long-term needs." Another indicated, "It could expand because contractors could bring different perspectives to the table. The Government tends to train people in a stove-pipe mind-set; so I think it would be good to have a fresh look at things."

For those indicating that contracting out could "limit" decision-making ability, several made comments that the ability to know the customer and develop a working relationship could create this limitation. One respondent stated, "A buyer earns trust and accountability—a bought contractor would not stay in the game long enough to build a good reputation or accountability." Another respondent expressed concern



that the loss of interaction on requirements would eventually cause harm to a program either due to cost creep or other misunderstandings of the requirement. “An isolated Contracting Officer doesn’t see the bigger picture.”

### **3. Integrity of the Contracting Process**

Understanding that the integrity of the contracting process should be an upper most consideration in any procurement action, a question regarding the manner in which it can be safeguarded when contracting services are procured was felt to be essential. This same question appeared on the Policy survey. **Question 16** asked:

**“What steps should be taken to ensure the integrity of the contracting process is protected when contracting for procurement functions?”**

Many contracting respondents highlighted the need for Government personnel that are adequately trained, particularly regarding responsibilities that cannot be transferred to contractor personnel. Awareness training for both Government and contractor personnel regarding the limitations on authority, restrictions as to the functions contractors can perform, and what constitutes inherently governmental functions is critical. They must be well-versed in OCIs, procurement integrity, ethics and personal services requirements, and must ensure appropriate policies and *FAR* rules are in place. Likewise, agencies must establish a verification process to detect if contractors are performing IGFs. The ultimate authority to commit the Government should remain securely within Government control. Contractors should never be given signatory authority as warranted Contracting Officers. Likewise, all contractor personnel must be knowledgeable of the restrictions and understand and adhere to appropriate behavior and controls. Some felt that contractors should not be physically located in the same offices as Government procurement personnel, but if they must, they should be required to wear different colored badges that provide clear differentiation.

In obtaining support contractors, it is essential that such acquisition be handled exclusively with Government personnel and accomplished at a totally



separate location from any contractor with all documents maintained under lock and key. A sound Statement of Work with clear requirements must be crafted that clearly calls out tasking and specifies the non-inherently governmental functions for which contractor support personnel are responsible. We in the Government, must pay close attention to contractor support capabilities and make sure that contractor people brought onboard are the right fit for the particular position they are filling.

Several respondents cited the need for non-disclosure statements, financial disclosure, ethics and conflict of interest certifications, performance surveillance, OCI clauses, and robust firewalls as essential. Perhaps the Government requires very strict non-disclosure clauses that go beyond what is commonly used today. Companies merge with such frequency that the integrity of the competitive process is vulnerable to compromise. Further, we need statutory authority to bring criminal and civil sanctions against contractor employees for violating the same trust issues to which we hold Government employees accountable. Some respondents are concerned about the significant amount of oversight needed to protect the Government. Someone would need to be accountable and knowledgeable enough to conduct valid surveillance and understand what constitutes an acceptable deliverable. Some thought that, ultimately, this could become a very cumbersome process. From a slightly different vein, the integrity of the process is completely dependent on the integrity of the personnel, whether they are Government or contractors. The steps taken by the Government should be the same regardless of who is involved in the process. Some viewed it from a political standpoint. It depends on how closely you want to manage the public's perception of having "for profit companies" involved in spending their tax monies.

One respondent suggested requiring an "Integrity Plan" from all bidders to be used in the evaluation process. The plan would require bidders to address all the issues present in a contractor-Government work environment. Since most of the competitors involved in one area also compete for Government contracts in several other areas, there will almost always be conflicts, and this must be attended to in the





“Integrity Plan.” Requiring and evaluating plans would open the doors to other, non-traditional companies to bid on this type of work.

Some responses focused internally and stated that to protect the integrity of the contracting process, the Government needs to recruit better people, hire more employees, improve management, continue training people in their own field and across other disciplines, and increase the use and dollar amount of bonuses.

A couple of respondents stated that the safest course of action is to not contract out the contracting process at all. “You run too high a risk of inviting the fox into the hen house.” Integrity may not be maintained if contracting were taken out of Government employees’ hands. One respondent felt that the Government should hire quality assurance and quality control personnel to monitor the process.

Air Force program office personnel expressed a number of steps that should be taken to ensure the integrity of the contracting process. Among those indicated were, in order of precedence based on the number of specific citations:

- Maintaining open communications between Government and contracted personnel,
- Clearly defining roles and responsibilities of all workplace participants,
- Enforcing a certification program (similar to or the same as *DAWIA*),
- Establishing and enforcing credentials for contracted personnel,
- Training participants (both contracted and Government personnel),
- Utilizing only Government personnel for contractor oversight (for those contractors executing procurement functions),
- Clearly defining deliverables in task orders and contracts for procurement functions, and,
- Limiting contractor authorized functions to administrative duties only.

Air Force personnel strongly believed that communications, clearly defined requirements, and the establishment of credentialed and well-trained contracting personnel can all contribute to ensuring the integrity of the contracting process. One respondent stated that penalties for wrong doing, similar to those in place for





organic personnel, should be enacted. Of note is that in response to this question, none of the thirty-two program office respondents specifically mentioned having an established ethics policy with enforcement provisions.

#### **4. Personal Services**

As noted earlier, contracts for personal services are prohibited with certain exceptions and a contract for procurement functions does not meet the requirements for an exception. Because the execution of a services contract is the period during which a personal services relationship is likely to arise, Government organizations must be particularly attentive to this issue during contract performance. To determine if organizations have sufficient controls in place, **Question 9** asked:

**“What specific policies and/or protocols exist in your organization to ensure that contractor personnel are not performing personal services?”**

Approximately twenty-five percent of the contracting respondents indicated that they were unaware of any policies or protocols to prevent personal services situations in their organization. A couple were new to the organization and felt they would learn in time, while others said that even though no policies existed, they had been briefed by management or had been in discussions with legal and other contracting personnel about this issue.

Some respondents were quick to point out that personal services are strictly prohibited and that their contracts were not for this purpose. They only awarded contracts for non-personal services. This was followed up by their assertion that strong and effective ethics and procurement integrity training is mandatory for all Government employees.

Some respondents indicated that the Statements of Work are critical. First, they must be scrutinized to ensure they do not contain inherently governmental work, and second, care must be taken to ensure that contractors only perform tasks



set forth in the SOW. These steps are followed by performance measures applied by Government contracting personnel who have the necessary expertise and integrity themselves. Respondents also indicated appropriate training for both Government and contractor employees, screening and oversight by management, legal review, and a determination of non-personal services for the file before contract award and performance reviews after contract award were all mentioned as important controls. One respondent indicated that the severability of the requirements for the contract closeout function from other contracting functions performed by the organization was the key to avoiding personal services situations. Another respondent pointed to a Government-Contractor Relationship Guide that spells out the roles and responsibilities of the various parties. One said they listen to what people say; you can be amazed as to what they tell you.

Several respondents cited the strict relationship between Government and contractor that is managed and monitored by the Contracting Officer's Representative (COR). In some instances, the COR is the only one who deals directly with the contractor. All assignments go to the contractor, who then tasks its personnel. One respondent stated that multiple CORs have been appointed that are knowledgeable of what constitutes personal services and are aware that our contracts are for non-personal services.

Although the question focused on what Government controls existed, several respondents expressed what contractors are doing. Some mentioned that the contractor has an on-site supervisor or program manager who is responsible for direct supervision of the contractor's employees. All assignments are handled by the program manager who acts as the liaison between Government and contractor personnel. The contractor has established team leads who work closely with Contracting Officers and higher-level Government personnel in making workload assignments. In some cases, the team lead reviews the work products of the team prior to submitting them to the Government. Evaluation, compensation and



continued employment within the contractor's firm are controlled by the contractor's appointed supervisors.

Air Force program office personnel presented several responses to this question. Among the most prominent were (in order of precedence):

- Having a written policy regarding personal services on Government contracts,
- Clearly defining contract requirements, task orders, and deliverables,
- Government monitoring, auditing, and conducting oversight of contract functions to ensure compliance,
- Training (to ensure understanding and compliance), and,
- Don't know of any policy and/or protocol.

Several respondents stated that this issue of personal services was problematic. Many were not aware of any policy or protocols in-place regarding personal services. Nearly one-third of the respondents either did not know of any particular policy or protocol or did not think one applied to their workplace. Some personnel believed that personal services were being performed at their sites, despite having specific protocols and policies in place to help prevent such services from occurring. For example, contractor personnel attended command functions, such as parties, ceremonies, and retirement parties, despite the existence of a clear prohibition.

## **5. *Defense Acquisition Workforce Improvement Act Requirements***

The *DAWIA* requirements were briefly explained in Chapter IV. The survey sent to policy and senior management personnel asked if there were *DAWIA* implications, and should *DAWIA* or "*DAWIA*-like" requirements be imposed on contractors performing contracting services. The survey sent to management and operating personnel assumed that such certification requirements could be imposed, and sought to identify how difficult such a requirement would be to enforce.

**Question 11** asked:



**“How difficult would it be to enforce *DAWIA* or “*DAWIA-like*” certification requirements on contractors who are awarded contracts to perform procurement functions?**

\_\_\_\_\_ **Very Difficult**    \_\_\_\_\_ **Difficult**    \_\_\_\_\_ **Easy”**

The results are displayed in Tables 6-5a and 6-5b.



**Table 6-5a. How Difficult Would It Be to Impose *DAWIA* Requirements on Contractors?** (Categorized by Department)

Organization	Very Difficult	Difficult	Easy	NA	Totals
Army	2	4	5	0	11
Navy/Marine Corps	6	1	9	1	17
Air Force	0	1	1	0	2
Defense Agencies	4	5	15	1	25
<b>Contracting Response Totals</b>	12	11	30	2	55
Percentage	22%	20%	54%	4%	
<b>AF Prgm Mgmt/Tech Totals</b>	5	9	13	5	32
Percentage	16%	28%	41%	16%	

**Table 6-5b. How Difficult Would It Be to Impose *DAWIA* Requirements on Contractors?** (Total all Surveys)

Responses	Very Difficult	Difficult	Easy	NA	Totals
Number	17	20	43	7	87
Percentage	20%	23%	49%	8%	

A majority of the contracting respondents believed that it would be easy to require contractors to comply with *DAWIA* requirements. The question did not ask for an explanation, but a significant number of those who choose to elaborate on their responses felt it would be “Difficult” or “Very Difficult” to achieve. These answers focused principally on the costs to the Government. Although it would be relatively easy to incorporate these requirements into the RFP and, ultimately, the



contract, the expenses incurred by the contractor to train, certify and maintain continuous learning would probably be charged to the Government. Contractor personnel might be able to attend *DAWIA* courses on a space available basis but, as one respondent pointed out, “You also need experience and formal education for certification completion.” She was not sure of the ratio of DOD (civilians and military) retirees to those hired directly out of college or from other agencies with different experience, but it appeared there were probably more contractor employees hired without the appropriate certification levels. Therefore, it would be a large investment for the Government, not to mention the expense and time for these employees and an agreement to retain such employees for a period of time after the training. A couple of respondents stated that most contractor employees who are former Government personnel either separated or retired before implementation of *DAWIA* or were grandfathered into the system. There may not be the incentive for these people to take the required courses to meet *DAWIA* certifications. Others cited the Government’s difficulty in monitoring and verifying the requirement, especially since the contracting staff is already overburdened and needs contract personnel to supplement them. One respondent pointed out that in recent years, the Government has emphasized the use of commercial practices and performance-based Statements of Work. The focus should be on the desired outcome and allowing contractors maximum flexibility on how they will deliver that desired outcome. The guidance is that only rarely should professional certifications be mandated, thus, there would have to be a cultural change to implement this requirement.

Those who felt it would be relatively easy stated that either: (1) most of the contractor employees are retired or former Government contracting professionals who are already certified at Levels II or III and tend to be well-educated with professional association certifications, or (2) this is not unlike similar requirements placed in ID/IQ contracts. One respondent felt that it would be easy to incorporate training requirements in the contract, but that this does not take the place of people who have solid work experience and take ownership in the process. Some pointed



out that contractors generally are eager to comply in order to obtain Government business. Because most contractor employees are professional and well-educated, they would probably be most cooperative in meeting *DAWIA* requirements.

Air Force program office personnel expressed mixed opinions on how difficult it would be to impose *DAWIA* requirements on contractors. Nearly forty-five percent of respondents stated that it would be “Very Difficult” or “Difficult,” while forty-one percent stated that it would be “Easy”. Many respondents qualified their responses, making it easier to place the responses with a rationale for the position being chosen.

First, among those indicating that it would either be “Very Difficult” or “Difficult,” were several reasons as follows:

- Contract-mandated *DAWIA* requirements would have to be a “top down” mandate.
- The Government would either directly or indirectly pay for any *DAWIA* or *DAWIA*-like requirement imposed through contractual provisions.
- The availability of *DAWIA* courses is already limited, so the programs would have to be enlarged to accommodate additional persons requiring the credentials.

Second, those indicating that *DAWIA* requirements imposed on contractors would be “Easy” to enforce included:

- There’s a large pool of *DAWIA*-qualified retired military and civilians available.
- It would be easy to include mandatory contractual language to enforce *DAWIA* if the AF had the money to do it.

In both those responses indicating difficulty and those indicating ease of implementing a *DAWIA* requirement on contractors, cost and availability of courses was an issue expressed. Additionally, two respondents qualified their statements that even if the Government were to place a *DAWIA* requirement in its contracts, *DAWIA* statutory language doesn’t allow for non-Government personnel access to classes. Quoting a respondent, “Probably relatively easy to put into the SOW,



however, the Government would have to allow contractors access to classes, rates would increase (thus cost the Government more) and when would they take the classes (within the 8 hours they are working for us, or in addition to that)?“

## **6. Contract Effectiveness**

One of the principal facets of this research has been to assess the effectiveness of contractors' performance in the delivery of contracting services. A series of questions were posed with the intent to elicit respondents' opinions and ideas regarding how effective such contracts have been, the positive and negative aspects of such contracts, and the measures used by organizations to evaluate contractor effectiveness.

A distinction must be made between measurements of efficiency and effectiveness. The former indicates the extent to which an organization utilizes its resources to accomplish its responsibilities and is usually expressed in quantitative terms. The latter refers to how well an organization performs the tasks to execute their responsibilities and is often measured in qualitative terms.

### **a. Level of Effectiveness**

To assess effectiveness, **Question 4** asked:

**“In your organization and to your knowledge, how effective have contracts which procure contracting functions been?**

\_\_\_ **Highly Effective**      \_\_\_ **Somewhat Effective**  
\_\_\_ **Not Effective**      \_\_\_ **Very Ineffective”**

The results are displayed in Tables 6-6a and 6-6b.





**Table 6-6a. How Effective are Contracts That Have Been Used to Procure Contracting Functions? (Categorized by Department)**

Organization	Highly Effective	Somewhat Effective	Not Effective	Very Ineffective	NA	Totals
Army	2	6	0	0	3	11
Navy/Marine Corps	3	1	1	0	12	17
Air Force	2	0	0	0	0	2
Defense Agencies	12	9	0	0	4	25
<b>Contracting Response Totals</b>	19	16	1	0	19	55
Percentage	35%	28%	2%	0%	35%	
<b>AF PMs/Tech Totals</b>	4	9	1	2	16	32
Percentage	13%	28%	3%	6%	50%	

**Table 6-6b. How Effective are Contracts That Have Been Used to Procure Contracting Functions? (Total all Surveys—Combined Results)**

Responses	Highly Effective	Somewhat Effective	Not Effective	Very Ineffective	NA	Totals
Number	23	25	2	2	35	87
Percentage	26%	29%	2%	2%	40%	

Of the contracting respondents who chose to answer this question, only one suggested that procurement services contracts were not effective. All respondents, except for those who felt this was “Not Applicable” or did not answer the question, believe that contracts for procurement functions are somewhat effective or highly



effective. Some respondents cited examples that demonstrated effectiveness. One respondent provided an instance in which a policy office had been contracted out. After three years, this function was moved in-house and performed, once again, by Government personnel. The reasons, however, did not involve effectiveness. The cost of the service, as well as the cost to perform surveillance on the contract, became too high.

One respondent stated, “Contractors ‘fill the gap’ for resources that are not available internally. By making them responsible for the price/cost analysis of proposals and cost performance reports, contract specialists are able to focus on negotiation, execution of contracts and task orders, administration/monitoring- core duties of contracting personnel.”

A majority of the Air Force program office respondents expressed no specific opinion on the question of how effective contracts for procurement functions have been. Eighty percent of this population rated effectiveness as either highly effective or “Somewhat Effective”. Only three respondents indicated that contracting out of procurement functions was “Not Effective” or “Very Ineffective”, which equates to less than ten percent of the population expressing a qualitative measure.

#### **b. Positive Contractor Performance**

In order to obtain thoughts as to the positive characteristics of contractor performance, **Question 5** asked:

**“For contracts in progress in your organization, identify and discuss three positive aspects of contractor performance of contracting functions.”**

Responses from contracting personnel included the following: (1) personnel costs are reduced; (2) performance metrics can be established that must be met; (3) contractor employees are trained and qualified; (4) certain functions, such as contract closeout, do not have to compete with higher priority functions, such as new



awards; (5) valuable assistance is provided during periods of work surges; (6) contractors are excellent sources for analytical support; (7) they help increase the efficiency of operations and meet mission requirements; (8) it allows the contracting workforce to concentrate on more difficult contract actions; and (9) contractors acknowledge the work and help keep the workload current.

The answer to this question from Air Force personnel is predicated, in large part, on the respondent's answer to Question #1, "Are procurement functions being contracted out in your organization?" Question #1 had eighteen "yes" responses and fourteen "no" responses. Of the fourteen respondents able to answer this question, several common themes emerged including (in order of precedence):

- Expertise delivered by contracted personnel,
- Flexibility to meet surge in demand and/or meet requirements,
- Delivery of greater capability (cited also as contractors are more focused),
- Willing to tackle routine administration tasks viewed as burdensome by organic workforce,
- Contractors bring "continuity" to programs that otherwise would be absent, and,
- Documentation for performances by contractor is superior to that of Government personnel.

The researchers tallied common-thread themes mentioned and determined that comments and narratives of respondents clearly cited "expertise" as the primary positive aspect of contractor performance, while flexibility to meet requirements came in a close second. Nearly seventy percent of respondents cited the expertise of contractors as the most positive aspect of contractor performance. Many indicated that contractors are more focused on the tasks required, and not burdened with many of the same administrative duties of organic personnel. Lastly, and interestingly, several respondents stated that contractors were tackling routine administrative tasks, such as contract closeouts, that were seen as a boring and



menial task by organic personnel. Having contractors perform these tasks provided a morale boost to the civilian employees otherwise burdened with these tasks.

**c. Negative Contractor Performance**

In order to obtain thoughts as to the negative characteristics of contractor performance, **Question 6** asked:

**“For contracts in progress in your organization, identify and discuss three problems associated with contractors performing contracting functions.”**

Responses from contracting personnel included the following: (1) blurring of lines between contractor and Government personnel; (2) potential treatment of contractor personnel as personal services employees; (3) Coordinating of contractors' efforts and activities with those of Government personnel; (4) contractors ineffectiveness in supporting more complex contracts; (5) less reliable than Government staff because better contractor personnel move on to more important contracts; (6) labor cost increases; (7) contractors will do everything, and, in some cases, exceed scope of work; (8) potential for actual or apparent conflicts of interest; (9) the fact that OCIs created by contractor mergers and acquisitions are decreasing the competition; (10) reliance on private sector impacts the Government's level of expertise to recognize when solutions offered by contractors during pre-award phase are less than optimal; (11) lack of knowledgeable Government employees makes reliance on CORs for acceptance of services a concern; (12) interns no longer learn to perform these functions; and (13) valuable Government resources allocated to monitor contracts.

Air Force respondents provided several common themes as follows (in order of precedence):

- Agent relationships and blurring of lines between contractor and Government personnel,
- Lack of experience and/or skill sets provided by contracted personnel,



- Lack of knowledge,
- High cost to contract out procurement functions (it's expensive),
- Contractor employee turnover rates (too high), and learning curve effects (negative aspects)
- Oversight requirements (too much and too expensive),
- Negative perceptions among organic employees,
- Loss of organic capability and development of organic workforce,
- Contractors working out of scope (not under specific contract provisions) and,
- Potential for collusion.

Of the eighteen respondents indicating that their organizations did contract out procurement functions, one-third of those respondents stated that the blurring of lines between contractor and Government personnel was a negative effect. Tied for the next highest number of negative citations, at nearly twenty-eight percent of respondents, were the lack of experience and/or skill sets provided by contractor personnel, lack of knowledge, high turnover rates of contracted personnel, and high costs to contract out procurement functions.

#### **d. Measures of Effectiveness**

The heart of contract administration is the measurement of contractor performance to ensure protection of the Government's best interests. If performance is not in accordance with the contract's terms and conditions, corrective action may be necessary. This could include corrective actions by both the Government and the contractor. Measures of effectiveness can be either qualitative or quantitative, the former being more subjective while the latter tend to be more objective in nature. In order to understand what measures are being used to gauge contractor performance, **Question 7** asked:

**“In your organization, what measures of effectiveness are used to evaluate contractor performance of procurement services?”**

Measures of effectiveness mentioned by respondents included:



- Statement of Work tasks completed
- Resource control
- Management
- Schedule and Timeliness
- Quality of Performance
- Reduction of backlog orders
- Number of expedite actions worked
- Number of Purchase Orders awarded vs contractor effort
- Number of closeouts performed
- Performance work specification
- Performance-based contracts

From Air Force respondents, two common themes emerged, both of which were cited by approximately forty-five percent of those respondents whose commands were contracting out procurement functions. The responses by the Air Force program office personnel indicated a high degree of uncertainty on how exactly to measure effectiveness.

First, many respondents stated that identifying a specific measure was “too subjective” and that they could not really define how to measure these functions. Secondly, just as many respondents indicated that the response could not be given, without rationale provided.

- Too subjective to provide a definitive answer, and
- Did not answer (with no specific rationale provided).

Other less frequently cited responses included:

- CPARS (Contractor Performance Assessment Review System) evaluation reports,
- Error rates (for administrative functions),
- Number of actions completed,
- Dialog at meetings,
- EVM (Earned Value Management) assessments, and



- DCMA does this (not our function).

These responses are in sharp contrast to those provided earlier from contracting personnel. Contracting office personnel were more specific about how to measure the effectiveness of these functions. An analysis of these differences will be included in the next chapter.

**e. Measuring Contracting Data**

In assessing performance, evaluators sometimes find themselves assessing data that are easily captured and for which data bases exist rather than the most appropriate data for the actions at hand. In order to determine if Government evaluators felt they were using the most suitable data, **Question 8** asked:

**“In your organization, do you believe you are measuring the appropriate (correct) data, events, etc. as part of your responsibility to manage contractors? \_\_\_\_\_ Yes \_\_\_\_\_ No Please explain”**

The results are displayed in Tables 6-7a and 6-7b.



**Table 6-7a. Measuring Appropriate Data in Managing Contractors?**  
(Categorized by Department)

Organization	Yes	No	NA	Totals
Army	6	3	2	11
Navy/Marine Corps	6	0	11	17
Air Force	2	0	0	2
Defense Agencies	15	1	9	25
<b>Contracting Response Totals</b>	29	4	22	55
Percentage	53%	7%	40%	
<b>AF Prgm Mgmt/Tech Totals</b>	12	11	9	32
Percentage	38%	34%	28%	

**Table 6-7b. Measuring Appropriate Data in Managing Contractors?** (Total All Surveys)

Responses	Yes	No	NA	Totals
Number	41	15	31	87
Percentage	47%	17%	36%	

The majority of contracting respondents felt they were using the most appropriate data for their assessment of contractor performance. Very few respondents explained their answer to this question. One respondent felt that a good measure was that missions are completed on time and satisfactorily, but also explained that because Government expertise is suspect, the appropriateness of the measurement approved and solution offered is suspect. Another relied on the reporting of problems, which admittedly said was rare. There is a good working





relationship between the technical department, the contractor, and contracts personnel.

Air Force program office personnel provided mixed responses to the question of the appropriateness (correctness) of data, events, etc., as part of their responsibility to manage contractors. Most respondents indicated a “Yes” answer. However, some of the “Yes” responses were qualified in some manner, such as in the following:

- CPARS data were sufficient.
- Contractor had their own self-assessment system (with reports).
- EVM data were sufficient.
- Deliverables as defined in the contract were measured as appropriate.

In close second place were the “No” responses. Several qualified answers were provided, including:

- No data were collected at all (no assessment was being made).
- Deliverables were monitored, but qualitative measures were not being collected.
- Meetings were monitored for interaction, but no specific measures were produced.
- Additionally, one respondent stated that there is a “Gross lack of measurements.”

The number and qualifications presented by the Air Force program office personnel answering “No” responses are in sharp contrast to the answers provided by contracting personnel. The majority of contracting respondents felt they are using the most appropriate data for their assessment of contractor performance.

## **7. Limits on Contractor Participation**

The DAU study recommended that each contracting activity be limited to no greater than twenty-five percent of their workforce that may be contracted out in other than exceptional situations.



**a. Percentage Limitations**

To determine how personnel viewed the notion of limiting the percentage of the contracted out workforce, as well as a percentage of the workload, or any other measurement, **Question 12** asked:

**“If you were to limit the percentage of the effort an organization would contract out, what should be the maximum limitation on that percentage? (Circle appropriate %)**

**Workforce (end strength): <10%, 10-25%, 26-50%, 51-75%, >75%, unlimited**

**Workload: <10%, 10-25%, 26-50%, 51-75%, >75%, unlimited**

**Other Factor \_\_\_\_\_ : <10%, 10-25%, 26-50%, 51-75%, >75%, unlimited”**

The Workforce results are displayed in Tables 6-8a and 6-8b.



**Table 6-8a. What Percentage Limitations Should be Placed on an Organization's Authority to Contract Out the Workforce to Perform Procurement Functions? (Categorized by Department)**

<b>Organization</b>	<b>&lt;10%</b>	<b>10-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>&gt;75%</b>	<b>Unlimit</b>	<b>NA</b>	<b>Tot</b>
Army	5	2	1	0	0	0	3	11
Navy/Marine Corps	3	6	1	0	0	1	6	17
Air Force	0	1	0	0	0	0	1	2
Defense Agencies	6	4	9	1	2	1	2	25
<b>Contracting Response Totals</b>	14	13	11	1	2	2	12	55
Percentage	25%	24%	20%	2%	4%	4%	22%	
<b>AF Prgm Mgmt/Tech Totals</b>	7	11	8	1	1	1	3	32
Percentage	22%	34%	25%	3%	3%	3%	9%	

**Table 6-8b. What Percentage Limitations Should be Placed on an Organization's Authority to Contract Out the Workforce to Perform Procurement Functions? (Total all Surveys)**

<b>Responses</b>	<b>&lt;10%</b>	<b>10-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>&gt;75%</b>	<b>Unlimit</b>	<b>NA</b>	<b>Tot</b>
Number	21	24	19	2	3	3	15	87
Percentage	24%	28%	22%	2%	3%	3%	17%	



The Workload results are displayed in Tables 6-9a and 6-9b.

**Table 6-9a. What Percentage Limitations Should be Placed on an Organization's Authority to Contract out the Workload to Perform Procurement Functions? (Categorized by Department)**

<b>Organization</b>	<b>&lt;10%</b>	<b>10-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>&gt;75%</b>	<b>Unlimit</b>	<b>NA</b>	<b>Tot</b>
Army	5	2	1	0	0	0	3	11
Navy/Marine Corps	4	3	3	0	0	2	5	17
Air Force	0	1	0	0	0	0	1	2
Defense Agencies	4	4	9	1	2	2	3	25
<b>Contracting Response Totals</b>	13	10	13	1	2	4	12	55
Percentage	24%	18%	24%	2%	4%	7%	22%	
<b>AF Prgm Mgmt/Tech Totals</b>	6	10	7	0	0	3	6	32
Percentage	19%	31%	22%	0%	0%	9%	19%	

**Table 6-9b. What Percentage Limitations Should be Placed on an Organization's Authority to Contract out the Workload to Perform Procurement Functions? (Total all Surveys)**

<b>Responses</b>	<b>&lt;10%</b>	<b>10-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>&gt;75%</b>	<b>Unlimit</b>	<b>NA</b>	<b>Tot</b>
Number	19	20	20	1	2	7	18	87
Percentage	22%	23%	23%	1%	2%	8%	21%	



The Other Factor results are displayed in Tables 6-10a and 6-10b.

**Table 6-10a. Other Factors to Consider in Placing Percentage Limitations on an Organization's Authority to Contract out to Perform Procurement Functions (Categorized by Department)**

<b>Organization</b>	<b>&lt;10%</b>	<b>10-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>&gt;75%</b>	<b>Unlimit</b>	<b>NA</b>	<b>Tot</b>
Army	1	0	0	0	0	0	10	11
Navy/Marine Corps	0	0	0	0	0	1	16	17
Air Force	0	0	0	0	0	0	2	2
Defense Agencies	1	2	0	1	0	0	21	25
<b>Contracting Response Totals</b>	2	2	0	1	0	1	49	55
Percentage	4%	4%	0%	2%	0%	2%	89%	
<b>AF Prgm Mgmt/Tech Totals</b>	1	2	0	0	0	1	28	32
Percentage	3%	6%	0%	0%	0%	3%	88%	

**Table 6-10b. Other Factors to Consider in Placing Percentage Limitations on an Organization's Authority to Contract out to Perform Procurement Functions (Total all Surveys)**

<b>Responses</b>	<b>&lt;10%</b>	<b>10-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>&gt;75%</b>	<b>Unlimit</b>	<b>NA</b>	<b>Tot</b>
Number	3	4	0	1	0	2	77	87
Percentage	3%	5%	0%	1%	0%	2%	89%	



This question did not call for an explanation and only four contracting respondents decided to elaborate on their answers. The comments included a suggestion to limit contracting out to the contract closeout function, to limit the type of effort contracted out, and an assertion that the contracting out concept is flawed. Regarding workforce, over sixty-five percent of the respondents felt it should be limited to less than fifty percent of the employees in the office while a little less than sixty percent believed it should be limited to fifty percent or less of the workload. Fewer than fifteen percent felt other factors should be considered.

Air Force program management personnel were resolute in placing restrictions on the amount of the workforce and workloads that could be contracted out. These respondents felt a strong tendency toward limiting the numbers of both the workforce and workload contracted out to less than fifty percent each. In fact, eighty-one percent of respondents expressed a desire to limit workforce levels to below fifty percent of the total. Seventy-two percent suggested that workload figures should be limited to below fifty percent of the total workload. Other factors were not identified with any significance; eighty-eight percent declined to express any limitation preference when considering other factors to limit.

Although these responses did not expressly require a qualification to the response, three Air Force respondents stated that limits were needed to maintain the organic workforce capability. This small group expressed concern that without limitations, the organic workforce could experience a detrimental loss of valuable skills.

The Air Force program office responses were noticeably different than the contracting population surveyed, wherein respondents were varied regarding limitations on the percentage of the workforce and the workload that should be considered for contracting out.



**b. Physical Location**

One of the issues associated with the problem of personal services relates to the integration of contractor personnel with Government employees at Federal facilities. In order to determine the extent to which survey respondents felt that contractors performing contracting functions should be located away from Government personnel, **Question 13** asked:

**“Should contractor employees performing procurement services be physically separated from Government employees?**

\_\_\_\_\_ **Yes**    \_\_\_\_\_ **No**    **Please explain”**

The results are displayed in Tables 6-11a and 6-11b.



**Table 6-11a. Should Contractor Employees Be Physically Separated from Government Employees? (Categorized by Department)**

Organization	Yes	No	NA	Totals
Army	3	7	1	11
Navy/Marine Corps	7	9	1	17
Air Force	1	1	0	2
Defense Agencies	4	20	1	25
<b>Contracting Response Totals</b>	15	37	3	55
Percentage	27%	67%	6%	
<b>AF Prgm Mgmt/Tech Totals</b>	5	25	2	32
Percentage	16%	78%	6%	

**Table 6-11b. Should Contractor Employees Be Physically Separated from Government Employees? (Total all Surveys)**

Responses	Yes	No	NA	Totals
Number	20	62	5	87
Percentage	23%	71%	6%	

Sixty-seven percent of the contracting respondents believed that contractor personnel performing procurement functions should not be physically separated from Government contracting personnel, while almost eighty percent of program management personnel expressed this opinion. The reasons for this position primarily included the professional interaction and synergy needed to efficiently perform procurement functions and the need to be close to the customer for effective support and the efficiencies of real-time decision-making. Several respondents





stated that the Government-contractor employees were a team and should be building a solid working relationship. Those performing contracting functions should not be separated because they learn from each other. One respondent felt a Government contract specialist might pay more for an item than their contractor counterpart because the former did not have the procurement knowledge possessed by the latter, ultimately costing the Government more. Separation would not create a very conducive work environment or atmosphere and would tend to develop an “us” versus “them” mentality. With multi-functional Government teams, it would be detrimental to segregate the contractor employees.

Several respondents suggested that communication is a key ingredient to effective contracting, especially if it is face-to-face. Physically separating Government and contractor employees hampers communication. Services involve personal interaction and relationships, and physical separation simply artificially complicates performance of a cohesive objective. One respondent related that contractor employees were originally physically separated but were relocated to their facility because the ability of Government personnel to interact with contractors was very difficult. Some respondents answered “No,” but explained that contractor personnel should not be part of the Government organization; they should clearly identify their workspace with separate e-mail accounts, phone identification, badges, and other similar administrative structures. Another answered “No,” but explained that contractor employees have a different set of obligations and personnel rules than Government employees.

Those responding positively to this question generally pointed to the potential for direction by the Government to lead to personal services, or to the access contractor employees would have to procurement sensitive information that might give them an unfair advantage. Actual conflicts of interest, or at least the appearance of such conflicts, was also cited. An example was a contractor performing closeout functions who was also competing on another contract effort and was physically near the source selection team. One respondent went on to



emphasize that private industry personnel must have a supervisor so that Government personnel are not managing and directing contractor employees. The supervisor is also needed to ensure the contractor employees are not working outside the scope of the contract. A COR must be assigned to review the “deliverables,” which would have to be an 1102 type in order to understand if the “deliverable” is acceptable. One respondent suggested that physical separation would assist in the perception that the services were not personal but wasn’t sure about its practicality. One said that “no way should the contractor have access to quotes or other proprietary data sent to contract specialists in the mail, left on their desks or discussed in their offices.”

A majority of the Air Force respondents, seventy-eight percent, believe that contractor personnel performing procurement functions should not be physically separated from Government contracting personnel. Those qualifying their “no separation” positions expressed common themes, including (in priority order):

- Contractor personnel must be part of the Government team.
- Co-location is required for conducting adequate oversight.
- Greater efficiencies result from co-location.
- Command, control, and communications require co-location.

Those responding “Yes,” which indicates a need to be physically separated, cited the potential for creating personal services situations, security concerns, and conflicts of interest. However, it must be noted that within this survey population group, the “separatists” were only fifteen percent of the total. Hence, an overall majority believed that the contractors and Government personnel should be co-located.

## **8. General Remarks**

**Question 17** solicited comments not covered by any of the other questions on the survey. Hopefully respondents would speak freely regarding their opinions and beliefs.



About twenty-five percent of the respondents provided comments under this question. One individual felt that before any contracting function performed by Government personnel is contracted out, a commercial activities study under A-76 needs to be performed. She cautioned not to downplay the divisive affect this might have on the workforce. Another respondent believes that contractor support is another tool for the Government to accomplish its mission when specialized assistance is needed during surge conditions. Others felt that the shortage of Government contracts personnel will have to be accommodated by contractors. One suggested that the issue could conceivably come down to an issue of public trust. Would the taxpayer be comfortable with contractors directly involved in making decisions about how their money is spent and with whom? Another stated that he personally believes the Government needs to contract out fewer procurement functions. There are certain areas that may be conducive, but overall the Government needs to be accountable and responsible for contracting. Sometimes the tendency is to rely on using contractors rather than incentivizing people to become Government contracting personnel.

Facing reality, one respondent said that procurement continues to become more complex and the workload expands constantly. Government Contracting Officers have an impossible and often thankless job. Strong and consistent expert contractor support would stabilize the work environment. "My preference would be to have a strong intern program and continue to utilize only Government contracting professionals, but I don't think that's practical or possible in today's world."

One individual stated that some Government procurement officials say that contracting functions should never be contracted out because contractors have access to other contractors' data, and the information can be used to gain a competitive advantage. However, Government employees have access to the same data, and those individuals can use that data in an unethical way that causes harm to a contractor. Both parties need to protect contracting data, and just because a



person is in the Government, doesn't mean they are better at protecting sensitive data.

Commenting on the implementation of *DAWIA* and its affect on the workforce, one individual stated: if *DAWIA*, as initially intended, had been completed, there would probably be less shortage of Government interns and contract specialists. The purpose of this Act was to professionalize the acquisition series through specific training, on-the-job experience and completion of formal education in business-related fields. Subsequently, the acquisition employees should have been provided a special pay above that of the general schedule, such as for engineers, teachers, etc. Since the increased pay has never been implemented, there is just too much workload on the acquisition professionals, especially those in contracting. The younger generations want to know that they will get paid more competitively in exchange for meeting the *DAWIA* requirements and carrying the heavy workloads. It is difficult for the Government to compete with industry based upon disproportionate salaries for similar career fields. The Government salaries continue to lag farther behind that of the industry counterparts, as laws have not been enforced to bring the Government salaries on par. Thus, Government employees in acquisition career fields, especially contracting, are becoming more scarce as people continue to go to industry for better pay and benefits.

In a well-crafted statement, one respondent said:

Contracting, which is a small part of the acquisition process, is based on regulations and is an actual process that can be defined and measured. Contracting is just one of many dots on the Acquisition Process Line. This should not be considered for outsourcing, unless there is significant data to prove that value has been added and that it is cost effective. What you make up in retirement savings, you spend in contract surveillance. If poor performance should occur under an outsourced scenario, the Government has its rights to take action, but the action will only aid in the delay of supplies and services that may be needed to support our warfighters, or a significant program that may fall under a non-DOD agency. You cannot take the time to take action on poor performance and allow the procurement process of critical supplies and services to be delayed while doing so.



One individual stated:

I do not believe that contractors (private firms) should be performing any portion of the contracting function. If the contracting function is contracted out, the Government will eventually become embroiled in allegations of improper or illegal short cuts, nepotism, and corruption. Private firms are not held to the same standards as Government Contracting Officers, and always make allowances that increase their profits. If the Government feels that Contracting Officers cannot perform their duties fast enough, then it is up to the Government to target problems and improve their management. Hiring private firms to accomplish inherently governmental tasks will become our future headaches and headlines.

Among Air Force comments were those expressing concerns that too much contracting out was occurring. Specific comments were that contracting and procurement functions are too critical to have contractors performing those functions, and in some cases, it was too expensive to do it at all.

Others expressed opinions that contracting out procurement functions is perfectly acceptable to meet emerging needs and challenges, provided there is proper decision-making authority and oversight.

### C. Chapter Summary

This chapter has summarized and reported the results of surveys and interviews conducted with Management and Operating Level personnel from both the contracting and program management communities. Although the contracting surveys were received from individuals around the country in all Services and selected Defense Agencies, acquisition personnel in the program management and technical areas located at Tinker Air Force Base, Oklahoma, were specifically targeted for this research. This was done in order to obtain program office perspective and insight on the issues associated with contracting for procurement services.

Briefly, the following areas were presented and discussed: respondents' knowledge of functions that are being contracted out, the reasons organizations are



or are not contracting out, the protocols used by organizations to avoid personal services relationships, the difficulty of applying *DAWIA* or *DAWIA*-like requirements to contractor employees, the effectiveness of contracts used to procure contracting functions and the positive and negative aspects of contractor performance, the metrics or measures of effectiveness used to monitor and evaluate contractor performance, the likely impact of contracting out on the Government's ability to develop Contracting Officers and to consider various procurement options, how the integrity of the contracting process can be protected, any limitations regarding the numbers or percentages of contractor employees that should be permitted in any one buying organization, and if co-location of contractor and Government employees should be allowed. An analysis of all these areas, together with responses from policy and senior management personnel, is presented in Chapter VII.



## VII.

## Analysis

### A. Introduction

This chapter will analyze and attempt to develop some perspective regarding the issues brought out in the surveys, interviews and pertinent literature set forth in previous chapters. For some participants, contracting out is an emotional issue. Not only can it affect whether and/or how an individual will be employed by an organization, but it goes to the heart of membership in a professional community. This is true for individuals in both Government service and private industry.

The first area to be explored is the range of statutory and regulatory issues affected by contracting out, including: inherently governmental functions, personal services relationships, conflicts of interest, legal issues, and ethics. The second area to be discussed involves the various acquisition issues including: procurement functions contracted out, the effectiveness of contracted services, limitations on contracted support, experience and training requirements, the impact on the contracting system, the integrity of the contracting process, and procurement policy.

### B. Statutory and Regulatory Issues

#### 1. **Inherently Governmental Functions**

“The contracting function is inherently governmental.” This is what one frequently hears when asking why contracting functions are not contracted out. Because contracting is viewed by many as a core capability that must be performed by civil servants, there has been significant resistance to the thought of contracting out any part of the Government’s responsibility involving contracting.

Recent studies have suggested that although the overall contracting function may be inherently governmental, there are certain tasks within this broad framework that might possibly be non-inherently governmental. Born out of necessity, some procurement tasks have already been contracted out. In some organizations, those





tasks appear to many individuals to far exceed the boundaries of acceptability. Although not precisely inherently governmental, many say several contracting tasks are so closely related to Government decision-making that they ought not be performed by anyone other than public employees. Other tasks are perhaps more suitable for performance, if necessary, by other than Federal employees. The tasks that a majority of the contracting community agrees could be contracted out tend to be of a low-risk, administrative, and routine nature that require very little, if any, contracting knowledge or expertise. The debate continues.

This research focused on whether respondents were aware of any functions considered to be inherently governmental or exempt from competition that are, in fact, being contracted out and the extent to which capability deficiencies forced organizations to identify their interpretation of inherently governmental functions. Lastly, from a very limited list of functions, survey participants were asked to distinguish those they felt were inherently governmental as opposed to those that were not.

Forty percent of the respondents stated that a capability deficiency had caused their organization to assess whether or not a contracting function was inherently governmental. The shortage of FTEs due to various forms of attrition has been exacerbated in recent years. Retirements and personnel transfers (with the resultant loss of corporate knowledge and expertise) have forced organizations to rethink their position regarding tasks contractors can perform. The sixty percent that said they had not made this assessment are from organizations that long ago decided that certain contracting tasks were non-IGF, have decided the entire function is off limits to contracts, or have had sufficient resources to meet workload demands. The number of organizations in this last category seems to be dwindling.

When asked if they knew about inherently governmental functions that are being contracted out, slightly fewer than twenty percent acknowledged that this is happening. Although this may seem like a small number, it points out that there are functions being acquired on contract that some view as violating the rules. A large





part of this is probably due to the disparity between those who believe that some contracting tasks are IGFs and others who do not.

In analyzing responses to the list of functions, survey respondents were asked to classify as either IGF or non-IGF, three categories have been established: (1) “unanimously” or predominantly IGF, (2) predominantly non-IGF, and (3) “middle ground.” If no more than seventy-five percent or no fewer than twenty-five percent selected a function for either IGF or non-IGF, the function was placed in the “middle ground” and remains widely open to interpretation. Table 5-3 in Chapter V presented the raw data regarding responses, while Table 7-1 below displays the three categories established above as viewed by DOD and State/local government contracting leadership.



**Table 7-1. Senior Contracting Personnel Views of Inherently Governmental vs Non-Inherently Governmental Functions**

<b>Inherently Governmental</b>	<b>“Middle Ground”</b>	<b>Non-Inherently Governmental</b>
Requirements determination		
	Developing Statements of Work	
	Structuring market research	
		Conducting market research
	Performing acquisition planning	
	Developing solicitation documents	
	Issuing solicitation documents	
	Developing and applying evaluation criteria	
	Member of Source Selection Evaluation Board	
	Evaluation of proposals/offers	
	Performing cost and price analysis	
Negotiating contract prices, terms & conditions		
Structuring & approving incentive plans		
	Preparing price negotiation memoranda	
Awarding contracts		
Negotiating contract modifications		
Determining cost allowability		
Exercising options		
	Assessing contractor performance	
Implementing action based on contractor performance		
Accepting or rejecting goods & services		
Terminating contracts		
		Preparing contracts for closeout



All of the IGFs cited above involve some type of Contracting Officer determination and/or decision which are considered by almost everyone to be within the Government's purview. The two functions identified as essentially non-IGF have been performed by contractors for several years and now seem to be the accepted norm. The "middle ground" functions are basically the area of debate. Functions listed close to the left of the box received the majority of IGF responses, while those functions close to the right received the majority of non-IGF responses. Structuring market research is closely related to conducting market research and developing solicitation documents can easily be distinguished as a support effort. These two functions could have easily slipped into the non-IGF category. Performing cost and price analysis is the function that seems to generate the most heated debate. Many believe it to be integrally involved in either the negotiation process or a Contracting Officer's determination of price reasonableness, or both, and that it should not be contracted out. Further, considered by several to be a core capability, it is also judged to be one of the weakest skills held by the Government and badly in need of significant training and hands-on experience. Although tending toward the IGF side, acquisition planning, evaluation of offers, and preparing price negotiation memoranda are just as easily viewed by many as non-IGF.

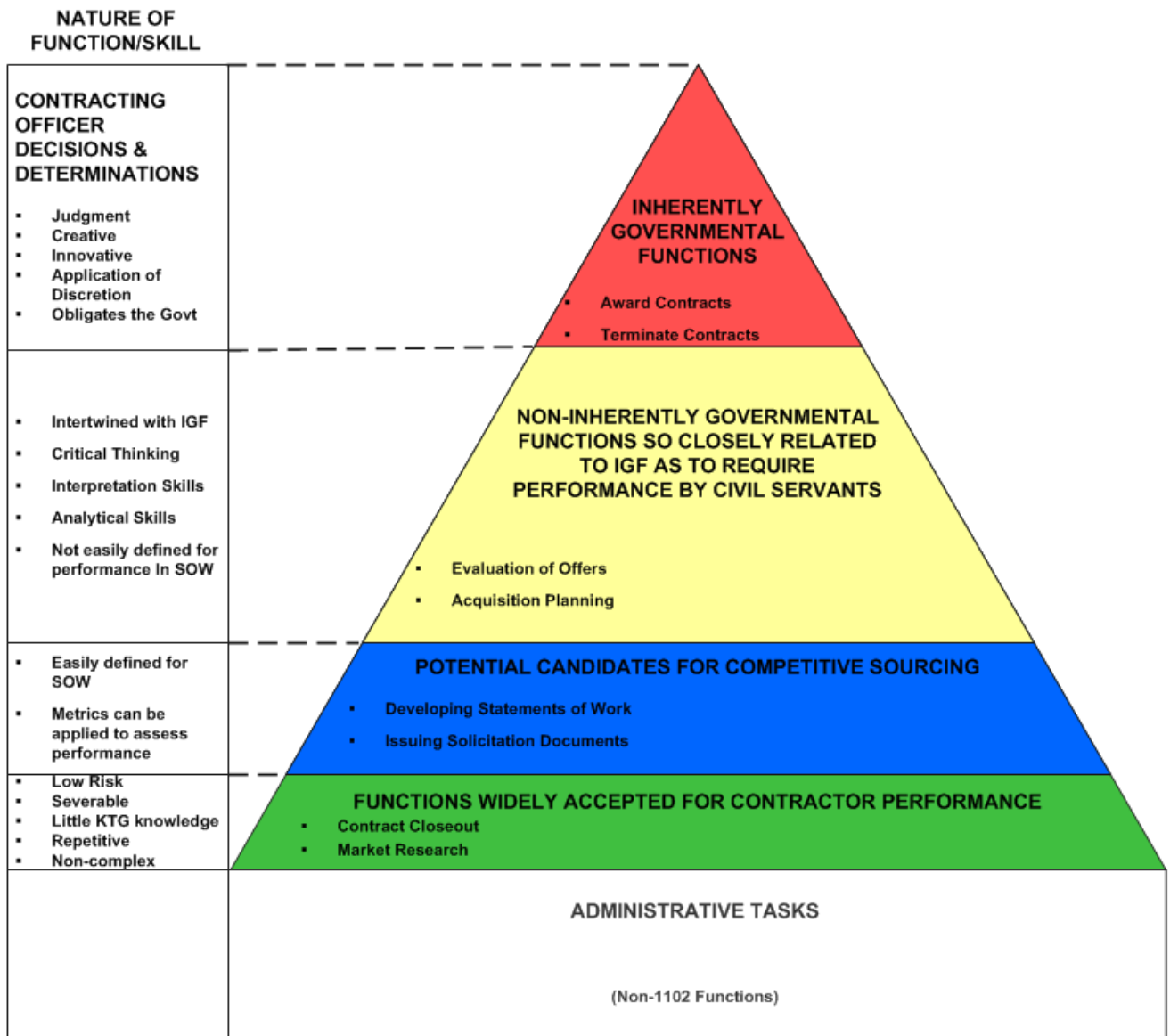
Perhaps a helpful process would be the development of a hierarchy of functions that starts with absolutely inherently governmental functions and ends with functions almost no one would object to contracting out. A pyramid that suggests a conceptual approach is presented in Figure 7-1. This hierarchy serves somewhat as a taxonomy of functions or tasks in that it allows users to identify the characteristics they want to use to distinguish or differentiate functions for various purposes. Once the objectives of classification have been defined, the users may then proceed to "fill in" the various levels of the pyramid with appropriate contracting tasks. Justification for placement into the various levels should be explicitly supported, thus allowing comparison among various organizations as to where a function is classified and the rationale for placement.



Figure 7-1 displays four different categories of contracting functions in color coded format. Functions determined to be inherently governmental reside in the top level and are coded red to indicate they are not to be contracted out. Functions so closely intermingled with IGFs as to demand performance by civil servants is presented in the second tier in yellow to connote severe caution in attempting any contracting out. Functions that are potential candidates for competitive sourcing are at the third tier and are color coded blue to indicate the possibility these could be, with careful consideration, performed by contractors. The next tier consists of functions widely accepted for contractor performance and, in many cases, are already being accomplished by contractor personnel. This tier is color coded green to indicate these functions are extremely good candidates for contracting out. The last tier is actually not in the pyramid, but rather is the base or support for the framework to imply that the administrative tasks performed by non-contracting personnel are a significant component of the overall contracting process. Examples of contracting functions that could be placed into each of these categories are found in Figure 7-1. Arrayed next to the pyramid are some of the skills needed to perform the functions or some aspects of the nature of the function that indicate rationale for function placement.



**Figure 7-1. Hierarchy of Contracting Functions**



## 2. Personal Services Relationships

As noted in Chapter V, over eighty-five percent of the respondents believe there are potential problems with personal services relationships when contracting for procurement services. On the one hand, as will be noted later in this chapter, there is an overwhelming indication that contractor employees need to be co-located with Government contracting personnel in order to effectively accomplish their work.



On the other hand, this close proximity presents the very ingredients that lead to personal services situations. Many of the respondents felt that because Government and contractor specialists had to work together so intimately to perform their responsibilities that such a relationship was inevitable.

Not directly causing a personal services dilemma but linked to the close working relationship are the circumstances involving “acceptance” of the service or work product performed by contractors. Products or goods have a very definitive acceptance or rejection process that requires specific Government action. Services do not have similar acceptance procedures. In the case of contracting functions, who is accepting the contractor’s work product, and how formal is the process? If the Government proceeds to use work packages submitted by contractors, de facto acceptance has probably occurred without an overt action. At this point, the Government would certainly be liable for the decisions made based on the contractor input that later proved to be faulty and damaging. A test of this situation, to the researchers’ knowledge, has yet to occur, but the potential certainly exists

The Acquisition Advisory Panel (2007) found that the prohibition on personal services contracts has compelled agencies to create unwieldy procedural safeguards and guidelines to avoid such contracts. They suggested the administration of these contracts could be inefficient and recommended the restriction on personal services contracts be removed, thus allowing Government supervision up to the point of hiring, approval of leave, promotion, performance ratings and other similar supervisory responsibilities. The Panel concluded that Congress should statutorily resolve the ambiguity rather than wait for a regulatory revision.

None of the survey respondents voiced an opinion that the prohibition on personal services contracts should be eliminated. If given a choice, however, it is suspected that a majority would willingly agree with the Acquisition Advisory Panel regarding removal of certain aspects of the personal services restriction.



### **3. Conflicts of Interest**

Conflicts of interest in Government procurement have always been a matter of concern. Because the Government bends over backwards to ensure fairness and equity to all parties in the procurement process, any actual or even perceived situation in which someone obtains, or appears to obtain, more favorable treatment or might be treated unfairly is generally dealt with in a vigorous fashion.

This research focused on circumstances in which conflicts of interest might become a problem when contracting for procurement services. Survey participants responded with numerous situations they believed could easily occur unless precautionary measures were instituted. Access to company proprietary and business sensitive information, competing in cases in which firms participated in developing requirements, an actual or perceived ability to influence procurement actions, biases against certain companies for obvious or even unknown reasons, insight into the Government's requirements process, mergers and acquisitions that cause questionable affiliations, and other similar opportunities to inappropriately affect Government procurement were cited as potential problems with contractors. One step to lessen the potential for conflicts of interest is to establish firewalls within the organization that prevent contractor employees from operating outside the specific boundaries of their particular project. In reality, this becomes very expensive to structure and enforce. One drawback is that this does not allow contractor personnel to transfer knowledge and freely interact with Government contract specialists outside their firewall, which has been cited as a benefit to having contractors present in the first place.

Perhaps even more disconcerting would be a situation in which a foreign company acquired interest in a firm performing Government contracting functions. Several foreign companies are essentially "nationalized" and, therefore, have very close ties with their government. Just the thought of foreign control over U.S. purchasing is chilling. The ramifications of improper behavior could be fairly immense.



Some respondents remarked that conflicts of interest could also easily occur with civil servants working so closely with contractor employees. Differences in compensation, future employment opportunities, and personal friendships with contractor employees that may even have originated when both worked for the Government were observed as some of the conflict of interest situations in which civil servants could become embroiled. The *Procurement Integrity Act* was established in the 1980s to address some of the problems leading to personal conflicts of interest and violations of ethical behavior. One requirement of the Act concerns steps procurement officials must take if contacted about private employment during certain phases of the contracting process. The Acquisition Advisory Panel believes that, because the *FAR* provides considerable leeway to agencies in addressing actual or potential conflicts of interest, and because there is a lack of guidance in mitigating such conflicts (leading to inconsistent application of the regulations), uniform regulatory language is needed.

#### **4. Legal Issues**

Although a survey question regarding legal issues was worded a bit differently in this research than in the DAU study, the results here seem to vary somewhat from their findings. Over sixty percent of the respondents in that study replied that they did not receive any legal limits or concerns in the guidance provided regarding contracted procurement services. This research asked if there are any legal issues or impediments, to which over eighty-five percent responded in the affirmative. Looking closely at the explanations, however, it is apparent that both groups of respondents are concerned about: (1) violating the prohibition against placing inherently governmental functions on contract, (2) averting personal services relationships, and (3) avoiding organizational conflicts of interest. As discussed earlier, proper non-disclosure agreements, financial disclosure statements, and vigorous application of safeguards and security mechanisms are critical to prevention.





It is well known that civil and criminal penalties await Federal employees if they violate statutes prohibiting unethical and improper behavior in the execution of their responsibilities. This is generally not true if contractor employees performing procurement functions for the Government act in this manner. The Acquisition Advisory Panel referred to testimony that some have expressed serious concerns regarding the inappropriate conduct of individual contractor employees. Several situations concerning contractor personnel involved with financial conflicts of interest, impaired impartiality, misuse of information, misuse of authority and misuse of Government property have transpired. There has been some discussion about the suitability of changing the laws to make them applicable to contracted employees when they are working on behalf of the Government. Despite the situations mentioned above, the Acquisition Advisory Panel... “does not believe the requirements imposed on contractors and their personnel—through the contract and solicitation clauses or otherwise—should incorporate the extensive and complex requirements imposed on federal employees by existing statutes....” (p. 423). It is believed that this recommendation should be reconsidered. Although extremely heightened awareness regarding Federal employees and their behavioral transgressions has been publicized, high profile cases continue to occur. The Darleen Druyun affair is a prime example of the continued need to be extremely vigilant. At the very least, contractor personnel should be held liable and accountable for actions taken in their capacity as “Government agents.” Whether this is accomplished statutorily or through contractual clauses, some action in this direction is absolutely crucial. There appears to be a wide disparity between the actions that can be taken in response to Government transgressions versus contractor wrongdoing. One major incident on the private side similar to Druyun and the public outcry will likely be thunderous.

## **5. Ethics**

The subject of ethics in Government contracting is complex and difficult. When significant transgressions of what is considered to be appropriate behavior



occur, the reaction, from Congress in particular, is to tighten the reins on the workforce. Frequently included under the concept of ethics are considerations regarding fraud, waste and abuse; conflicts of interest; standards of conduct; improper business practices; and procurement integrity.

This issue was brought up on the Policy and Senior Management questionnaire. A significant majority of the survey respondents believe that ethical issues are associated with contracting for procurement services. To some, this took the form of organizational conflicts of interest, while to others, it involved contractor access to procurement sensitive information and the opportunity to take unfair advantage of the system. Most of the respondents expressed concern about contractor loyalties and motivations, which might impair their objectivity and impartiality when acting as an “agent” for the Government. The judgment and interpretation of the laws and regulations by Government employees should not be replaced by contractor personnel. The best interests of the Government should be foremost in any action taken by someone in the contracting process. Misgivings can easily arise when contractor employees are taking these actions. Trust in the system can be easily and seriously jeopardized.

This is not to say that Government employees are above reproach when it comes to improper behavior. The Darleen Druyun case is a glaring example that greed and selfishness still exist and, despite even the most robust preventive measures, some are willing to give up all sense of self-respect and dignity to attain personal benefit. In a report (GAO, 2005a) to Congress, GAO criticized DOD’s ethics program. It reported that, in general, DOD lacks the knowledge to determine whether internal training and counseling efforts are meeting ethics objectives and that DOD’s knowledge of defense contractor efforts to promote ethical standards is also limited.

If the procurement of contracting services is to occur and expand beyond its current boundaries, there is a definite need to ensure that ethics and standards of conduct are well understood, broadly observed, and vigorously enforced.



## C. Acquisition Issues

### 1. Procurement Functions Contracted Out

#### a. Extent to Which Procurement Functions Are Contracted out

In order to determine the extent to which procurement functions are being contracted out, both surveys asked if such functions were being obtained on contract. The results from all survey participants are provided in Table 7-2.

**Table 7-2. Are Procurement Functions Being Contracted out in Your Organization?**

	<b>Yes</b>	<b>No</b>	<b>Totals</b>
<b>Contracting Policy &amp; Senior Management</b>	21	24	45
	47%	53%	
<b>Contracting Management &amp; Operating Level Personnel</b>	38	17	55
	69%	31%	
<b>Program Mgmt/Technical Personnel</b>	18	14	32
	56%	44%	
<b>Totals</b>	77	55	132
	58%	42%	

A bit less than sixty percent indicated that at least some procurement functions are being contracted out. Policy and senior personnel have fewer situations of contracting out, while management and operating personnel are predominantly from organizations that are contracting out procurement functions. When isolating the Defense Agencies from the other organizations (observed in Tables 5-11 and 6-1a), however, that number was almost eighty-five percent. When



looking only at Navy and Marine Corps organizations (also observed in Tables 5-11 and 6-1a), that number dropped slightly below forty percent. These findings are consistent with the DAU study, which found the Defense Agencies had the highest ratio of contracted support services and the Navy and Marine Corps had the lowest.

**b. Types of Functions Contracted Out**

When asked which functions are involved, contract closeout was identified with the greatest frequency. This was true for all Services and the Defense Agencies. Policy and senior management personnel tended to cite market research, acquisition planning, drafting policy, developing evaluation criteria, evaluation of offers, and requirements development as the predominant functions contracted out. Some policy/senior personnel did state, however, that all functions performed by 1102s, except for inherently governmental functions, are placed on contract. The percentage of management and operating personnel who reported functions contracted out in their organizations was much higher and included all functions ranging from all pre-award to all post-award phases. All contract specialist functions in support of the Contracting Officer were mentioned. Most were careful to explain that the approvals, determinations and decisions made by Contracting Officers were not included in the mix.

Over recent years, the numbers and types of functions contracted out have greatly increased. Some organizations have become concerned that too great a percentage of workforce positions are filled with contractor employees and have begun to develop plans to reduce that percentage. The DAU study recommended that organizations limit the percentage of contractor employees to no more than twenty-five percent of the total workforce.

**c. Reasons for Contracting out**

As noted in Chapters V and VI, the most prevalent reasons for contracting out are the lack of organic resources to meet workload demands and the lack of needed skills or expertise in certain areas. The continual downsizing and freezes on hiring new personnel over the last several years, together with an increase in the workload,



has severely strained the contracting community. In certain geographical areas, there is constant turnover and an inability to fill 1102 vacancies with qualified applicants. In some cases, contractors are used in order to obtain exposure to business concepts and insight into commercial practices and technology.

Adjacent to this reasoning is the fact that hiring contractors is generally easier and faster than trying to obtain Federal employees through the cumbersome civil service personnel process. Contractors provide greater flexibility in adjusting to workload fluctuations, particularly due to surge situations. They can also provide continuity in those cases in which organizations are experiencing a very high turnover of contract specialists.

**d. Reasons for Not Contracting out**

The most common reason for not contracting out procurement functions is that the organization believes all aspects of contracting are inherently governmental. Even if the organization did not consider contracting inherently governmental, there was a preference against contracting out, especially if interchangeability of personnel or adaptability was threatened. In smaller contracting offices, Contracting Officers are performing most contract specialist functions, which would be difficult to untangle from their decision-making functions. In some cases, the organization claimed that sufficient resources existed to meet workload requirements or that outsourcing the functions did not provide any additional advantages. A few organizations indicated that the potential for conflicts of interest or other ethical problems has steered them away from using contractors. In a couple of cases, respondents felt contractors were more expensive than Government employees.

One scenario that has been cause for concern is contractor default. Buying offices that have turned over contract specialist workload to contractor employees may be in a difficult situation if the contractor is terminated for default. It would be arduous to explain to the buying office's customers that procurement actions are delayed because the contractor defaulted. If a significant portion of an office's



workforce consisted of contractor employees, the added burden of contractor default may be too overwhelming for the civil servants in the office.

**e. Authority for Contracted Services**

Contracting for services performed by Federal Government employees is generally covered by *OMB Circular A-76*, if they are commercial activities. Certainly, activities that are inherently governmental, by definition, are not commercial activities. As discussed earlier, the problem is that there is not complete agreement as to what are or are not inherently governmental functions. Regardless, the researchers wanted to determine what authority or rule governed the acquisition of contracting services, particularly since the DAU study concluded that advisory and assistance services was the appropriate aegis under which procurement services should be obtained. Approximately one-third of the policy and senior management respondents did, in fact, point to A&AS as the authority. Over half the respondents either did not respond to the question or stated it to be not applicable. It appears that those who choose to answer the question are, by and large, familiar with the A&AS contracting. This question was not on the management and operating level personnel survey.

This research has not found that A&AS contracts are an inappropriate vehicle for obtaining contracted services, however, a careful reading of *FAR 37.2* does seem to indicate that some of the reasons contracted services are being acquired may be inconsistent with the language and intent of A&AS. Several organizations remarked that procurement functions are being contracted out because they do not have the human capital resources to meet workload demands. Is this inconsistent with the requirement that A&AS shall not be used to bypass or undermine personnel ceilings? Further, as will be discussed in the next section, the *FAR* language discussing appropriate use of these contracts appears to expect a temporary contractual relationship to obtain specific support, advice, and opinions rather than the performance of day-to-day tasks carried out by the agency.



## **2. Effectiveness of Contracted Services**

### **a. Views of Effectiveness**

Management and Operating Level personnel expressed overwhelmingly that contracts for procuring contracting functions were highly effective or somewhat effective. A deeper analysis of the results, however, show that most of the respondents indicating a positive effectiveness of contracts based their evaluation on a simple objective set of metrics. First, did contractor performance allow the command to meet its mission? And second, was overall performance good enough to consider the contractor for future work? The heart of the rudimentary metric gets at the most basic rationale for contracting out any function: getting the job done and getting it done satisfactorily. Responses are based primarily on criteria that find their basis in whether the contractor allowed the activity or business unit to achieve its mission or productivity goals, and additionally, whether the contractor had any significant performance problems that would preclude it from being considered as a candidate for future award of similar work.

What was striking to the researchers about the responses is that no other criteria for measuring effectiveness were being systemically applied. Examining the responses in the context of several of the framework elements presented earlier in this research, none of the personnel offered any clearly defined metrics that are actually being used. This rudimentary approach to determining effectiveness should not be discounted, however. Whether a contractor allows an entity to meet its goals, and whether that contractor's performance is good enough to be considered for repeat business is at the heart of any sound criteria for effectiveness. The researchers use an analogy of a private individual having a car repaired at a local repair shop. The bottom line criteria most people would use to assess the performance in that instance are whether the car was properly repaired (mission) and whether the business did its work in a manner that makes one want to use that facility for similar work in the future (past performance).





What is challenging for contract managers is that these types of metrics are difficult to capture in any detailed objective format. The subjective nature of this type of assessment by the population surveyed is very common. It is, in fact, a measure that can be captured by Past Performance Information (PPI) systems and the Contractor Performance Assessment Reporting System (CPARS) currently in use within DOD. These systems are not without their deficiencies, however. First, they are subject to dilution—wherein a preponderance of positive evaluations can obfuscate a small number of negative evaluations, even when the negative evaluations should be preeminent in the decision process for future award. Second, there is grade inflation in the reporting system, often resulting from the rebuttal process accorded to contractors that receive negative or detrimental evaluations. Often, evaluators will provide a neutral or positive evaluation to avoid contentious rebuttals. Third, the criteria may be measured against unclear and arbitrary benchmarks, as clearly objective criteria are often not being utilized on a systemic basis.

**b. An Analytical Model**

Given the obvious limitations of existing measures, the researchers contend that a clear framework or model should be utilized to examine contracting out procurement functions. It is proposed that a hybrid three-dimensional model incorporating elements from: (1) the Lehner 12-phase acquisition process; (2) the three application metric concepts of process, workforce, and outputs; and (3) the qualitative and quantitative elements of metrics. All three of these were presented in Chapter IV.

The *first dimension* of the framework incorporates the six contracting phases. The *second dimension* is the application association of the metric: process, workforce, and outputs. The *third dimension* is the nature and type of metric, either quantitative or qualitative. The three-dimensional model is presented in Figure 7-2.





**Figure 7-2. Metric Analytical Model**

Phase	ACQ Planning	Solicitation	Evaluation	Negotiation	Award	MGT & Admin
Application						
Process						
Workforce						
Outputs						

Quantitative

Qualitative

Recommended metrics for each of the six contracting phases are presented in Appendix C. The recommendations span the three dimensions and should be utilized as an aid to developing additional tailored metrics uniquely suited to the application and requirements of the contracting activity. Any such tailoring should incorporate performance goals and benchmark standards to ensure proper alignment to strategy and mission.

Contracts for contracting out any or all of the functions within the six phases should have metrics to gauge effectiveness and efficiency of the processes, personnel (workforce alignment), and outputs in terms of quantity (objectively) and



quality (subjectively). The three dimensions of metrics should be structured with enough diversity as to elicit useful statistical information, managerial and actionable data, and motivation and incentives to perform to desired parameters.

Each of the six contracting phases are presented with the secondary and tertiary dimensions discussed within each phase. The reader should note that the metrics recommended within each phase are key representatives of the metrics that should be generated. Metrics should be tailored, using this framework, to the unique requirements of the activity awarding the contract. Also note that throughout these examples presented, qualitative adjectives of excellent, good, and poor are utilized, but, any meaningful rating system can be used, such as color coding, adjectival assessment, or numeric scoring.

The three-dimensional model's first dimension is the six contracting phases, consisting of: (1) acquisition planning, (2) solicitation, (3) evaluation of offers, (4) negotiation, (5) contract award, and (6) contract administration. These six phases make up the backbone of the model. The metrics will be structured to meet the unique requirements of each of these phases. Within each of the phases are the secondary metrics related to process, workforce, and outputs, and the tertiary metrics related to quantity and quality.

### **1. Acquisition Planning**

The contracting process really begins in the acquisition planning phase, in which the strategy and elements for a sound contract begin to materialize. The acquisition plan is where all the personnel responsible for an acquisition are coordinated and integrated through a comprehensive approach for fulfilling the requirement in a timely manner and at reasonable cost. It is literally a roadmap that contains all the “who, what, where, when, why and how” elements required in subsequent phases of the acquisition process.



## **2. Solicitation**

The solicitation phase brings the contracting strategy defined in the acquisition planning phase into action. The requirement, which has been transformed into solicitation format and language, is released to the public. It includes all proper business protocols that may be unique to the strategy and process defined in the acquisition plan. For example, if *FAR* Part 12 for commercial item acquisition is utilized, it garners a unique set of protocols that will be followed throughout the solicitation and subsequent phases. Creating sound metrics for determining the effectiveness of this process is essential.

## **3. Evaluation of Offers**

The evaluation of offers is both art and science in that strict adherence to established statutory and regulatory requirements, while maintaining an objective and unbiased evaluation of proposals against the criteria published in the solicitation is critical. At any time prior to award, and up to ten days after the announcement of the award, any party with a material interest in the outcome of the award may file a protest. Normally, protests are sustained based on the Government's failure to conduct the evaluation process in accordance with established statutes and regulations and/or failure to follow the prescribed evaluation criteria. Additionally, bias in the process can materially alter outcomes, resulting in potential protest or loss of process integrity. There are myriad actions that occur within this phase, all of which can have associated metrics assigned. For example, determining a competitive range and conducting debriefings are actions that could be measured. Metrics for contractors performing evaluation of offers are essential to ensure the processes and outputs are effective.

## **4. Negotiations**

Conducting discussions with offerors may be required in certain, but not all, circumstances. Even when *FAR* 15 provisions are utilized, some solicitations may use a clause reserving the Government's right to award without discussions. When this clause is utilized as a methodology, it most often will not result in discussions.



This function requires metrics that measure the skill and abilities a contract negotiator is able to bring to the negotiating table. Critical thinking skills, verbal expression, objectivity, analytical ability, tolerance for ambiguity, ability to listen, and many more are all elements that need to be measured.

## **5. Contract Award**

The award of a Federal contract is inherently Governmental, thus, the ultimate decision to award belongs to a warranted Contracting Officer. However, there are supporting roles and tasks that could be candidates for contracting out, such as the preparation and presentation of debriefs for unsuccessful offerors, post-award orientation preparation, file documentation, and administration. *FAR 42* suggests that post-award orientation is an administrative function, but preparation for the orientation often occurs within the award phase so that timely commencement of performance can occur. Since protests can be filed up to and including ten days after the contract award, the vigilance towards process integrity and accountability remains paramount. Within this realm, metrics for effectiveness can be assigned appropriately.

## **6. Contract Administration**

Many people would argue that the post-award phase of contract management and administration is actually when the quality of all previous phases become evident. Any latent defects in construct or protocol tend to surface in this phase. Contract administration could have myriad criteria, simply because the universe of management and administrative functions is so large and diverse. Contracting organizations are inclined to contract out some of these functions if either the Defense Contract Management Agency (DCMA) or organic personnel are not available or capable of accomplishing the task.

*FAR 42* presents many of the most common functions required for contract management and administration. There are seventy functions specifically assignable to the contract administration office, such as conducting post-award



orientation conferences, determining the allowability of costs suspended or disapproved as required, issuing work requests under maintenance contracts, and performing property administration, to name only a few. When a contract is assigned for administration, the contract administration office (CAO) perform functions in accordance with 48 CFR Chapter I, the contract terms, and, unless otherwise agreed to in an interagency agreement, the applicable regulations of the servicing agency. Contracting Officers normally delegate these functions to the DCMA unless the agency has requested the Contracting Officer to perform them.

Many respondents to the surveys indicated that since these were normally DCMA functions, they were unaware of the metrics that were utilized to determine effectiveness. However, contracting out these functions requires a metric set that will allow the agency or activity to manage the contractor performing these functions.

It is important to note that when constructing and utilizing metrics, there must be an appropriate balance, or diversity, within the metrics. The balance and diversity helps to identify and offset any negative organizational and process behaviors that can result from matching outcomes to specific metrics. For example, a number of years ago, the Navy utilized a financial reimbursement mechanism for contracting activities known as the Productive Unit Resourcing System (PURS). This system allocated funds for use by contracting activities for personnel allocation based on the type and complexity of the contract actions it awarded. One of the metrics allocated dollars for the number of modifications that the command awarded. The researchers witnessed phenomena on a contracting production floor directly related to the metric in that a very large modifications section was created, with several employees creating hundreds of modifications each month. Often, the modifications were simple administrative corrections with little to no real value. The metric was driving behavior in an unacceptable manner. This example is cited to illustrate that metrics must be monitored and have diverse balance to ensure desired outcomes are achieved, and negative secondary and tertiary effects are not elicited.



### **c. Metric Conclusion**

There was universal belief among respondents that contracts used to acquire procurement functions were either “Highly Effective” or “Somewhat Effective”. The primary means for the determination of effectiveness was based on whether the contracting function was able to meet its mission, and whether the contractor would be considered for future award. The metrics currently utilized present a very limited picture of effectiveness. They lack clear criteria and dimensions essential to effectively gauge the broader dimensions of the contracting processes normally contracted out.

### **3. Limitations on Effort Contracted out**

Three aspects of limitations on contractors performing procurement functions were explored. First was the length of contracted support effort. This area was queried on the Policy surveys. Next was whether contractors should be physically located with Government personnel performing the same tasks or if contractors should work in separate facilities. Last was the extent to which a percentage of the procurement effort could be contracted out. The latter two areas were presented on the Management and Operating Level personnel surveys.

#### **a. Duration of Contracts**

There is widespread belief that acquiring contracted procurement services is governed by the policies and procedures for advisory and assistance services (A&AS) in *FAR* Part 37. Although the *FAR* language does not now place limits on the duration of contracts for such services, the original policy did envision these contracts would be of a temporary nature. Many senior acquisition managers were brought up with this position. As reported in Chapter V, over sixty percent of the respondents believe these contracts should be of a temporary nature. Interestingly, organizations which tended to currently have more procurement functions contracted out were split over the idea of temporary versus permanent. The proponents for temporary contracts feel it should only be used for surge or emergent requirements while the Government recruits and trains organic resources. Those advocating a



more permanent duration feel it will be several years, if ever, before Government resource requirements are met, thus, they feel we should accept the reality of this situation by expecting a lasting contractual relationship. Some feel that certain tasks, such as contract closeout, have such a low priority they might never be appropriately completed without contractor support and should be made permanent regardless of in-house resource levels.

It appears to the researchers that almost all of the reasons cited in the *FAR* to be valid alternatives for the use of A&AS contracts seem to imply temporary situations. Obtaining advice, points of view, opinions, special knowledge, alternative solutions, support to improve operations, and assistance with more efficient and effective operation of managerial or hardware systems all give the impression that agency management would acquire these “consultant” services on an as-needed basis. Further, the language does not give the impression that the performance of routine tasks on a day-to-day basis is the intent of employing this capability. If management policy is to utilize contracted support only if we must, then certainly all contracts for this support should be viewed as temporary until no longer required. If management policy is to leave this up to each individual organization to decide, the types of functions they perform and their overall view of the procurement responsibility will drive their choice.

**b. Personnel Location**

Closely related to the matter of personal services relationships during contract performance is the location of contractor employees when they are carrying out their duties. When a contractor is producing a product or item, unless Government facilities are involved, the work is usually accomplished at the contractor’s site. When services are being delivered, this frequently necessitates performance at the Government’s site. Given the nature of procurement functions, one might argue that they could be performed independently of a Government location. This was not, however, the reaction of over seventy-five percent of the respondents to a question about this.





Notwithstanding personal services, an overwhelming majority of respondents emphatically expressed the need for close communications on a face-to-face basis between all members of the acquisition team. These respondents felt professional interaction that will occur through physical proximity outweighs any risks that might surface. Past attempts at separation have shown this to severely hinder smooth accomplishment of the contracting functions. The twenty-five percent who said contractor employees should not be in the same spaces as civil servants were not denying the benefits of personal interaction, but rather were intimating that the risks are more than we should accept. Access to sensitive and proprietary data, security considerations, and the potential for conflicts of interest were of real concern.

Some of the reasons set forth by those in favor of close proximity seem to involve perception. The perception of being part of the team argues for co-location, while the perception of conflict of interest scenarios argues in the negative. Other reasons set forth involve day-to-day working conditions (requiring communication, efficient interaction, and responsive feedback/input), and professional interface (to advance learning and understanding) seem to necessitate a blended workforce.

Personal services concerns appear to be diminishing. The constantly blurring lines between Government and contractor seem not to create the same level of distress as in years past. Employees, both buyer and seller, are working closely together, and although the personal services line is no doubt crossed on a daily basis, no substantial damage appears to have occurred. The Acquisition Advisory Panel has recommended that the policy be changed regarding prohibition of the employer-employee distinction in order to reflect realistic methods to accomplishing work tasks.

#### **c. Percent of Effort Placed on Contract**

The last area related to restrictions on the extent of contractor participation was the thought of confining the percentage of effort that activities can place on contract. The DAU report recommended that no more than twenty-five percent of an activity's workforce be contracted out. This would, the report explains, provide





flexibility to react to surge workload situations, probably cause lower priority and less sensitive tasks to be assigned to contractor employees, and leave enough Government positions to maintain necessary experience and an acceptable opportunity to develop future Contracting Officers.

The researchers decided to ask not only where the percentage limitation on the workforce should be established, but also what percentage of the workload should be limited. Lastly, the researchers were looking for other limitations beside workforce and workload that might be in use or considered appropriate.

Regarding workforce, just over fifty percent of the respondents said that it should be under the DAU recommended limit of twenty-five percent; up to three-fourths of the respondents agreed to a fifty percent limitation. Just over forty-five percent of the respondents believe that contracting out should be constrained to under fifty percent of the total workload, while that percentage increases to sixty-five percent if half of the workload is the limitation. Although there were a few who cited other factors, over eighty-five percent of the respondents marked “Not Applicable” or did not answer this last question. Focusing on the two principal factors identified above, workforce and workload, there is a clear feeling that somewhere under fifty percent of that factor is appropriate.

#### **4. Experience and Training Requirements**

The acquisition workforce has been criticized over the years for its lack of skills, knowledge and abilities to execute its responsibilities. The *Report of the Commission on Government Procurement*, the *Packard Commission Report* and several other studies from similar groups have pointed to the need for a professional workforce meeting minimum standards established for education, training and experience. Recommendations from these reports served as the impetus that created the *Defense Acquisition Workforce Improvement Act (DAWIA)* and led to the standards in place today.



It would be justifiable to expect that anyone performing contracting functions for the Government should meet these standards and qualifications. Should this expectation be extended to contractor personnel performing procurement functions for the Government? And if so, how difficult would it be to impose and enforce *DAWIA* standards on contractors? This was the issue explored in both surveys. The Policy and Senior Management survey asked about *DAWIA* implications and whether *DAWIA* should be imposed on contractors. The Management and Operating Level personnel survey queried participants as to the level of difficulty encountered if an attempt were made to compel contractors to comply. Seventy percent of the policy survey respondents felt there are *DAWIA* implications, whereas about sixty-five percent felt that *DAWIA* or *DAWIA*-like requirements should be imposed. Forty-five percent of the management/operating level personnel said it would be “Difficult” or “Very Difficult” to impose and enforce *DAWIA* requirements, while over forty-five percent noted that it would be easy. Although not an overwhelming majority, most participants felt that *DAWIA* is important to the issue of using contracted employees.

The argument for application of *DAWIA* includes the beliefs that these requirements are critical elements in the performance of complex functions to ensure individuals have the ability to think logically, act competently, stay current in the field, meet contractual expectations, and perform in a proficient manner. Contractors should have the same level of competence as Government personnel. Those opposing application of *DAWIA* claim that: (1) it will cost the Government an additional expense for contractors to meet the standards, (2) most contractor employees are former Government personnel and already have these certifications, (3) *DAWIA* is a statutory requirement placed on the Government and not industry, (4) some are already using *DAWIA* standards as an evaluation criterion in source selections or use *DAWIA* language in Statements of Work to describe desired labor categories, and it will inhibit competition.

There appear to be valid arguments on both sides. Although perhaps oversimplified, it seems as if the argument for *DAWIA* focuses primarily on the level



of skills and competencies personnel should hold, while the argument against mainly suggests that *DAWIA* qualifications are already being used to a certain extent and to push any further would be costly to the Government. One might suggest that if *DAWIA* is already being used in this environment to one extent or another, full application of this qualification should not be a difficult stretch. Further, one might point out that although there may be an added expense to the Government to bring contractor employees up to a certain level of competence, failure to do so may be even more costly in the less-than-satisfactory performance of contracting functions, even though there might be Government oversight.

If serious thought is given to requiring *DAWIA* or something similar, it might be worth the effort to investigate the extent to which standards already exist that are comparable to *DAWIA*-type requirements. Professional association certification programs, industry association and corporate training programs, and academic institution certificate programs are all examples of existing or potential methods for meeting *DAWIA*-type standards.

## **5. Impact on the Contracting System**

This research included examination of the affect contracted procurement services might have on the contracting system by looking at three aspects: (1) the development of future Contracting Officers, (2) the development of procurement options by agency management, and (3) the extent to which companies might be agreeable to being involved in Government procurement. The first two areas were addressed on both surveys, while the last was asked only on the Policy survey.

### **a. Developing Contracting Officers**

One of the principal concerns regarding the contracting out of procurement functions has been the potential affect this will have on the development of future Contracting Officers. A question about this issue was asked on both the Policy/Senior Management and Management/Operating Level Personnel surveys. A comparison of responses among the former and the latter, divided into contracting



and program management personnel, is provided in Table 7-4. Although the percentage of the former group believing it to have a negative affect was slightly lower than the latter, both were at or above sixty-five percent in their reasoning that it could have a damaging impact. Slightly over twenty percent of all respondents felt it would not have any affect, while less than ten percent of the total thought it might have a beneficial impact.



**Table 7-4. Affect on Developing Contracting Officers**

	<b>Negative</b>	<b>Positive</b>	<b>No Affect</b>	<b>NA</b>	<b>Totals</b>
<b>Contracting Policy &amp; Senior Management</b>	29	6	9	1	45
	65%	13%	20%	2%	
<b>Contracting Management &amp; Operating Level Personnel</b>	37	2	12	4	55
	67%	4%	22%	7%	
<b>Program Mgmt/Technical Personnel</b>	19	4	7	2	32
	59%	13%	22%	6%	
<b>Totals</b>	85	12	28	7	132
	65%	9%	21%	5%	

The concept involved is the critical need to nurture and cultivate a competent and professional workforce to accomplish the acquisition requirements of the Federal Government. Significant experience is needed to progress through the basic and intermediate levels to ultimately reach the advanced and expert proficiency levels required of Contracting Officers. It can be argued that one needs to be exposed to the broadest cross-section of contracting tasks that permits development of the critical thinking skills and competencies so fundamental to making complex Contracting Officer decisions.

Contract specialists need to experience the various avenues one might pursue in accomplishing a particular objective. They need to grasp the underlying mechanics and inner workings and, in fact, they need to fail from time-to-time to discover the weaknesses and risks surrounding particular courses of action. They



need to rotate through various assignments in contracting to undergo and be exposed to the specific facets these duties have to offer.

Contract specialists need to be mentored. Not only must they eventually acquire strong managerial skills, but they must also develop leadership capabilities. This is true regardless of the level within the organization to which they aspire. The Government acts through its Contracting Officers and, by extension, its contract specialists. They are the “face to industry” with which the Government speaks and acts. They exhibit authority, execute responsibilities, create relationships and perform duties all as part of the Government’s side of the buyer-seller relationship. All of these abilities are accumulated on the job, integrated with appropriate levels of training and education. Many would argue that the “culturing” acquired through mentoring must be achieved by interaction with a Government workforce, while others would assert that capable and adept contractor personnel can greatly assist to the same degree.

One frequently hears the notion of being involved in contracting on a “cradle to grave” basis. Many point to this diverse experience as indispensable to their career development. In fact, not everyone in Government procurement is involved in the “cradle to grave” aspects of contracting. Several are involved almost exclusively in pre-award actions and, thus, never observe and appreciate post-award difficulties. The reverse situation is also true. The Defense Contract Management Agency (DCMA) performs a significant role in some pre-award activities, but the bulk of its effort lies in the administration of contracts on a post-award basis.

It can be rationalized that the existence of contractor personnel working as contract specialists in a Government organization can bring new dimensions to the performance of procurement duties. An important ingredient frequently missing in buying offices is the sensitivity and understanding of commercial and industrial procurement practices that work well, or not, in the business world. Sound business methods and the decisions that result from genuine business thinking are vital to any “business,” even if it is the business of procurement. On the other hand, the



research has shown that most of the staff employed to perform contracting functions are former Government acquisition personnel who have had little, if any, industry experience to bring to the procurement table. Some have even complained that the Government contracting knowledge they do bring is outdated and lacks currency. The business manager's role required of contracting professionals today differs from the contracting technician's role of even a few years ago.

The research thus far has suggested that contractor employees performing procurement functions are dedicated, trustworthy and reliable. Their loyalty to the U.S. is unquestioned. However, because their livelihood is derived from a private entity, there could be an inkling of suspicion on the part of Government managers that these employees might not always be placing the best interests of the Government ahead of all others. This thought could carry into the interactions between Government contract specialists and contractor personnel, in which proposed courses of action might not be the most beneficial to the Government.

Contract specialists, be they Government or contractor, are the backbone of the acquisition workforce in both Government and industry. From intern/entry level employee through the senior journeyman level, they perform the day-to-day actions that result in the accomplishment of many procurement objectives and goals. These personnel, some with much guidance and others with very little supervision needed, choose procedures, plans and even strategies to be embarked upon. It is in this very selection of the direction in which to set out that every viable possibility and opportunity should be suitably explored. Ruling out ignorance or incompetence for the moment, some would question that contractor employees would investigate all viable alternatives before coming forth with a proposed solution, particularly if one or more alternatives were perceived as detrimental to their company.

#### **b. Developing Procurement Options**

One of the major concerns regarding procurement of contracting functions is the long-term affect this would have on the ability of agency management to develop and consider procurement options. This question was asked on both surveys. A



comparison of results, while preserving the distinction between contracting and program management personnel, is presented in Table 7-5.

**Table 7-5. Affect on Decision Making Ability to Develop Procurement Options**

	Limit	Expand	Neither	NA	Total
<b>Contracting Policy &amp; Senior Management</b>	7	23	14	1	45
	16%	51%	31%	2%	
<b>Contracting Management &amp; Operating Level Personnel</b>	13	18	19	5	55
	24%	33%	34%	9%	
<b>Program Mgmt/Technical Personnel</b>	10	14	4	4	32
	31%	43%	13%	13%	
<b>Totals</b>	30	55	37	10	132
	23%	42%	28%	8%	

Over forty percent of the total respondents believe that this will expand the procurement options, while less than twenty-five percent believe it will limit such options. Almost thirty percent feel it would neither limit nor expand the procurement options. Most notably, the greatest number of policy and senior management personnel believe that it will enhance options.

There appear to be several pros and cons on this subject. Arguments can be made for both the notion that options are expanded and the concern that options are limited. Several valid points support the former. Contractors can bring fresh ideas to the discussion; they can expose Government personnel to industry business methods; they can free up Government personnel to perform more complex or value





added tasks; they can come with specific skills and expertise to supplement workforce weaknesses; they operate in a competitive environment and, therefore, have developed innovative approaches which can be shared with the Government; they are not as stove-piped in their thinking and training; and they come at a time when in-house resources and capabilities appear to be extremely low.

Ever since passage of the *Competition in Contracting Act (CICA)* in 1983, the Federal Government has been criticized for its inability to perform comprehensive market research. Our knowledge of the various market segments and how they operate has been considered minimal at best. Over the years, training and experience have significantly improved our ability to perform market surveillance and to utilize the information produced from these efforts to structure our requirements, understand potential market participants, develop acquisition strategies, and execute the procurement process. Many would contend this remains one of our key weaknesses. Market research is not a function performed only by contracting personnel. Several other Government officials are, or should be, involved. Requirements personnel, program management folks, logisticians, engineering and other technical personnel all play a role. The fact, however, that contracting people are the key interface with industry thrusts them into a leadership position and frequently finds them to be the only member of the team actively engaged. It is at this very point, contend some, where overworked contracting personnel seem to be on their own that contractors with special market research skills become invaluable.

One of the chief reasons set forth by proponents of the “expand” position is that contractor employees bring knowledge of industry best practices and techniques that can be shared with contract specialists. Government procurement has long been reproached for its lack of understanding of commercial methods and sound business concepts and practices. This could be a way of introducing commercial procedures and actions which might greatly assist in executing a more effective and efficient procurement system. Consider, however, from what source these contractor personnel might come. Many buying organizations claim that their



contractors use former Government civil servants and military personnel, which increases their ability to perform contracting functions. But this almost assures that they will have had little industry experience. Even those individuals who have previously worked for companies holding prime contracts with the Federal Government have been in the Contracts Division and interfacing directly with their Federal counterparts. Not until someone with experience in the Procurement or Subcontracts Department of a company is involved will we find an individual likely to be immersed in business practices. If someone comes from outside this realm, they probably have had little “Government” experience with which to execute their contracting responsibilities and will most likely have a significant learning curve in becoming familiar with the Federal world.

The prime reasons set forth by those who claim it will limit options involve: (1) a belief that a contractor’s objectivity will be questioned because it might not always have the Government’s best interests at heart, (2) the restrictive nature of firewalls and other safeguards necessary to ensure prevention of conflicts of interest, (3) a denial of valuable training and experience for junior Government personnel, (4) contractual limitations placed on organizations as to how they can use contractor employees, (5) experience with contractors during which little assistance with options was provided, and (6) fewer and fewer experienced civil servants available to adequately assess and evaluate contractor performance.

A significant number felt there would be no affect on the ability to develop procurement options. They essentially believe that a talented individual will make a considerable contribution regardless of their origin: Government or contractor. Further, it is really up to management to decide how to act on specialists’ input from whomever provides it.

### **c. Market Participation**

The extent to which companies are willing to participate in procurements in which one or more other companies are involved in performing contracting functions for the Government should be of some concern. The health of the industrial base is



often measured by the amount and nature of competition. If companies become suspicious of their treatment in Government competitions, their eagerness to continue may be dampened. The result could be that less information is forthcoming, particularly confidential and private data, or worse, that companies withdraw from Government competitions altogether. The “large” contractor dependent on Government contracts, particularly if it is a sole source, is less likely to disengage, but could potentially restrict the flow of information. Companies with a significant amount of commercial business in addition to public contracts could very well decide to no longer stay connected with Government procurement. It is not out of the realm of possibility that this might generate protests.

The results of the question regarding market participation indicate that slightly over one-half of the respondents are concerned about the negative impact. Most of the respondents from the Services, over seventy-five percent, believe that a negative affect could occur, but no one from the Defense Agencies held this belief. Many of those from the Defense Agencies have had experience with contracted procurement services and can report their views from actual situations. The primary concern from those expressing a negative impact centers on the fairness and objective treatment of competing firms. The inappropriate use of proprietary data, biased evaluations, and undue influence by private companies all can lead to distrust in the integrity of the contracting process. Some would point out that all of these abuses could occur with Government personnel as well. But, Federal laws impose civil and criminal sanctions on these individuals, which is not the case with contractor employees.

It is unlikely that most companies, if questioned, would cite their distrust of the system as the reason for non-participation in a procurement. It would be interesting to pursue this area in-depth with respect to the affect on small businesses and foreign competitors. Some may feel trapped in their need to participate, while others may even attempt to take advantage of the system for their own purposes.



## **6. Integrity of the Contracting Process**

The integrity of the contracting process was investigated on both surveys. Although some of the respondents asserted that the best way to ensure integrity is to completely avoid using contractors, most provided thoughts and ideas they felt would help to maintain a robust contracting system. Many pointed to proactive efforts that will maintain necessary components of integrity. Sensible policies that discuss the legal, ethical, and practical aspects are critical.

Integrity has to do with the image and reputation of the system. The actions, or inactions, resulting from “challenges” to the system, such as fraudulent or abusive events, shape the character and personality of the system. How the Government handles a breach of our laws and ethics policies, both by civil servants and contractors, is highly visible and reaches to the heart of our moral fiber. It is the responsibility of every member of the acquisition team to do their utmost to preserve the highest quality of our collective personality and culture.

Certainly, safeguards and precautions are vital. Methods to discourage or prevent conflicts of interest, illegal actions, and other similar activities must be in place. Internal Government efforts, such as oversight, audits, reviews, surveillance, awareness training, and firewalls can and should be used. External efforts focused on contractors are also important and could include non-disclosure statements to protect sensitive data, financial disclosure, and ethical and integrity certifications. Going a step further, it could be argued that contractor employees who have been entrusted with the same responsibilities as civil servants should face the same consequences for contraventions of that trust. Civil and criminal sanctions should apply equally to all who are accountable for public endeavors.

## **7. Procurement Policy**

Whether DOD or the Services should issue a policy statement concerning the procurement of contracting functions is an important consideration. No policy



currently exists that is specifically centered on the procurement of contracting services, although there are policies concerning the general use of services.

This topic was broached to the policy and senior management personnel in both the surveys and interviews. Almost sixty percent of the survey respondents believe that a policy statement would be extremely helpful in clarifying top management's position on all aspects of this issue. Respondents' main concern is that there is too much difference of opinion concerning the definition of inherently governmental functions and feel a more direct application to contracting functions is needed. The thirty-five percent who do not believe a policy statement is necessary noted such on the grounds that sufficient policy and guidance already exists and that any further language on the subject would probably serve to make things more restrictive.

Although the main reason for needing a policy was a clearer understanding of the boundaries of inherently governmental functions, responses to the key elements that should be included if such a policy were published were across the board. Respondents felt a policy should be very flexible and include some or all of the following:

- Identification of those to whom the policy applies.
- Those functions which are considered acceptable for contracting out
- Safeguards to be used.
- Sanctions for failure to comply with the policy.
- Conflict of interest mitigation strategies.
- A statement as to the acceptability of using contractors.
- Approvals and approval levels.
- Emphasis on the fact that contractors have no decision authority and cannot commit the Government.
- Best practices in using contractors.
- Identification of risks and how to manage them.
- Identification of what contract types should be used.



- Requirement for non-disclosure agreements and financial disclosure statements.
- Metrics to be used in evaluating contractor performance
- Enumeration of required contractor credentials or qualifications.
- Extent to which contractors can participate in Government events outside the workplace.

One of the principles of acquisition is the existence of policies that guide our procurement activities. Policies are shaped and forced by a number of influences, mostly of an organizational origin, such as congressional laws, court decisions, GAO reports and Comptroller General decisions, and procuring agency actions, to name just a few. Policy formulation is generally a responsibility of the Executive Branch of Government and policy tends to appear abstract and theoretical until a specific issue is involved. We have here a very specific issue. Responsibilities and functions thought by many the sole domain of the Government to be accomplished by civil servants are considered by others open to execution by private firms. The question of whether these functions should be performed by other than Federal employees and, if so, the conditions under which such effort should be assumed is immediate and begging to be answered.

#### D. Chapter Summary

This chapter has attempted to analyze the various aspects covered by the research. It assessed the scope and breadth of survey and interviewee responses and tried to provide a feeling for the character and attitude surrounding the topic of contracting out procurement functions. This has by no means been an exhaustive examination of every facet of this subject, but it has delved into some of the central issues and endeavored to capture the sense of opinion in the acquisition community. The next chapter will present the conclusions and recommendations of this study.



## VIII. Conclusions and Recommendations

### A. Introduction

This report has covered a variety of subjects related to contracting out of the procurement function. Some of these areas have been addressed in recent studies and reports. This report will confirm and agree with some of the findings and recommendations in those studies but will disagree with others. The researchers hope this study can be used as a tool to heighten consideration of the issues and lead to effective policy and execution to meet the challenges posed by contracted procurement services.

### B. Conclusions

The following fifteen conclusions have been reached as a result of this research effort. Each conclusion is briefly explained, but the reader is encouraged to delve into the appropriate sections in Chapters IV, V, VI and VII to understand the full breadth and depth of each conclusion.

**Conclusion 1: Contracting out of procurement functions has been effective, however, robust metrics to measure and assess contractor performance are lacking.**

Almost all of the respondents stated that contracting out of procurement functions was effective. An analysis of responses, however, reveals that most utilized mission attainment (getting the job done) and perceptions of overall contractor performance as metrics. These measures should not be discounted, as they are clearly important to the end-user. However, they represent an ambiguous account of effectiveness without clear criteria.

There were no comprehensive or universal metrics nor framework utilized for determining effectiveness across process, workforce, and outputs with regard to quantitative measures (objective) and qualitative measures (subjective). Any





specific metrics cited were generally being utilized in an ad hoc and inconsistent manner. In light of capacity and capability shortfalls, the ability to utilize contractors to complete essential missions is considered a success. However, long-range assessment of effectiveness against established criteria is not occurring.

**Conclusion 2: The phrase “inherently governmental function” continues to be inconsistently interpreted and applied throughout DOD.**

This phrase has caused confusion for quite some time. Attempts through the years to improve understanding of just exactly what are inherently governmental functions have helped, but differences of opinion still exist. The *FAR*, as well as *OMB Circular A-76*, have set forth the definition and examples of what are considered to be these types of functions. The blurred distinctions between inherently governmental and non-inherently governmental functions caused by the discretionary ability of agencies to decide its borders will continue to trouble the acquisition process until clarification has occurred. The Acquisition Advisory Panel (2007) has recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by Government employees. This study has served to confirm that such a recommendation is valid and pressing.

**Conclusion 3: Personal services relationships are almost inevitable in the close-working circumstances required between Government contracting employees and contractor personnel performing procurement functions.**

The lines between the buyer-seller relationship and the employer-employee relationship have become more distorted than ever. It has been suggested that mechanisms do exist to attempt clear distinctions, such as a well-defined Statement of Work, between the two. However, a performance-based SOW is very difficult to develop and implement. Even if the SOW is written precisely, the danger is that management will openly engage in direction to contractor employees in order to get





the work done on schedule. Contract award requires much higher level review and interaction with the author of documents. These exchanges, if done by Government Contracting Officers and contractors, could be interpreted as personal services. The co-location of contractor employees in Government facilities certainly creates the appearance that they are Government employees, if not the actual treatment as such. Personal services relationships will occur no matter how often people are counseled on the “arm’s length” relationship that must be maintained. The contracting functions that might be contracted out are so closely intertwined with functions that must be performed by Government personnel, e.g., the Contracting Officer, that a personal services relationship will almost certainly develop since it will be so easy for the Government to assume the role of “supervisor.”

**Conclusion 4:      The contracting community is seriously concerned about the potential for conflicts of interest, both organizational and personal, when contractors are used to perform contracting functions.**

The issue of conflicts of interest has come up on numerous occasions during this research. Legal concerns almost always turn into a discussion of conflicts of interest. Ethical concerns frequently result in the same scenario. Government employees have been so carefully trained over the last several years regarding not only inappropriate, but illegal behavior, that they are collectively very sensitive to not only actual situations but, just as importantly, the perception of conflicts. Numerous potential situations were cited by respondents in this study as to how conflict of interest problems could develop unless precautionary measures were taken. When focused on the contractor side, access to company proprietary and business sensitive information, competing in cases where firms participated in developing requirements, an actual or perceived ability to influence procurement actions, biases against certain companies for obvious or even unknown reasons, insight into the Government’s requirements process, mergers and acquisitions that cause questionable affiliations, and other similar opportunities to inappropriately affect



Government procurement were cited as potential problems with contractors. When focused on the Government side, differences in compensation, future employment opportunities, and personal friendships with contractor employees that may even have originated when both worked for the Government are some of the conflict of interest situations in which civil servants could become embroiled. The *Procurement Integrity Act* was established in the 1980s to address some of the problems leading to personal conflicts of interest and violations of ethical behavior. One requirement of the Act concerns steps procurement officials must take if contacted about private employment during certain phases of the contracting process. The Acquisition Advisory Panel believes that, because the *FAR* provides considerable leeway to agencies in addressing actual or potential conflicts of interest and because there is a lack of guidance in mitigating such conflicts leading to inconsistent application of the regulations, uniform regulatory language is needed.

**Conclusion 5: Specific measures must be taken to ensure ethical standards are maintained and the integrity of the contracting process is protected.**

One might assume that so much training and education has gone into shaping the ethical character and identity of the acquisition workforce in recent years, that this conclusion would be unnecessary. Not wishing to beat a dead horse, the Darleen Druyun affair caused considerable consternation within the acquisition community, particularly contracting personnel. This situation surfaced during interviews a few times in the context of ethical principles and an imperative need to protect the integrity of the acquisition and contracting processes. This case caused acquisition organizations to “pull back” and re-examine the fundamental structure of their ethical climate. Are the right checks and balances in place to prevent or discourage such events? Does the senior leadership put correct and suitable emphasis on ethical principles and moral values? Are instances of ethical and standards of conduct transgressions handled in a vigorous fashion? Are subtle indiscretions and instances of wrongdoing dealt with promptly and aptly? Have we



assured industry, with overt measures, that such irresponsible actions will not be repeated?

A majority of survey respondents deemed that ethical issues are clearly associated with contracting for procurement services. This generally included organizational conflicts of interest and contractor access to procurement sensitive information and the opportunity to take unfair advantage of the system. There is concern about contractor loyalties and motivations which might impair their objectivity and impartiality when acting as an “agent” for the Government. Judgment and interpretation of the laws and regulations by Government employees should not be replaced by contractor personnel. The best interests of the Government should be foremost in any action taken in the contracting process. Suspicions can easily arise when contractor employees are taking these actions. Trust in the system is fragile and can be easily and seriously jeopardized.

**Conclusion 6:      The contracting out of procurement services will have a negative effect on the ability of the Federal Government to develop Contracting Officers.**

Contracting Officers grow from having worked as contract specialists. Contract specialists need experience. They need to grasp the underlying mechanics, inner workings, and fundamentals of the contracting process. They need to fail from time-to-time to discover the weaknesses and risks surrounding particular courses of action. They need to rotate through various assignments in contracting to undergo and be exposed to the specific facets these duties have to offer. Contract specialists need to be mentored. Not only must they eventually acquire strong managerial skills, but they must also develop leadership capabilities. This is true regardless of the level within the organization to which they aspire. Contract specialists must learn to think critically, make valid interpretations of the laws and regulations, exhibit authority, execute responsibilities, create relationships and perform mature duties all as part of the Government’s side of the buyer-seller relationship. They need judgment skills, cultural awareness and the ability to make



trades. All of these skills and abilities are accumulated on the job, integrated with appropriate levels of training and education. As the decision is made to increase the number of contractors in the workforce, there will be less full-time Government employees hired, which ultimately reduces the pool of potential Contracting Officers. If an organization contracts out the lower level functions, then potential Contracting Officers may be ill-prepared to do the more complex tasks later in their careers. Frankly stated, “If you cut off the pipeline, how do you replace your Contracting Officers and first line supervisors when they retire?”

**Conclusion 7: Contracting out of procurement services may have the affect of expanding the ability of Government agencies to develop procurement options.**

Contractors can bring fresh ideas to the discussion; they can expose Government personnel to industry business methods and best practices; they can free up Government personnel to perform more complex or value-added tasks; they can come with specific skills and expertise to supplement Government weaknesses; and they operate in a competitive environment and, therefore, have developed innovative approaches which can be shared with the Government. Government procurement has long been reproached for its lack of understanding of commercial methods and sound business concepts and practices. This could be a way of introducing commercial procedures and actions which might greatly assist in executing a more effective and efficient procurement system. Contractors may, for example, be able to accomplish and supply market research and planning alternatives that would be more difficult for Government personnel to provide.

**Conclusion 8: There is mixed opinion regarding the affect contracting out of procurement services would have on companies participating in the marketplace for Government contracts.**

This research started with the premise that there could potentially be a negative affect on the willingness of some companies to either compete for



Government contracts or to be open with information, technology and data if contractors were performing Government contracting functions. If companies become suspicious of their treatment in Government competitions, their eagerness to continue may be dampened. Firms are far more likely to question the integrity of the process if non-Government personnel handle proprietary information and participate in or influence acquisition strategies and source selections. Vendors could lose confidence in the fairness and objective treatment of offerors. Several respondents, however, with many years of experience in using contracted procurement services believed that there would not be a negative affect on market participation. In all of their dealings with industry, they have not seen any perceived or real impact on market participants. They feel that offerors are very willing to do business with them even though other companies are performing contracting functions.

**Conclusion 9: Government contracting functions are being performed by contractors because buying organizations lack sufficient human resources to accomplish mission requirements.**

Time and again throughout the surveys and interviews, the chief response to a question about the need to use contractors is that the levels of Government personnel are too low to permit adequate performance of the workload. Contracting Officers and contract specialists are overwhelmed and feel they are working in a sweat shop. In certain geographical areas, the same positions in other Federal Agencies are far less demanding and provide the same level of compensation. Openings in these Agencies are very attractive. It is literally impossible to fill vacant positions with qualified applicants. They just do not exist. Downsizing actions taken in the acquisition workforce over the last several years, large numbers of retirements, hiring freezes, slowly developing intern programs and a cumbersome personnel recruitment system all have led to extremely frustrated contracts managers. Although hiring authority has improved in very recent years, there is a significant gap between the “brand new” entry level employee and the journeyman



level. All of these conditions have caused desperate supervisors to seek solutions to their human capital dilemma in other ways.

**Conclusion 10: A majority of senior contracting personnel believe that contracts for procurement services should be of a temporary nature.**

Over sixty percent of senior contracting personnel believe that contracting out should be on a temporary basis and limited to surge or emergent demands while the Government recruits and trains organic resources. There is recognition that a periodic reevaluation of need and internal capability should be the deciding point to continue under contract. Although these are viewed as “temporary,” if the long-term plan is to convert back to the Government any functions contracted out after sufficient staff has been recruited and hired, then the timeframes could be in years. If the contracts are for certain functions, such as market research or requirements development, where the contractor is typically engaged in a specific acquisition under a task order, then these are of a more temporary nature. There is not a unanimous opinion that they be temporary. Some felt they were recognizing reality by pointing out we have a long-term problem of getting additional Government billets, and that contracts should be placed on a permanent basis until and unless we can recruit and retain a steady cadre of trained Government 1102s, which will take years. Contract closeout is an example of a recurring need which we may never be able to fill, and contracted services are, out of necessity, integrated into the normal workload.

**Conclusion 11: Contractor personnel performing procurement functions should be co-located with Government contracting personnel.**

There is a need for close communications on a face-to-face basis between all members of the acquisition team. Contractor personnel must be an active part of the Government team, building solid working relationships and learning from each other.



Physically separating Government and contractor employees hampers communication, would not create a very conducive work environment or atmosphere, and might tend to develop an “us” versus “them” mentality. With multi-functional Government teams, it could be detrimental to segregate the contractor employees. Services involve personal interaction and relationships; physical separation simply artificially complicates performance of a cohesive objective. The interface that occurs through physical proximity outweighs most risks that might surface. Professional interaction and synergy are needed to efficiently perform the functions. There is a need to be close to the customer for effective support and to reap the efficiencies of real-time decision-making. Also, co-location will aid in the performance of the Government’s responsibility for contractor oversight. Examples exist in which contractor employees were physically separated but were relocated to the Government facility because the ability of Government personnel to interact with contractors was very difficult. It is true that there is the potential for direction by the Government to lead to personal services and that physical separation would assist in the perception that the services are not personal. Additionally, access to sensitive and proprietary data, security considerations, and the potential for conflicts of interest is of real concern. Safeguards and security measures must be taken to protect against such occurrences.

**Conclusion 12: The percentage of the contracting workforce and/or the percentage of the contracting workload placed on contract for performance by contractor employees should not exceed an established maximum.**

The Defense Acquisition University (DAU) report recommended that each contracting activity be limited to no more than twenty-five percent of their total 1102 workforce in other than exceptional situations. This study evaluated a limitation not only in terms of workforce, but workload as well. The surveys indicated that most individuals advocate a maximum somewhere between twenty-five and fifty percent of either measure of effort. The researchers, however, disagree with the DAU





recommendation regarding the limitation on workforce. Although full-time equivalents are easy to measure and a percentage of an activity's end strength is easy to calculate, it is the view of this research that the percentage limitation be applied to workload as opposed to workforce. Individual contracting members of a buying organization perform a range of tasks and duties. Cutting them out of the organization slices through these tasks without regard to the complexity or nature of the tasks involved. Further, when focusing on workload, an activity can group various tasks that are candidates for performance by contractors, such as contract closeout duties, and apply the percentage to the grouped tasks. Government contract specialists do not perform just one set of duties, such as contract closeout, but are typically engaged in a fuller range of responsibilities. This also permits the organization to think in terms of grouped tasks that can easily be described in Statements of Work, are fairly homogeneous, may be of low risk, and might be easily severable and require far less interaction with Government personnel, therefore, potentially even allowing performance at the contractor's facility. Although disagreeing with the measure of effort to be used, the researchers do agree with the DAU recommendation that a twenty-five percent limitation should apply.

**Conclusion 13: Requirements similar to those found in the *Defense Acquisition Workforce Improvement Act (DAWIA)* could be imposed on contractor employees performing Government procurement functions without difficulty.**

Sixty-five percent of the senior contracts leadership believe that *DAWIA* or *DAWIA*-like certification requirements should be imposed on contractor personnel performing contracting functions for the Government. There is a feeling that these requirements are critical elements in the performance of complex functions. They ensure individuals have demonstrated the ability to think logically, act competently, stay current in the field, meet contractual expectations, and perform in a proficient manner. Contractors should be required to have the same level of competence as Government personnel. Contracting tasks have become more complex and





complicated, of a high risk nature, and demand intellectually capable personnel who can reason through the issues with common sense and wisdom. Many of the contractor personnel working in Government offices are former civil servants or military who achieved *DAWIA* certification while in the Government. They most likely already hold the requisite credentials or could easily obtain them. Consideration should be given to exploring the possibility of utilizing existing professional association certification programs or educational institution certificate programs as an alternative to satisfying *DAWIA*-like requirements.

**Conclusion 14:     There is general opposition among Navy and Marine Corps contracts leaders to the notion of contracting out procurement functions.**

Through interviews and from the surveys, it has become apparent that most of the Navy and Marine Corps contracting leadership are generally opposed to contracting out procurement functions. They are not proponents. Although they will acknowledge that some contracting functions, such as contract closeout, are being effectively performed by contractors and might not otherwise be accomplished in a timely fashion, the vast majority of tasks are, in their estimation, so closely intertwined with inherently governmental functions that they must be performed by Government civil servants. Even in those cases in which a buying organization is utilizing contractors fairly extensively, there is a feeling that they would rather accomplish all mission requirements with Government employees. If sufficient qualified personnel were available, this would be the case.

**Conclusion 15:     A policy regarding the contracting out of procurement functions is needed.**

Much emotion and opinion have been generated over this subject. Various organizations have developed their own plans to accommodate their organic resource shortfalls by utilizing contractor personnel to varying degrees. Sixty percent of the senior leadership believes a policy is needed to set the general



boundaries for contracting out and would be extremely helpful in clarifying top management's position on all aspects of this issue. Their main concern is that there is too much difference of opinion concerning the definition of inherently governmental functions and a more direct application to contracting functions is needed. This is coupled with the perceived need for an identification of conflict of interest mitigation strategies, metrics to be used in evaluating contractor performance, appropriate sanctions for contractor transgressions, the qualifications and credentials that should be required of contractors, the hidden risks involved, and best practices in using contractors, to name just a few.

### C. Recommendations

**Recommendation 1: Metrics must be developed and robustly utilized to monitor and assess contractor performance of Government contracting functions.**

This research has found that the acquisition workforce believes that the procurement of contracting functions have been relatively effective. This is based, however, on only two primary factors: (1) was the mission accomplished in that the contracting functions were performed, and (2) did the contractor perform well enough to be considered for future contracts. As was discussed earlier, there are obvious shortfalls in the existing means to determine effectiveness, in that it lacks clearly defined criteria and the degree to which the value of effectiveness is determined. To aid in the development of valid metrics to determine effectiveness, it is recommended that organizations use the model depicted in Figure 7-2. Appendix C in this study suggests metrics that could be used as a starting point for creation of organization-unique metrics and measures for local application that can be inserted into the appropriate sections of the model. Specific data requirements should be tailored within the model framework for each unique application, and should strike a proper balance to ensure that they can elicit contractor performance consistent with strategic organizational performance goals. Activities should utilize this model framework as the basis of construct for any contracting action for procurement



functions. Higher level management and policy personnel can use this model to gather and disseminate informational and actionable metrics within their organizations. The value of this model is that it brings together the quantitative (objective) and qualitative (subjective) dimension with the three types of metric categories (process, workforce, and outputs), and overlays these on the six phases of the contracting process. The contractor's work effort must be evaluated and assessed. Government contracting personnel will have the principal responsibility for performing these evaluations. In actuality, assessing the performance of a contractor performing Government contracting functions is not unlike the assessment that must occur when Government managers and supervisors are evaluating their own civil servant workforce. Many of these judgments are highly subjective in nature but, nonetheless, must be performed. It is suggested that this model will assist in that difficult task.

**Recommendation 2:      The Department of Defense should issue a policy regarding the contracting out of procurement functions.**

There is overwhelming evidence, as brought out in surveys and interviews, that some type of policy should be disseminated from the Office of the Secretary of Defense that will guide the Services and Defense Agencies through the challenges created by utilizing contractors to perform Government contracting functions. This is not to say that organizations have not already successfully carried out the responsibility of awarding and administering contracts under which contractors are effectively and productively executing these duties. At a minimum, the policy should address the following areas: the extent to which DOD endorses the use of contractor support, to whom the policy applies, the parameters within which organizations have flexibility to interpret and execute the policy, identification of functions that might not be inherently governmental but should be performed by civil servants, the conditions under which contracts may be of a temporary or permanent nature, any limitations on the extent to which contractor personnel are some portion



or ratio of the workforce, safeguards that should be in place to prevent breaches by Government and industry of ethical principles and legal tenets (although the extensive body of Federal standards and ethics already extant is noted), conflict of interest mitigation strategies, disciplinary action that might be taken for failure to follow the policy, sanctions that should be used for improper contractor behavior, approvals and appropriate authority levels that may be necessary, re-emphasis of the constraint that contractor employees will have no decision or obligation authority, prohibition on the use of contractors to select or monitor other firms performing contracting functions, identification of the risks associated with using contractors and how they might be managed, identification of best practices in using contractor support, metrics and measures to be used in monitoring and assessing contractor performance, and the extent to which contractor qualifications and credentials should be aligned with those currently imposed on Government employees by the *Defense Acquisition Workforce Improvement Act*. Such a policy will go a long way in helping to clarify many of the issues currently plaguing DOD acquisition organizations. It should be noted that consideration was given to encouraging the Office of Federal Procurement Policy to issue a Policy Letter regarding this area, but because such an issuance might require vetting from the Federal Agencies (thus delaying release), it would be timelier if such a policy were to come from DOD. Certainly, however, OFPP should consider pronouncements that may be appropriate from its level.

**Recommendation 3:        Safeguards to protect the integrity of the contracting process when using contractor support to accomplish contracting functions should be strengthened and rigorously enforced.**

Utilization of contractor employees to perform Government contracting functions is relatively new and has posed a new set of complex challenges. This research has confirmed the existence of serious challenges to the procurement process that have already been known or suspected on a fairly widespread basis.



Not the least of these is conflicts of interest, both organizational and personal. Other challenges that may be increasing as more and more contractors become involved in performing contracting actions are ethical problems, personal services issues, legal issues, and general overall threats to the integrity of the contracting process. Several techniques are already in place to protect the Government from improper and unethical behavior on the part of both civil servants and contractors. In many cases, however, experience has shown that these have not been enforced as meticulously as they should be. Non-disclosure statements, financial disclosures, procurement integrity certifications and other similar instruments should be used as vigilantly as possible. Oversight methods including surveillance, reviews and audits are essential components of this effort. This same concern was raised by the Acquisition Advisory Panel. To mention just one area, the Panel believes that more expansive and detailed guidance for identifying, evaluating, and mitigating organizational conflicts of interest is needed. This study has confirmed that such guidance is necessary. Contracting personnel interviewed and surveyed for this research have repeatedly pointed to the potential for biased and less-than-objective action on the part of contractor employees whose loyalties and motivations may, from time to time, be at odds with the best interests of the Government. The public image and reputation of the procurement process is vital. The “fishbowl” environment within which this process takes place sets an even greater responsibility for preserving an untarnished image on all members of the acquisition workforce.

**Recommendation 4:      The prohibition on the use of personal services contracts should be removed.**

Throughout this study, references to the difficulties encountered by Government organizations attempting to avoid personal services situations have continually arisen. Although a contract may have been carefully crafted to eliminate any potential for such a relationship, including a precisely defined Statement of Work, actual contract execution may be riddled with instances in which the line has



been crossed. Some organizations have taken extreme measures, at some expense, to structure working relationships that meticulously avert any opportunity for personal services. Other organizations have pretty much ignored the rules because they are believed to be too unrealistic and unworkable. It has been demonstrated in this study that the close working relationship so important to effective execution of contracting duties requires a significant amount of interaction and direction that is of a personal services nature. This recommendation is consistent with a recommendation by the Acquisition Advisory Panel calling for removal of the restriction regarding supervision of contractor employees by Government personnel. All of the other aspects of the employer-employee relationship, such as hiring, firing, performance appraisal, compensation, promotion, etc., remain exclusively within the contractor's area of responsibility.

**Recommendation 5: Civil and criminal penalties currently applicable to Federal employees should be extended to contractor employees who are performing contracting functions for the Government.**

It has been noted in this study that contractor personnel performing procurement functions on behalf of the Government are not subject to the same penalties and consequences that would be enforced upon civil servants for violations of statutes, standards of conflict and ethical principles. The Government is potentially at significant risk for unlawful or dishonest actions taken by contractor employees acting on its behalf. Contractor employees are not liable for the work they perform or the recommendations they make. Sanctions do exist for illegal or improper contractor behavior, such as suspension or debarment, but this generally fails to recognize employee misbehavior. Companies who may have been injured by the unauthorized and prohibited actions of a contractor employee performing contracting actions may have recourse against the Government to obtain a remedy for an offense, but the Government, in turn, does not currently have recourse against that employee except to complain to the contractor and seek removal. It has been



expressed by many that contractor personnel performing Government contracting actions should be held to the same standards and consequences for wrongdoing as civil servants. This could occur by extending appropriate civil and criminal penalties to those contractor individuals performing contracting functions.

**Recommendation 6: A hierarchy of contracting functions should be developed by buying organizations as a classification of tasks that can be used to support various decisions and reporting requirements.**

Figure 7-1 proposes a “Hierarchy of Contracting Functions” as a conceptual method of arraying and evaluating contracting tasks or functions that are typically performed by Government buying organizations. The hierarchy can be uniquely tailored to each organization to reflect its specific duties at the micro level. The hierarchy can also be used by DOD and the Services/Defense Agencies as a macro level approach to categorizing and distinguishing tasks and duties by specific characteristics. This taxonomical approach to classifying functions permits organizations to identify characteristics that differentiate functions from one another. Once an organization has defined the objectives of its classification, e.g., candidates for contracting out, individual tasks can be placed in the hierarchy according to the interpretation it has made about each task. Explicit justification for the category of placement should be maintained. The hierarchy can then be used by an organization as an inventory of functions for a variety of purposes. One such purpose would be to support submission of function designations under the *FAIR Act*. The hierarchy could also be used by organizations as a common framework in which to compare the classification of tasks and supporting rationale with each other. Additionally, capability gaps in skill levels identified by DOD Competency Model, currently in its experimental phase, could be overlaid on this hierarchical model to determine where a particular function under examination resides in the overall classification scheme.





#### D. Areas for Further Research

1. Perform a study that compares Government and industry practices used to contract out the performance of procurement functions.
2. Analyze how contractors contract out (outsource) procurement functions (extent, what functions, under what circumstances, etc.)
3. Analyze the nature of the industry that provides contracted procurement services to the Government (Small vs large businesses, foreign companies, geographical locations, typical skills provided, size of workforce, employees vs consultants, length of time in business, employee/consultant profile).
4. Study in-depth the extent to which companies will hesitate or refuse to bid/propose on Government contracts because private firms are involved in the contract formation and/or contract administration process.





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# Appendix A. Survey for Policy and Senior Management Personnel

## CONTRACTING OUT PROCUREMENT FUNCTIONS

### SURVEY FOR POLICY AND SENIOR MANAGEMENT PERSONNEL

1. What is your understanding of the scope of the term “contracting functions” or “procurement functions?”
2. Are procurement functions being contracted out in your organization?  
☐ Yes ☐ No  
If yes, which functions?
3. If you are contracting out contracting functions, what are the primary reasons for doing so?
4. If you are not contracting out contracting functions, what are the reasons?
5. If your organization contracts out procurement functions, what authority does it cite?  
☐ OMB A-76 ☐ Advisory & Assistance Services (FAR 37) ☐ Other  
(Explain)
6. Has a capability deficiency in your organization ever caused you to have to assess and determine whether a function was inherently governmental or non-inherently governmental?  
☐ Yes ☐ No  
If yes, briefly explain.
7. To your knowledge, are any functions that have been determined to be inherently governmental or exempt from competition being performed by contractors?  
☐ Yes ☐ No
8. Within the context of your organization, which of the following functions are inherently governmental and should not be contracted out and which are non-inherently governmental and could potentially be contracted out? Provide qualifying comments if needed.



Function	Inherently Governmental	Non-Inherently Governmental	Comments
Requirements determination			
Developing Statements of Work			
Structuring market research			
Conducting market research			
Performing acquisition planning			
Developing solicitation documents			
Issuing solicitation documents			
Developing and applying evaluation criteria			
Member of Source Selection Evaluation Board			
Evaluation of proposals/offers			
Performing cost and price analyses			
Negotiating contract prices, terms & conditions			
Structuring and approving incentive plans			
Preparing price negotiation memoranda			
Awarding contracts			
Negotiating contract modifications			
Determining cost allowability			
Exercising options			
Assessing contractor performance			
Implementing action based on contractor performance			
Accepting or rejecting goods and services			
Terminating contracts			
Preparing contracts for closeout			

**9.** Are there any legal issues or impediments associated with contracting for procurement functions?

\_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, briefly explain.

**10.** Are there any ethical issues associated with contracting for procurement functions?

\_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please explain.

**11.** Is there a potential problem with personal services relationships when contracting out procurement functions?

\_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please explain.



**12.** How could a conflict of interest situation arise when contracting for procurement services?

**13.** Do the *DAWIA* requirements have any bearing on the procurement of contracting functions? ☐ Yes ☐ No Please explain.

**14.** Should DOD or the Services issue a policy statement regarding the use of contractors to perform procurement functions?  
☐ Yes ☐ No

**15.** If DOD or the Services were to issue a policy statement regarding contracting for procurement functions, what key elements should be included?

**16.** Should the contracting of procurement services be permitted only on a temporary basis or allowed to be a permanent part of an organization's acquisition resource?  
☐ Temporary ☐ Permanent

**17.** Should contractors be required to comply with *DAWIA* or "*DAWIA*-like" certification requirements as a condition for receiving contracts for the performance of procurement functions?  
☐ Yes ☐ No  
Please explain

**18.** Could contracting out of procurement services either (1) limit or (2) expand an organization's decision-making ability to develop and consider procurement options?  
☐ Limit ☐ Expand ☐ Neither  
Please explain

**19.** Would contracting out of procurement services have either (1) a negative affect on or (2) a positive affect on an organizations' ability to develop Contracting Officers?  
☐ Positive ☐ Negative ☐ No affect  
Please explain

**20.** Might contracting out of procurement services have a real or perceived negative impact on market participants?  
☐ Yes ☐ No  
If yes, what are these negative aspects?

**21.** What steps should be taken to ensure the integrity of the contracting process is protected when contracting for procurement functions?

**22.** Please feel free to provide any comments not covered by the above questions.





May we interview you regarding your answers? ☐ Yes ☐ No

Please recommend someone in your organization to whom we could send this survey.

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Organization: \_\_\_\_\_

May we cite your responses with attribution in the published research report?

☐ Yes ☐ No





## Appendix B. Survey for Management and Operating Level Personnel

### **EFFECTIVENESS OF CONTRACTING OUT PROCUREMENT FUNCTIONS SURVEY FOR MANAGEMENT AND OPERATING LEVEL PERSONNEL**

1. Are procurement functions being contracted out in your organization?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, which functions?
2. If you are contracting out contracting functions, what are the primary reasons for doing so?
3. If you are not contracting out contracting functions, what are the reasons?
4. In your organization and to your knowledge, how effective have contracts which procure contracting functions been?  
\_\_\_\_\_ Highly Effective \_\_\_\_\_ Somewhat Effective  
\_\_\_\_\_ Not Effective \_\_\_\_\_ Very Ineffective
5. For contracts in progress in your organization, identify and discuss three positive aspects of contractor performance of contracting functions.
6. For contracts in progress in your organization, identify and discuss three problems associated with contractors performing contracting functions.
7. In your organization, what measures of effectiveness are used to evaluate contractor performance of procurement services?
8. In your organization, do you believe you are measuring the appropriate (correct) data, events, etc. as part of your responsibility to manage contractors?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
Please explain
9. What specific policies and/or protocols exist in your organization to ensure that contractor personnel are not performing personal services?



**10.** Given that you have authority to contract for procurement services, for what reasons are you not utilizing this authority when needed?

- ☐ Fuzzy area
- ☐ Timing
- ☐ Lack of protocols to distinguish effort from inherently governmental functions
- ☐ Organic workforce perception of contracting out these functions
- ☐ Other

**11.** How difficult would it be to enforce *DAWIA* or “*DAWIA*-like” certification requirements on contractors who are awarded contracts to perform procurement functions?

☐ Very Difficult   ☐ Difficult   ☐ Easy

**12.** If you were to limit the percentage of the effort an organization would contract out, what should be the maximum limitation on that percentage? (Circle appropriate %)

Workforce (end strength): <10%, 10-25%, 26-50%, 51-75%, >75%, unlimited

Workload: <10%, 10-25%, 26-50%, 51-75%, >75%, unlimited

Other Factor \_\_\_\_\_ : <10%, 10-25%, 26-50%, 51-75%, >75%, unlimited

**13.** Should contractor employees performing procurement services be physically separated from Government employees?

☐ Yes   ☐ No

Please explain

**14.** Would contracting out of procurement services have either (1) a negative affect on or (2) a positive affect on an organizations’ ability to develop Contracting Officers?

☐ Positive   ☐ Negative   ☐ No affect

Please explain

**15.** Could contracting out of procurement services either (1) limit or (2) expand an organization’s decision-making ability to develop and consider procurement options?

☐ Limit   ☐ Expand   ☐ Neither

Please explain

**16.** What steps should be taken to ensure the integrity of the contracting process is protected when contracting for procurement functions?

**17.** Please feel free to provide any comments not covered by the above questions.



May we interview you regarding your answers? ☐ Yes ☐ No  
Please recommend someone in your organization to whom we could send this survey.

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Organization: \_\_\_\_\_

May we cite your responses with attribution in the published research report?  
☐ Yes ☐ No



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# Appendix C. Contracting System Metrics

## CONTRACTING SYSTEM METRICS

### 1. Acquisition Planning Phase

Acquisition Planning Phase Metrics	
Process	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Process and sub-element process milestones met (sections completed, reviews passed)</li> <li>• Number of process integrity violations detected and reported</li> <li>• Statement of Work tasks completed</li> </ul> <p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Reviewed and determined compliant with all regulations and directives</li> <li>• Rated process integrity compliance as to excellent, good, or poor</li> <li>• Maintained proper security and accountability for all documentation as rated excellent, good, or poor</li> <li>• Quality of Statement of Work tasks completed as excellent, good, or poor</li> </ul>
Workforce	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Contractor provided the correct number of personnel to accomplish the task</li> <li>• Contractor provided correct oversight to assigned personnel as indicated by ratio of management to employee</li> <li>• Total cost of contracted out function</li> <li>• Per-action cost of contracted out function</li> <li>• Total cost reduction compared to established benchmark for this function (dollars and percentage)</li> </ul> <p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Contractor personnel had the correct skill level and credential as needed for the task</li> <li>• Contractor personnel demonstrated a sound work ethic and value</li> <li>• Contractor provided adequate direction and oversight to its employees as rated as excellent, good, or poor</li> <li>• Contractor personnel conducted themselves in a professional manner</li> <li>• Expertise delivered as excellent, good, or poor</li> </ul>



Outputs (Outcomes)	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Number of plans created</li> <li>• Number of pre-planning/planning conferences conducted</li> <li>• PALT (clock time to complete this phase)</li> <li>• Percent of milestone dates met (on-time performance percentage)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Plans reviewed and scored by organic force as being overall excellent, good or poor</li> <li>• Effectiveness of plan in meeting command/customer objectives as rated excellent, good, or poor</li> <li>• Long-term efficacy rating of the plan as excellent, good, or poor (to what degree did the plan have its long-term effect on mission contribution)</li> <li>• Plan clearly delineated requirements for participants in a clear, accurate and meaningful manner according to ratings of excellent, good, or poor</li> <li>• Plan clearly defined subsequent deliverables (such as test and evaluation plans) required in remaining phases according to ratings excellent, good or poor</li> <li>• Plan recommended and utilized commercial item acquisition, socio-economic goals, and other key mandates as defined by Federal, Agency, and local requirements as rated excellent, good or poor</li> <li>• Degree to which the contractor met other defined metrics uniquely tailored to the activity as rated as excellent, good, or poor</li> <li>• Contractor documented all actions required for accountability and auditing as rated excellent, good, or poor</li> </ul>



## 2. Solicitation Phase

Solicitation Phase Metrics	
Process	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Process and sub-element process milestones met (sections completed, reviews passed)</li> <li>• Number of process integrity violations detected and reported</li> <li>• Number of process-related protest actions filed</li> <li>• Number of process-related protest actions sustained</li> <li>• Statement of Work tasks accomplished</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Reviewed and determined compliant with all regulations and directives</li> <li>• Rated process integrity compliance as to excellent, good, or poor</li> <li>• Maintained proper security and accountability for all documentation as rated excellent, good, or poor</li> <li>• Quality of Statement of Work tasks as excellent, good, or poor</li> </ul>
Workforce	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Contractor provided the correct number of personnel to accomplish the task</li> <li>• Contractor provided correct oversight to assigned personnel as indicated by ratio of management to employee</li> <li>• Total cost of contracted out function</li> <li>• Per-action cost of contracted out function</li> <li>• Total cost reduction compared to established benchmark for this function (dollars and percentage)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Contractor personnel had the correct skill level and credential as needed for the task</li> <li>• Contractor personnel demonstrated a sound work ethic and value</li> <li>• Contractor provided adequate direction and oversight as rated as excellent, good, or poor</li> <li>• Contractor personnel conducted themselves in a professional manner</li> <li>• Expertise delivered as excellent, good, or poor</li> </ul>



Outputs (Outcomes)	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Number of solicitations created</li> <li>• Number of requests for solicitations</li> <li>• Number of proposals submitted per solicitation</li> <li>• Number of clarifications requested</li> <li>• PALT (clock time to complete this phase)</li> <li>• Percent of milestone dates met (on-time performance percentage)</li> <li>• Number of protests filed (negative outcome)</li> <li>• Number of protests sustained (negative outcome)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Solicitation packages reviewed and scored by organic force as to excellent, good, or poor</li> <li>• Proper incorporation of evaluation criteria and instructions to offerors as rated as excellent, good, or poor</li> <li>• Effectiveness of solicitation in meeting command/customer objectives as rated excellent, good, or poor</li> <li>• Solicitation created achieving harmony with contract type, method, protocol (commercial/non-commercial/SAP) and other parameters defined in the acquisition plan as rated excellent, good, or poor</li> <li>• Efficacy of the solicitation(s) at achieving long-term goals (to what degree did the plan have its long-term effect on mission contribution) as rated excellent, good, or poor</li> <li>• Participant ratings from those receiving the solicitation package as to its quality in terms of communicating the requirement, instructions to offerors, and evaluation criteria as rated excellent, good, or poor</li> <li>• Degree to which the contractor met other defined metrics uniquely tailored to the activity as rated as excellent, good, or poor</li> <li>• Contractor documented all actions required for accountability and auditing as rated excellent, good, or poor</li> </ul>





### 3. Evaluation Phase

Evaluation Phase Metrics	
Process	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Process and sub-element process milestones met (sections completed, reviews passed)</li> <li>• Number of process integrity violations detected and reported</li> <li>• Number of process-related protest actions filed</li> <li>• Number of process-related protest actions sustained</li> <li>• Statement of Work tasks accomplished</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Reviewed and determined compliant with all regulations and directives</li> <li>• Rated process integrity, including defined protocols for vendor rating, compliance as to excellent, good, or poor</li> <li>• Maintained proper security and accountability for all documentation as rated excellent, good, or poor</li> <li>• Reviewed and rated evaluation board results against criteria without introduction of non-advertised criteria and/or bias as excellent, good, or poor</li> <li>• Quality of Statement Work tasks rated as excellent, good, or poor</li> </ul>
Workforce	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Contractor provided the correct number of personnel to accomplish the task</li> <li>• Contractor provided correct oversight to assigned personnel as indicated by ratio of management to employee</li> <li>• Total cost of contracted out function</li> <li>• Total cost reduction compared to established benchmark for this function (dollars and percentage)</li> </ul>
	<p>Qualitative: Contractor assigned personnel:</p> <ul style="list-style-type: none"> <li>• Contractor personnel were the correct skill level and credential as needed for the task</li> <li>• Contractor personnel demonstrated a sound work ethic and value</li> <li>• Contractor provided adequate direction and oversight to its employees as rated as excellent, good, or poor</li> <li>• Contractor personnel conducted themselves in a professional manner</li> <li>• Expertise delivered as excellent, good, or poor</li> </ul>



Outputs (Outcomes)	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Number of solicitations created</li> <li>• Number of requests for solicitations</li> <li>• Number of proposals submitted per solicitation</li> <li>• Number of clarifications requested</li> <li>• PALT (clock time to complete this phase)</li> <li>• Percent of milestone dates met (on-time performance percentage)</li> <li>• Number of protests filed (negative outcome)</li> <li>• Number of protests sustained (negative outcome)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Solicitation packages reviewed and scored by organic force as to excellent, good, or poor</li> <li>• Proper incorporation of evaluation criteria and instructions to offerors as rated as excellent, good, or poor</li> <li>• Effectiveness of solicitation in meeting command/customer objectives as rated excellent, good, or poor</li> <li>• Efficacy of the solicitation(s) at achieving long-term goals (to what degree did the plan have its long-term effect on mission contribution) as rated excellent, good, or poor</li> <li>• Participant ratings from those receiving the solicitation package as to its quality in terms of communicating the requirement, instructions to offerors, and evaluation criteria as rated excellent, good, or poor</li> <li>• Degree to which the contractor met other defined metrics uniquely tailored to the activity as rated as excellent, good, or poor</li> <li>• Contractor documented all actions required for accountability and auditing as rated excellent, good, or poor</li> <li>• Product output quality was sufficient to commence next phase of acquisition process as rated by excellent, good, or poor</li> </ul>



#### 4. Negotiations Phase

Negotiations Phase Metrics	
Process	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Process and sub-element process milestones met (sections completed, reviews passed)</li> <li>• Number of process integrity violations detected and reported</li> <li>• Number of process-related protest actions filed</li> <li>• Number of process-related protest actions sustained</li> <li>• Statement of Work tasks accomplished</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Reviewed and determined compliant with all regulations and directives</li> <li>• Rated process integrity compliance as to excellent, good, or poor</li> <li>• Maintained proper security and accountability for all documentation as rated excellent, good, or poor</li> </ul>
Workforce	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Contractor provided the correct number of personnel to accomplish the task</li> <li>• Contractor provided correct oversight to assigned personnel as indicated by ratio of management to employee</li> <li>• Total cost of contracted out function</li> <li>• Per-action cost of contracted out function</li> <li>• Total cost reduction compared to established benchmark for this function (dollars and percentage)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Contractor personnel had the correct skill level and credential as needed for the task</li> <li>• Contractor personnel demonstrated a sound work ethic and value</li> <li>• Contractor provided adequate direction and oversight to its employees as rated as excellent, good, or poor</li> <li>• Contractor personnel conducted themselves in a professional manner</li> <li>• Expertise delivered as excellent, good, or poor</li> </ul>



Outputs (Outcomes)	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Number of negotiations conducted</li> <li>• Number of firms participating per each solicitation issued</li> <li>• Number of firms submitting final offers for evaluation</li> <li>• PALT (clock time to complete this phase)</li> <li>• Percent of milestone dates met (on-time performance percentage)</li> <li>• Number of debriefs requested and conducted</li> <li>• Number of protests filed (negative outcome)</li> <li>• Number of protests sustained (negative outcome)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Negotiations observed, reviewed and scored by organic force as to excellent, good, or poor</li> <li>• Proper incorporation of customer and solicitation-based issues for resolution through discussions with offerors as rated as excellent, good, or poor</li> <li>• Effectiveness of negotiation in meeting command/customer objectives as rated excellent, good, or poor</li> <li>• Solicitation created achieving harmony with contract type, method, protocol (commercial/non-commercial/SAP) and other parameters defined in the acquisition plan as rated excellent, good, or poor</li> <li>• Efficacy of the solicitation(s) at achieving long-term goals (to what degree did the plan have its long-term effect on mission contribution) as rated excellent, good, or poor</li> <li>• Participant rating in negotiations and debriefs for quality in terms of professionalism and integrity, as rated excellent, good, or poor</li> <li>• Degree to which the contractor met other defined metrics uniquely tailored to the activity as rated as excellent, good, or poor</li> <li>• Contractor documented all actions required for accountability and auditing as rated excellent, good, or poor</li> <li>• Product output quality was sufficient to commence next phase of acquisition process as rated by excellent, good, or poor</li> </ul>



## 5. Contract Award Phase

Contract Award Phase Metrics	
Process	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Process and sub-element process milestones met (sections completed, reviews passed)</li> <li>• Number of process integrity violations detected and mcreported</li> <li>• Number of process-related protest actions filed</li> <li>• Number of process-related protest actions sustained</li> <li>• Statement of Work tasks accomplished</li> </ul> <p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Reviewed and determined compliant with all regulations and directives</li> <li>• Rated process integrity compliance as to excellent, good, or poor</li> <li>• Maintained proper security and accountability for all documentation as rated excellent, good, or poor</li> </ul>
Workforce	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Contractor provided the correct number of personnel to accomplish the task</li> <li>• Contractor provided correct oversight to assigned personnel as indicated by ratio of management to employee</li> <li>• Total cost of contracted out function</li> <li>• Per-action cost of contracted out function</li> <li>• Total cost reduction compared to established benchmark for this function (dollars and percentage)</li> </ul> <p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Contractor personnel had the correct skill level and credential as needed for the task</li> <li>• Contractor personnel demonstrated a sound work ethic and value</li> <li>• Contractor provided adequate direction and oversight to its employees as rated as excellent, good, or poor</li> <li>• Contractor personnel conducted themselves in a professional manner</li> <li>• Expertise delivered as excellent, good, or poor</li> </ul>



Outputs (Outcomes)	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Number of debriefs, orientations, and tasks defined in the SOW conducted</li> <li>• PALT (clock time to complete this phase)</li> <li>• Percent of milestone dates met (on-time performance percentage)</li> <li>• Number of debriefs requested and conducted</li> <li>• Number of post-award orientations conducted</li> <li>• Number of protests filed (negative outcome)</li> <li>• Number of protests sustained (negative outcome)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Debriefs and/or orientations observed, reviewed and scored by organic force as to excellent, good, or poor</li> <li>• Proper incorporation of customer and contract-based issues addressed with participants rated as excellent, good, or poor</li> <li>• Effectiveness of debriefs and orientations (or other tasks) in meeting command/customer objectives as rated excellent, good, or poor</li> <li>• Debriefs and orientations created achieving harmony with contract type, method, protocol (commercial/non-commercial/SAP) and other parameters defined in the acquisition plan as rated excellent, good, or poor</li> <li>• Efficacy of the debriefs and orientations (or other tasks) at achieving long-term goals (to what degree did the plan have its long-term effect on mission contribution) as rated excellent, good, or poor</li> <li>• Participant rating debriefs and orientations (or other tasks) for quality in terms of professionalism and integrity, as rated excellent, good, or poor</li> <li>• Degree to which the contractor met other defined metrics uniquely tailored to the activity as rated as excellent, good, or poor</li> <li>• Contractor documented all actions required for accountability and auditing as rated excellent, good, or poor</li> <li>• Product output quality was sufficient to commence next phase of acquisition process as rated by excellent, good, or poor</li> </ul>



## 6. Contract Administration Phase

Contract Administration Phase Metrics	
Process	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Process and sub-element process milestones met (sections completed, reviews passed)</li> <li>• Number of process integrity violations detected and reported</li> <li>• Number of process-related actions completed</li> <li>• Statement of Work tasks accomplished</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Reviewed and determined compliant with all regulations and directives</li> <li>• Rated process integrity compliance as to excellent, good, or poor</li> <li>• Maintained proper security and accountability for all documentation as rated excellent, good, or poor</li> </ul>
Workforce	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Contractor provided the correct number of personnel to accomplish the task</li> <li>• Contractor provided correct oversight to assigned personnel as indicated by ratio of management to employee</li> <li>• Total cost of contracted out function</li> <li>• Per-action cost of contracted out function</li> <li>• Total cost reduction compared to established benchmark for this function (dollars and percentage)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Contractor personnel had the correct skill level and credential as needed for the task</li> <li>• Contractor personnel demonstrated a sound work ethic and value</li> <li>• Contractor provided adequate direction and oversight to its employees as rated as excellent, good, or poor</li> <li>• Contractor personnel conducted themselves in a professional manner</li> <li>• Expertise delivered as excellent, good, or poor</li> </ul>



Outputs (Outcomes)	<p>Quantitative:</p> <ul style="list-style-type: none"> <li>• Number of <i>FAR</i> Part 42 and/or tasks defined in the SOW conducted</li> <li>• Clock time to complete this phase</li> <li>• Clock time for each task (efficiency measure)</li> <li>• Percent of milestone dates met (on-time performance percentage)</li> </ul>
	<p>Qualitative:</p> <ul style="list-style-type: none"> <li>• Management and administrative tasks observed, reviewed and scored by organic force as to excellent, good, or poor</li> <li>• Proper incorporation customer and contract-based issues addressed with participants rated as excellent, good, or poor</li> <li>• Effectiveness of management and administrative tasks in meeting command/customer objectives as rated excellent, good, or poor</li> <li>• Actions conducted in harmony with contract type, method, protocol (commercial/non-commercial/SAP) and other parameters defined in the contract and/or administration plan as rated excellent, good, or poor</li> <li>• Efficacy of management and administrative tasks at achieving long-term goals (to what degree did the plan have its long-term effect on mission contribution) as rated excellent, good, or poor</li> <li>• Participant rating management and administration for quality in terms of professionalism and integrity, as rated excellent, good, or poor</li> <li>• Degree to which the contractor met other defined metrics uniquely tailored to the activity as rated as excellent, good, or poor</li> <li>• Contractor documented all actions required for accountability and auditing as rated excellent, good, or poor</li> <li>• Product output quality was sufficient to commence next phase of acquisition process as rated by excellent, good, or poor</li> </ul>





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## **Acquisition Management**

- Software Requirements for OA
- Managing Services Supply Chain
- Acquiring Combat Capability via Public-Private Partnerships (PPPs)
- Knowledge Value Added (KVA) + Real Options (RO) Applied to Shipyard Planning Processes
- Portfolio Optimization via KVA + RO
- MOSA Contracting Implications
- Strategy for Defense Acquisition Research
- Spiral Development
- BCA: Contractor vs. Organic Growth

## **Contract Management**

- USAF IT Commodity Council
- Contractors in 21st Century Combat Zone
- Joint Contingency Contracting
- Navy Contract Writing Guide
- Commodity Sourcing Strategies
- Past Performance in Source Selection
- USMC Contingency Contracting
- Transforming DoD Contract Closeout
- Model for Optimizing Contingency Contracting Planning and Execution

## **Financial Management**

- PPPs and Government Financing
- Energy Saving Contracts/DoD Mobile Assets
- Capital Budgeting for DoD
- Financing DoD Budget via PPPs
- ROI of Information Warfare Systems



- Acquisitions via leasing: MPS case
- Special Termination Liability in MDAPs

## **Logistics Management**

- R-TOC Aegis Microwave Power Tubes
- Privatization-NOSL/NAWCI
- Army LOG MOD
- PBL (4)
- Contractors Supporting Military Operations
- RFID (4)
- Strategic Sourcing
- ASDS Product Support Analysis
- Analysis of LAV Depot Maintenance
- Diffusion/Variability on Vendor Performance Evaluation
- Optimizing CIWS Life Cycle Support (LCS)

## **Program Management**

- Building Collaborative Capacity
- Knowledge, Responsibilities and Decision Rights in MDAPs
- KVA Applied to Aegis and SSDS
- Business Process Reengineering (BPR) for LCS Mission Module Acquisition
- Terminating Your Own Program
- Collaborative IT Tools Leveraging Competence

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