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CONTRACTING OUT GOVERNMENT PROCUREMENT FUNCTIONS: AN ANALYSIS

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by

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Contracting Out Government Procurement Functions: An Analysis

Presenter: Dr. David Lamm, Professor Emeritus from the Graduate School of Business and Public Policy (GSBPP), served at NPS as both a military and civilian professor from 1978 through his retirement in January 2004, teaching a number of acquisition and contracting courses, as well as advising thesis and MBA project students. During his tenure, he served as the Academic Associate for the Acquisition & Contracting Management (815) MBA Curriculum, the Systems Acquisition Management (816) MBA Curriculum, the Master of Science in Contract Management (835) distance-learning degree, and the Master of Science in Program Management (836) distance-learning degree. He created the latter three programs. He also created the International Defense Acquisition Resources Management (IDARM) program for the civilian acquisition workforce throughout the country. Finally, in collaboration with the GSBPP Acquisition Chair, he established and served as (PI) for the Acquisition Research Program, including inauguration of an annual Acquisition Research Symposium. He also developed the Master of Science in Procurement & Contracting degree program at St. Mary's College in Moraga, CA, and served as a Professor in both the St. Mary's and The George Washington University's graduate programs.

He has researched and published numerous articles and wrote an acquisition text entitled *Contract Negotiation Cases: Government and Industry*, 1993. He served on the editorial board for the *National Contract Management Journal* and was a founding member of the editorial board for the Acquisition Review Quarterly now known as the *Defense Acquisition Review Journal*. He served as the NPS member of the Defense Acquisition Research Element (DARE) from 1983-1990.

Prior to NPS, he served as the Supply Officer aboard the USS Virgo (AE-30) and the USS Hector (AR-7). He also had acquisition tours of duty at the Defense Logistics Agency in Contract Administration and the Naval Air Systems Command, where he was the Deputy Director of the Missile Procurement Division.

He holds a BA from the University of Minnesota and a MBA and DBA both from The George Washington University. He is Fellow of the National Contract Management Association and received that association's Charles A. Dana Distinguished Service Award and the Blanche Witte Award for Contracting Excellence. He created the NCMA's Certified Professional Contracts Manager (CPCM) Examination Board and served as its Director from 1975-1990. He is the 1988 NPS winner of the RADM John J. Schieffelin Award for Teaching Excellence.

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Abstract

The Deputy Assistant Secretary of the Navy for Research, Development & Acquisition (DASN (RDA) (Acquisition Management)), asked the Naval Postgraduate School (NPS) to analyze the contracting out of procurement functions currently being accomplished by Navy, Marine Corps, and other Department of Defense (DOD) Activities. The request specifically focused on assessing the degree of effectiveness and shortcomings of such contracting out efforts. This research sought to answer these questions: Which contracting functions are now being contracted out by Navy and other DOD organizations? How effectively have contractors performed on these contracts? What metrics are being used and could be used to assess the quality of contractor performance? Although the primary focus of this study is the effectiveness of contracts used to procure contracting services, several interrelated subjects have been explored. Aspects of inherently governmental functions, personal service relationships, conflicts of interest, and legal/ethical issues were included. Further, questions regarding the impact on the contracting system, the development of Contracting Officers, the participation of competing companies in the marketplace, training and experience qualifications, and agency procurement decision-making and policies were also examined.

Introduction

Several factors have led to an increased reliance upon the private sector to provide services. One of the most critical factors has been the lack of adequate numbers of civil servants to perform the functions required of buying organizations. The number of DOD employees has been significantly reduced due to retirements or transfers to other agencies and, in certain metropolitan areas, the number of qualified applicants available to fill vacant positions has fallen to a seriously low level. Another of the principal factors has been to reduce the cost of providing services. With competition and a more efficient process of producing services, it is widely believed that significant savings have accrued. Another factor has been the ability to obtain certain skills which the Government does not possess. This has become more critical as



agencies have reduced the size of their workforce. Yet another factor is to obtain services on an emergency or surge basis. DOD has come to rely more and more extensively on service contractors during military conflicts. For these reasons, some organizations have begun to contract out selected contracting functions associated with the acquisition process. Further, some have actively promoted contracting out efforts and see this as an integral part of their corporate strategy. But, for various reasons explored herein, some organizations have taken no action to contract out procurement functions.

Methodology

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

Two survey questionnaires were used. The first focused on participants at the policy and senior management levels and asked questions about the broader issues involved in contracted procurement services. The second survey focused on management and operating level personnel and, although some of the same questions on the first survey were also posed, it mainly asked questions regarding the effectiveness of contracts that are being or had been used to procure contracting support services. Surveys were completed by a total of one hundred contracting professionals and thirty-two program management and technical personnel. A comparison of organizational affiliation and category of survey participants is presented in Table 1. All thirty-two program management and technical personnel are from the Air Force located at Tinker Air Force Base, Oklahoma. In some instances, the senior managers of a major acquisition organization provided collective views. Thus, the number of individuals participating in the survey are greater than the number of questionnaires received.

Table 1. Survey Participants

Organization	Policy and Senior Management	Management and Operating Level Personnel	Total Survey Participants
Army	5	11	16
Navy/Marine Corps	18	17	35
Air Force	5	2	7
Defense Agencies	13	25	38
Non-Federal Agencies	4	0	4
Air Force Prgm Mgmt & Tech Personnel	0	32	32
Totals	45	87	132



Personal (face-to-face) interviews were conducted with nineteen senior contracting personnel (over 80% of whom are from the Navy Department) many of whom also completed a survey. Phone interviews were conducted with fifteen individuals and generally included those who had indicated willingness on their survey responses to clarify or expand upon their answers. Throughout the study, the terms “procurement” and “contracting” are used interchangeably, as are the terms “function,” “task” and “duty.” The terms “contracted services,” “contracted support services” and “procurement services” refer to those contracting functions or tasks that are typically performed by civil servants and are now, or could be, performed by contractor employees. “Outsourcing” refers to accomplishment by contractors and does not include other Federal Agencies. This research work was undertaken with the intent of exploring and evaluating only those actions and efforts taken by the Government in the buyer-seller relationship. Although there are a significant number of companies that provide contracted support services as well as industry and professional associations that have intimate knowledge and understanding of the process, the present research was limited to the issues and problems experienced only by Government personnel.

A few situations arose which impeded the numbers of surveys and interviews that might otherwise have been obtained. One situation was the impression that this study was looking for those contracting functions which could be prime targets for contractor performance, which in turn could lead to a reduction in contracting workforce personnel. A second situation occurred in which agencies are contracting out some functions that other agencies consider to be inherently governmental, and those agencies’ officials felt that they would be criticized for having placed these functions on contract. A third situation involved a general feeling that top agency management was against placing contracting functions on contract, which made our study a moot point. Lastly, some organizations simply said they were too busy to participate in the research.

Discussion

Inherently Governmental Functions

Survey questions concerning inherently governmental functions (IGF) focused on whether respondents were aware of any functions considered to be inherently governmental or exempt from competition that are, in fact, being contracted out and the extent to which capability deficiencies forced organizations to identify their interpretation of inherently governmental. Also, from a very limited list of functions, survey participants were asked to distinguish those they felt were inherently governmental as opposed to those that were not. Forty percent of the respondents stated that a capability deficiency had caused their organization to assess whether or not a contracting function was inherently governmental. The shortage of Full-Time Equivalents (FTEs) due to various forms of attrition has been exacerbated in recent years. Retirements and personnel transfers with the resultant loss of corporate knowledge and expertise have forced organizations to rethink their position regarding tasks contractors can perform. The 60% that said they had not made this assessment are from organizations that long ago decided that certain contracting tasks were non-IGF and were placed on contract, had decided the entire function is off limits to contracts, or had sufficient resources to meet workload demands. When asked if they knew about inherently governmental functions being contracted out, slightly fewer than 20% acknowledged that this is happening. Although this may seem like a small number, it points out that there are functions being acquired on contract that some view as violating the rules. A large part of this could be due to the disparity between those who believe that some contracting tasks are IGFs and those who do not.



Policy survey respondents were presented with a limited list of contracting functions and asked to classify them as either IGF or non-IGF. From the replies, three categories were established: (1) “unanimously” or predominantly IGF, (2) predominantly non-IGF, and (3) “middle ground.” Table 2 displays the three categories.

Table 2. Senior Contracting Personnel Views of Inherently Governmental vs Non-Inherently Governmental Functions

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

If no more than 75% or no fewer than 25% selected a function as either IGF or non-IGF, the function was placed in the “middle ground” and open to interpretation. All of the IGFs involve some type of Contracting Officer determination and/or decision which are considered by almost everyone to be within the Government’s purview. The two functions identified as essentially non-IGF have been performed by contractors for several years and now seem to be the accepted norm. The “middle ground” functions are basically the area of debate. Functions listed close to the left of the box received the majority of IGF responses, while those functions close to the right received the majority of non-IGF responses. Structuring market research is closely related to conducting market research and developing solicitation documents is often distinguished as a support effort. These two functions could have easily slipped into the non-IGF category. Performing cost and price analysis is the function that seems to generate the most heated debate. Many believe it to be integrally involved in either the negotiation process



or a Contracting Officer's determination of price reasonableness, or both, and should not be contracted out. Further, considered by several to be a core capability, it is also judged to be one of the weakest skills held by the Government and badly in need of significant training and hands-on experience. Although tending toward the IGF side, acquisition planning, evaluation of offers and preparing price negotiation memoranda are just as easily viewed by many as non-IGF.

Personal Services Relationships

Over 85% of the respondents felt that there are potential problems with personal services relationships when contracting for procurement services. On the one hand, there is an overwhelming feeling that contractor employees need to be co-located with Government contracting personnel in order to effectively accomplish their work. On the other, this close proximity presents the very ingredients that lead to personal services situations. Many of the respondents felt that because Government and contractor specialists had to work together so intimately, such a relationship was inevitable. Not directly causing a personal services dilemma but linked to the close working relationship are the circumstances involving "acceptance" of the service or work product performed by contractors. Products or goods have a very definitive acceptance or rejection process that requires specific Government action. Services do not have similar acceptance procedures. In the case of contracting functions, who accepts the contractor's work product and how formal is the process? If the Government proceeds to use work packages submitted by contractors, de facto acceptance has probably occurred without an overt action. At this point, the Government could certainly be liable for the decisions made based on the contractor input that might later prove to be faulty and damaging. None of the respondents voiced an opinion that the prohibition on personal services contracts should be eliminated; however, if asked, it is suspected that a majority would willingly agree with the removal of certain aspects of the personal services restriction.

Conflicts of Interest

Survey participants responded with numerous conflict of interest situations they believed could easily occur unless precautionary measures were instituted. Access to company proprietary and business sensitive information, competing in cases where firms participated in developing requirements, an actual or perceived ability to influence procurement actions, biases against certain companies for obvious or even unknown reasons, insight into the Government's requirements process, mergers and acquisitions that cause questionable affiliations, and other similar opportunities to inappropriately affect Government procurement were cited as potential problems with contractors. Some respondents remarked that conflicts of interest could also easily occur with civil servants working so closely with contractor employees. Differences in compensation, future employment opportunities, and personal friendships with contractor employees that may even have originated when both worked for the Government were observed as some of the conflict of interest situations in which civil servants could easily become embroiled. A recent Government Accountability Office (GAO, 2008) report concluded that when contractors are performing duties closely supporting inherently governmental functions, risks exist that could result in loss of Government control and decision-making. The Government and contractors are both responsible for ensuring that measures are in place to prevent conflicts of interest.



Legal and Ethical Issues

This research asked if there are any legal issues or impediments to which over 85% responded in the affirmative. Respondents are concerned about three primary areas: (1) violating the prohibition against placing inherently governmental functions on contract, (2) averting personal services relationships, and (3) avoiding conflicts of interest. They state that proper non-disclosure agreements, financial disclosure statements, and vigorous application of safeguards and security mechanisms are critical to prevention. It is well known that civil and criminal penalties await Federal employees if they violate statutes prohibiting unethical and improper behavior in the execution of their responsibilities. This is generally not true if contractor employees performing procurement functions for the Government act in this manner. Several situations concerning contractor personnel involved with financial conflicts of interest, impaired impartiality, misuse of information, misuse of authority and misuse of Government property have transpired. There has been some discussion about the suitability of changing the laws to make them applicable to contracted employees when they are working on behalf of the Government. Some suggest that instead, contract clauses should incorporate such requirements. At the very least, contractor personnel should be held liable and accountable for actions taken in their capacity as "Government agents." Whether this is accomplished statutorily or through contractual clauses, some action in this direction is absolutely crucial.

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

Procurement Functions Contracted Out

Over recent years, the numbers and types of functions contracted out has greatly increased. Some organizations have become concerned that too great a percentage of workforce positions are filled with contractor employees and have begun to develop plans to reduce that percentage. Close to 60% of survey participants indicated that at least some procurement functions are being contracted out. Policy and Senior personnel have fewer situations of contracting out while Management and Operating Level Personnel are predominantly from organizations that are contracting out procurement functions. When isolating the Defense Agencies from the Services and others, however, that number exceeded 85%. When looking only at Navy and Marine Corps organizations, that number dropped slightly below 35%. These findings are consistent with other studies, which found the Defense Agencies with the highest ratio of contracted support services and the Navy and Marine Corps with the lowest. When asked which functions are involved, contract closeout was identified with the greatest frequency. This was true for all Services and the Defense Agencies. Policy and Senior Management personnel tended to cite market research, acquisition planning, drafting policy, developing evaluation criteria, evaluation of offers, and requirements development as the predominant functions contracted out. Some policy/senior personnel did state, however, that all functions performed by 1102s, except for inherently governmental functions, are placed on



contract. The percentage of Management and Operating Personnel who reported functions contracted out in their organizations was much higher and included all contract specialist functions in support of the Contracting Officer in both pre-award and post-award phases. Most were careful to explain that the approvals, determinations and decisions made by Contracting Officers were not included.

The most prevalent reasons cited for contracting out are the lack of organic resources to meet workload demands and the lack of needed skills or expertise in certain areas. The continual downsizing and freezes on hiring new personnel over the last several years, together with an increase in the workload, has severely strained the contracting community. In certain geographical areas, there is constant turnover and an inability to fill 1102 vacancies with qualified applicants. In some cases, contractors are used to obtain exposure to business concepts and insight into commercial practices and technology. Some stated that hiring contractors is generally easier and faster than trying to obtain Federal employees through the cumbersome civil service personnel process. Contractors provide greater flexibility in adjusting to workload fluctuations, particularly due to surge situations. They can also provide continuity to those cases in which organizations are experiencing a very high turnover of contract specialists.

The most common reason for not contracting out procurement functions is that the organization believes all aspects of contracting are inherently governmental. Even if the organization did not consider contracting inherently governmental, there was a preference against contracting out, especially if interchangeability of personnel or adaptability was threatened. In smaller offices, Contracting Officers are performing most contract specialist functions that would be difficult to untangle from their decision-making functions. In some cases, the organization claimed that sufficient resources existed to meet workload requirements or that outsourcing the functions did not provide any additional advantages. A few organizations indicated that the potential for conflicts of interest or other ethical problems had steered them away from using contractors. In a couple of cases, respondents felt that contractors were more expensive than Government employees. One scenario that has been cause for concern is contractor default. Buying offices that have turned over contract specialist workload to contractor employees may be in a difficult situation if the contractor is terminated for default. It would be arduous to explain to the buying office's customers that procurement actions are delayed because the contractor(s) defaulted. If a significant portion of that office's workforce consisted of contractor employees, the added burden may be too overwhelming for the civil servants in the office.

Effectiveness of Contracted Services

Management and Operating Level Personnel expressed overwhelmingly that contracts for procuring contracting functions were highly effective or somewhat effective. A deeper analysis of the results, however, shows that most of the respondents indicating a positive effectiveness of contracts based their evaluation on a simple objective set of metrics. First, did contractor performance allow the command to meet its mission, and second, was overall performance good enough to consider the contractor for future work. The heart of the rudimentary metric gets at the most basic rationale for contracting out any function, getting the job done and doing it satisfactorily. Responses are based primarily on criteria that find their basis in whether the contractor allowed the activity or business unit to achieve its mission or productivity goals, and additionally, whether the contractor had any significant performance problems that would preclude them from being considered as a candidate for future award of similar work. No other criteria for measuring effectiveness were being systemically applied. What is challenging for contract managers is that metrics are difficult to capture in any detailed



objective format. The subjective nature of this type of assessment by the population surveyed is very common. It is, however, a measure that can be captured by Past Performance Information (PPI) systems, and the Contractor Performance Assessment Reporting System (CPARS) currently in use within DOD.

Limitations on Effort Contracted Out

Three aspects of limitations on contractors performing procurement functions were explored: (1) the duration of contracted support effort, (2) whether contractors should be physically located with Government personnel performing the same tasks, and (3) percentage limitations on the amount of procurement effort that could be contracted out. The first area was presented on the policy survey while the latter two areas were presented on the management/operating level personnel surveys.

Duration

Over 60% of the respondents believed these contracts should be of a temporary nature. Organizations which tended to currently have more procurement functions contracted out were split over the idea of temporary versus permanent. The proponents for temporary contracts felt it should only be used for surge or emergent requirements while the Government recruits and trains organic resources. Those advocating a more permanent duration felt it will be several years, if ever, before Government resource requirements are met, thus a lasting contractual relationship should be established. Some feel that certain tasks, such as contract closeout, have such a low priority they might never be appropriately completed without contractor support and should be made permanent regardless of in-house resource levels. It appears to the researchers that almost all the reasons cited in the *Federal Acquisition Regulation (FAR)* as valid alternatives for the use of advisory and assistance services (A&AS) contracts seem to imply temporary situations. Obtaining advice, points of view, opinions, special knowledge, alternative solutions, support to improve operations, and assistance with more efficient and effective operation of managerial or hardware systems all give the impression that agency management would acquire these "consultant" services on an as-needed basis. Further, the language does not give the impression that the performance of routine tasks on a day-to-day basis is the intent of employing this capability. If management policy is to utilize contracted support only if we must, then certainly all contracts for this support should be viewed as temporary until no longer required. If management policy is to leave this up to each individual organization to decide, then the types of functions they perform and their overall view of the procurement responsibility will drive their choice.

Co-location

Closely related to the matter of personal services relationships during contract performance is the location of contractor employees when they are carrying out their duties. An overwhelming 75% majority of respondents emphatically expressed the need for close communications on a face-to-face basis between all members of the acquisition team. The professional interaction that will occur through physical proximity outweighs any risks that might surface. The day-to-day working conditions requiring communication, efficient interaction, responsive feedback/input, and professional interface to advance learning and understanding all support a blended workforce. Past attempts at separation have shown this to severely hinder smooth accomplishment of the contracting functions. The 25% who said contractor employees should not be in the same spaces as civil servants were not denying the benefits of personal interaction but rather were implying that the risks are more than should be accepted. Access to



sensitive and proprietary data, security considerations, and the potential for conflicts of interest was of real concern. Personal service concerns appear to be diminishing.

Percentage of Contracted Services

The last area related to restrictions on the extent of contractor participation is the idea of confining the percentage of effort that activities can place on contract. A Defense Acquisition University (DAU) report recommended that each contracting activity be limited to no more than 25% of their workforce that may be contracted out. The researchers decided to ask not only where the percentage limitation on the workforce should be established, but also what percentage of the workload should be limited to outsourcing. Regarding workforce, just over 50% of the respondents said that it should be under 25% and the total reaches three-fourths of the respondents when one goes to a 50% limitation. Just over 45% of the respondents believe that contracting out should be constrained to under 50% of the total workload while that percentage increases to 65% if half of the workload is the limitation.

Experience and Training Requirements

The DOD acquisition workforce has been criticized over the years for its lack of skills, knowledge and abilities to execute its responsibilities. The Report of the Commission on Government Procurement, the Packard Commission report and several other studies from similar groups have pointed to the need for a professional workforce meeting minimum standards established for education, training and experience. Recommendations from these studies served as the impetus that created the *Defense Acquisition Workforce Improvement Act (DAWIA)* and led to the standards in place today. It would be justifiable to expect that anyone performing contracting functions for DOD should meet these standards and qualifications. Should this expectation be extended to contractor personnel performing procurement functions for the Government? And if so, how difficult would it be to impose and enforce DAWIA standards on contractors? This was the issue explored in both surveys. The Policy and Senior Management survey asked about DAWIA implications and whether DAWIA should be imposed on contractors, while the Management and Operating Personnel survey queried participants as to the level of difficulty encountered if an attempt were made to compel contractors to comply with DAWIA. Seventy percent of the policy survey respondents felt there are DAWIA implications whereas about 65% felt that DAWIA or DAWIA-like requirements should be imposed. Forty-five percent of the management/operating personnel said it would be difficult or very difficult to impose and enforce DAWIA requirements, while, in contrast, over 45% noted that it would be easy. Although not an overwhelming majority, most participants felt that DAWIA is important to the issue of using contracted employees.

The argument for application of DAWIA includes the beliefs that these requirements are critical elements in the performance of complex functions to ensure individuals have the ability to think logically, act competently, stay current in the field, meet contractual expectations, and perform in a proficient manner. Proponents believed that contractors should be held to the same standard of competence as DOD personnel. Those opposing application of DAWIA claim: it will cost the Government an additional expense for contractors to meet the standards; most contractor employees are former Government personnel and probably already have these certifications; DAWIA is a statutory requirement placed on the Government and not industry; some are already using DAWIA standards as an evaluation criterion in source selections or use DAWIA language in statements of work to describe desired labor categories, and it will inhibit competition. There appear to be valid arguments on both sides. It seems as if the argument for DAWIA focuses primarily on the level of skills and competencies personnel should hold, while



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

Impact on the Contracting System

The research examined the affect contracted procurement services might have on the contracting system by looking at three aspects: (1) the development of future Contracting Officers, (2) the development of procurement options by agency management, and (3) the extent to which companies might not want to participate in Government procurement. The first two areas were addressed on both surveys while the last was asked only on the policy survey.

Contracting Officers

Over 65% of the respondents felt that contracting out procurement functions could have a damaging impact on the development of future Contracting Officers, slightly over 20% felt it would not have any affect, and less than 10% thought it might have a beneficial impact. Respondents believing a damaging impact could occur pointed to the critical need to nurture and cultivate a competent and professional workforce. Significant contract specialist experience is needed to progress through the basic and intermediate levels to ultimately reach the advanced and expert proficiency levels required of Contracting Officers. One needs to be exposed to the broadest cross-section of contracting tasks that permits development of the critical thinking skills and competencies so fundamental to making complex Contracting Officer decisions. It was argued that contract specialists need to experience the various avenues one might pursue in accomplishing a particular objective. They need to grasp the underlying mechanics and inner workings and, in fact, they need to fail from time-to-time to discover the weaknesses and risks surrounding particular courses of action. They need to rotate through various assignments in contracting to undergo and be exposed to the specific facets these duties offer. Contract specialists need to be mentored. Not only must they eventually acquire strong managerial skills but they must also develop leadership capabilities. The Government acts through its Contracting Officers and, by extension, its contract specialists. They are the “face to industry” with which the Government speaks and acts. They exhibit authority, execute responsibilities, create relationships and perform duties all as part of the Government’s side of the buyer-seller relationship. All of these abilities are accumulated on the job, integrated with appropriate levels of training and education. Many would argue that the “culturing” acquired through mentoring must be achieved by interaction with a Government workforce, while others would assert that capable and adept contractor personnel can greatly assist to the same degree. It can be rationalized that the existence of contractor personnel working as contract specialists in a Government organization can bring new dimensions to the performance of procurement duties. An important ingredient frequently missing in buying offices is the sensitivity and understanding of commercial and industrial procurement practices that work well, or do not function well, in the business world. Sound business methods and the decisions that result from genuine business thinking are vital to any “business” even if it is the business of Government procurement. The research has suggested, however, that most of the contractor staff employed to perform contracting functions are former Government acquisition personnel who have had little, if any, industry experience to bring to the procurement table. Some have even complained that the Government contracting knowledge they do bring is outdated and



lacks currency. The business manager's role required of contracting professionals today differs from the contracting technician's role of even a few years ago. The research thus far has suggested that contractor employees performing procurement functions are dedicated, trustworthy and reliable. Their loyalty to the US is unquestioned. However, because their livelihood is derived from a private entity, there could be an inkling of suspicion on the part of Government managers that these employees might not always be placing the best interests of the Government ahead of all others. This thought could carry into the interactions between Government contract specialists and contractor personnel where proposed courses of action might not be the most beneficial to the Government. Ruling out ignorance or incompetence for the moment, some would question that contractor employees would investigate all viable alternatives before coming forth with a proposed solution, particularly if one or more alternatives were perceived as detrimental to their company.

Procurement Options

One of the major concerns regarding procurement of contracting functions is the long-term affect this would have on the ability of agency management to develop and consider procurement options. Over 40% of the respondents believed that this will expand the procurement options while less than 25% believed it will limit such options. Almost 30% felt it would neither limit nor expand the procurement options. Most notably, Policy and Senior Management personnel mostly believed that it will enhance options. Arguments can be made for both the notion that options are expanded and the concern that options are limited. Several valid points support the former. Contractors can free up Government personnel to perform more complex or value added tasks; they can come with specific skills and expertise to supplement Government weaknesses; they usually operate in a competitive environment and, therefore, have developed innovative approaches that can be shared with the Government; they are not as stove-piped in their thinking and training, and they come at a time when in-house resources and capabilities appear to be extremely low. One of the chief reasons set forth by proponents of the "expand" position is that contractor employees bring knowledge of industry best practices and business concepts that can be shared with contract specialists. This could be a way of introducing commercial procedures and actions, which might greatly assist in executing a more effective and efficient procurement system. Consider, however, the sources from which these contractor personnel might come. Many buying organizations claim that their contractors use former Government civil servants and military personnel, which increases their ability to perform contracting functions. But this almost assures that they will have had little industry experience. Even those individuals who have previously worked for companies holding prime contracts with the Federal Government have been in the Contracts Division and interfacing directly with their Federal counterparts. Not until you get to someone with experience in the Procurement or Subcontracts Department of a company will you find an individual likely to be immersed in business practices. If employees come from outside this realm, they probably have had little "Government" experience with which to execute their contracting responsibilities and will most likely have a significant learning curve in becoming familiar with the Federal procurement world. The prime reasons set forth by those who claim it will limit options involve: (1) a belief that a contractor's objectivity will be questioned because they might not always have the Government's best interests at heart; (2) the restrictive nature of firewalls and other safeguards necessary to ensure prevention of conflicts of interest; (3) a denial of valuable training and experience for junior Government personnel; (4) contractual limitations placed on organizations as to how they can use contractor employees; (5) experience with contractors where little assistance with options was provided; and (6) fewer experienced civil servants available to adequately assess and evaluate contractor performance. Those who felt there would be no affect on the ability to develop procurement options



essentially believed that talented individuals will make a considerable contribution regardless of their origin: Government or contractor. Further, they point out, it really is up to management to decide how to act on specialists' input, no matter what the source

Market Participation

The extent to which companies are willing to participate in procurements when one or more other companies are involved in performing contracting functions for the Government should be of some concern. The health of the industrial base is often measured by the amount and nature of competition. If companies become suspicious of their treatment in Government competitions, their eagerness to continue may be dampened. The result could be that less information is forthcoming, particularly confidential and private data, or worse, that companies withdraw from Government competitions altogether. The "large" contractor dependent on Government contracts, particularly if it is a sole source, is less likely to disengage but could potentially restrict the flow of information. Companies with a significant amount of commercial business in addition to public contracts could very well decide to no longer stay connected with Government procurement. Over one-half of the respondents are concerned about a negative impact. Most of the respondents from the Services, over 75%, believed that a negative affect could occur, but no one from the Defense Agencies held this belief. Many of those from the Defense Agencies have had experience with contracted procurement services and can report their views from actual situations. The primary concern from those expressing a negative impact centers on the fairness and objective treatment of competing firms. The inappropriate use of proprietary data, biased evaluations, and undue influence by private companies all can lead to distrust in the integrity of the contracting process. Some would point out that all of these abuses could occur with Government personnel as well but Federal laws impose civil and criminal sanctions on these individuals which is not the case with contractor employees. This affect is subtle and difficult to measure because it entails industry perceptions. It is unlikely that most companies, if questioned, would cite their distrust of the system as the reason for non-participation.

Integrity of the Contracting Process

This area was brought out on both surveys. Although some of the respondents asserted that the best way to ensure integrity is to completely avoid using contractors, most provided thoughts and ideas they felt would help to maintain a robust contracting system. Many pointed to proactive efforts that will maintain necessary components of integrity. Sensible policies that discuss the legal, ethical, and practical aspects are critical. Integrity has to do with the image and reputation of the system. The actions, or inactions, resulting from "challenges" to the system, such as fraudulent or abusive events, shape the character and personality of the system. How the Government handles a breach of our laws and ethics policies, both by civil servants and contractors, is highly visible and reaches to the heart of our moral fiber. It is the responsibility of every member of the acquisition team to do his or her utmost to preserve the highest quality of our collective personality and culture. Certainly, safeguards and precautions are vital. Methods to discourage or prevent conflicts of interest, illegal actions, and other similar activities must be in place. Internal Government efforts, such as oversight, audits, reviews, surveillance, awareness training, and firewalls can and should be used. External efforts focused on contractors are also important and could include non-disclosure statements to protect sensitive data, financial disclosure, and ethical and integrity certifications. Going a step further, it could be argued that contractor employees who have been entrusted with the same responsibilities as civil servants should face the same consequences for contraventions of that trust. Civil and criminal sanctions should apply equally to all who are accountable for public



endeavors. A very recent (March 2008) GAO report cited the need for additional conflict of interest safeguards for contractor employees who work alongside DOD civil servants.

Procurement Policy

This topic was broached to the Policy and Senior Management personnel in both the surveys and interviews. Over 60% believe that a policy statement would be extremely helpful in clarifying top management's position on all aspects of this issue. Their main concern is the range in difference of opinion concerning the definition of inherently governmental functions and a more direct application to contracting functions is needed. The 35% who do not believe a policy statement is necessary believed that sufficient policy and guidance already exists and any further language on the subject would probably serve to make things more restrictive. Key elements that should be included if such a policy were published varied. Respondents felt a policy should be very flexible and include some or all of the following: (1) identify those to whom the policy applies, (2) identify functions that are considered acceptable for contracting out, (3) cite safeguards to be used, (4) identify sanctions for failure to comply with the policy, (5) provide conflict of interest mitigation strategies, (6) establish approvals and approval levels, (7) emphasize that contractors have no decision authority, (8) specify that contractors cannot commit the Government, (9) suggest best practices in using contractors, (10) identify risks and how to manage them, (11) identify what contract types should be used, (12) require non-disclosure agreements and financial disclosure statements, (13) suggest metrics to be used in evaluating contractor performance, (14) enumerate required contractor credentials or qualifications, and (15) outline the extent to which contractors can participate in Government events outside the workplace.

Conclusions

Contracting out of procurement functions has been effective, however, robust metrics to measure and assess contractor performance are lacking. Almost all respondents stated that contracting out of procurement functions was effective, however, most utilized mission attainment and perceptions of overall contractor performance as metrics. These measures should not be discounted, as they are clearly important to the end user. However, they represent a fuzzy account of effectiveness without clear criteria. There were no comprehensive or universal metrics nor framework utilized for determining effectiveness across process, workforce, and outputs with regard to quantitative measures (objective) and qualitative measures (subjective). Any specific metrics cited were generally being utilized in an ad hoc and inconsistent manner. In light of capacity and capability shortfalls, the ability to utilize contractors to complete essential missions is considered a success. However, long-range assessment of effectiveness against established criteria is not occurring.

The phrase “inherently governmental function” continues to be inconsistently interpreted and applied throughout DOD. The blurred distinctions between inherently governmental and non-inherently governmental functions caused by the discretionary ability of agencies to decide its borders will continue to trouble the acquisition process until clarification has occurred. The Acquisition Advisory Panel has recommended that OFPP update the principles agencies use in determining which functions must be performed by Government employees. This study has served to confirm that such a recommendation is valid and pressing.



Personal services relationships are almost inevitable in the close working circumstances required between Government contracting employees and contractor personnel performing procurement functions. The lines between the buyer-seller relationship and the employer-employee relationship have become more distorted than ever. Contract award requires much higher-level review and interaction with the author of documents. These exchanges, if done between Government Contracting Officers and contractors could be interpreted as personal services. The co-location of contractor employees in Government facilities certainly creates the appearance that they are Government employees if not actual treatment as such. The contracting functions that might be contracted out are frequently so closely intertwined with functions that must be performed by Government personnel that a personal services relationship will almost certainly develop.

The contracting community is seriously concerned about the potential for conflicts of interest, both organizational and personal, when contractors are used to perform contracting functions. The issue of conflicts of interest has come up on numerous occasions during this research. Legal concerns almost always turn into a discussion of conflicts of interest and ethical considerations frequently result in the same scenario. Government employees have been so carefully trained over the last several years regarding not only inappropriate but also illegal behavior that they are very sensitive to not only actual situations but also the perception of conflicts. One step to lessen the potential for conflicts of interest would be to establish firewalls within the organization that prevent contractor employees from operating outside the specific boundaries of their particular project. In reality, this becomes very expensive to structure and enforce. One drawback is that this does not allow contractor personnel to transfer knowledge and freely interact with Government contract specialists outside their firewall, which has been cited as a benefit to having contractors present in the first place. The Acquisition Advisory Panel believes that because the *FAR* provides considerable leeway to agencies in addressing actual or potential conflicts of interest and because there is a lack of guidance in mitigating such conflicts leading to inconsistent application of the regulations, uniform regulatory language is needed.

Specific measures must be taken to ensure ethical standards are maintained and the integrity of the contracting process is protected. One might assume that so much education has gone into shaping the ethical character and identity of the acquisition workforce in recent years, that this conclusion would be unnecessary. The Darleen Druyun affair caused considerable consternation within the acquisition workforce, particularly contracting community. This situation came up during interviews in the context of ethical principles and an imperative need to protect the integrity of the acquisition and contracting processes. It caused acquisition organizations to “pull back” and reexamine the fundamental structure of their ethical climate. Are the right checks and balances in place to prevent or discourage such events? Does the senior leadership put correct and suitable emphasis on ethical principles and moral values? Are instances of ethical and standards of conduct transgressions handled in a vigorous fashion? Are subtle indiscretions and instances of wrongdoing dealt with promptly and aptly? Have we assured industry, with overt measures, that such irresponsible actions will not be repeated? A majority of survey respondents deem that ethical issues are clearly associated with contracting for procurement services and that specific actions are necessary to protect the integrity of the contracting process.

Contracting out of procurement services will have a negative affect on the ability of the Federal Government to develop Contracting Officers but may expand the ability of Government agencies to develop procurement options. Over 65% of the respondents maintained the former. Contracting Officers grow from the experience of having worked as



contract specialists. They need to grasp the underlying fundamentals, concepts and basics; understand the implications of particular courses of action; and experience various assignments that require critical thinking, interpretation of regulations and policies, judgment skills, cultural awareness and the ability to make trades. All of these skills and abilities are acquired on the job, interspersed with appropriate levels of training and education. As the decision is made to increase the number of contractors in the workforce, there will be fewer full time civil servants hired, which ultimately reduces the pool of potential Contracting Officers. If lower level functions are contracted out, they may be ill-prepared to do the more complex tasks later in their careers. Over 40% of the respondents felt procurement options would be expanded. They cited that contractors can bring new ideas to the discussion, they can interject industry business methods, they allow Government personnel to perform more difficult tasks, they can come with specific skills and expertise, and they may have innovative approaches which can be shared with the Government. Government procurement has long been reproached for its lack of understanding of commercial methods and sound business concepts and practices. Contractors may, for example, be able to accomplish and supply market research and planning alternatives that would be more difficult for Government personnel to provide.

There is mixed opinion regarding the affect contracting out of procurement services would have on companies participating in the marketplace for Government contracts. This research started with the premise that there could be a negative affect on the willingness of some companies to either compete for Government contracts or to be open with information, technology and data if contractors were performing Government contracting functions. If companies become suspicious of their treatment in Government competitions, their eagerness to continue may be dampened. Firms are more likely to question the integrity of the process if non-Government personnel handle proprietary information and participate in or influence acquisition strategies and source selections. Vendors could lose confidence in the fairness and objective treatment of offerors. Although a majority held this view, several respondents, with many years of experience in using contracted procurement services believed that there would not be a negative affect on market participation. In all of their dealings with industry, they have not seen any perceived or real impact on market participants. They felt that offerors are very willing to do business with the Government even though other companies are performing contracting functions.

Government contracting functions are being performed by contractors because buying organizations lack sufficient human resources to accomplish mission requirements. Time and again throughout the surveys and interviews, the chief response to a question about the need to use contractors was that the levels of Government personnel are too low to permit adequate performance of the workload. Contracting Officers and contract specialists are overwhelmed and feel they are working in sweat shops. In certain geographical areas, the same positions in other Federal agencies are far less demanding and provide the same level of compensation. Openings in these agencies are very attractive. It is literally impossible to fill vacant positions with qualified applicants. Downsizing actions taken in the acquisition workforce over the last several years, large numbers of retirements, hiring freezes, slowly developing intern programs and a cumbersome personnel recruitment system all have added to the problem. Although hiring authority has improved in very recent years, there is a significant gap between the entry level and the journeyman level employee. All of these conditions have caused some supervisors to solve their human capital dilemma by contracting out.



A majority of senior contracting personnel believe that contracts for procurement services should be of a temporary nature. Over 60% of senior contracting personnel believe it should be on a temporary basis and limited to surge or emergent demands while the Government recruits and trains organic resources. There is recognition that a periodic reevaluation of need and internal capability should be the deciding point to continue under contract. Although these contracts are viewed as “temporary,” if the long-term plan is to convert back to the Government any functions contracted out after sufficient staff has been recruited and hired, then the timeframes could be in years. If the contracts are for certain functions, such as market research or requirements development, in which the contractor is typically engaged in a specific acquisition under a task order, then these are of a more temporary nature. There is not a unanimous opinion that they be temporary. Some felt they were recognizing reality by pointing out the long-term problem of getting additional Government billets, and that contracts should be placed on a permanent basis until and unless a cadre of trained Government 1102s is in place, which will take years. Contract closeout is an example of a recurring need in which organizations may never be caught up and contracted services are, out of necessity, integrated into the normal workload.

Contractor personnel performing procurement functions should be co-located with Government contracting personnel. There is a need for close communications on a face-to-face basis between all members of the acquisition team. Contractor personnel must be an active part of the Government team, building solid working relationships and learning from each other. Physically separating Government and contractor employees hampers communication and would not create a very conducive work environment or atmosphere and might tend to develop an “us” versus “them” mentality. With multi-functional Government teams, it could be detrimental to segregate out the contractor employees. Services involve personal interaction and relationships. Physical separation simply artificially complicates performance of a cohesive objective. The interface that occurs through physical proximity outweighs most risks that might surface. Professional interaction and synergy are needed to efficiently perform the functions. There is a need to be close to the customer for effective support and to reap the efficiencies of real-time decision-making. Also, co-location will aid in the performance of the Government’s responsibility for contractor oversight. Examples exist in which contractor employees were physically separated but were relocated to the Government facility because the ability of Government personnel to interact with contractors was very difficult. It is true that there is the potential for direction by the Government leading to personal services, and physical separation would assist in the perception that the services are not personal. Additionally, access to sensitive and proprietary data, security considerations, and the potential for conflicts of interest is of real concern. Safeguards and security measures must be taken to protect against such occurrences.

The percentage of the contracting workforce and/or the percentage of the contracting workload placed on contract for performance by contractor employees should not exceed an established maximum. This study evaluated a limitation in terms of workforce and workload. The surveys indicate that most individuals advocate a maximum somewhere between 25% and 50% of either measure of effort. Although full time equivalents are easy to measure and a percentage of an activity’s end strength is easy to calculate, it is the view of this research that the percentage limitation be applied to workload as opposed to workforce. Individual contracting members of a buying organization perform a range of tasks and duties. Cutting them out of the organization slices through these tasks without regard to the complexity or nature of the tasks involved. Further, when focusing on workload, an activity can group various tasks that are candidates for performance by contractors, such as contract closeout duties, and apply the percentage to the grouped tasks. Government contract



specialists do not perform just one set of duties, such as contract closeout, but are typically engaged in a fuller range of responsibilities. Workload considerations also permits the organization to think in terms of grouped tasks that can easily be described in statements of work, are fairly homogeneous, may be of low risk, and might be easily severable and require far less interaction with Government personnel, thereby potentially even allowing performance at the contractor's facility.

Requirements similar to those found in the Defense Acquisition Workforce Improvement Act (DAWIA) could be imposed on contractor employees performing Government procurement functions without difficulty. Sixty-five percent of the senior contracts leadership believed that DAWIA or DAWIA-like certification requirements should be imposed on contractor personnel performing contracting functions for the Government. There is a feeling that these requirements are critical elements in the performance of complex functions and that contractors should be required to have the same level of competence as Government personnel. Contracting tasks have become more complicated, of a high-risk nature, and demand intellectually capable personnel who can reason through the issues with common sense and wisdom. Many of the contractor personnel working in Government offices are former civil servants or military who achieved DAWIA certification while in the Government. They most likely already hold the requisite credentials. If serious thought is given to requiring DAWIA, the extent to which standards already exist that are comparable to DAWIA-type requirements should be explored. Professional association certification programs, industry association and corporate training programs, and academic certificate programs are all examples of existing or potential methods for alternatively meeting DAWIA-type standards.

There is general opposition among Navy and Marine Corps contracts leaders to the notion of contracting out procurement functions. Through interviews and from the surveys, it has become apparent that most of the Navy and Marine Corps contracting leadership are generally opposed to contracting out procurement functions. Although they will acknowledge that some contracting functions, such as contract closeout, are being effectively performed by contractors and might not otherwise be accomplished in a timely fashion, the vast majority of tasks are, in their estimation, so closely intertwined with inherently governmental functions that they must be performed by Government civil servants. Even in those cases in which a buying organization is utilizing contractors fairly extensively, there is a feeling that if sufficient qualified personnel were available they would rather accomplish all mission requirements with Government employees.

A policy regarding the contracting out of procurement functions is needed. Sixty percent of the senior leadership believed a policy is needed to set the general boundaries for contracting out and would be extremely helpful in clarifying top management's position on all aspects of this issue. Their main concern is that there is too much difference of opinion concerning the definition of inherently governmental functions and a more direct application to contracting functions is needed. This is coupled with the perceived need for an identification of conflict of interest mitigation strategies, metrics to be used in evaluating contractor performance, appropriate sanctions for contractor transgressions, the qualifications and credentials that should be required of contractors, the hidden risks involved, and best practices in using contractors, to name just a few.



Recommendations

Metrics should be developed and robustly utilized to monitor and assess contractor performance of Government contracting functions. This research has found that the acquisition workforce believes that the procurement of contracting functions have been relatively effective based on only two primary factors: (1) was the mission accomplished in that the contracting functions were performed, and (2) did the contractor perform well enough to be considered for future contracts. As was discussed earlier, there are obvious shortfalls in the existing means to determine effectiveness, in that it lacks clearly defined criteria and the degree to which the value of effectiveness is determined. To aid in the development of valid metrics to determine effectiveness, it is recommended that organizations use the model depicted in Appendix 1. This study suggests specifics that could be used as a starting point for creation of organization-unique metrics and measures for local application that can be inserted into the appropriate sections of the model. Data requirements should be tailored within the model framework for each unique application and should strike a proper balance to ensure that they can elicit contractor performance consistent with strategic organizational performance goals. Activities should utilize this model framework as the basis of construct for any contracting action for procurement functions. Higher level management and policy personnel can use this model to gather and disseminate informational and actionable metrics within their organizations. The value of this model is that it brings together the quantitative (objective) and qualitative (subjective) dimension together with the three types of metric categories (process, workforce, and outputs) and overlays these on the six phases of the contracting process. The contractor's work effort must be evaluated and assessed. Government contracting personnel will have the principal responsibility for performing these evaluations. In actuality, assessing the performance of a contractor performing Government contracting functions is not unlike the assessment that must occur when Government managers and supervisors are evaluating their own civil servant workforce. Many of these judgments are highly subjective in nature but nonetheless must be performed. It is suggested that this model will assist in that difficult task.

The Department of Defense should issue a policy regarding the contracting out of procurement functions. There is overwhelming evidence, as brought out in surveys and interviews, that some type of policy should be disseminated from the Office of the Secretary of Defense that will guide the Services and Defense Agencies through the challenges created by utilizing contractors to perform Government contracting functions. This is not to say that organizations have not already successfully carried out the responsibility of awarding and administering contracts under which contractors are effectively and productively executing these duties. At a minimum, the policy should address the areas brought out earlier in this paper. Such a policy will go a long way in helping to clarify many of the issues currently plaguing DOD acquisition organizations.

Safeguards to protect the integrity of the contracting process when using contractor support to accomplish contracting functions should be strengthened and rigorously enforced. Utilization of contractor employees to perform Government contracting functions is relatively new and has posed a new set of complex challenges. This research has confirmed the existence of serious challenges to the procurement process that have already been known on a fairly widespread basis. Not the least of these is conflicts of interest, both organizational and personal. Other challenges that may increase as more and more contractors become involved in performing contracting actions are ethical problems, personal services issues, legal issues, and general overall threats to the integrity of the contracting process. Several measures are already in place to protect the Government from improper and unethical behavior on the part of both civil servants and contractors. In many cases, however, experience



has shown that these have not been enforced with the thoroughness and as meticulously as they should be imposed. Contracting personnel interviewed and surveyed for this research have repeatedly pointed to the potential for biased and less-than-objective action on the part of contractor employees whose loyalties and motivations may, from time to time, be at odds with the best interests of the Government. The public image and reputation of the procurement process is vital. The “fishbowl” environment within which this process takes place sets an even greater responsibility for preserving an untarnished image on all members of the acquisition workforce.

The prohibition on the use of personal services contracts should be removed.

Throughout this study, references to the difficulties encountered by Government organizations attempting to avoid personal services situations have continually arisen. Although a contract may have been carefully crafted to eliminate any potential for such a relationship, including a precisely defined statement of work, actual contract execution may be riddled with instances where the line has been crossed. Some organizations have taken extreme measures, at some expense, to structure working relationships that meticulously avert any opportunity for personal services. Other organizations have essentially ignored the rules because they are too unrealistic and unworkable. It has been demonstrated in this study that the close working relationship so important to effective execution of contracting duties requires a significant amount of interaction and direction that is of a personal services nature. This recommendation is consistent with a recommendation by the Acquisition Advisory Panel, which called for removal of the restriction regarding supervision of contractor employees by Government personnel. All of the other aspects of the employer-employee relationship, such as hiring, firing, performance appraisal, compensation, promotion, etc., remain exclusively within the contractor's area of responsibility.

Civil and criminal penalties currently applicable to Federal employees should be extended to contractor employees who are performing contracting functions for the Government. It has been noted in this study that contractor personnel performing procurement functions on behalf of the Government are not subject to the same penalties and consequences that would be enforced upon civil servants for violations of statutes, standards of conflict and ethical principles. The Government is potentially at significant risk for unlawful or dishonest actions taken by contractor employees acting on its behalf. Contractor employees are not liable for the work they perform or the recommendations they make. Sanctions do exist for illegal or improper contractor behavior, such as suspension or debarment, but this generally fails to recognize employee misbehavior. Companies that may have been injured by the unauthorized and prohibited actions of a contractor employee performing contracting actions may have recourse against the Government to obtain a remedy for an offense, but the Government, in turn, does not currently have recourse against that employee except to complain to the contractor and seek removal. It has been expressed by many that contractor personnel performing Government contracting actions should be held to the same standards and consequences for wrongdoing as civil servants. This could occur by extending appropriate civil and criminal penalties to those contractor individuals performing contracting functions.

A hierarchy of contracting functions should be developed as a classification of tasks that can be used to support various decisions and reporting requirements.

Appendix 2 presents a proposed “Hierarchy of Contracting Functions” as a conceptual method of arraying and evaluating contracting tasks or functions that are typically performed by Government buying organizations. The hierarchy can be uniquely tailored to each organization to reflect their specific duties at the micro level. The hierarchy can also be used by DOD and the Services/Defense Agencies as a macro-level approach to categorizing and distinguishing



tasks and duties by specific characteristics. This taxonomical approach to classifying functions permits organizations to identify characteristics that differentiate functions from one another. Once an organization has defined the objectives of its classification, e.g., candidates for contracting out, individual tasks can be placed in the hierarchy according to the interpretation it has made about each task. Explicit justification for the category of placement should be maintained. The hierarchy can then be used by an organization as an inventory of functions for a variety of purposes. One such purpose would be to support submission of function designations under the *FAIR Act*. The hierarchy could also be used by organizations as a common framework to compare the classification of tasks and supporting rationale with each other. Additionally, capability gaps in skill levels identified by the DOD Competency Model could be overlaid on this hierarchical model to determine where a particular function under examination resides in the overall classification scheme.

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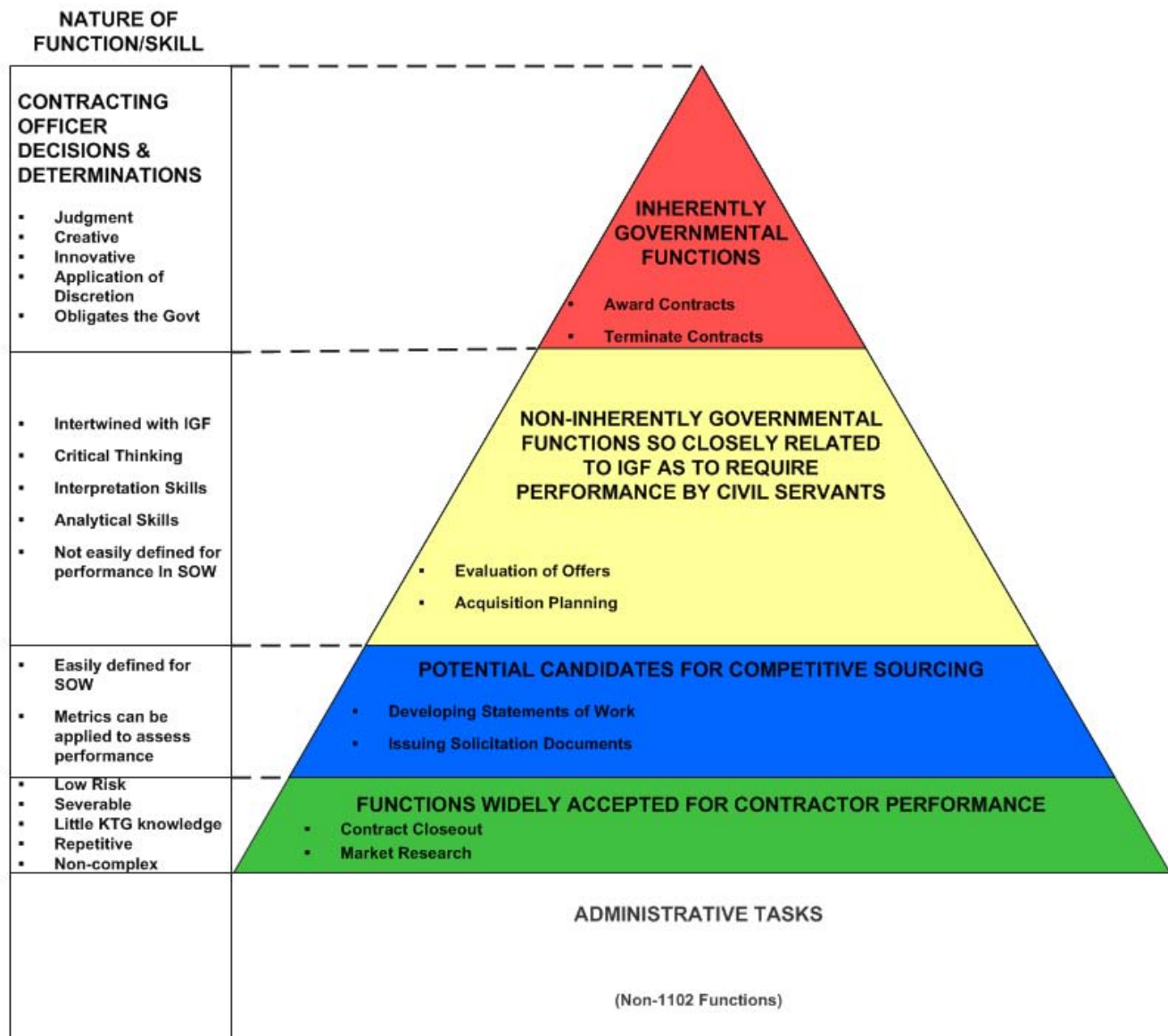
Appendix 1. Metric Analytical Model

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

Quantitative

Qualitative

Appendix 2. Hierarchy of Contracting Functions



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- Strategy for Defense Acquisition Research
- Spiral Development
- BCA: Contractor vs. Organic Growth

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- USAF IT Commodity Council
- Contractors in 21st Century Combat Zone
- Joint Contingency Contracting
- Navy Contract Writing Guide
- Commodity Sourcing Strategies
- Past Performance in Source Selection
- USMC Contingency Contracting
- Transforming DoD Contract Closeout
- Model for Optimizing Contingency Contracting Planning and Execution

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- Acquisitions via leasing: MPS case
- Special Termination Liability in MDAPs



Human Resources

- Learning Management Systems
- Tuition Assistance
- Retention
- Indefinite Reenlistment
- Individual Augmentation

Logistics Management

- R-TOC Aegis Microwave Power Tubes
- Privatization-NOSL/NAWCI
- Army LOG MOD
- PBL (4)
- Contractors Supporting Military Operations
- RFID (4)
- Strategic Sourcing
- ASDS Product Support Analysis
- Analysis of LAV Depot Maintenance
- Diffusion/Variability on Vendor Performance Evaluation
- Optimizing CIWS Lifecycle Support (LCS)

Program Management

- Building Collaborative Capacity
- Knowledge, Responsibilities and Decision Rights in MDAPs
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Contracting Out Government Procurement Functions: An Analysis

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Research Purpose and Sponsor

- Purpose: to analyze the contracting out of procurement functions by Navy, Marine Corps, and other DOD activities, focused on assessing the degree of effectiveness and shortcomings of contracting out efforts.
- Sponsor: Deputy Assistant Secretary of the Navy for Research, Development & Acquisition (DASN (RDA) (Acquisition Management)



Research Questions

- Question #1: Which contracting functions are being contracted out by Navy and other DOD organizations?
- Question #2: How effectively have contractors performed on these contracts?
- Question #3: What metrics are being used and could be used to assess the quality of contractor performance?



Interrelated Subjects Explored

- Inherently Governmental functions
- Personal service relationships
- Conflicts of interest
- Legal and ethical issues
- Impact of contracting out on the contracting system
- Development of Contracting Officers
- Participation of companies in the marketplace
- Training, experience and qualifications of participants
- Agency procurement decision-making and policies



Research Methodology

- Literature review (including, but not limited to):
 - Government Accountability Office (GAO)
 - Naval Postgraduate School (NPS)
 - Air Force Institute of Technology (AFIT)
 - Project on Government Oversight (POGO)
- Survey Questionnaires -- two utilized:
 - Policy and senior management level - 45 total participants
 - Management and operating level personnel - 87 total participants (effectiveness focus emphasized)
- Personal (face-to-face) and Phone interviews:
 - Nineteen face-to-face interviews with senior personnel
 - Fifteen phone interviews, primarily used for clarifications



Findings and Conclusions

- 1: Contracting out procurement functions has been effective, however, robust metrics to measure and assess contractor performance are lacking.
- 2: “Inherently Governmental” functions not clearly defined, and often blurred in practice.
- 3: Personal services relationships inevitable in close working environments.
- 4: Concern over potential for conflicts of interest to arise, both organizationally and personally.



Finding and Conclusions (continued)

- 5: Specific measures must be taken to ensure ethical standards are maintained and integrity of the contracting process is protected.
- 6: Contracting out will have a negative effect on the ability of the Federal Government to develop Contracting Officers, but may expand ability to develop procurement options.
- 7: There is a mixed opinion on the affect of contracting out on companies participating in the marketplace for Government contracts.



Findings and Conclusions (continued)

- 8: Government contracting functions are being performed by contractors because buying activities lack sufficient human resources to accomplish mission requirements.
- 9: A majority of senior contracting personnel believe that contracts for procurement services should be of a temporary nature.
- 10: Contractor personnel performing procurement functions should be co-located with Government contracting personnel.



Findings and Conclusions (continued)

- 11: Percentage of the contracting workforce and/or the percentage of the contracting workload placed on contract should not exceed an established maximum.
- 12: Certification requirements similar to those found in DAWIA could be imposed on contractor employees performing Government procurement functions without difficulty.
- 13: There is general opposition among Navy and Marine Corps contracts leaders to the notion of contracting out procurement functions.
- 14: A policy regarding the contracting out of procurement functions is needed.



Recommendations

- 1: Metrics should be developed and robustly utilized to monitor and assess contractor performance of Government contracting functions.
- 2: DOD should issue a policy regarding the contracting out of procurement functions.
- 3: Safeguards to protect the integrity of the contracting process when using contractor support should be strengthened and rigorously enforced.
- 4: The prohibition on the use of personal services contracts should be removed.



Recommendations (continued)

- 5: Civil and criminal penalties currently applicable to Federal employees should be extended to contractor employees who are performing contracting functions for the Government.
- 6: A hierarchy of contracting functions should be developed as a classification of tasks that can be used to support various decisions and reporting requirements.



Three Dimension Metric Analytical Model

- First dimension: phase of contract process:
 - Planning
 - Solicitation
 - Evaluation
 - Negotiations
 - Award
 - Management and Administration
- Second Dimension: application:
 - Process
 - Workforce
 - Outputs
- Third Dimension: assessment type:
 - Quantitative
 - Qualitative



Thoughts and Questions

- Is the Federal Government too reliant on contracted procurement functions?
- Where is the line between inherently Governmental and non-inherently Governmental?
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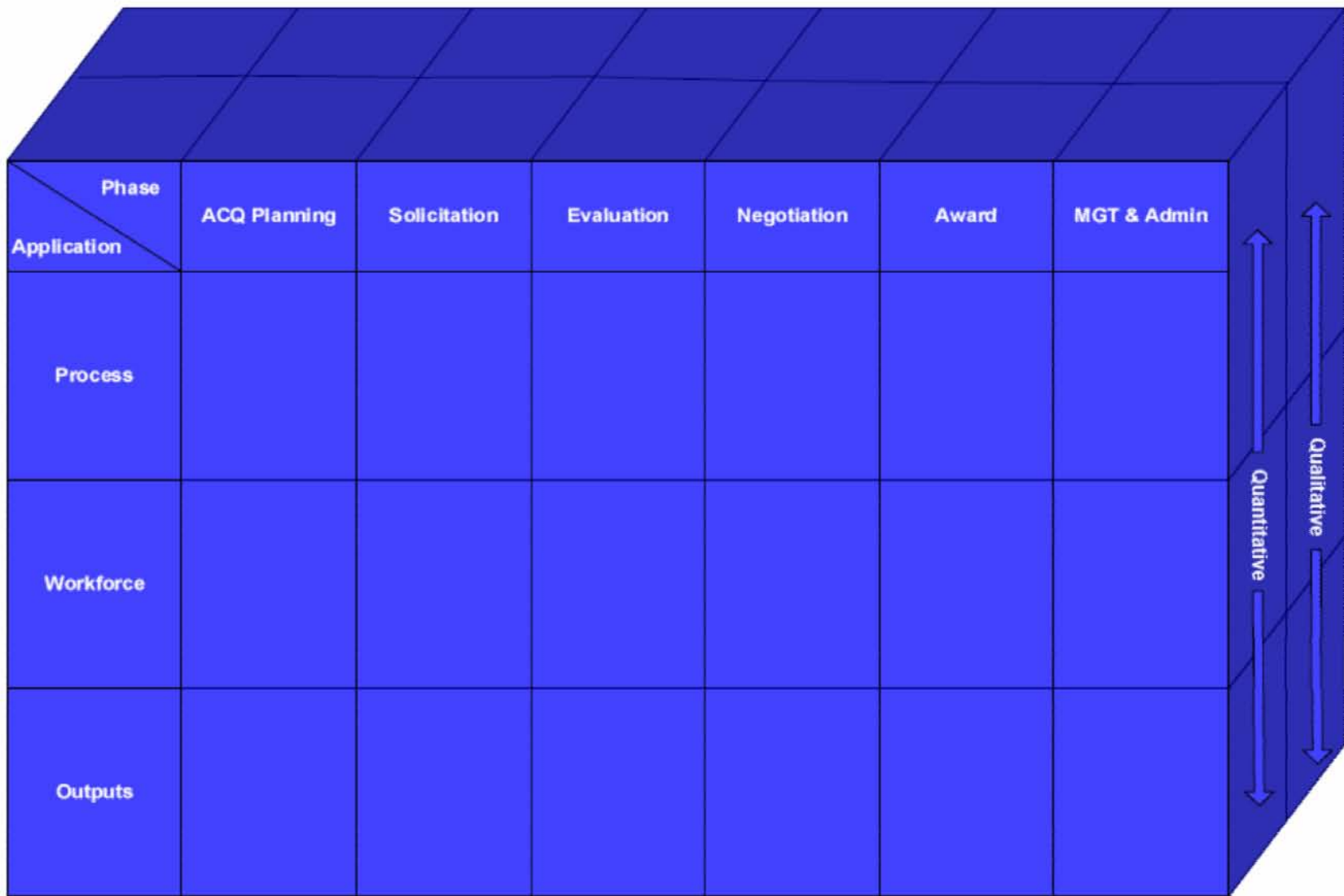


Figure 7-2. Metric Analytical Model



