

NDIA Acquisition Reform Second Event – Working Group Presentations
The Boeing Company
1200 Wilson Blvd., Arlington, VA 22201
July 29, 2014, 9 a.m. – 12 p.m.

Moderator: Jon Etherton, Senior Fellow

Notes recorded under the Chatham House Rule.

Jon Etherton: Good morning, and welcome to our second acquisition reform meeting. These meetings are in response to a HASC and SASC request for acquisition reform proposals. The meeting is conducted under the Chatham House Rule, so while we will make notes for the record, no comments will be attributable by individual or organization. We're looking to produce a 50-60 page report for the Hill and we are focused on producing actionable recommendations. We're trying to address our recommendations to individuals and organizations based on the tools that are presently in their toolbox.

We're about at the midpoint in our process. We had our first meeting at the end of May. What we're going to do this morning is have our working groups present their findings. The working groups will take anywhere from 6-10 minutes to present their work, and then they will receive comments from the audience. We're going to take this material and I, along with the NDIA staff, will work to knit this together into a coherent final report back to Congress. We're under a time crunch for this work. We need to get it done by the end of September based on feedback from the Armed Services Committees.

I want to thank everyone in the working groups for taking the time out of their busy schedules to advance this effort with their best thinking.

What we have this morning is something of a speed round. Hopefully you had a chance to review the materials we sent around last night. We're going to focus on the first seven presentations.

With that, I'd like to call up the Divergence of Government-Unique and General Private-Sector Practices Group.

Johnny Walker: To frame our concept, the budget top-line is what it is, and it's probably not going to change. So the struggle is how to get more with less. The idea is to valorize—get more value out of both ends, on buying and selling.

Our working group came up with a few definitions. State of the Art is the highest level of performance. State of the Practice is better performance at a lower cost. An obsolete practice is something that achieves lower performance at a potentially higher cost. So the State of the Practice intends to adopt the practices already out there for the best outcomes.

One area we decided to look at was supply chain management. We were looking at “man-out-of-the-loop” supply chain management, with automated systems and just in time purchasing. Industry is necking down our inventories and avoiding disruption through automated supply chains. On the government side, the obsession with cost traceability is creating costs and limiting the adoption of logistics automation. To assure the supply chain, the government may also just buy up components and stockpile, but that costs a lot of money, and we shouldn't pretend that it doesn't. We have some

solutions written out here, but the basic gist is an endorsement of a performance-based logistics model. We need to limit government overreach which doesn't add value but does add cost.

The next topic is industry self-funded research and development. Industry is not adequately compensated for its R&D. This issue is a significant risk to the warfighter, because this drives innovative companies out of the defense marketplace.

Participant: Why is the government doing what you claim they are doing?

Johnny Walker: It's a process issue. The government wants to know all of the cost data in order to establish price reasonableness. But we can establish price reasonableness in other ways.

Participant: We need to be careful about this recommendation. The military decides where it wants to invest R&D dollars. The commercial sector decides where it wants to invest. We can't treat them as identical.

Participant: The author of this slide was pointing out that some industry participants do their own R&D investments at no risk. That is a significant benefit to the Department of Defense and the taxpayer. And then they aren't compensated for it.

Johnny Walker: The issue isn't one of industry profiteering. The issue is that industry self-funded R&D needs to be "baked in" to the price the Department will pay for a finished product.

Participant: I see the government and commercial marketplaces as different. If industry doesn't like what the government does, they can leave the government market.

Johnny Walker: This discussion is good, but to keep things moving, our next issue is commercial item determinations. The definition has been narrowed significantly. That limits what the warfighter can get.

Participant: I think this is going in the right direction. Look at DCGS. The government failed to purchase a commercial item that cost significantly less, and instead they got a dramatically more expensive, worse system. The question is how do we make the right trade-offs between commercial items, non-developmental items, and developmental items.

Johnny Walker: So we have an increasingly narrow interpretation of the commercial items statute. The adverse consequence is this narrowing of the available items in the defense marketplace. And the solution is to restore the broader definition of commercial items.

Next is the rent versus buy decision. We see government purchasers making unwise cost decisions because it's harder to rent or borrow rather than buy equipment that might be obsolete within the year. Reinvigorating performance-based, service-based contracting at the execution level has only produced modest results where it has been applied.

The next issue is innovation to affordability. Sometimes the obsolete item is a personal preference item.

Participant: I would like to suggest that in the area of innovative IT, like cloud computing, DOD needs to emphasize security requirements alongside innovation requirements.

Participant: I would suggest that on developmental items versus non-developmental or commercial items, the process of designing to specifications makes it very difficult to purchase anything commercial or non-developmental.

Johnny Walker: I agree with you. I look around at the component parts on military equipment, and it's older, less efficient, and more consumptive. We need to look for innovations to get more bang for the defense buck.

Jon Etherton: Let's ~~follow~~ a couple of ground rules. Let's have everyone go through the slides first and then do questions. Also please use the microphones to the maximum extent possible. Now we will hear from the Leadership and Accountability Group.

Jay Harrison: Our current operating environment defies long-term, inflexible planning. So we need to empower decision makers to make decisions. Our problem statement is that there is a lack of synchronization between the requirements, acquisition, and budget processes. The world is changing constantly and if we don't empower decision makers to adapt to the circumstances, then we will remain in the situation we have today. Changes will occur more rapidly than decision makers can adapt.

We came up with about 15 root causes related to this problem statement. The root causes aren't specific to leadership and accountability, but our solution proposals are.

The big five issues are: lack of communication between stakeholders, that the major processes operate on different timelines, acquisition stakeholders have different cultures and incentives, a lack of incentive to take advantage of flexibility in the Federal Acquisition Regulation, and last, the regulatory and oversight burden.

So here are some things that we found. The acquisition system is necessarily complex. What the system produces is complex, so we can't completely avoid complexity in the system itself. There aren't any new ideas, and the old ideas haven't been implemented largely due to a lack of will and a lack of particularity, or specific actionable recommendations to empower decision makers. We think we need to empower program-level decision makers. We need to enhance the government-industry dialogue so that government folks can learn what's available and out there in industry. And last we need to incentivize folks to take advantage of the flexibility already present in the acquisition system.

So we need to increase the stature of the Defense and Service Acquisition Executives. We want to increase the senior military leadership involvement in managing the requirements process by extending acquisition data collection during the execution phase of programs. These changes will allow senior level decision makers to have insight into trends and possible bottlenecks during program execution.

Participant: What additional authority do you think that the USD(AT&L) needs?

Jay Harrison: We're proposing to give him tactical-level awareness of programs.

Participant: He can get whatever information he wants, whenever he wants. And your recommendation to extend political appointments beyond the Presidential term won't work.

Jay Harrison: The balance we're trying to strike here is between program-level decision makers and senior leaders. This way, if there is an issue in the execution phase, it can be corrected before it becomes a major problem. We're not the only folks out there recognizing this as an issue.

We also believe that there needs to be more technological awareness in the requirements process. We need realism as a strong component of the requirements process. There is very little opportunity for a collaborative dialogue between industry and government. We believe that you could address these issues partially through Other Transaction Authority and Public-Private Partnerships.

Next, we need to incentivize efficiency and cost-savings in the relationship between government and industry. We need to align the incentives of government and industry.

Last, we need continuous legislative reform through stakeholder collaboration. We need mechanisms for operators to identify regulations as challenges and put them forward for elimination. Putting sunsets on regulation is another way of forcing a regular review. Another option is to look at processes that work in other countries, such as the UK's Red Tape Challenge to address problems from the bottom up.

Our recommendations relate to increasing the use of Other Transaction Authority to break down the barriers between industry and government. And we need to expand Technology Domain Awareness and build information sharing within the acquisition system.

Participant: The budget and acquisition processes are actually highly synchronous. It's so synchronized that it's a barrier to entry. The milestones are synchronized to the program decision makers. I would suggest rethinking your root causes.

Jay Harrison: I think we're actually making the same point in different terms.

Participant: It's so synchronized it is absolutely inflexible.

Participant: In the private sector, profit is king; in the public sector, transparency and information are king. Our acquisition systems are absurdly outdated. We're rolling out "new" technologies that are actually 20 years old by the time they are implemented.

Jay Harrison: We agree. We want to emphasize the newest technology that's out there, and then give decision makers a way to insert that technology into ongoing programs.

Participant: I think officials do have the data. They have a central repository of information. The industry should mimic the government systems. I don't think the root cause is that the data isn't available. Whether government is making the right decision or not, that's another question.

Jon Etherton: Just a reminder to everyone, these briefings are not a final exam. We're going to take the materials that are presented here and use them as a starting point to conduct further research and expand on these ideas.

Participant: We should be very careful, as a group, about what we recommend before we recommend it. We may get exactly what we ask for, so we should ask for only what we know will fix the problems.

Jon Etherton: Again, these are working materials, and we appreciate feedback but shouldn't consider these final. Next up is the Performance Measurement Group.

Lilly Gilmour: I'm here in my personal capacity. We addressed performance measurement of the acquisition system. We've tried to hone it down to just three priorities, after an attempt to boil the ocean. A big thank you to my fellow working group members.

Our problem statement isn't that the acquisition system is broken, but how can we hone it and improve its performance by measuring it. So how do we measure value? Right now it seems to come down to money. But the real question is, what are we buying and how is it serving the warfighter?

Another issue is that we have a cost prohibitive bid process. And the process itself is extracting value from the program it is meant to guide.

So the toughest part was identifying the right root causes. Acquisition categories are based on constant, arbitrary thresholds, which categorize our programs but tell us very little about them, actually.

For the bid process, the policy of over-reporting creates a serious challenge. And again, for program management, the regulatory environment of metrics and data isn't actually providing the right information to make needed decisions.

So the big questions are what data are useful and timely? And what data are redundant or basically unhelpful? And then how do we extend that data down into programs at a lower-than-MDAP level?

We found these ideas echoed in the Performance of the Defense Acquisition System reports and several GAO reports. But these reports focus on MDAPs/ACAT I or IA levels. Only the SOCOM study we looked at addressed programs below the ACAT I level.

There's quite a bit of law, regulation, and policy related to enterprise reporting. We have a number of changes, and one of particular note is making sure that our program managers have some industry experience through our existing fellowship programs.

We need to use business intelligence systems that already exist at program levels lower than ACAT I and ACAT IA. We need to rationalize and streamline the FAR and DFARS reporting requirements.

Participant: I applaud your suggestion to use enterprise business systems and structured and unstructured data. But systems engineering information wasn't included, and it's unintelligible to the acquisition community. We need to aggregate the systems engineering data to know whether the system itself is producing redundant capabilities, inhibiting innovation, or increasing technological risk. Acquisition managers have to be part of the acquisition engineering system or we are just pushing dollar figures around. The current planning and budgeting system puts government into a lagging, not a leading, position. Government can't explain to industry its needs 10 years from now from this position.

Lilly Gilmour: I agree that we need to use other metrics and data as well. This data may be more qualitative in nature and harder to quantify, but it could also be collected and assessed.

Participant: We're stifling innovation in the smaller programs. We should have certain types of information collected for ACAT Is, and other information collected for lower than ACAT I programs.

Lilly Gilmour: I'm not aware of OSD reaching out to get the data on all Service programs lower than the ACAT I level. But ineffective use of the data at the lower ACAT levels doesn't excuse the need to collect data, nor should we necessarily assume that an ACAT II or III program couldn't provide the value that the warfighter needs in a certain capability area. More information wouldn't hurt.

Participant: That gets to the synchronization question. Is it so synchronized, is there so much information, that it's inflexible? Offering up all of the information may mean a deeper reach by Congress and OSD and involve them in every decision. Are we trying to do that? We have an over-capacity in the defense marketplace, yet we're also trying to leverage innovations outside of the defense marketplace. So those environmental factors should also influence your recommendations.

Lilly Gilmour: You're right that we are trying to get more information on performance, but for reporting requirements, we're trying to streamline and reduce the process.

Participant: I want to endorse your proposal on industry fellowships. All contracting officers should get a developmental assignment to learn about industry and industry systems that are really needed to do their work. It helps bridge the cultural divide.

Participant: There's no discipline in the Services to insert technology into the "kill chain" and we should improve that on the industry side too. We in industry should also participate in classes at DAU.

Jon Etherton: I'd like to invite the Small Business Group to come up and talk about their approach.

Donna Huneycutt: David Hahn and I worked together in co-leading this working group. There are problems with the current approaches. The current small business goals are ineffective. If agencies or primes don't meet their goals, there's no penalty. The root causes are an overtasked acquisition workforce and the ease of bundling work into mega contracts. Government can also outsource its small business contracting to a prime. The paperwork and labor involved in small business contracts favors the mega contracts.

With small business set-asides, we've seen small businesses subcontract to a large company for 49% of the prime contract in order to meet the legal requirement of the set-aside while undermining its intent.

There's also a valley of death for large contract set-aside winners, where they can no longer compete for small business contracts due to their growth, but they also aren't competitive for regular competitions.

Bundling is another major issue. You may have multiple work types that have no relationship to one another lumped into a single contracting opportunity. But the legwork involved in small business contracting creates a huge incentive to bundle.

Another problem is the waste involved in small business contracting. Even if small businesses are on the winning contract team, the churn involved in bid and proposal may not yield work for them.

Subcontracting creates at least two levels of overhead and profit. The bundling environment makes money the primary driver, which pushes everything towards the cheapest product – towards mediocrity.

The bundling of contracts also chills competition. High dollar value creates high risk, so contracting officers tend to favor large, familiar firms, not necessarily the best firm to do the work. Outsourcing small business participation through the prime means that the prime is looking for the best way to make profit and reduce costs, not necessarily identify the best solution that is most effective.

The current dynamic inhibits innovation. Innovation doesn't occur on the mass scale. It gets scaled up once it is demonstrated as successful. So we need a way to insert innovative companies and capabilities, which is actually inhibited by the current system of preferences and set-asides.

The adverse consequences of these problems are that they discredit small businesses and small business programs. We need an environment where small businesses can thrive and have a quick feedback loop.

We have a multi-part solution. We should unbundle mega contracts, shift responsibility for small business contracting from the primes back to the government, streamline the set-asides for small business, limit set-asides to two times the revenue or FTE based NAICS definition of small business and modernize the NAICS code, and we want to improve the information between acquisition workers and small business contractors. We need to encourage modest risk-taking when it comes to small business.

Participant: Referencing the DBB report on Innovation, it becomes supporting evidence for much of what you've articulated. We should include non-traditional small businesses in this group too. Looking at GSA for simplified, low-dollar acquisitions might also make a lot of sense.

Participant: Did the working group evaluate SBIR and STTR processes?

Donna Huneycutt: We did look at them, but the thresholds are so low that the savings probably aren't there. Also the SBA introduces a huge new variable.

Participant: The thrust of these recommendations seem to be more focused on services, is that right?

Donna Huneycutt: Not necessarily. We also looked at small manufacturing activities too.

Participant: My concern as a mid-tier supplier is that increasing small business direct contracting would have a major impact on my contracting opportunities.

Donna Huneycutt: We're looking for a path to growth. We don't want to see a small business have to permanently remain as such. We need a path for sustainable growth for good companies of all sizes.

Participant: Please reconsider your two-times FTE recommendation. I did agree with your proposal on certification of business practices. Having outside technical help on proposal writing has allowed some small businesses to game the system to pretend technical acceptability when they really aren't able to do the work.

Participant: Agencies aren't reporting all small business subcontracting. Your discussion of mega contracts confused large contracts awarded to small businesses and large contracts awarded to large businesses with small business subcontracting goals.

Participant: Subcontracting goals in last year's NDAA will have an influence on your recommendations.

Participant: Perhaps you should address Alaska native corporations and Ability One in your recommendations as well.

Jon Etherton: We're running behind, so we may drop off the last two briefings. Now we'll turn to Contract Strategy.

Chris Veith: I just want to note that these problems weren't created quickly, and we probably won't fix them quickly. It's a long term assignment, and these are dry runs for work over the next year to two years at least. This process isn't just being done to eliminate the annoyances for industry. This process is also for industry to come forward with solutions. So we should stay focused on alternatives. I commend NDIA for its more deliberate process. And we'll convert these more conceptual ideas into actionable recommendations.

For contract strategy, we have three major issues. First is LPTA source selection. LPTA is driving innovation away from the defense market and incentivizing unrealistically low bids. So we think contracting officers should have to validate the LPTA process.

Second is IDIQ for architecture and engineering, for which we have several proposals you can read through.

Last is IDIQ Multiple Award Contracting. There has been a huge proliferation of MACs and a dramatic increase in costs. This is actually an inversion of the purpose of the MAC process. The task order process is becoming more and more like FAR Part 15 processes, so there's little value left in it.

We came up with six proposed solutions, but they need more depth and work and require a higher level of dialogue with government. We need to simplify the award and task order process to return to a Clinger-Cohen environment, where contracting officers could do task orders very quickly.

Participant: I like your assessment of LPTA. They want to do it quickly and to be protest-proof. Rather than raising the approval, maybe insert a program management authority who is more worried about program performance, not legal or contracting chains.

Participant: The LPTA issue is about commoditizing labor. LPTA has grown because there is no way for the contracting officers to determine value and performance on contracts. We need to be able to measure value on contracts, and if we can't do that, we will always default to lowest price.

Chris Veith: LPTA has been around for a long time. And I agree with you, the issue isn't LPTA as an authority, it's the overreliance on LPTA.

Participant: The increase in LPTA source selection has its root cause in protests. Would the group entertain a "no-protest" rule for best value determinations?

Chris Veith: I don't know that you'll ever have industry agree to a no-protest rule.

Participant: Well, industry needs to have some skin in the game.

Chris Veith: I note that GAO is now charging industry some fees for protests.

Jon Etherton: Next group is on the Capabilities of the Acquisition Workforce.

Rene Campos: Peg Johnson and I will be co-briefing. I'm not an acquisition professional. My background is in military personnel systems. We're interested in making things better, and this is a work in progress. We see the acquisition workforce issues as reflective of some of the larger problems with the overall defense workforce.

There's a lack of consistent management of the workforce. There's room to professionalize and standardize workforce management.

There are many root causes of this problem. The civilian workforce lacks the leadership and soft skills of its military counterparts. The unclear definition of acquisition professional makes it difficult to professionalize the workforce. We have an aging workforce and therefore a declining level of experience as older workers retire and are replaced. There's insufficient training with industry. The acquisition workplace doesn't promote a culture of learning—it's too much of a "checklist workforce."

We need to take a more holistic look at workforce development and education. We've got a current set of laws and regulations, but we need to take a more expansive view of how we can get the acquisition workforce to think and behave in the way we want.

Peg Johnson: Rene was great at researching and writing this brief. And I brought my frustrations and my "rubber meets the road" experience. While we criticize the "checklist workforce," I actually don't oppose a checklist, I just want a checklist on a timeline. We really need to look at how to reorient our existing resources to best benefit the workforce out on the pointy end of the spear.

Participant: The acquisition workforce is incredibly maligned, but most times they create things that work and they do very well. Half of the Selected Acquisition Reports demonstrate the workforce is doing well. The other half isn't doing well, and the workforce gets blamed. DAU isn't an educational institution, it's a community college for military personnel transitioning into an acquisition career. The shrinkage of the acquisition workforce in the 1990s destroyed its capabilities. What this group can do is cite the real commercial success stories so that we can learn from industry.

Peg Johnson: We're not criticizing the acquisition workforce. We agree that the firings of the '90s were very damaging.

Participant: Without quality people that are well educated, we're in trouble. I think we should look at the programs that are doing well.

Participant: I would suggest bifurcating your recommendations for standard defense articles and for IT and cyber security. The two areas are so different that you can't apply the same rules to IT and cyber that apply to the rest of the workforce programs.

Participant: I second that point.

Participant: I think this area is related to the leadership and accountability group. What you're talking about is the competency of the leaders in our acquisition system. We do have a system. It consists of certification at multiple levels. And positions require those certifications. DAU provides courses to create a base-level of competence among program managers.

Participant: A lot of what I see in the slides is not reflective of what I see in government, particularly in Better Buying Power. I think they're trying hard to change the corporate culture, so we need to make sure those are included in the presentation.

Peg Johnson: Agreed, we had a narrow mandate, and BBP wasn't included, but I think you're very right. And the government needs a schedule just like they apply a schedule to industry.

Participant: The protest issue is a pertinent one. It's never been this bad in terms of protests. We need to come together as industry to fix the protest problem. I challenge NDIA and industry about how we get back to protesting for genuinely egregious things like breaking the law, not a disagreement on a best value determination. That should not be protestable. We aren't going to get rid of protests, but let's raise the bar. We've done a lot of harm to ourselves.

Jon Etherton: We have two other presentations, boundary conditions and services and IT, which were sent out to everyone. You can review those on your own. Today was a challenging dry run, and I want to thank each of the working group chairs—this task wasn't simple or easy, particularly fielding questions from the audience, so we're grateful for them rising to the challenge. We at NDIA are going to be tackling how to reconcile contradictions and identify where the consensus lies on major issues. We'll be taking the work that the working groups have done and fitting it within the bounds of the promissory note we've already provided to the Hill. We agree that there's a broader issue and problem statement. And in our report we need to be clear about what we can do now and what needs further development, clarity, and information for future action. Thanks to everyone who has participated and commented.