

NAVAL POSTGRADUATE SCHOOL

Monterey, California



THESIS

**COMMERCIAL METHODOLOGIES FOR ACQUIRING
CONSULTING SERVICES: CAN DEPARTMENT OF
DEFENSE CONTRACTING ACTIVITIES FOLLOW SUIT?**

by

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December 2001

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CAN DEPARTMENT OF DEFENSE CONTRACTING ACTIVITIES FOLLOW
SUIT?**

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Lieutenant Commander, United States Navy
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Submitted in partial fulfillment of the
Requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

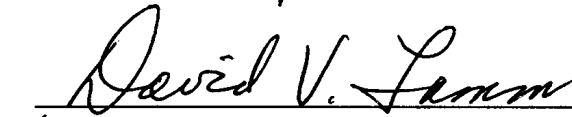
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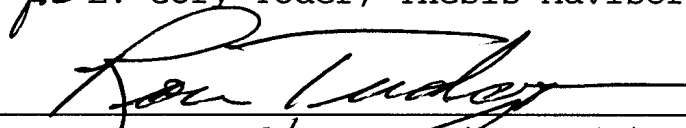
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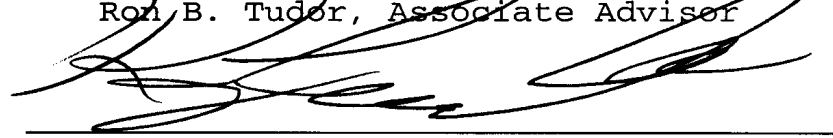
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ABSTRACT

Spending on services has increased over the past decade while spending on goods has decreased. The procurement methods for Consulting Services (CS), which comprises the largest spending subcategory of services, has come under scrutiny as a consequence of the results uncovered from an Inspector General Audit conducted in March 2000.

The objective of this thesis is to ascertain the best pre-award commercial practices for acquiring CS and draw conclusions and make recommendations for employing these proven methods in future Department of Defense (DoD) procurements. To gather these data, the researcher conducted on-site interviews with the executives and senior level acquisition professionals of eight highly successful firms, all of which are recognized leaders in their competitive niches in the commercial marketplace. Private firms effectively and efficiently obtain top-level CS because of their flexible and innovative acquisition methods. DoD can adopt private industry's sound business practices if the statutory barrier mandating full and open competition and the cultural barriers for conducting thorough market research are mitigated or eliminated.

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I. INTRODUCTION

A. BACKGROUND DISCUSSION

Over the past decade, on a percentage basis, the dollar value spent on contracting for services has steadily increased. In contrast, money spent on research/development has remained constant and the funds spent on goods/supplies have decreased. Specifically, in 1999, Department of Defense (DoD) spent nearly \$52B for services, which nearly equals the spending on goods and supplies. According to the Inspector General Audit Report No. D-2000-100, of this amount, \$10.3B (which amounts to more than twice the price of an aircraft carrier) was spent on contracting for Professional, Administrative and Management Support Services (PAMSS), compared to \$7.8B for aircraft contracts and \$5.8B for maintenance and repair contracts. Moreover, the report points out that spending for PAMSS has increased about 54% since 1992. (DoD IG, March 2000, p. 1)

PAMSS provides advice and assistance for the efficient and effective management and operation of the DoD organization. In the private sector, these services are commonly referred to as Consulting Services (CS). Despite the increasing significance of using CS, the Inspector General has uncovered that for a variety of reasons, activities and supported program offices do not adequately contract for these services. These reasons include lack of training and familiarity in requirements definition, inadequate cost estimating and cursory technical reviews (DoD IG, March 2000, p.7).

B. AREA AND PURPOSE OF RESEARCH

The trend towards increased use of CS has occurred because of DoD agencies recognizing that private industry has the economy of scale that allows it to provide these services at the same or higher quality level than DoD can, but at a lower total cost. This research will ascertain the best pre-award practices used by industry in its acquisition of CS. It will illustrate and consider the key attributes of these sound business practices and will draw conclusions and make recommendations for implementing these proven principles for future DoD acquisitions for CS.

C. LIMITATIONS

The intent of this thesis is not to give a point-by-point comparison of the methodologies used by DoD and the commercial sector in acquiring CS. Rather, this research will take an overarching look at the DoD pre-award methods and will state, in the opinion of the researcher, which commercial actions DoD could benefit from most.

D. RESEARCH QUESTIONS

The primary research question is:

What are the best pre-award practices used by private industry to acquire CS and how can these practices enable DoD to contract for these services faster and at a lower cost?

Subsidiary research questions:

1. What are CS and why are they important to DoD?
2. What are the prescribed practices and current trends for acquiring CS in DoD?

3. What are the best pre-award private commercial practices for acquiring CS?
4. Can these sound business practices from private industry be applied to DoD methodologies when acquiring CS?
5. What are the barriers that prohibit employing these methodologies?

E. SCOPE OF THESIS

The scope of this thesis will include: (1) a discussion of background information on CS along with DoD trends for acquiring goods and services, (2) a review of regulatory guidance for CS acquisitions, DoD directive 4205.2D Acquiring and managing Contracted Advisory and Assistance Services (CAAS), and Secretary of the Navy Instruction (SECNAVINST) 4200.31C, Acquiring and managing Consulting Services, (3) a review of the DoD Inspector General Report Nr D-2000-100, (4) current pre-award private industrial methodologies in the acquisition of consulting services, (5) an analysis of which elements of private industry's acquisition of professional services are most feasible to use in DoD, and (6) an analysis of the barriers to implementing these methodologies.

F. METHODOLOGY

The methodology used in this thesis research will consist of the following steps:

1. Conduct a comprehensive literature review of books, magazine articles, CD-ROM systems, Internet based materials and other library information resources.

2. Summarize the findings of DoD Inspector General (IG) Report Nr. D-2000-100 on contracts for PAMSS and review DoD directive 4205.2D and SECNAVINST 4200.31C for procedures for acquiring CS.
3. Conduct interviews either in person, or by telephone, with the acquisition professionals and senior contracting officials of several commercial firms, all of whom are recognized leaders within their competitive niches, on their methods for procuring CS.
4. Prepare a summary of the pervasive best pre-award commercial practices for acquiring CS.
5. Draw conclusions and make recommendations for employing the commercial best practices.

G. ORGANIZATION OF THESIS

This thesis consists of five chapters. The first chapter is an introduction and provides the structure and lays the groundwork for the research methodology. Chapter II will define CS and will provide background information as well as a discussion on DoD policy and directives in contracting for CS and will illustrate the current trends and issues involved in acquiring these services.

Chapter III will provide the methodology used for selecting the companies researched, and will provide background information on each corporation interviewed. This chapter will present and review the answers to questions used to interview each company researched. Most importantly, this chapter will delineate the pre-award actions taken by each company as well as the contracting

vehicle it uses to acquire CS. This information is the core set of data used that is analyzed in later chapters.

Chapter IV then analyzes and compiles the best pervasive practices for acquiring management consulting services and will discuss the present barriers against implementing these practices.

Chapter V makes conclusions and recommendations and provides the summary of the answers to the primary and subsidiary research questions. Additionally, this chapter will point out areas that require further research.

H. BENEFITS OF RESEARCH

This thesis is conducted at the request of Assistant Secretary of the Navy, Research Development and Acquisition (ASN RD&A) Acquisition Business Management (ABM) Office. It is intended to primarily benefit DoD contracting activities, by providing commercial methodologies for procuring CS from a range companies that are both defense and non-defense related. These best practices will be shared within the Navy and will identify areas in which DOD needs to develop analytical tools or business intelligence (based on industry experience) to improve contracting for services.

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II. BACKGROUND ON CONSULTING SERVICES

A. INTRODUCTION

This chapter provides the reader with background information on Contracted Advisory and Assistance Services (CAAS) and Consulting Services (CS). It will address four major areas. First, it will provide both the DoD and the Department of the Navy (DoN) definition of these services and will devise a common term for them. Secondly, it will point out the three subsets (Studies/Evaluations, Professional Support, and Engineering/Technical) of these services recognized by DoD. Next, this chapter will provide an overview of the regulations and the procedures in place to acquire these services. Finally, this chapter will conclude with a discussion on the trends and issues involved in acquiring these services

B. CONSULTING SERVICES (CS) DEFINED

DoD Directive 4205.2D, promulgated in 1992, provides overarching guidance for each component to acquire and manage CAAS. This directive defines CAAS as:

Those services acquired by contract from nongovernmental sources to support or improve organization policy development, decision making, management and administration, program and/or project management and administration, or to improve the effectiveness of management processes or procedures. (DoD 4205.2D, February 1992, p.1)

SECNAV INSTRUCTION 4200.31C which followed a year later, essentially renamed CAAS. **For the remainder of this**

thesis the researcher will refer to CAAS as Consulting Services (CS), since from DoN's definition it can be inferred that they are the same:

CS are advisory and assistance services acquired by contract from non-governmental sources (including Federally Funded Research and Development Centers and other non-profit organizations) to support or improve organizational policy development, decision making, management, and administration; support program or project management and administration; provide management and support services for Research and Development (R&D) activities; provide engineering and technical support services; or to improve the effectiveness of management processes or procedures. (SECNAVINST 4200.31C, June 1992, p.2)

C. CONSULTING SERVICES (CS) CATEGORIES

The three categories of CS recognized by DoD are 1) Professional Administrative and Management Support Services (PAMSS), 2) Engineering and Technical Support Services (ETS), and 3) Analyses, Studies and Evaluations (ASE). Table 1 delineates definitions, uses and examples of each CS category:

Table 1 Categories of CS

1. PAMSS		
Definition Contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities or systems.	Use Closely related to the basic responsibilities and mission of the activity contracting for these services.	Examples Efforts to support program management, logistics, accounting, data collection, auditing, budgeting, technical support for conferences and training, existing managerial policies, develop alternative procedures/applications to existing or developing technologies, etc
2. ETS		
Definition Contractual services that provide direct support of weapons systems, which is essential to research and development, production or maintenance of the system.	Use Program office or program support.	Examples Developing/overseeing test requirements, resolving interface problems, evaluation of test data/design, developing work statements, determining performance specs and parameters, assistance in maintaining fielded systems, overseeing other contractors operations or resolving technical controversies, etc
3. ASE		
Definition Contractual services that provide organized, analytic assessments in support of policy development, decision-making, management or administration.	Use Program office or program support.	Examples Cost benefit or effectiveness analysis of plans or programs; technology assessments and management and operations research studies; threat evaluations and equipment studies; environmental impact statements; studies or assessments in support of R&D, etc

Source: SECNAVINST 4200.31C

D. REGULATIONS AND PROCEDURES FOR ACQUIRING CS

DoD and the private sector are trending towards the increased use of service contracts. There are numerous regulations and statutes that govern services contracting. The regulations and procedures discussed herein pertain specifically to acquiring CS.

1. Federal Acquisition Regulation (FAR)

FAR Part 37 prescribes policy and procedures required for acquiring and managing all contracted services regardless of the kind of service or the type of contractual agreement intended for use. This part defines a broad range of terms for in service contracting such as "Non-personal services contract", "Personal services contract", "Performance-based contracting" and "Child care services." It also mandates the use of Performance Based Service Contracting (PBSC) methods to the maximum extent possible.

In particular, Subpart 37.2 is dedicated to governing contracting for Advisory Assistance services. Along with providing the scope of contracting officer responsibilities, this subpart specifically excludes routine information technology services (unless an integral element in acquiring CS), architectural and engineering services, and "research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological or other phenomena" from its definition of CS. Further, it states that these services shall not be:

- Used for work in decision-making, policy or management nature for which agency officials are responsible;

- Used to circumvent personnel ceilings, pay, or competitive employment procedures;
- Used to aid in influencing or enacting legislation;
- Used on an unfair or preferential basis for former Government employees; or
- Used when the product or deliverable is within the activity or another Federal agency. (FAR, November 2001, Part 37)

2. Office of Federal Procurement Policy (OFPP) Letter 92-1 on Inherently Governmental Functions

DoD service members agree that contractors can provide a wide array of services to assist agencies in achieving their mission. However, contractors may not perform all functions. While it is clear that combat related functions may not be contracted, it is also clear that functions such as grounds maintenance and laundry services should be contracted out. This policy letter is designed to assist agencies in determining which functions may be contracted for. (Executive Office of the President, OFPP, 1992) Appendix A, taken from the policy letter, provides a list of services that are not considered inherently governmental.

3. OFPP Policy Letter 93-1 on Management Oversight of Service Contracting

Pertaining only to non-personal service contracts, this policy letter established policy, assigned responsibility and provided the principles for the Executive Departments and agencies in managing the acquisition and use of services. Services such as CS, which tend to affect government decision-making, support or influence policy development, or affect program management,

are susceptible to abuse. These therefore require a greater level of oversight. This policy letter assists in providing agencies with guidelines in managing and administering service contracts through practical techniques gained from documented Federal Government experience. (Executive Office of the President, OFPP, 1993)

4. DoD Directive 4205.2D Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)

Consulting Services (CS) can be an extremely effective tool for supporting military operations at all levels. This directive established the overarching policy and guidelines to be used by DoD Components for acquiring CS. This directive applies to all CS as defined in **Table 1** of this chapter. DoD uses CS for a variety of reasons, including:

- To obtain specialized and technical advice in an area which DoD lacks or does not have access to a capability;
- To improve management and administrative functions;
- To obtain external opinions to facilitate and increase its understanding on complex or uncharted issues;
- To get information on private industry norms in subject areas where it lacks expertise;
- Assist in transferring technical knowledge from manufacturers to DoD operators on new weapons systems or equipment.

DoD directive 4205.2D mandates that requiring activities make a conscious effort to determine if CS is the "appropriate resource." Either of two criteria must be satisfied in the CS requirements determination process:

- A. In-house capability is not available and can not be acquired in time to meet the requirement or it is not cost effective to establish an organic source.
- B. When the requirement is temporary or short term.

The deliverables of CS for DoD generally takes the form of written reports, studies, advice/recommendations, opinions and analyses. As CS is advisory in nature, per Office of Management Budget (OMB) Circular A-11, they are segmented into the Object Class 25.1 category of service contracts.

Directive 4205.2D goes further to delineate the responsibilities for the Under Secretary of Defense (Acquisition, Technology and Logistics), the DoD Comptroller, the Assistant Secretary of Defense (Force Management and Personnel) and the Head of each DoD component to create a disciplined approach for the acquisition, use and management of CS. (DoD 4205.2D, February 1992, pp.1-7) It also prescribes procedures that flow down to its components, which will be addressed in the following discussion of SECNAVINST 4200.31C.

5. SECNAV INSTRUCTION 4200.31C Acquiring and Managing Consulting Services

This instruction was implemented as a result of DoD Directive 4205.2(D) and establishes policy, assigns responsibilities and institutes procedures for planning acquiring, managing and reporting CS. The intent of this instruction, is to "ensure the effective and efficient procurement oversight of Consulting Service efforts," and is designed to appease congressional interest that became apparent when Public Law 102-394 was passed which required the OMB to establish a funding category for Consulting Services. The following provides the pertinent details from SECNAV 4200.13 for the purposes of this thesis:

A. Policy - in addition to those items discussed in Directive 4205.2D, this instruction addresses conflict of interest, and mandates that clauses to prevent it from occurring be included in the solicitation, and requires contractors to sign disclosure statements. Additionally, it prescribes that the requirement be identified and determined soonest to permit increased competition, and that the required tasks be specific enough so that the performance work statement is written clearly to avoid ambiguity.

B. Responsibilities - **Table 2** delineates the titles and duties as prescribed by this instruction.

Table 2 SECNAVINST 4200.31C Duties and Responsibilities

<u>Title</u>	<u>Responsibility</u>
Assistant Secretary of the Navy (Financial Management) (ASN(FM))	Supervises the <i>DoN CS Director</i>
Principle Deputy Assistant Secretary of the Navy (<i>DoN CS Director</i>)	Ensures that the process, procedures and practices of the DoN comply with this and other applicable policy guidelines
Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN (RDA))	Provides acquisition advice and staff support to ensure <i>DoN CS Director</i> is able to successfully fulfill the duties assigned by this instruction
Assistant Secretary of the Navy (Manpower and Reserve Affairs)	Assists in determining the appropriate level of procurement support for the DoN
Navy Comptroller (NCB-6)	Ensures that CS requirements are identified and defensible in the budget; obligations and expenditures for CS are accurately entered in accounting systems; CS funds are administered according to the budget plan; training is administered at the claimant level for acquiring and managing CS and that budget deviations adhere to DoN funding policy
<i>CS Coordinator</i> (appointed by the Major claimant or Echelon 2 level command)	Establish controls to ensure CS resources are used per the operating plan; Reviews Operating Plans for compliance and savings through consolidation; Implements training to sub-claimants; Ensures performance documents/records are maintained to assess the CS utility to the organization; Ensures accurate and appropriate actions and output are reported to Defense Technical Information Center (DTIC)

Source: SECNAVINST 4200.31C

C. Procedures - this instruction outlines four phases for acquiring CS. These phases are:

1. Requirements Identification - CS shall be identified by the program manager and the budget officer in the planning and budget formulation phase and incorporated into the Operating Plan (discussed in next paragraph) The end user of CS is responsible for ensuring CS are properly identified, budgeted and reported.
2. Operating Plan (OP) - produced annually, it is maintained by the requiring activity and consolidated at the claimant level. It illustrates future and ongoing CS requirements and details the supporting documentation for the budget exhibit. These plans shall at a minimum include a detailed description and justification of the requirement, cost and an explanation of why the CS is needed to satisfy the requirement. The OP must be reviewed and approved annually by a Flag Officer or Senior Executive Service (SES) manager, unless otherwise delegated.
3. Budget Exhibit and Accounting Procedures- CS obligations (Object class 25.1) are identified and reported by DoD to OMB and Congress on "Exhibit 15E." CS shall be accounted for in one of the three categories discussed in part D of this chapter and are

to be entered in the requiring activities' automated accounting system.

4. Procurement and Contract Administration - Each purchase request for CS is required to be approved by one level above the user activity level. If a request is generated in the fourth quarter for obligation in the same quarter in the fiscal year, the approval authority for this request must be two levels above the user activity. Purchase requests are to include the type of CS desired, a Performance Work Statement clearly describing the required tasks, period of performance and associated deliverables, certification by the requiring activity that the service requested has been reviewed for the most efficient means to accomplish it, evaluation and competitive source selection criteria, detailed surveillance plans regarding oversight and contractor performance management, certification by the budget office of funds availability and independent price estimates. Finally, if the CS requested is for a study, the requiring activity must certify that queries of Defense Technical Information Center (DTIC) and all other applicable sources resulted in no information or reports that could satisfy the requirement. (SECNAVINST 4200.31C, June 1993, pp. 4-8)

The policy and procedures listed in this instruction ensure that CS is stringently managed and reported. This intent has surfaced due to Congressional, General Accounting Office (GAO) and Inspector General (IG) criticism that focused on the perception that there exists a higher risk for waste, fraud and abuse when contracting for CS. (DoD 4205.2D, February 1992, p.3)

E. TRENDS AND ISSUES

Recent trends show that money spent on services is approaching the amount spent on goods. From 1992 to 1999 DoD spending on services increased from \$39.9B to \$51.8B. Of this amount, \$10.3B was spent on contracting for Professional, Administrative and Management Support Services (PAMSS), one of the three categories of CS, compared to \$7.8B for aircraft contracts and \$5.8B for maintenance and repair contracts. Moreover, the report points out that spending for PAMSS has increased about 54% since 1992. (DoD IG, March 2000, p.2)

There is no single factor that explains the increasing use of CS. It is the result of a political mandate for scaled down government operations as evidenced by a 21% decrease in the federal workforce from 1990 to 2000 (GAO Testimony, May 2001, p.4), initiatives which rely more on the commercial sector for operational support and through considerations that demand maximum support through the best practices and technology available (AF903T1, June 1999, p.11).

A DoD IG Audit was initiated due to increased use of service contracts and problems identified from previous audits (DoD IG, March 2000, p.2). The audit's objective, as stated in Report No. 2000-100, was to evaluate the acquisition procedures for PAMSS. A total of 105 Army, Navy and Air force contract actions were reviewed dating from FY1997 to FY1998. The audit identified problems in every one of the contracts examined. Table 3 summarizes the findings:

Table 3 Summary of Discrepancies of DoD IG Audit Nr 2000-100

<u>Discrepancies</u>	#Errors /Sample	Percent
1. Lack of Prior History usage to define requirements	58/84	69
2. Inadequate Government Cost Estimates	81/105	77
3. Cursory Technical Reviews	60/105	57
4. Inadequate Competition	63/105	60
5. Failure to Award Multiple-Award Contracts	7/38	18
6. Inadequate Price Negotiation Memorandums	71/105	68
7. Inadequate Contract Surveillance	56/64	67
8. Lack of Cost Control	21/84	25

Source: DoD IG Report No. D-2000-100

Two of the most prevalent problems cited were:

- In 69% of the contracts examined, activities failed to use available history from prior contracts to help define costs and reduce risk by awarding Firm Fixed Price arrangements. For example, a Navy activity issued a Cost Plus Fixed Fee (CPFF) contract for CS worth \$73.4M despite the presence of twenty-five years of past data.
- In 77% of the actions, contracting officers either failed to prepare cost estimates or developed estimates that were inadequate or lacked detail. These deficiencies leave the

Government vulnerable and the mercy of the contractor to accurately define the cost. In one example, the contractor submitted a proposal of \$1.93M on a National Guard Contract, and the agency's estimate was close at \$2.01M; however, a Defense Contract Audit Agency (DCAA) review determined actual costs of only \$.99M.

Recommendations resulting from the audit concentrated chiefly on training. Specifically, the IG recommended that the Deputy Under Secretary of Defense (Acquisition Reform) (USD (AR)) develop comprehensive training for the user on planning and defining the requirements for CS and for acquisition and program management personnel on awarding and administering these contracts. Additionally, the IG recommended that each component Senior Acquisition Executive establish Centers of Excellence (CE) consisting of well-trained and experienced personnel to develop plans and goals along with performance measures to improve the future CS procurements. The researcher envisions that some of the information presented and discussed in the later chapters of this thesis will serve as solid input to these CE's.

F. CHAPTER SUMMARY

DoD uses contractors to perform services because of constraints on the use or availability of in-house resources or because using them increases agency efficiency and cost effectiveness. CS are advisory and assistance services acquired from nongovernmental sources and are a legitimate means to support military missions and operations. In this chapter, the researcher provided a broad and descriptive background as well as an overview of the regulations and prescribed procedures for acquiring

these services. Due to increased use of CS and despite the guidelines in place for procuring them, it is evident from the IG report D-2000-100 that DoD needs to improve on contracting for these types of services. In addition to making its processes more efficient, DoD is searching for innovative methods to reform its procedures. The next chapter presents the methodologies of how several reputable, publicly held and privately owned Fortune 500 companies acquire CS.

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III. THE COMMERCIAL APPROACH FOR ACQUIRING CONSULTING SERVICES (CS)

A. INTRODUCTION

This chapter identifies and discusses the pre-award commercial practices for acquiring CS. Here, the researcher presents the data gathered from the interviews of eight highly successful U.S. companies. The interviews were conducted via site-visits, telephone calls and through electronic mail. These interviews targeted the senior level acquisition professionals of two categories of companies: first, firms that primarily rely on the Federal Government for their major source of revenue; and second, firms that do not. The questions listed in Appendix B, if requested, were provided in advance to allow the interviewers time to gather information and prepare for the face-to-face visit. The questions, based on the literature review conducted in Chapter II, were designed to draw out the practices used by each firm for its procurement of CS. The interview sessions took place at the interviewee's work-site either in a roundtable discussion or in a one-on-one conversation. On one occasion, the interview was conducted via purely electronic media. A total of 21 interviews were conducted across the 8 companies.

This chapter is laid out as follows. First, the reasoning used for selecting the corporations interviewed is discussed. Next, a corporate overview for each firm is presented. Then, responses to the questions asked, grouped by theme, are discussed and summarized. Finally, the chapter is concluded.

B. RATIONALE FOR COMPANY SELECTION

To be highly successful in a competitive industry, firms need to be visionary, flexible and committed to taking calculated risks to differentiate themselves and improve their position in their market niche. The ability to "tap" into cutting edge information that can potentially bring a new product to market or that can improve on an otherwise superb piece of equipment is crucial for success. Although the market place differs on its approach, DoD has taken steps to bring its business processes in line with those of the private sector, as evidenced by programs such as, "Revolution in Business Affairs" and through "Acquisition Reform."

For the purpose of this thesis, the researcher chose to interview three kinds of companies that employ consultants: those large, profitable companies that compete in the very competitive high technology sector, in which the forces of the market force dictate that they seek constant improvements in their internal business processes and products to remain industry leaders; those leading companies that have cornered the market for the production of products and services that are essential instruments for the defense of our nation; and, a nonprofit organization.

Selection was based on the following criteria. Each firm must be a recognized leader within the business community and be classified as successful in its competitive niche. Each firm must show growth and or financial stability during past and recent economic downturns, and should be profitable for its owners or shareholders. (Here the researcher used *Fortune*, *Quicken* and the information provided from the individual company

websites to categorize and select the publicly traded firms.) Next, to ensure the broadest view of commercial practices for acquiring CS, it was imperative that the firms produce and sell commodities to different market segments. Limiting the research to firms that compete for the same customer would for the most part, yield similar practices.

C. CORPORATE OVERVIEW

Based on the rationale discussed in the previous section of this chapter, the following corporations, listed alphabetically, were selected for interviews: Agilent Technologies, Santa Clara, CA; Cisco Systems, Herndon, VA; International Business Machines (IBM), Boulder, CO; Logistics Management Institute (LMI) McLean, VA; Motorola, Schaumburg, ILL; Newport News Shipbuilding (NNS), Newport News, VA; Raytheon, Tucson, AZ; and Science Applications International Corporation (SAIC) San Diego, CA. (Author's note: the background information on these companies was taken from their own public release information.)

The leader in the scientific and technical instruments industry, Agilent Technologies, Inc. was "spun off" from Hewlett Packard in NOV 98 as the result of a corporate realignment. Agilent, which has facilities in more than 40 countries, and employs over 48,000 persons, is a global, diversified technology company focusing on high-growth markets in the communication, electronic, life science and health care industries. (Agilent Website, October 2001) Agilent's major industry competitors are Perkin-Elmer and Applera-Applied Biosystems. Based on revenues of \$10.7B per its 2000 Annual report, Agilent ranks in the top 180 companies in the United States. At the Santa Clara site,

the researcher interviewed Arianne Pannell, Global Sourcing Manager for Corporate Procurement and Kathi Satrum, Strategic Commodity Manager for Consulting Services.

Cisco Systems, Inc. is the worldwide leader in networking for the Internet. Cisco's Internet Protocol-based networking solutions are the foundation of the Internet and most corporate, education, and government networks around the world. Cisco solutions ensure that networks both public and private operate with maximum performance, security, and flexibility. In addition, Cisco solutions are the basis for most large, complex networks used by corporations, public institutions, telecommunication companies, and are found in a growing number of medium-sized commercial enterprises. (Cisco Systems website, October 2001) Based on 2000 revenues of \$18.9B Cisco ranks 107th on the Fortune 500 list (Fortune website, July 2001). Cisco competes with Nortel, Juniper and 3COM networks. The researcher interviewed Charlie Booth, manager, DoD strategic alliances.

International Business Machines (IBM), Inc., employs over 316,000 people to develop, manufacture, and sell information processing products, including computers and microelectronics technology, software, networking systems, and information technology-related services operating on a worldwide basis. IBM strives to translate its advanced technologies into business value for its customers. (IBM website, October 2001) IBM competes with Hewlett Packard, Dell and Compaq in producing computing equipment. In 2000, IBM ranked 8th in revenues on the Fortune list (Fortune website, July 2001). For this interview, the questions listed in Appendix B were transmitted electronically to Tom

Lindhal, Air Force Project Executive, who coordinated the responses from the IBM Global procurement team.

Logistics Management Institute (LMI) is a nonprofit institution that was set up by the Federal Government in the 1960's to assist in improving the management of the nations public sector through research, analysis, education and counsel. Specifically, LMI specializes in the areas of Acquisition and Health Systems, Infrastructure, Materiel and Organizational Workforce Management. (LMI website, October 2001) LMI's primary competitors are Center for Naval Analysis (CNA) a Federally Funded Research Development Center, and RAND worldwide. The persons interviewed were Jeffery Bennett, Supply Chain Management Program Director; Dennis Wightman, Weapons Systems Maintenance Program Manager; Donald Boyle, Senior Contracts Attorney, and Juliet Nisely, Subcontract Administrator.

A global leader in providing integrated communications and embedded electronic solutions, Motorola, Inc., employs over 140,000 persons worldwide, and earned nearly \$38B in revenues making it 34th on Fortune's list for 2000 Fortune website, July 2001). Motorola's products include software-enhanced wireless telephone, two-way radio and messaging products and systems, end-to-end systems for broadband operators, electronic and semiconductor systems. (Motorola website, September 2001) Motorola's chief competitors are Qualcomm, Nokia and Ericsson. Gene Rudnicki, Director of Corporate Contracts for Software & Technology Acquisition, provided data during the face-to-face interview conducted.

Newport News Shipbuilding (NNS) Company, Inc., is the sole builder and refueling shipyard of the U.S. Navy's

nuclear powered aircraft carriers and only one of two manufacturers of its submarines. NNS was spun off from Tenneco in the mid 1990's and is one of the top ten defense companies. (NNS website, October 2001) Employing over 18,000 people most of whom are located in Newport News, VA., NNS ranks 681st on the Fortune list for 2000 (Fortune website, July 2001). The persons interviewed for this thesis were Stephen Hassell, Vice President and Chief Information Officer (CIO); Ronald Ward, Director of Contracts; Tom Clark, Director of Production Engineering; and, Paul Tuzzolo, Materials Resource Planning Controller.

Raytheon, Inc. is a world leader in the production of Defense, Government and Commercial electronics as well as business, aviation and special mission aircraft. Raytheon has 87,500 employees worldwide and based on revenues of \$18.3B, ranks 111th on Fortune's list for 2000. (Raytheon website, October 2001) The persons interviewed were Kurt Kutyla, Deputy Director for Contracts and Cheri Sayers, Senior Supply Chain Specialist of the Engineering Procurement Material Group. Both interviewees work at the missile systems development and manufacturing facility.

A diversified high-technology research and engineering company, Science Applications International Corporation (SAIC) headquartered in San Diego, California offers a broad range of expertise in technology development and analysis, computer system development and integration, technical support services, and computer hardware and software products. The largest employee owned research and engineering firm in the nation, SAIC and its subsidiaries employ over 41,000 workers in over 150 cities world wide

and ranks 296th in revenues on the Fortune list. (SAIC website, August 2001) The persons interviewed were Stephen Ayers, Senior Vice President (VP) for Contracts and Procurement and, Robert Berg, VP for Procurement.

D. THE INTERVIEW RESPONSES

At each company, the persons interviewed were mid to upper-level contracting professionals that are actually involved in acquiring CS for their organization. In the attempt to extract the commercial procurement approach from the defense contractors, the researcher stressed that the desired responses are those that reflect their methodology when acquiring CS for internal purposes vice those resulting from a subcontracting effort for a Government engagement.

Appendix B lists the twenty questions along with their associated subparts that were asked of the eight firms during the interview process. For the purpose of brevity, the interview responses are categorized below according to eight themes: Requirements Determination, Market Research and Surveillance, Solicitation, Competition Requirements, Source Selection, Negotiation, Fair Pricing Determination and Contract Types. Each theme is laid out in three parts. First, the researcher discusses the *objective* of the questions within the theme. Next, *paraphrased responses* to the questions are listed. Finally, the researcher presents a *summary* of those responses.

1. Requirements Determination

a. *Objective:* The first series of questions focused on the rationale for acquiring CS and how these

requirements are defined. Here the researcher attempts to establish a common ground between DoD and commercial companies reasons for using CS. (Author's note: All responses are paraphrased to mask the company providing the information.) The paraphrased responses are:

- We hire consulting services when we need the expertise of an outside service provider to assist in administering a program or a vision. This need can stem from a lack of knowledge in a particular area because it is not a core competency, or because the expertise was lost due to restructuring. We define the requirement by a desired quality of service and to achieve a specific objective.
- Our Company hires consultants to fill a perceived need that falls outside the core competency of the business unit. Depending on the business case, will hire them on a full-time or part-time basis. The requirements for consultants are defined with an objective focus by putting together a cross functional team to identify and shape the requirements.
- We hire consultants because some of our business needs, and the needs of our customers, are unique, and require niche expertise not available internally.
- My firm hires consultants for unique expertise that, for whatever reason, does not exist in the organization. Consultants are essentially brought onboard to fill gaps in study programs for our clients. The requirements are defined first by looking at the specific objective and then by obtaining a high quality of service to fill the requirement.
- We hire consultants when there is no immediate staff on hand to support or satisfy a requirement. Generally the requirement seeks both the quality of service and to achieve a specific objective.
- Our organization hires consultants when a required skill set or knowledge base is not

present within the company, or to get an independent set of eyes to take a look at internal process for the purpose of recommending improvements or change; to "bridge a short term gap." "Consultants have a broad view across multiple industries." The requirements definition of consulting services depends on the type of engagement. For technology consultants they are short term and are narrowly defined per the Statement of Work. For Management Consultants, the requirements are much looser and tend to have a broad multiyear function.

- We use consultants in the performance of company requirements when a particular professional knowledge or skill needed does not exist within the company. Requirements are defined to achieve a specific objective, with a certain quality of service.
- Consultants are brought in to advise on policy development, and management administration to improve the business operation of the company. They are used to evaluate programs across a product line. We use much of their services to improve on proposal preparation to assist us in obtaining new business.

b. *Response summary:* 100% of the companies interviewed use CS for same fundamental reason - to get advise or opinions in an area for which they recognize that they lack knowledge or expertise. Specifically, the responses illustrate that if the service needed is outside a core competency then that service is acquired for the express purpose of assisting in attaining a larger objective. These results are consistent with the intent of DoD policy on acquiring CS.

The definition of the requirement appears to be determined by the specific need. Six of the companies interviewed pointed out that in many cases the end products desired from the CS are usually in the form of advice or

written reports. However, two companies stated that in cases where the requirement was not well defined an early phase of the project could be to define the subsequent phases and direction the engagement needs to go.

2. Market Research

a. *Objective:* The next series of questions were posed to determine if market research is conducted in support of acquiring CS, and, if so by whom and to what extent. Surprisingly, some firms informally conducted market research. A few paraphrased responses were:

- Formal market research is not consistently done throughout our business units. Most of the information on the market place is gathered through networking and exposure and maintained by the individual program needing the service. At present, an informal pool of sources is traced at the user/business unit level.
- For consulting services that are specifically for our internal benefit, there is no formal market research effort. We simply give a call to a few sources. For consultants required in support of a government contract, we have a more formal approach, as required by the FAR;
- Market research is informally conducted at the program level and much of the data on available sources is gathered from recommendations and prior use of the similar services and its providers. There is no central company/division database that exists of qualified consulting sources. The individual program office informally tracks qualified service providers.
- Market research for consulting sources is performed via the company intranet . . . we simply ask around to our colleagues for inputs on sources to fill the requirement. No formal system is in place to track consulting talent.

The pool of qualified sources is more or less tracked at the user/requestor level.

Other firms had more formal methodologies for their market research efforts. Their paraphrased responses are:

- We perform market research on a global and continual basis. We also buy industry information. Further, we meet with our core suppliers on a regular basis. We also track trends year to year. We track qualified resources to fulfill our requirements. Resources can come from: (a) companies that we contract directly with, or (b) companies that recruit resources.
- A central database (available for all personnel to view via intranet) is maintained by our subcontract administrator of all consultants currently on IDIQ contract, as well as those previously used and those that have been recommended for use. This pool of talent consists of both firms and individuals.
- For technology consulting, we use market research firms. These firms specialize in sizing up and evaluating the suppliers in a particular service sector. They tend to be able to identify smaller more personalized sources that have specific knowledge in a technology area. These firms give a list of providers, rank and evaluate their relative strength, and give a range of prices charged for each provider's services, etc.
- We research both internally (look at company history with certain providers . . .when, where and how much spent) and externally (new technology areas and the other suppliers not previously used). At present, we are investing time in pairing down the supplier base to get strategic partnering. The pool is from a vendor list, whereas individual consultants are more prevalent outside the U.S.

b. *Response Summary:* There is a varied spectrum for conducting market research amongst the eight firms interviewed. Half the firms had no formal method for conducting market research. Incidentally, these companies were no less confident in their ability to acquire the best CS providers than the other four companies interviewed. The methodologies for the formalized approach ranged from developing and maintaining shared central databases to purchasing this info from an outside firm.

3. Solicitation Process

a. *Objective:* The next series of answers were in response to the researcher's inquiry on the methods each firm uses to advertise and solicit service providers for their CS requirements. NONE of the eight companies interviewed send out blind solicitations. Rather, they specifically target those sources that through past experience or via market research or recommendations they feel can best fill their requirement. Some of the comments follow:

- We have a "Preferred supply base" (established relationship/partnership, hence gets discounted rates) and an "Approved Supply base" (any service provider that they have used before and intend on using again). As requirements arise we use these supply bases, and will contact the vendors directly. We never blindly advertise our CS requirements.
- We do not advertise our requirements for consultants through media channels. We have a well-defined, and well-established, strategy for sourcing consulting services. This includes: Selecting one of our established Core Suppliers; Competitive Bid; Competitive Evaluation with/without price.

- Basically, we generally know who we're looking for, thus we just go out and get them. We don't have the time or the infrastructure to blindly advertise and evaluate countless proposals.
- Our firm generally does not advertise its requirements for consultants. The business units, or program managers usually have already identified the source that they feel can meet the requirement. An RFI will be sent out only on those rare occasions when there is a lack of confidence the pool of service providers.
- Requirements are advertised internally and informally (via intranet/email), to tap into the corporate knowledge in an attempt to find the best possible source to perform the service.
- The requirements for consulting services are advertised to none other than the service providers targeted.

While some firms use formal Request For Proposals (RFP's), others solicit bids by less formal measures. The other typical methods are described below:

- Our requirements to hire consultants are only advertised through its pre-established service providers via phone calls, emails or face-to-face meetings.
- My solicitation procedures are informal, but direct. We simply call up the provider we deem can successfully complete the task. Formal documentation is neither required nor desired. We feel that sending formal solicitations adds no value to the selection process.

b. *Response summary:* While it is evident from paragraph 2 that there is no consistency in the market research methodology amongst the eight firms, there is a consensus that only those sources that are known as capable

of successfully fulfilling the requirement are solicited. This factor also holds true when the requirement is for a subcontract with the Government.

4. Competition Requirements

a. *Objective:* The next question focused on defining adequate competition in as it pertains to contracting for CS. Seven of the eight companies surveyed had no express competition requirement. Typical, paraphrased responses are:

- There are no written competition requirements/rules.
- Competition requirements to hire consultants for government subcontracts are usually in accordance with the FAR. However, in cases not related to government subcontracts there are no competition requirements.
- There is no written policy at the corporate level for competition requirements.
- There are no real competition requirements that must be adhered to unless the service is in direct support of a government contract. The nature and classification of these requirements are such that they are seldom competed due to limited available sources.
- Advance Notification-Consent is required from the PCO if hiring consultants for use on a government contract IAW/Pursuant to FAR part 52.244.

The response from the only outlier was:

- The standard is to have greater than one, but we prefer to have three.

b. *Response summary:* With the exception of one company, all the companies interviewed have no formal

policy on the number of competitive bids required to acquire CS. All eight companies pointed out that when satisfied with the level of service from a previous provider, they usually sought out the provider for future engagements. The only instance where competition is of unanimous concern is under subcontracting efforts for the government when flow-down clauses apply, and when the requirement is for an unfamiliar or a first-time engagement.

5. Source Selection Process and Factors

a. *Objective:* The next questions extract information on source selection along with the methods for verifying the criteria each company feels is paramount when contracting for the best CS provider. Typical paraphrased responses are:

- There is no Source Selection Evaluation Board (SSEB), nor is there a written Source Selection Plan (SSP). No specific sourcing teams exist for individual procurements. However the project manager typically includes his/her technical folks in the decision to use a particular source.
- There is no source selection board. We involve the stakeholders in the source selection decision and down select based upon the service provider's ability to meet this requirement.
- In no case is there any sort of formal SSEB. The Project or program manager is the final decision on the consultants that are hired and if the dollar value is large or the risk level is great, the level of review is elevated to the next level.

The two other companies, which are leading defense firms, responded as follows:

- In the technology area, an evaluation team is comprised of someone on the business side, finance side and the technical side - and they use a proposal evaluation matrix. The VP for that functional area signs off/approves hiring Consultants.
- We use a Source Selection Strategy Integrated Product Team (S³IPT), which is assembled when a new project comes on line and is comprised of persons having different technical competencies within the program. These folks are involved in selecting all the inputs necessary to see its program to successful launch/completion.

In all the companies, the final decision authority for sourcing rests with the Project Manager (PM) or the Vice President of the business unit. Typical responses are:

- The PM is overall responsible for identifying and selecting.
- In our company, since the decision and the outcome of the overall project efforts and results are tied to the PM, he is primarily responsible the sourcing efforts.
- The project manager charged with the responsibility to execute is in charge of the selection process, and takes into account a budgetary target.
- The VP of the business unit requiring the service has the final say in source selection.
- Generally, the CIO or the VP of the business unit is responsible for the selection process.

Much emphasis is put on Past Performance (PP) for the selection decision. Of note, seven of the eight companies weight PP as the number 1 criteria, with prior performance on a previous project with their company being paramount. For each case, verification consists of directly contacting the references of prospective source to validate its track record. The following statement is from the firm with a differing perspective:

- Past performance is the number 2 requirement. Our confidence in the service provider's ability to meet the requirement is number 1, and reputation is number 3.

b. *Response Summary:* While sourcing involves forethought and a process to make a final calculated decision, in six of the eight companies there is no formal or written selection plan. Nonetheless, inputs from personnel familiar with the project are used in the process. From these responses we can glean two facts: 1) although, in most cases formal source selection teams are non-existent, the PM or VP are held responsible for the final decision; 2) PP is the single greatest factor for source selection.

6. Negotiation

a. *Objective:* The next series of answers are in response to the researcher's inquiry on which areas each firm addresses in the process of negotiating CS agreements. All the firms have some variation of a pre-existing agreement it uses in an attempt to

shorten the process. The following three paraphrased comments typify the answers of the eight firms:

- Negotiation is minimal since we're aware of industry norms and the standard prices; the terms and conditions are generally non-negotiable . . .take it or leave it.
- A Model Agreement is presented to the supplier. This is generally nonnegotiable, and specifies the overall conduct and responsibilities of buyer and supplier.
- Large consulting firms tend to want their own terms and conditions as a negotiating starting point. However, we use a Master Services Agreement in an effort to get the level and type of service we want.

All eight firms prefer not to spend time negotiating rates. A few of the respondents' paraphrased statements illustrate this fact:

- Much of the negotiation normally involves the tasks required as opposed to the rates, since many of the consultants used for subcontracts are on the GSA schedule.
- Most of the service providers have standard rates; hence we do not spend time with price negotiation.
- The only negotiations that occasionally occur in consulting contracts are for Material (travel expenses). Most of the service providers have standard rates.
- Rates are negotiated when we add a potential source to our preferred supplier base. Hence, when we use a Consultant from this supplier base, we seldom if ever re-negotiate those rates.

- As opposed to negotiating the rates, a large sticking point for our company is to ensure the firms provide continuity and high caliber persons.
- We insist that we keep any data rights developed at the conclusion of the engagement and are indemnified against their loss.
- In the management consulting area, most of the negotiation that occurs is for schedule and performance. The fee amount is not negotiated much but the type of fee is.

b. *Response Summary:* The common starting point for negotiating a contract for CS is through some version of a master agreement. From here, the firms negotiate any terms and conditions they deem necessary for its requirements satisfactory performance. Any subsequent negotiating points appear to arise as a result of the uniqueness of the engagement between the firm and the CS provider.

7. Fair Pricing Determination

a. *Objective:* This next series of responses delineate the process used in the commercial sector for developing independent price estimates when acquiring CS and for all companies interviewed, led to determining "Fair and Reasonable" pricing. The comments of the respondents are paraphrased below:

- Prior to acquiring CS, independent price estimates are developed through comparing prices of comparable firms and by looking at past use of the service. When determining if the price is fair and reasonable, we weigh the value of the service to the organization.

- We pay attention to current market rates, industry norms, and the rates we've paid for similar engagements in the past. If we're hiring a CS provider for an entirely new venture and industry information is non-existent, then we make a comparative analysis of what it would cost to perform the service in-house.
- Independent price estimates for the service are developed based upon identifying the market rate. Fair and reasonable pricing is determined and obtained by leveraging relationships with the service providers.
- At our company, we establish internal estimates for services delivered. An analytical evaluation of "fairness" for consulting includes a comparison of quoted rates to industry averages for the skills required.
- Independent price estimates are generated based on market rates and past contracts for similar requirements. Due to the nature of the business we provide our customers, our fairness determination is also based on applying internal cost structures to the contracted service.
- Independent price estimates are developed on the basis of past contracts for similar purposes, knowledge of the "going-rates", price comparisons, and from market research.

b. *Response Summary:* Amongst the eight firms interviewed, there is a consistent norm for determining whether a price is fair and reasonable. The companies make their determination based on internal price estimates that are derived from current market research data, prices paid for similar past services and on internal labor rates.

8. Contract Types and Payment Arrangements

a. *Objective:* These questions were designed to determine if there are particular types of contracting vehicles used in the commercial sector for CS engagements. Each firm uses its own version of a "boilerplate" CS agreement (example provided in appendix C) as a starting point for putting terms and conditions of the requirements in place. One firm noted:

- We use "Model Agreements" as a base for the relationship. These define the overall relationship responsibilities that apply to any individual project. These model contracts were developed by our corporate legal office, and are (generally) non-negotiable.

Five of the eight firms (four of which are leading defense contractors) use Firm Fixed Price (FFP) contracts when the CS requirement is well defined. Paraphrased comments from these companies follow:

- Arrangements range from FFP to Cost Plus Fixed Fee for Subcontracts with the Government.
- If the requirement is well defined, we try to use a FFP contract.
- We have used FFP contracts when acquiring CS in the past. For example, when we needed a critical analysis of our internal approach to getting prepared for during Y2K, we hired a consultant using a FFP contract. For this venture, the final deliverable was a report laced with recommendations for improving our posture for the turn of the century.

- Our company tries to use FFP arrangements to the maximum extent practicable. In fact, we recently let a contract for a 2-week project for \$5K. For this engagement, both the requirement and the deliverable were narrowly defined.

All the respondents indicate that there is a recurring need to acquire CS for their respective firms. As a result, Indefinite Delivery Indefinite Quantity (IDIQ) type contracts are used by each organization. The most pervasive arrangement is the Time and Material contract. If there are no expenses billed, the engagement becomes a labor hour contract. All firms routinely use this vehicle when acquiring CS. Industry standards for payments for CS agreements are made on a periodic basis. Of the companies surveyed, two pay their CS providers 45 days after invoice, while the other 6 firms pay 30 days hence.

A progressive method is performance-based payment by milestones. A paraphrased comment from one company is:

- For some consulting tasks we try to structure our agreements such that we pay at the completion of a milestone or upon receipt of the deliverable, as applicable. This practice is "less work" on us and serves to ensure that the contractor delivers high quality service on schedule.

b. *Response summary:* Although all the firms have differing requirements, they all use model agreements as a launching point for their CS engagements. These agreements list the contract type as well as the payment terms for the length of service. If the requirement is well-defined and short term, the

majority of the firms place most of the risk on the service provider by instituting FFP contracts.

E. CHAPTER SUMMARY

This chapter presented data gathered from interviews of mid to high level acquisition professionals of a diverse mix of seven highly successful Fortune 1000 companies, and one non-profit organization. All firms are widely recognized leaders in their respective competitive niches, and employ innovative and flexible approaches to acquiring CS. The interview responses were categorized and summarized under the eight themes of: Requirements Determination, Market Research, Solicitation, Competition Requirements, Source Selection, Negotiation, Fair Pricing Determination and Contract Types. Chapter IV will compile the "best commercial practices" for acquiring CS, and will illustrate those practices most feasible to apply in DoD. Additionally, Chapter IV will identify barriers against implementing these best practices.

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IV. COMMERCIAL BEST PRACTICES FOR ACQUIRING CS

A. INTRODUCTION

The objective of this chapter is to distinguish those methodologies for acquiring CS, identified in the previous chapter, which are the commercial best practices. For the purpose of this thesis, best practices are sensible techniques gained from the viable expertise of the eight extremely successful companies interviewed and may be used to improve on DoD's process for procuring CS. First, this chapter will compile and describe those proven and established best practices. Next, the researcher discusses the feasibility for using these commercial business methods in DoD, coupled with any associated barriers for implementation. Specific recommendations will follow in chapter V.

B. BEST PRACTICES

This section identifies and describes the best practices for acquiring CS. These practices are presented according to the themes offered in Chapter III: Requirements Determination, Market Research, Solicitation, Competition, Source Selection, Negotiation, Fair Pricing Determination and Contract Types.

1. Requirement Determination

- Commercial businesses acquire CS to obtain professional advice, or outside points of views to enhance their understanding or to develop solutions in areas that are not immediately available internally, or falls outside their core

competencies. The deliverables from the CS engagement are vital to assisting the organization in managing and administering a project, program or some other value-based venture.

2. Market Research

a. Market Surveillance - Actively study the marketplace on a recurring and universal basis to keep abreast of the best and brightest CS providers available.

b. Market Investigation - In addition to market surveillance, companies meet with their suppliers to stay informed on the most recent trends. This action occurs prior to soliciting for CS.

c. Knowledge Management - Develop and maintain a current database of CS suppliers. This information is made accessible to all potential users so that the entire organization can reap the benefits.

d. Contract for Market Research Services - If companies are unable to shepherd the information internally, they purchase industry data from market research firms. Market research firms can evaluate the base of suppliers for any specific CS requirement and can provide relative rankings based on ability to fill the need, reputation, past performance, price, etc.

3. Solicitation Process

- ***Target Qualified Sources*** - Companies solicit only those sources able to satisfactorily meet or exceed their requirement. In the current and expected future environment of constrained dollars, commercial industry does not waste time soliciting and subsequently evaluating countless proposals. The weeks required to evaluate them could make the difference in fielding a new product before industry competitors do. Resources are better spent focusing on other sectors of the business organization.

4. Competition Requirements

- ***Stick with reliable suppliers*** - When satisfied with an offer from a competent source or when content with the level of service obtained from a previous supplier, companies stick with that CS provider. Establishing strategic, long-term alliances with a few core-suppliers is the current trend.

5. Source Selection Process and Factors

- Team Approach*** - Involve the representative stakeholders (persons having a vested interest in the product the CS providers are hired to improve) in the source selection process, to make

quick and logical decisions based on what makes business sense for the present requirement.

b. Past Performance - CS supplier past performance on previous contracts with the firm is the number one factor for source selection, followed by past performance history with other firms.

6. Negotiation

a. Model Agreement - Use a distinct and unambiguous model agreement (boilerplate contract) as the initial negotiating position. This facilitates obtaining the type and level of service desired. This agreement specifies the overall conduct and responsibilities of both parties.

b. Pay Market Rates - Make the acquisition price-based, rather than cost-based. Let the economics of the market determine the price to pay. Pay the market rates for the service and do not barter on prices.

c. Pay for Value Added Functions Only - Negotiate the prospective types of fees charged, rather than the amount to be charged. If there's a fee for a segment of service that adds no value, rather than reduce the amount of the fee, eliminate that service segment altogether.

7. Fair Pricing Determination

a. Independent Price Estimates - Formulate independent price estimates based on market rates, industry norms and past contracts for similar requirements.

b. Internal Cost Estimates - For first-time engagements and if market data is unavailable, make fairness determination based on the cost to perform the service if it were conducted in-house.

c. Quantify Value Added - Estimate the cost of service and compare to the projected value added to the organization.

8. Contract Type and Payment Arrangements

a. Indefinite Delivery Indefinite Quantity - To make efficient use of time, generate Indefinite Delivery Indefinite Quantity (IDIQ) Contracts for recurring CS requirements. This agreement saves several steps in acquiring CS for future engagements.

b. Firm Fixed Price (FFP) Contracts - To minimize risk on the buyer, when the requirement and the deliverable are well defined, introduce FFP contracts.

c. Minimize Time and Material Contracts - Time and Material tend to give the CS provider little motivation not to control hours worked.

d. Performance Based Guarantee - Structure payments according to milestone or performance objective, if possible. Example - one company

contracted a consulting firm to evaluate the efficiency of a production division. The objective was to reduce costs while improving quality and on-time performance. After its initial assessment, the CS contractor assured the company that it would save them three dollars for every dollar spent, on a yearly basis for its training systems and service. The program was designed to last 30 weeks and could be discontinued anytime at the company's discretion. The contract explicitly stated, "Should we not be able to achieve our guaranteed annual savings rate by the planned completion date of our program, we would either continue working on your premises at our expense until this rate is attained, or we would reimburse a portion of our fees equal to the percentage of savings shortfall." This type of arrangement makes the agreement essentially risk free for the buyer.

The following table encapsulates the best pre-award practices used by private industry to acquire CS.

Table 4 Summary of Best Pre-award Commercial practices for acquiring CS

CATEGORY	BEST PRACTICE
1. Requirement Determination	Acquire CS for professional advice, opinions and points of view not available internally and if outside "Core Competency." Acquire these services only for a specific, value-based need.
2. Market Research	1. Market Surveillance; 2. Market Investigation; 3. Knowledge Management; 4. Contract out for Market Research Services
3. Solicitation	Target Qualified Sources Only.
4. Competition	Stick with reliable suppliers.
5. Source Selection	1. Team Approach; 2. Make Past performance #1 Factor.
6. Negotiation	1. Model Agreements; 2. Pay market rates; 3. Pay for value-added functions only.
7. Fair Pricing Determination	1. Independent Price Estimates; 2. Internal Cost Estimates; 3. Quantify Value Added.
8. Contract Type	1. IDIQ for recurring requirements; 2. Define requirements well enough to use FFP contracts; 3. Minimize TM contracts; 4. Performance-based guarantee.

(Produced by Researcher)

C. FEASIBILITY OF EMPLOYING COMMERCIAL BEST PRACTICES

According to the 2001 Quadrennial Defense Review, the Defense Department's business processes and regulations are redundant and engineered to prevent mistakes. While private industry has streamlined and adopted new business models to react to fast moving changes in markets and technologies, DoD has lagged behind in several areas (Rumsfeld, 2001 QDR, p. 49). Some of the best business practices presented earlier are congruent with the approach DoD intends for its contracting activities to use when acquiring CS. For the other best practices, there are major obstacles that must be overcome.

The remainder of this chapter will systematically discuss the feasibility of employing the commercial best practices in the previous section, according to the eight themes. Each theme is laid out in three parts. First, the commercial practices are discussed; next, the DoD methodology is presented; and lastly, the researcher's assessment of employing the practice is offered.

1. Requirement Determination

a. Commercial Practice - companies acquire CS for advice and opinions in knowledge sectors that are absent from the firm and lie outside the core competency of the organization. Essentially, the Defense Department's guiding principles for acquiring CS echoes this commercial best practice.

b. Defense Department Method - Directive, 4205.2D Acquiring and Managing Contracted Advisory and Assistance Services (CAAS), states that CS is a justifiable way to support military operations and

shall be used at all levels to assist managers in attaining mission requirements in a efficient and effective manner. As such, the policy dictates that CS is a suitable resource when in-house capability is lacking, is not cost-effective to be established or when the need is short term. In conjunction with the Office of Federal Procurement Policy Letter 92-1, this directive also states that CS is not to be used to execute inherently governmental functions.

c. Researcher Assessment: If DoD's guidelines for the requirement determination phase of acquiring CS are met, then the barriers for employing this commercial best practice are minimal.

2. Market Research

"Market research can provide tangible benefits to the activities that employ it. The customer directly benefits when the procurement agency uses commercial style market research."
(Yoder, December 1993, p. 46)

a. **Commercial Practice** - business practice takes a cradle to grave approach in using market research. Firms routinely use market surveillance and investigation to keep abreast of the conditions of their supplier's competitive environment and through knowledge management they store and share this data with other potential users in the organization. If this method is beyond their means, they purchase the information as needed.

b. Defense Department Method - Federal Acquisition Regulation (FAR) Part 10 prescribes Government policies and procedures for performing market research. There is no mention of the phrases "market surveillance" or "market investigation." Specifically, it states that market research is to be conducted before soliciting offers to determine the availability and capability of existing resources. The FAR then lists the following techniques for conducting market research:

- o Use contacts to assess market capabilities to meet requirements.
- o Use previous market research data from similar or identical requirements.
- o Send out Requests For Information (RFI) to publications.
- o Query databases for information relevant to agency acquisitions.
- o Participate in interactive, on-line communication among industry, acquisition personnel, and customers.
- o Obtain source lists of similar items from other contracting activities or agencies, trade associations or other sources.
- o Review catalogs and other literature published by manufacturers, distributors, and dealers or available on-line.

- o Meet with potential suppliers or holding pre-solicitation conference early in the acquisition process.

c. Researcher Assessment: DoD can greatly benefit from conducting commercial style market research in support of CS requirements. Although there are no statutory reasons preventing DoD from executing these practices, the barriers for employing them are large. Specifically, the barriers to conducting market surveillance and investigation are: a lack of personnel (acquisition work-force numbers declining); a lack of commitment by top management (never had this information in the past, hence why must I make my people do it now?); and a lack of the perceived benefit of having this data available (what good will it do to expend energy to obtain this info if sending out solicitations in the Commerce Business daily and the RFP/RFQ process will provide the same data?).

In addition to the barriers discussed above, the obstacles for Knowledge Management pertaining to market information for CS providers are: a lack of manpower organizational assignments (obtaining and assigning the correct persons to generate and transfer the information to those that need it); a lack of training (persons identified must be taught to conduct all the elements of market research); and the "Rice-bowl" effect (persons charged with gathering the data must be willing to disseminate it).

Purchasing the information from market research firms is a viable alternative to conducting it in-house. The major barrier to contracting for industry information is linking the value of the research benefits to the cost of obtaining the data.

3. Solicitation Process

a. Commercial Practice - There are no statutes that exist in the corporate sector that mandate firms to make their prospective contractual actions available to all interested parties to bid on. As a result, *when requirements arise, commercial companies specifically target only the sources they consider best able to meet their need.* Thus, firms are able to quickly focus their attention on contracting with the optimum resources available, allowing them to bring in top-level talent. *This fundamental distinction differentiates between private and public acquisition methodologies.*

b. Defense Department Method - Federal Acquisition Regulation (FAR) part 5, the statutory barrier that prevents DoD contracting activities from applying this commercial best practice, prescribes Government policies and procedures for publicizing contract opportunities and award information. It requires contracting officers to broadcast their proposed contract actions to expand industry participation, increase competition and to assist small businesses in obtaining Government contracts as follows:

1. Actions exceeding \$25K in the Commerce Business Daily (CBD), and

2. Actions from \$10 to \$25K via some other unrestricted electronic means.

Appendix D, extracted from the FAR, Subpart 5.202, lists the fourteen exceptions to advertising solicitations for Government contracts.

c. Researcher Assessment: If the CS requirement is not covered under one of the fourteen exceptions to advertising solicitations for government contracts cited in FAR Subpart 5.202, then the practice of only soliciting the best sources is not feasible for DoD. Contracting activities with CS requirements that are exempt from broadcast solicitation procedures per FAR 5.202, must implement, institute and practice effective market research techniques to ensure they solicit the optimal source. These complementary barriers make this practice infeasible to employ.

4. Competition Requirements

"Basically, we generally know who we're looking for thus we just go out and get them." (Booth, Cisco Systems Interview, 17 August 2001)

a. Commercial Practice - Similar to solicitation conditions where commercial companies specifically target only the sources they consider best able to meet their need, there are no statutes in the private sector which mandate that firms ensure more than one source compete to satisfy their

requirements. This factor not only allows commercial companies to be more flexible in their sourcing alternatives, but also enables them to form better strategic partnerships with their CS suppliers to obtain higher quality service.

b. Defense Department Method - Federal Acquisition Regulation Part 6 prescribes the policies and procedures to promote full and open competition (the process by which all responsible suppliers are allowed to compete) and it applies to all acquisitions except the following types:

1. Those using Simplified Acquisition Procedures (SAP);
2. Those authorized by other statute;
3. Contract Modifications;
4. Orders placed under Definite Quantity contracts;
5. Orders placed under IDIQ contracts.

Subpart 6.302 and the Competition in Contracting Act (CICA) list circumstances that permit other than full and open competition. These seven conditions are:

1. Single source;
2. Urgent and compelling need;
3. Maintain industrial base;

4. International agreement or foreign treaty;
5. Required by statute;
6. National security;
7. In the public interest.

Contracting officers that do not compete a CS requirement must prepare a "Justification and Approval (J&A)" and insert it in the contract file.

c. Researcher Assessment: Since CS requirements do not fall within one of the seven exemptions for contracting under full and open competition, the FAR statutes make the commercial best practice for acquiring CS infeasible to employ.

5. Source Selection Process and Factors

a. Commercial Practice - When it comes to acquiring CS, commercial companies operate in a less restrictive regulatory environment than Government agencies. Since there are no statutes directing that full and open competition be pursued, firms are able to focus their efforts on evaluating fewer proposals, all of which presumably can fill their requirements. As a result, firms can reach a selection decision in minimal time. Although most firms are generally quick to point out that there is no official selection panel, they do utilize the stakeholder's expertise in the source selection process. In the corporate sector, the Project Manager or VP is principally the final arbiter for selecting providers used for CS

engagements as the results of the contractor's performance are tied to the project manager's venture. Additionally, of the many factors considered in the sourcing decision, past performance by far, holds the most credence.

b. Defense Department Method - The objective of the Government source selection process is to select the proposal that represents the "best value." In most cases the contracting officer is charged with the selection decision unless the head of the agency appoints another individual as the Source Selection Authority (SSA). According to FAR Part 15, when acquiring CS, the SSA is responsible for:

1. Establishing an evaluation team tailored specifically to the acquisition;
2. Approving the selection plan prior to solicitation;
3. Assuring consistency among all paperwork and procedures involved in the selection process;
4. Ensuring proposals are evaluated per the published solicitation;
5. Taking into account advice provided by the evaluation team;
6. Selecting source based on best value.

In evaluating the proposals, the team is to fully document its grounds for contract award and include a

discussion of any trade-offs in the contract file. The evaluation factors include capability of the provider to meet the need, price and past performance.

c. Researcher Assessment: DoD is trending towards the commercial best practice of involving the stakeholders in the selection decision. However, documentation required by statute lengthens the acquisition process. Additionally, while FAR Part 15 was recently rewritten to include past performance as a source selection evaluation factor, it is often not the chief discriminator used for the final selection decision. Moreover, a cultural barrier exists such that many in the aging acquisition workforce still use price and price-related factors as the top selection factor.

6. Negotiation

“Negotiation is minimal since we’re already aware of the industry norms and standard prices; terms and conditions are generally non-negotiable...take it or leave it.”
(Pannell, Agilent Technologies Interview, 18 July 2001)

a. Commercial Practice - The above quote does not mean that private firms coerce their suppliers into signing CS agreements. Rather, it sheds light on the fact that they are well prepared to make counter offers because they know market rates and are willing to pay them. Hence, commercial companies speed up the process by skipping rate negotiation. Additionally, their “going in” positions are based on standing

master services agreements that have proved successful during previous engagements. The few instances when firms feel compelled to negotiate the terms and conditions of the contracts are when they need to ensure that that they only pay for those functions that add value to their organization.

b. Defense Department Method - There is an abundance of material that explains negotiating techniques and strategy. FAR part 15.405 states that the purpose of price analysis is to develop a negotiating position that permits the buyer and seller to reach agreement on price. The FAR also stresses the importance of establishing pre-negotiation objectives to assist in determining fair and reasonable price, and that " . . . the supporting objectives should be directly related to the dollar value, importance, and the complexity of the pricing action." Finally FAR Part 15.406 mandates contracting officers to document fundamental ingredients of the negotiation agreements in a Price Negotiation Memorandum, and lists eleven areas that it must cover.

c. Researcher Assessment: Although FAR Part 15 prescribes negotiation objectives as well as documentation procedures there are no statutes that prevent DoD from employing the best commercial for negotiating CS agreements.

7. Fair Pricing Determination

a. Commercial Practice - Prior to negotiating CS agreements, commercial firms obtain independent price estimates to determine whether the price offered for the service is fair. Much of this data is acquired via market research, since in many cases there may be no competitive quotation or other offers. In cases when there is no prior history, or if procuring from a single source, the firms compare what the service would cost if they performed it internally to the offered cost to make the determination. In either case, the organizations weigh the cost they pay for the service against the benefit it expects to reap from purchasing the service.

b. Defense Department Method - Federal Acquisition Regulation (FAR) Part 15 directs that a fair and reasonable price determination of a proposed price be made prior to contract award. Whenever possible, this decision is to be made based on competitive quotations or offers. Under circumstances where there is only a single offer, FAR 13.106-3 prescribes that the reasonableness must be documented in the contract file based on the following:

1. Market Research;
2. Price comparison with previous purchases;
3. Current data listed in publications;
4. Comparison of like service in related field;

5. Contracting Officer's personal knowledge of service being acquired; or
6. Comparison of Independent Government Estimates (IGE); or
7. Other reasonable basis.

c. Researcher Assessment: There are no significant statutory barriers to employing best commercial practices for determining whether the price of an offer is fair and reasonable. In fact, the regulatory guidance of the FAR, coupled with the Independent Government Estimates (IGE) provided by Defense Contract Management Agency (DCMA), make this portion of the practice readily obtainable. The other part of this practice requires that activities examine and compare their internal cost structures with the proposal to make the determination, which again is not too difficult. However, the ability to quantify the value of the CS to the organization is more of an art, not a science, and requires that the user be able to sufficiently define and estimate the cost of the requirement. Overall, DoD can employ this commercial best practice.

8. Contract Type

a. Commercial Practice - Commercial companies must preserve their resources to remain viable. Additionally, they must be flexible and innovative to stay ahead of their competitors. For these reasons, companies with recurring requirements frequently set

up IDIQ arrangements with their CS providers to ensure they obtain prompt and world class service – within days. Moreover due to excellent price analysis techniques and the ability to narrowly define their CS requirements, they often award FFP contracts to effectively shift the performance risk to the provider. Finally, it is becoming more common for buyers to pay their suppliers based on performance milestones as opposed to on a fixed, periodic basis.

b. Defense Department Method - FAR Part 16 provides the policies and procedural guidance for selecting the suitable contract types for CS and all other engagements. Appendix E, taken from Paragraph 16.104, discusses the eleven factors to be considered when negotiating the contract type. Taking all these factors into account should allow the buyer and seller to arrive at a mutually beneficial contractual relationship. Specifically, in cases where a recurring need is anticipated, paragraph 16.504 states that an IDIQ should be used. Paragraph 16.202 states that FFP contracts are appropriate when a fair and reasonable price can be established and the service is specified in sufficient detail. Finally paragraph 16.601 discusses that Time and Material contracts are to be used only when the length of the service required is uncertain, and for which case the contract officer must justify in writing that no other contract vehicle is suitable.

c. Researcher Assessment: No statutory barriers exist that prevent DoD activities from executing the

best commercial practices for employing innovative contract types or payment arrangements. The critical element to using these commercial practices is DoD's ability to define its CS requirements in sufficient terms necessary use FFP contracts, which places more risk on the CS provider. While CS requirements for many Government buyers are unique, high quality providers often provide more than one type of service. These sources should be placed on IDIQ contract so that future requirements can be filled in minimal time.

D. CHAPTER SUMMARY

This chapter compiled and analyzed the proven best pre-award commercial practices for acquiring CS. First, it assembled those methods according to eight themes. Next, given current statutes and regulations, it discussed the feasibility of employing these methods for future DoD CS procurements. While some of these practices match the intent of DoD's acquisition process and have no significant barriers for performance, others require enormous change prior to implementation. Chapter V will make recommendations for executing these best commercial practices for acquiring CS.

V. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

This thesis identified and analyzed the pre-award methodologies used by eight highly successful private firms for Consulting Services (CS) acquisitions. This research effort was not designed to make point-by-point comparisons between public and private sector methodologies for procuring CS. Rather, it was crafted to discuss the Department of Defense's overarching technique for obtaining professional services, and based on the information gathered from interviews, was intended to compile a list of the best commercial practices and point out the barriers for employing these proven processes.

In this closing chapter, the author provides brief answers to the primary and secondary research questions posed in chapter I. Next, this chapter presents the conclusions identified during the study efforts. Additionally, the author makes recommendations for implementing those commercial practices with immense barriers that must be hurdled prior to being adopted in DoD. Finally, this thesis concludes with recommendations for areas requiring further research.

B. RESEARCH QUESTIONS

The following subsidiary questions focus the author's efforts in answering the primary research question of identifying the best pre-award commercial practices for acquiring CS and assessing how these methods can enable DoD to contract for these services faster and at a lower cost.

1. Subsidiary Questions

- **What are CS and why are they important to DoD?**

CS are advisory and assistance services obtained from sources external to the government to: improve or support organizational policy development, management, decision-making and administration; support program or project management; provide management and support services for R&D activities; or to improve the effectiveness of management processes or procedures. CS enables DoD to acquire expertise in critical areas absent from its knowledge base and is an extremely effective tool for supporting military operations at all levels. Table 1 in the first chapter identifies and describes the three CS categories recognized by DoD.

- **What are the current trends and prescribed practices for acquiring CS in DoD?**

Money spent on contracting for CS has significantly increased over the past decade and this trend is projected to continue in the years to come. Federal Acquisition Regulation (FAR) Part 37 provides regulatory guidance for contracting for services. Subpart 37.2 more explicitly prescribes policies and procedures for procuring CS. Incorporating the FAR guiding principles, the rules of Office of Federal Procurement Policy (OFPP) Letters 92-1 on

Inherently Governmental Functions, and 93-1 on Management Oversight of Service Contracting, DoD directive 4205.2D prescribes the overarching practices to be used when acquiring CS in the Defense Department.

- **What are the best pre-award private commercial practices for acquiring CS?**

The researcher developed and asked the same questions, listed in Appendix B, of each of the eight highly successful and reputable firms to draw out their pre-award methods procuring CS. Chapter III presents and summarizes the interview responses according to theme. Chapter IV analyzes and crafts these responses into nineteen best practices and further lists them in Table 4.

- **Can the sound business practices from private industry be applied to DoD methodologies for acquiring CS?**

Some of the commercial best practices are congruent with the DoD prescribed guiding principles and procedures for acquiring CS. To employ the rest of these practices, DoD must overcome several barriers.

- **What barriers prohibit employing these pre-award commercial practices?**

Several barriers in a number of areas must be surmounted for DoD to fully employ the best commercial practices identified in this thesis. Barriers exist in the areas of Market Research, Solicitation, Competition, Source Selection, Fair Pricing and Contract Types.

Market Research - is plagued by a diminishing workforce, lack of commitment, negative perceptions by management, lack of training and willpower to share information.

Solicitation - this process is hampered by the FAR, which mandates advertising unless an exception listed in FAR 5.202 is met.

Competition - as mandated by the Competition in Contracting Act (CICA), the requirement for full and open competition forces unnecessary actions (unless the requirement is one of the 7 exceptions listed in FAR 6.302) in two cases. First, the CICA statute can prevent activities from efficiently contracting with first time sources. Next, it can prevent activities from using the same source for successive or recurring requirements.

Source Selection - is mired by the cultural mindset that price and price related factors are the chief discriminators in the "best value" decision.

Fair Pricing Determination - is hindered by a lack of commitment to using available resources

and the negative perceptions for assessing the value that CS can add to an organization.

Contract Types - a lack of expertise for sufficiently defining CS requirements leads contracting activities to use Time and Materials contracts when Firm Fixed Price arrangements are more appropriate.

2. Primary Question

What are the best pre-award practices used by private industry to acquire CS, and how can these practices enable DoD to contract for these services faster and at a lower cost?

The efficiencies of pre-award best commercial practices for acquiring CS come from private company operations in rapidly evolving and extremely competitive environments. The success of these firms depends on their ability to assess critical and timely data and to process information in an efficient and effective manner to produce a product or service that allows them to gain or maintain a competitive advantage over their industry rivals. With these factors in mind, the best methods for acquiring CS, arranged in eight themes, as outlined in Chapter IV are:

Requirement Determination - Acquire CS when professional advice, opinions and points of view not available internally are required to support a critical, value-based need.

Market Research - Conduct market surveillance and market investigation to assess the resources available. Collate and share this information with potential users in the organization. If unable to effectively perform market research, contract it out.

Solicitation - Target responsible and qualified sources only.

Competition - Only use suppliers that have proven themselves reliable.

Source Selection - Involve stakeholders heavily in the source selection process and make Past Performance the number one criteria.

Negotiation - Generate a model or boilerplate agreement as a starting point. Do not waste time haggling over prices; pay the market rate. Pay only for value added services.

Fair Pricing Determination - For services with no prior history, devise independent price estimates based on market data and calculate internal cost estimates. Compare the potential cost of the service to its expected value to the organization.

Contract Type - Use Indefinite Delivery, Indefinite Quantity arrangements for recurring requirements and minimize the use of Time and Material Contracts. Incorporate performance based payment arrangements.

The Defense Department can reap many tangible and significant benefits by employing these best practices. Specifically, by conducting commercial-style market research, DoD can arm itself with a

vibrant pool of top-quality CS providers to fill its critical requirements. By soliciting only a small number of qualified sources, requiring activities will have fewer proposals to evaluate, which serves to reduce the time, energy, and resource dollars necessary for the acquisition process. Moreover, using these practices also negates the requirement for full and open competition, which saves scarce resources by allowing activities to contract with optimum service providers without having to entertain offers from less qualified or less dependable suppliers.

C. CONCLUSIONS

- 1. Commercial firms use CS for the same fundamental reasons as the DoD. Flexible and innovative practices facilitate their ability to consistently contract with top-level service providers**
- 2. DoD can adopt the best commercial practices for acquiring CS, provided that the statutory and regulatory barriers are eliminated.**
- 3. Of the barriers identified, the most critical is the statutory requirement for full and open competition. The absence of this constraint in the commercial marketplace is the chief reason that firms are able to contract for CS in an efficient and cost-effective manner.**
- 4. DoD must overcome its immense barriers to practicing commercial style market research before**

it can employ private industry's best practices for acquiring CS.

5. Past performance is the chief discriminator in the source selection process used by commercial firms when acquiring CS.
6. DoD can benefit from implementing the best commercial practices for acquiring CS.

D. RECOMMENDATIONS

1. Set up a pilot program at contracting activities in each service component to measure the social and economic impact on small and disadvantaged businesses if CS contracts are exempted from full and open competition.

The statute for full and open competition was designed to increase competition from responsible sources, broaden industry participation and ensure that small businesses have the chance to compete for government contracts. The need to increase the Government's efficiency and effectiveness in acquiring CS must be weighed against the effect it has on the firms that the statute was intended to benefit.

2. Include CS in FAR 6.302 as a "circumstance permitting other than full and open competition."

Exercising this course of action would significantly reduce the time and administrative costs necessary for the solicitation process (in cases where the requiring activity has already identified responsible sources), and more notably would reduce the time, labor and administrative

costs of the source selection process. This action would enable DoD activities to contract for CS more efficiently and effectively. However, it should be employed only after the effects of the pilot program (first recommendation) are assessed.

3. Either systematically improve organic market research efforts or contract out for this service as CS requirements arise.

Obtaining the best source, in other than the full and open competition environment, calls for the requiring activity to have expert knowledge on the available suppliers in the market place. If this invaluable data is lacking, then employing the commercial best practices for acquiring CS is fruitless.

E. AREAS REQUIRING FURTHER RESEARCH

The following are recommended topics for additional research:

- Develop post-award commercial best practices for administering CS contracts.
- Through interviews and site visits, take a practical and in-depth look at government methods for contracting for CS to come up with a best public practice for acquiring CS. How do these techniques compare with the private practices identified in this thesis?
- Study the impact on the results of the test program recommended in this thesis.

- Develop implementation procedures for DoD to employ the best commercial practices identified in this thesis.

F. THESIS SUMMARY

Through a revolution in business affairs, the Defense Department is looking beyond its traditional boundaries to monitor lessons learned, evaluating the methodologies used in the commercial sector, and applying best practices to its in-house processes. The practices in this thesis were drawn from industry leaders with top-notch ideas and proven track records. Even if the recommendations presented by the author are not implemented, DoD contracting activities still have much to gain by benchmarking the methods of these excellent organizations against their internal practices. This will infuse process improvements for future CS acquisitions.

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APPENDIX A – OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) POLICY LETTER 92-1

From Appendix B of policy letter List of Services and Actions

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Technical evaluation of contract proposals.
9. Assistance in the development of statements of work.

10. Contractors' providing support in preparing responses to Freedom of Information Act requests.
11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).
12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
13. Participation in any situation where it might be assumed that they are agency employees or representatives.
14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.
16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
17. Inspection services.
18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.
19. Non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

APPENDIX B – INTERVIEW QUESTIONS

1. Why do you hire professional management support services (Consultants)?
 - Is it more economical than growing the expertise from within?
 - Is it a core competency issue?
2. How are the requirements for consulting services defined?
 - Quality of service received or achievement of specific objective?
3. When the need arises to hire management consultants do you advertise the requirement?
 - If so, how and through what media channels?
 - If not, why not?
4. To what extent is market research conducted in support of the acquisition of management consulting services?
5. Do you track a pool of qualified sources for these services?
 - What system is in place to keep track of these resources?
 - Where does this pool of talent come from...are they individuals or companies?
6. What solicitation procedures are used?
 - What documents are used?
 - Is there an IFB/RFP/RFQ, etc?
7. What are the competition requirements? How is adequate competition defined?
8. What are the source selection criteria?
 - Is there a source selection evaluation board (SSEB)
 - Is a source selection plan developed? If so, who's responsible for it?

9. How do you handle/protect against conflict of interest issues in selecting a source?
10. What performance measures are utilized for source selection?
11. How much emphasis is put on Past Performance?
- What documents/records are reviewed to determine the offeror's past performance?
 - How do you verify past performance?
 - How much does reputation of the provider come into play?
 - What is the time window in considering past performance? I.E, how many years of the company's previous record come into play? What determines this time requirement?
12. Once you've decided to use the services of a particular company, what negotiation procedures (Give and take) take place to finalize the contract?
13. Are independent price estimates for the service developed? On what basis?
14. How do you determine if the price of the service is "fair and reasonable"?
15. What contract types are pervasive in your Company's acquisition of consulting services and why?
- Are these contract types consistent with industry (your competitor's) standards
 - Do you use boilerplate contracts (plug in the name, dollar amount) for particular types of services?
16. What are the payment arrangements for these services?
- Bulk funding for the entire project?
 - Funding by time period (hours billed, week, month, etc)
17. How do you terminate a contract? Are the terms and conditions for termination written into the contract?
- Convenience
 - Default

18. How long, on average does the process for acquiring management consulting services take?

- What is the most time consuming portion of the process?

19. Are there individuals specifically dedicated to contracting for these services?

- If so, are there any unique training requirements necessary for this procurement position? What are they?
- Are these individuals part of a separate department?

20. Do you presently use a retainer system for consultants?

- If not is this a present/future consideration?
- Will this be with a firm or with an individual?

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APPENDIX C - BOILERPLATE CS AGREEMENT

SUBCONTRACT

between Subcontract No.: _____
Subcontract Type:
Indefinite Quantity _____ Logistics Management Institute
Subcontract Ceiling: \$- -
2000 Corporate Ridge Total Funded Amount: \$- -
McLean, VA 22102-7805
and
Subcontract Administrator:
Name of Vendor Address of Vendor

This Subcontract is entered into by the Logistics
Management Institute (hereinafter called the Institute),
a non-profit corporation organized and existing under
the laws of the State of Delaware, located at 2000
Corporate Ridge, McLean, Virginia, 22102-7805, and
_____ (hereinafter called
Subcontractor), organized and existing under the laws of
the _____ located at
_____.

DECLARATIONS

LMI has contracts with federal and local government
agencies, quasi-governmental agencies, and international
agencies, and private sector firms; and

The work and services performed by the
Subcontractor are related to the work and services to be
furnished by LMI to its clients; and

This Subcontract supersedes any and all written or oral agreements and constitutes the entire agreement between the parties for the work specified in Article I; and

The clause titles contained herein are only for convenience and shall not be construed to limit the scope or intent of the particular clause;

Therefore, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, the parties mutually agree as follows:

THE SCHEDULE

ARTICLE I. WORK STATEMENT

The Subcontractor, as an independent contractor and not as an agent of the Institute, shall provide all necessary facilities, personnel, equipment, and materials to accomplish the Statement of Work established in each individual Task Order.

A. SCOPE OF WORK

The Subcontractor's efforts will be directed by the issuance of Task Orders. The Subcontractor's tasking may include studies, analyses, training, or research, or other services in the area of:

(insert scope of work for the contract).

B. REPORTS AND OTHER DELIVERABLES

The Subcontractor shall submit all reports and other deliverables in accordance with the requirements specified in each Task Order. The Subcontractor as mutually agreed upon between the Subcontractor and the Institute Program Manager will provide oral reports and/or interim briefings.

The Subcontractor shall provide written technical reports. The format, schedule, and number of copies required will be as agreed upon in the Task Order. Reports submitted will be subject to review and approval by the Institute Program Manager, and if necessary, will be modified and resubmitted.

Individual Monthly Progress Reports may be required for each Task Order and shall be prepared and

submitted in the format reflected in Attachment A. The financial condition of each Task Order shall be explained in the narrative portion of the monthly report. The report is due by the fifth (5th) calendar day of the month following the reported month. Reports shall be sent to the Institute to the attention of the Program Manager specified in the Task Order with a copy to the Subcontract Administrator at the following address: 2000 Corporate Ridge, McLean, Virginia, 22102-7805. All deliveries shall be made F.O.B. Destination.

Reports delivered by the Subcontractor in the performance of this Subcontract (which includes Task Orders) shall be considered "technical data" as defined in DFARS 252.227-7013, "Rights in Technical Data & Computer Software (Oct 1988)" found in the General Provisions.

C. PERIOD OF PERFORMANCE

The period of performance for this Subcontract will be _____ through _____. The period of performance specified constitutes an ordering period. Individual Task Orders will determine the actual period of performance for this agreement.

ARTICLE II. TYPE OF CONTRACT

This is an Indefinite Delivery - Indefinite Quantity Subcontract. Any services or supplies to be furnished under this Subcontract shall be ordered by issuance of Labor Hour, Time and Material, or Firm Fixed Price Task Orders. Such orders may be issued from the Subcontract start date through the end of the ordering period specified in Article I.

In addition to the terms and conditions in this Subcontract, the terms and conditions included in the individual Task Orders are applicable. In the event of conflict between a Task Order and this Subcontract, the Task Order shall control.

ARTICLE III. TASK ORDERING

As used within this Subcontract, the term "Subcontractor" means _____, and not the individual employees of _____. The Subcontractor shall provide the necessary personnel,

facilities, services, equipment and materials to perform those activities, which are applicable to and called for specifically under each Task Order.

The Subcontractor is responsible to the Institute Program Manager and Subcontract Administrator for the professional qualifications of the personnel assigned to work under the Subcontract, for the quality of their performance, and for the quality of reports and other deliverables furnished as end products of a Task Order.

Under this Subcontract, as firm work requirements materialize within the scope of work described in Article I, the Institute may request a proposal from the Subcontractor, which will be evaluated. Following the evaluation, the Institute Program Director and/or Subcontract Administrator may negotiate with the Subcontractor any additional terms or conditions, the work to be performed under the Task Order, the schedule of the Task Order, and the ceiling price of the Task Order. Following negotiations, the Institute Subcontract Administrator will issue directives in the form of written Task Orders. If the Subcontractor is unwilling to accept a Task Order, the Subcontractor shall immediately notify the Institute Subcontract Administrator and return the Task Order within five (5) business days. Failure to notify the Subcontract Administrator or return the Task Order within five (5) business days shall constitute the Subcontractor's acceptance of the Task Order and its associated terms and conditions.

The Institute makes no representation as to the number of Task Orders or the actual amount of work, which will be assigned. The Subcontractor shall not perform any work hereunder nor incur any cost hereunder, until it receives a specific Task Order signed by the Institute's Director of Contracts, or his designee.

Each Task Order will contain as a minimum the following:

1. Subcontract Number
2. The Institute Prime Contract Number and Supplement
3. Sequential Task Order Number
4. Short Title of Task Work

5. Statement of Work
6. Period of Performance
7. Security Classification
8. Deliverable Schedule
9. Other Necessary Information
10. Negotiated Price for the Effort
11. Funded Amount of Task Order
12. Required Authorized Signatures

Task Orders may be issued from the effective date of the Subcontract through the end of the ordering period specified in Article I. The Subcontract shall not be considered complete until all Task Orders are complete. The Subcontract and all its terms and conditions shall remain in full force and affect until all Task Orders are complete and the Subcontract is closed out.

Task Orders may be modified to add or change work. However, the Subcontractor will initiate no changes in work until a modification to the Task Order directing the Institute and the Subcontractor properly execute such change.

ARTICLE IV. LIMITATION OF THE INSTITUTE'S LIABILITY

Task Orders will be funded individually and in some cases incrementally. The Not-To-Exceed ceiling established in each Task Order is specific to that Task Order. Funding may not be moved between tasks by the Subcontractor. The Institute's maximum liability under any Task Order shall be the lesser of, the funded amount of the Task Order or the Not-To-Exceed ceiling established in the Task Order.

The Institute's maximum liability is limited to the aggregate value of all Task Orders executed under the Subcontract. If no Task Orders are issued to the Subcontractor, the Institute's liability to the Subcontractor is zero dollars (\$0.00).

ARTICLE V. RESERVED

ARTICLE VI. INSPECTION AND ACCEPTANCE

Inspection and acceptance of the supplies or services to be furnished hereunder shall be made at:

Logistics Management Institute
2000 Corporate Ridge
McLean, Virginia, 22102-7805

The Program Manager specified in that Task Order shall make acceptance of supplies or services provided under a Task Order.

ARTICLE VII. PLACE OF PERFORMANCE

The Subcontractor shall perform the work under this Subcontract at its facilities or at other locations as required for the completion of task orders under this Subcontract.

ARTICLE VIII. ASSIGNMENT OF CLAIMS

The Subcontractor shall not assign its rights to be paid amounts due or to become due as a result of performance under this Subcontract without the prior written consent of the Institute.

Copies of the Subcontract; any plans, specifications, or other similar documents relating to work under this Subcontract marked "Top Secret," "Secret," or "Confidential," shall not be furnished or disclosed to any assignee of any claim arising under this Subcontract or any other person not entitled to receive the same without the prior written authorization of the Institute.

ARTICLE IX. AUTHORIZED PERSONNEL

A. THE INSTITUTE

A Program Manager will be identified in each Task Order. The Program Manager is authorized to act for the Institute in matters pertaining to technical performance

under this Subcontract, including approval of Subcontractor deliverables and verification of monthly progress reports.

All contractual matters, for example (but not limited to): price, terms and conditions, types and quantities of services and/or products to be supplied, delivery schedule, financial adjustments and changes in the scope of work, must be coordinated through _____, Subcontract Administrator, or through other authorized individuals in the LMI Contracts Department. Then, such action must be set forth in a formal modification to the Subcontract approved by the Institute's Director of Contracts, or his designee. The Subcontractor is advised that only the Institute's Director of Contracts, or his designee can change or modify the Subcontract terms or take any other action, which obligates the Institute.

All may be reached at (703) 917-9800.

B. SUBCONTRACTOR

_____ is the Program Manager for the Subcontractor and may be reached at _____.

_____ is the Contract Administrator for the Subcontractor and may be reached at _____.

ARTICLE X. PRICE & PAYMENT

A. PRICE

The Subcontractor agrees to perform the work using the categories and hourly rates listed below. The labor rates identified below are fully burdened. For each hour worked under any Task Orders issued pursuant to the Subcontract, the Subcontractor is authorized to bill the Institute at the appropriate rate for the category performing the work.

Labor Category	10/01/00-09/30/01	10/01/01-09/30/02	10/01/02-09/30/03	10/01/03-09/30/04	10/01/04-09/30/05

B. REIMBURSEMENT OF OTHER DIRECT COSTS

Other direct costs may be authorized in Task Orders issued by LMI. LMI will reimburse the Subcontractor for those other direct costs, burdened in accordance with the Subcontractor's proposal and disclosed accounting practices, up to the limitation set forth in the Task Order, and provided those costs are allowable in accordance with the Cost Principles of FAR Part 31. The Subcontractor may not exceed the reimbursement limitation established in the Task Order without the prior written authorization of the LMI Subcontract Administrator.

Invoices requesting reimbursement for other direct costs **must** be accompanied by adequate supporting documentation, **including receipts for any expense greater than \$75.** If original receipts are not provided, the Subcontractor shall retain the original receipts, which will be subject to FAR 52.215-1, "Examination of Records by Comptroller General (FEB 1993). Expenses incurred by the Subcontractor in excess of the ceiling amount set forth in the Task Order will not be reimbursed by LMI.

C. PAYMENT

The Institute shall pay the Subcontractor for satisfactory performance of all requirements of each Task Order, including delivery of all reports and data required hereunder. A separate invoice is required for each Task Order. The invoice shall be certified, submitted in duplicate, and mailed to the following address:

Logistics Management Institute
2000 Corporate Ridge
McLean, Virginia 22102-7805
Attention: Accounts Payable

The invoice shall include the following information:

1. Prime contract number
2. Subcontract number and Task Order number
3. Invoice number and date
4. Period covered by the invoice.
5. Detailed cost data as follows:

- a. Hours by labor category for the period covered
 - b. Hourly rate applied
 - c. Breakdown of other direct costs
 - d. Cumulative labor hours
 - e. Cumulative labor costs
 - f. Cumulative other direct costs
6. Invoice amount
7. Invoice total and cumulative total

The certification statement should read as follows:

"I hereby certify that this invoice is accurate and complete and that it reflects only those charges for work performed by _____ in accordance with the applicable Subcontract, and that payment therefore has not been previously received."

Payment terms are net 30.

The final invoice for each Task Order shall be clearly marked "Final" and shall be submitted within 30 days after the expiration date of each Task Order. The final invoice shall include the following certification:

"Payment of this final invoice shall constitute complete satisfaction of all of LMI's obligations under this Task Order and Subcontractor remises, releases, and discharges LMI and its officers, agents, and employees, of and from all liabilities, obligations, claims and demands whatsoever under or arising from the said Task Order upon payment hereof."

ARTICLE XI. REPRESENTATIONS AND CERTIFICATIONS

Attachment B of this Subcontract contains the necessary Representations, Certifications, and Other Statements by Offerors or Quoters.

The Subcontractor shall, as part of executing this Subcontract, complete all of the Representations and Certifications as they apply to this Subcontract. The Subcontractor further agrees that it will provide additional Certifications and Representations that may be requested by the Institute in connection with a Task Order. The Subcontractor also agrees to promptly notify the

Institute of any changes, which modify the information contained in any Certification or Representation.

ARTICLE XII. MILITARY SECURITY CLASSIFICATION

Military security requirements in the performance of this Subcontract shall be maintained in accordance with FAR 52.204-02. The Contract Security Classification (DD254), if applicable, is hereby incorporated. Each Task Order will identify the security classification for the work hereunder.

ARTICLE XIII. PACKAGING AND MARKING

All items to be delivered under this Subcontract shall be packaged, packed and marked to prevent deterioration and damage during shipping, handling and storage to ensure safe arrival at destination.

ARTICLE XIV. PACKAGING AND MARKING OF CLASSIFIED ITEMS

Confidential or Secret material will be packed to conceal it properly and to avoid suspicion as to contents, and to reach destination in satisfactory condition. Internal markings or internal packaging will clearly indicate the classification. NO NOTATION TO INDICATE CLASSIFICATION WILL APPEAR IN EXTERNAL MARKINGS. (See Paragraph 17 of the *Industrial Security Manual for Safeguarding Classified Information*, DoD 5220.22-M.)

Confidential or Secret documents will be enclosed in two (2) opaque envelopes or covers. The inner envelope or cover containing the documents being transmitted will be addressed, return addressed, and sealed. The classification of the documents being transmitted will be clearly marked on the front and back of the inner container. The classified documents will be protected from direct contact with the inner cover by a cover sheet or by folding inward. For Secret documents, a receipt form identifying the addresser, addressee, and documents will be enclosed in the inner envelope. A receipt will cover confidential documents only when the sender deems it necessary. The inner envelope or cover will be enclosed in an opaque outer envelope or cover. The classification markings of the inner envelope should not be detectable.

The outer envelope will be addressed, return addressed, and sealed. NO CLASSIFICATION MARKINGS WILL APPEAR ON THE OUTER ENVELOPE OR COVER.

ARTICLE XV. METHOD OF TRANSMISSION (TOP SECRET)

Top Secret material may be transmitted by (i) a specifically designated escort or courier cleared for access to Top Secret information (military, U.S. civilian employee, or a responsible employee designated by the Subcontractor, except the Subcontractor's employee shall not carry classified material across international boundaries) or (ii) Armed Forces Courier services using a contractor assigned ARFCOS account number. Under no circumstances shall Top Secret material be transmitted through the U.S. or company mail channels.

ARTICLE XVI. NOTICE REGARDING LATE DELIVERY

In the event the Subcontractor anticipates difficulty in complying with the Subcontract delivery schedule, the Subcontractor shall immediately notify the Program Manager in writing with a copy to the Subcontract Administrator, giving pertinent details, including the date by which it expects to make delivery; provided, however, that this data shall be informational only in character and that receipt thereof shall not be construed as a waiver by the Institute of any Subcontract delivery schedule, or any rights or remedies provided by law or under this Subcontract.

ARTICLE XVII. CHANGES

Within the general scope of this Subcontract, the work to be performed under any Task Order may be changed unilaterally by the Institute at any time by written notice to the Subcontractor. Within ten (10) working days after said notice, the Subcontractor will provide the Institute with a price estimate, if applicable, for performing the changed work. Promptly thereafter, the Institute and the Subcontractor shall negotiate an equitable adjustment of price and schedule resulting from the changes as may be required.

Failure to agree to any adjustment under this Article shall be resolved under ARTICLE XXII ARBITRATION of

this Subcontract. However, nothing in this Article shall excuse the Subcontractor from proceeding diligently with the performance of the work as changed.

ARTICLE XVIII. SUBCONTRACTS

The Subcontractor agrees that none of the Task Orders or deliverables to be furnished hereunder shall be assigned or subcontracted without the written permission of the Institute.

ARTICLE XIX. INDEMNIFICATION AND INSURANCE

A. INDEMNIFICATION

The Subcontractor will hold the Institute and its Trustees, Officers, Directors, Agents, and employees harmless and will defend it from any claims or liabilities growing out of any suits or patent infringements, and will also hold harmless and defend the Institute against any claims, liabilities, loss, damage, or injury to or death of persons arising or in any manner growing out of the performance of its work or services under this Subcontract, except when such injuries or damages are caused by gross negligence of the Institute.

B. INSURANCE

The Subcontractor shall insure its employees under the Worker's Compensation Act, and carry Bodily Injury, Property Damage, and Automobile Liability Insurance in amounts specified below.

TYPE OF INSURANCE	MINIMUM AMOUNT
Worker's Compensation and all occupational disease	As required by State Law
Employer's Liability including all occupational disease when not so covered in Worker's Compensation above	\$100,000 per accident
General Liability (Comprehensive) Bodily Injury per occurrence	\$500,000
Automobile Liability (Comprehensive) Bodily Injury per person Bodily Injury per occurrence Property Damage per accident	\$200,000 \$500,000 \$ 20,000

ARTICLE XX. SPECIAL CONTRACT REQUIREMENTS

This Subcontract is subject to Special Contract Requirements, which are flowed down from the Institute's prime contracts with various Federal Agencies and the U. S. Postal Service. The applicable special requirements will be incorporated in each Task Order.

ARTICLE XXI. TITLE TO DATA

All material of whatever nature, including, but in no way limited to systems analysis, modified specifications, plans, sketches, booklets, schedules, engineering and other calculations, correspondence and other data and all tracings, reproducibles, masters, photographs, microfilms and additional copies thereof which are developed, prepared, or procured by the Subcontractor under this Subcontract shall become the property of the Institute at the time of development, preparation, or procurement and upon demand of the Institute, shall be forwarded by the Subcontractor to the Institute or any other point of designation within the confines of the United States of America.

ARTICLE XXII. ARBITRATION

All disputes, differences, or disagreements between the Subcontractor and the Institute arising out of this Subcontract, which are not resolved by negotiation, shall be subject to arbitration under this clause.

Any unresolved dispute, difference, or disagreement between the Subcontractor and the Institute arising out of the performance of this Subcontract shall promptly be referred to arbitration pursuant to the Rules of the American Arbitration Association in effect on the date of this Subcontract; such arbitration to be conducted in McLean, Virginia.

Any arbitration shall be conducted in accordance with the laws of the Commonwealth of Virginia and the rules of the American Arbitration Association. Judgment on an award or decision of the arbitrator or a majority of the Board of Arbitrators may be entered in the United States

District Court or any other court of competent jurisdiction. Arbitration costs shall be paid as directed by the arbitration decisions.

Pending any decision, appeal or judgment on the settlement of any dispute arising under this Subcontract, the Subcontractor shall proceed diligently with the performance of this Subcontract.

ARTICLE XXIII. OMISSION AND ERRORS

The Subcontractor shall, without due delay, rectify all omissions and errors found in deliverables at no additional cost to the Institute for a period of one (1) year after delivery and acceptance by the Institute.

ARTICLE XXIV. PRESS RELEASES OR OTHER DISSEMINATION OF INFORMATION

No press releases or similar documents shall be issued that relate to the work performed under this Subcontract, the Client or the Institute.

Except within and between the Institute and the Subcontractor, there shall be no dissemination or publication of any information related to this Subcontract or contained in any reports or other deliverables to be furnished pursuant to this Subcontract.

The Subcontractor may seek the prior written approval of the Institute's Director of Contracts, or his designee, for a waiver of these provisions.

ARTICLE XXV. COMPLIANCE WITH LAWS

The Subcontractor shall in the performance of the Subcontract, comply with all applicable federal, state and local laws and ordinances, including, but not limited to all regulations, rules and orders in effect on the date of this Subcontract. Insofar as relevant, the parties shall likewise comply with all laws and rules of foreign countries that may be applicable.

ARTICLE XXVI. KEY PERSONNEL

Key personnel may be specified in individual Task Orders. Key personnel are individuals whose participation is considered essential to successful performance of the work required under this Subcontract. The Subcontractor agrees to make such key personnel available for the performance the Task Order(s) in which they are named.

Proposed substitutions for the designated key personnel must be submitted at least two (2) weeks in advance of the substitution and must be accompanied by a detailed explanation of the circumstances necessitating the substitution, a resume for the proposed substitute and any other information requested by the LMI Program Manager needed to approve the proposed substitution. All substitutes must have, in the judgment of the LMI Program Manager, the requisite qualifications to perform at an equivalent level to the person being replaced. The LMI Program Manager will notify the Subcontract Administrator of the decision and the Subcontract will be modified as appropriate.

ARTICLE XXVII. GOVERNMENT FURNISHED EQUIPMENT

The Institute will furnish the property identified below to be used in performing the Subcontract. The property is provided on a rent-free and noninterference basis or an equitable adjustment shall be made in the terms of this Subcontract. If Government Furnished Equipment (GFE) is not provided, state "none."

None

Prior to receiving GFE, the Institute reserves the right to require the Subcontractor to demonstrate to the satisfaction of the Institute Property Administrator, that it has a satisfactory property control system for tracking and maintaining GFE. All GFE received by the Subcontractor shall be managed in accordance with the requirements of FAR Subpart 45.5, "Management of Government Property in the Possession of Contractors."

The Subcontractor agrees to report all GFE in its custody as of September 30 to the Institute Subcontract Administrator by October 6 of each year. The Subcontractor is also required to report zero end of period balances when no GFE property remains accountable to the Subcontract.

ARTICLE XXVIII. CONTRACTOR FURNISHED EQUIPMENT

If any Contractor Furnished Equipment (CFE) or information (the title to which is with the Institute), is furnished to the Subcontractor at any time during the term of this Subcontract, the Subcontractor assumes the risk of and shall be responsible for any loss thereof or damage thereto. The Subcontractor, in accordance with the provisions of this Subcontract, but in any event upon completion thereof, shall return such equipment/information to the Institute in the condition in which it was received except for reasonable wear and tear and except to the extent that such equipment/information has been incorporated into items delivered under this Subcontract, or has been consumed in normal performance of work under this Subcontract.

If Contractor Furnished Equipment (CFE) is not provided, state "none."

DESCRIPTION

QUANTITY

None

Prior to receiving CFE, the Institute reserves the right to require the Subcontractor to demonstrate to the satisfaction of the Institute Property Administrator, that it has a satisfactory property control system for tracking and maintaining CFE.

ARTICLE XXIX. TITLE TO EQUIPMENT

The Subcontractor shall not fabricate or acquire under this subcontract, either directly or indirectly, any item of nonexpendable property without the prior approval of the Institute.

Title to all other direct cost items purchased by the Subcontractor under this subcontract and charged to the Institute, shall vest with the Institute.

ARTICLE XXX. TECHNICAL DIRECTION

Performance of the work under this Subcontract shall be subject to the technical direction of the Institute's Program Manager, designated in each Task Order. Such technical direction includes those instructions to the Subcontractor necessary to perform the tasks and

deliverables in the Task Order(s) issued under this Subcontract. Technical direction shall not include any directions that:

1. Constitutes an assignment of additional work outside the scope of the Work Statement;
2. Constitutes a change as defined in ARTICLE XVII. Changes, herein;
3. In any manner causes an increase or decrease in the total price or time required for Subcontract performance;
4. Changes any of the expressed terms and conditions of this Subcontract.

ARTICLE XXXI. ORGANIZATIONAL CONFLICTS OF INTEREST

A. PURPOSE

The primary purpose of this clause is to aid in ensuring that: (1) the Subcontractor's objectivity and judgment are not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to work under this Subcontract; (2) the Subcontractor does not obtain an unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and (3) by virtue of its access to proprietary information belonging to others, the Subcontractor does not obtain any unfair competitive advantage.

B. SCOPE

The restrictions described shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest covered by this clause as prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity.

C. MAINTENANCE OF OBJECTIVITY

The Subcontractor shall be ineligible to participate in any capacity in contracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the Subcontractor's performance of work under

this Subcontract; logical continuances and follow-ons excepted. Furthermore, unless so directed in writing by the Institute, the Subcontractor shall not perform any services under this Subcontract on any of its own products or services, or the products or services of another firm, if the Subcontractor is, or has been, substantially involved in their development or marketing. In addition, if the Subcontractor under this Subcontract prepares a complete, or essentially complete, Statement of Work to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort, which is based on such Statement of Work or specifications. Nothing in this paragraph shall preclude the Subcontractor from competing for follow-on contracts involving the same or similar services.

D. ACCESS TO AND USE OF GOVERNMENT INFORMATION

If the Subcontractor in the performance of this Subcontract, obtains access to information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the Institute, it shall not: (1) use such information for any purpose other than that for which it is provided; (2) compete for any work based on such information for a period of one (1) year after the completion of this Subcontract; and (3) release such information.

E. ACCESS TO AND PROTECTION OF PROPRIETARY INFORMATION

The Subcontractor agrees that, to the extent that it receives or is given access to proprietary data; trade secrets; or other confidential or privileged technical, business, or financial information ("proprietary data") under this Subcontract, it shall treat proprietary data in accordance with any restrictions imposed. The Subcontractor further agrees to enter into a written agreement, if necessary, for the protection of the proprietary data of others and to exercise diligent effort to protect proprietary data from unauthorized use or disclosure as long as it remains proprietary and refrain from using the proprietary data for any purpose other than that for which it was furnished. In addition, the Subcontractor shall obtain from each employee who has access to proprietary data under this Subcontract, a written agreement which shall in substance provide that such employee shall not, during his/her employment by the

Subcontractor or thereafter, disclose to others or use for their own benefit, proprietary data received in connection with the work under this Subcontract.

F. SUBCONTRACTS

The Subcontractor shall include this clause, including this paragraph, in approved consulting agreements and subcontracts of any tier. The terms "Subcontract," "Subcontractor," and "the Institute," will be appropriately modified to preserve the Institute's rights.

G. DISCLOSURES

The Subcontractor represents that it has disclosed to the Institute, prior to award, all facts relevant to the existence or potential existence of an organizational conflict of interest as that term is used in FAR 9.5. The Subcontractor agrees that if after award it discovers an organizational conflict of interest with respect to this Subcontract, a prompt and full disclosure shall be made in writing to the Institute which shall include a description of the action the Subcontractor has taken or proposes to take to avoid or mitigate such conflicts.

H. REMEDIES AND WAIVER

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this Subcontract, the Institute may terminate this Subcontract for default, disqualify the Subcontractor for subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Subcontract. If, however, in compliance with this clause, the Subcontractor discovers and promptly reports an organizational conflict of interest (or the potential therefore) subsequent to Subcontract award, the Institute may terminate this Subcontract for convenience (if such termination is deemed to be in the best interest of the Institute) or work with the Subcontractor to mitigate such conflict of interest.

The parties recognize that this clause has potential effects which will survive the performance of this Subcontract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the Subcontractor may at any time seek a waiver from the Institute by submitting a full written description of the requested waiver and the reasons in support thereof. If it is determined to be in the best

interests of the Institute, the Institute's Director of Contracts, or his designee, will grant such a waiver in writing.

I. MODIFICATIONS

Prior to a Subcontract modification, when the Statement of Work is changed to add new work or the period of performance is significantly increased, the Institute reserves the right to request and the Subcontractor will be required to submit either an organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.

ARTICLE XXXII. COST ACCOUNTING STANDARDS

This Subcontract is (), is not () subject to the Cost Accounting Clause referenced in the General Provisions hereof. If this Subcontract is subject to such clause, the Subcontractor shall comply with all Standards in effect on the date of award or of final agreement on the Subcontract price, as shown on the Subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

The Institute retains the right to adjust the Subcontract price under the CAS clauses and other applicable provisions of this Subcontract if the Contracting Officer or DCAA makes a subsequent final determination of noncompliance under the prime contract.

ARTICLE XXXIII. BANKRUPTCY AND INSOLVENCY

The Institute may terminate this Subcontract for default, in whole or in part, by written or telegraphic notice to the Subcontractor in the event of the occurrence of any of the following:

1. Insolvent. The Subcontractor shall be deemed insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not, and whether insolvent within the meaning of the Federal Bankruptcy Law or not.

2. Filing of a voluntary petition to have the Subcontractor declared bankrupt.

3. The execution by the Subcontractor of an assignment for the benefit of creditors.

ARTICLE XXXIV. GENERAL PROVISIONS

Under the General Provisions of the Institute's prime contracts with the U.S. Government, the Institute is obligated to pass down to its subcontractors certain general terms and conditions. The General Provisions set forth in Attachment C are comprised of a basic set of General Provisions and three Supplements. Each Task Order issued will specify which of the General Provisions are applicable to that Task Order. The General Provisions specified in each Task Order are incorporated into and are part of this Subcontract. Except in those clauses where a right is intended to be reserved to the Government (as in FAR 52.215-2, Audit), to provide logical application of said clauses, the word "Government" and "Contracting Officer" shall mean the Institute and the word "Contractor" shall mean the Subcontractor.

ARTICLE XXXV. ORDER OF PRECEDENCE

This Subcontract shall consist of the Schedule set forth in the body of this document; Attachment A, Monthly Progress Report Format; Attachment B, Representations, Certifications, and Other Statements of Offerors or Quoters; Attachment C, General Provisions; all Task Orders; and the DD254, if applicable.

In the event of a conflict of any of the terms of this order, the order of precedence shall be as follows:

- a. Task Order(s)
- b. The Schedule;
- c. Any Applicable General, Special or Supplemental Provisions (Attachment C);
- d. Attachment B, Representations, Certifications, and Other Statements of Offerors or Quoters with the Certificate of Current Cost or Pricing Data;
- e. Attachment A, Monthly Progress Report.

ARTICLE XXXVI. WHOLE AGREEMENT

This agreement together with Attachments A, B, C, all Task Orders, and the DD254, if applicable, comprise the entire agreement between the Institute and the Subcontractor. No change to the terms and conditions of this Subcontract shall be effective unless approved in writing and signed by the Institute and the Subcontractor.

ARTICLE XXXVII. SUBCONTRACT CLOSEOUT

Upon completion of all work and services required by this Subcontract, or upon notification of termination by the Institute, the Subcontractor agrees to provide as a condition precedent to final payment under this Subcontract, a release discharging the Institute, its officers, agents and employees of and from all liabilities, obligations and claims arising out of or under this Subcontract.

The Subcontractor shall complete, as a minimum, the following release documents:

- a. Subcontractor's Release,
- b. Property Closeout Report & Certificate,
- c. Data Closeout Report & Certificate,
- d. DD882 "Report of Inventions and Subcontracts,
- e. Return of Classified Information or Material (if applicable).

These documents shall be completed and returned to the Institute within thirty (30) working days after receipt.

IN WITNESS WHEREOF, the parties hereto have executed this contract as indicated below:

INSTITUTE **BY :** **LOGISTICS** **MANAGEMENT**

Signature
(Seal)_____

Title Director of Contracts
Date _____

* * * * *

BY :

Signature _____
 (Seal) _____
 Title _____
 Date _____

(Sample)

TASK ORDER

The Institute Prime Contract No.
Applicable Special Contract Requirement Supplement:
Subcontractor:
Subcontract No:
Task Order No:
Program Manager

LMI Task Number and Title:

- 1.0 Statement of Work
- 2.0 Period of Performance
- 3.0 Security Classification
- 4.0 Deliverable Schedule
- 5.0 Other Necessary Information
- 6.0 Task Order Ceiling Price
- 7.0 Funded Amount of Task Order

APPROVED

LOGISTICS MANAGEMENT INSTITUTE

Director of Contracts

Date

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APPENDIX D – FOURTEEN EXCEPTIONS TO ADVERTISING SOLICITATIONS FOR GOVERNMENT CONTRACTS

FAR Subpart 5.202 lists the following exceptions to advertising solicitations for Government Contracts:

The contracting officer need not submit the notice required by [5.201](#) when --

(a) The contracting officer determines that --

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The proposed contract action is made under the conditions described in [6.302-2](#) (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in [5.203](#);

(3) The proposed contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The proposed contract action is expressly authorized or required by a statute to be made through another Government agency, including

acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see [5.205\(f\)](#)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The proposed contract action is for utility services other than telecommunications services and only one source is available;

(6) The proposed contract action is an order placed under Subpart 16.5;

(7) The proposed contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The proposed contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see [2.101](#)) and publication of any notice complying with [5.207](#) would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the proposed contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see [6.302-1\(a\)\(2\)\(i\)](#));

(9) The proposed contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The proposed contract action is made under conditions described in [6.302-3](#), or [6.302-5](#) with regard to brand name commercial items for authorized resale, or [6.302-7](#), and advance notice is not appropriate or reasonable;

(11) The proposed contract action is made under the terms of an existing contract that was

previously synopsisized in sufficient detail to comply with the requirements of [5.207](#) with respect to the current proposed contract action;

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to proposed contract actions subject to the Trade Agreements Act (see Subpart 25.4). This exception also does not apply to North American Free Trade Agreement proposed contract actions, which will be synopsisized in accordance with agency regulations;

(13) The proposed contract action --

(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; and

(iii) Permits the public to respond to the solicitation electronically; or

(14) The proposed contract action is made under conditions described in [6.302-3](#) with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

(b) The head of the agency determines in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable

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APPENDIX E - FACTORS IN SELECTING CONTRACT TYPES

FAR 16.104 discusses the following factors to be considered when negotiating the contract type:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See [15.404-1\(b\)](#))

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.

(f) *Period of performance or length of production run.* In times of economic uncertainty, contracts extending

over a relatively long period may require economic price adjustment terms.

(g) *Contractor's technical capability and financial responsibility.*

(h) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.

(i) *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

(j) *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

(k) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

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