

# IMPROVING ACQUISITION OF SERVICES IN THE INTELLIGENCE COMMUNITY

# INTELLIGENCE AND NATIONAL SECURITY ALLIANCE

ACQUISITION MANAGEMENT COUNCIL

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# EXECUTIVE SUMMARY

Procurement for the Department of Defense (DoD) and the Intelligence Community (IC) is increasingly directed toward the acquisition of services such as information technology, software, and advisory services. For example, in FY2014, services acquisitions amounted to 45 percent of total DoD contract obligations and 68 percent of total contract obligations for the rest of Government. The IC is also undergoing a similar trend, as Government and industry grapple with the associated issues that stem from an acquisition process better suited for the procurement of traditional hardware and systems. The process for procuring services should enable agencies to quickly acquire the capabilities that satisfy mission requirements. In

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light of shrinking budgets and rapidly changing mission demands, it is imperative that the IC improve the effectiveness and timeliness of its mechanisms for procuring and overseeing services contracts.

At the request of the Assistant Director of National Intelligence for Acquisition, Technology, and Facilities (ADNI/AT&F), the Intelligence and National Security Alliance (INSA) formed an Acquisition Management Working Group – since upgraded to a standing INSA Council on Acquisition Management – to identify opportunities for improving the IC's management and oversight of high-end services contracts.

Discussions with three groups of people – senior IC acquisition and procurement executives, experts from industry and academia, and industry CEOs with IC experience – identified contracting inefficiencies that could be grouped into seven key themes:

- 1. Lack of collaboration between acquisition and mission personnel
- 2. The need for consistent performance-based contracting
- 3. Challenges to awarding true Best Value solutions
- 4. Difficulties quantifying and qualifying past performance
- 5. Quality and innovation in the acquisition process
- 6. Restrictive communication between Government and industry
- 7. Increases in the number of contract protests

After analyzing insights provided by acquisition experts and practitioners, the working group developed ten recommendations, described below, that the Intelligence Community can implement over the short and long term without, in most cases, new legislation. Many of the recommendations can be undertaken by agency directors, although the ODNI may, by virtue of its mission to coordinate and deconflict IC-wide activities, wish to lead the implementation of the recommendations across the Community.

1. Agencies should adopt policies that emphasize outcome-based acquisition as opposed to the prevailing specification-based acquisitions. (Themes 1, 2, 3, 5)

### **Key Points:**

- An outcome-based services acquisition approach would select and reward contractors who are best positioned to generate agencies' desired results instead of those who come closest to providing specified inputs.
- Requests for Proposals (RFPs) that are based on Statements of Objectives (SOOs) instead of Statements of Work (SOWs) or Performance Work Statements (PWSs) would require contractors to propose unique, innovative solutions that would give the Government more choices for meeting mission goals.
- Government could select and incentivize a contractor based on its achievement of specified mission-focused outcomes rather than mere contract compliance.
- To enable effective outcome-based RFPs, it is incumbent on agency leadership to communicate its strategic objectives to the contracting workforce.

 Intelligence agencies should use comprehensive service level agreements (SLAs) as the primary performance measures for services acquisitions. SLAs should be developed by contractors as part of their proposals in response to a SOO. (Themes 1, 2, 3, 5, 6)

- Defining the levels of service to be provided clarifies Government and contractor expectations, establishes measurable output goals, and establishes enforcement mechanisms for mitigating shortfalls in performance.
- For all service acquisitions, SLAs should be developed by the contractor and be included as part of the response to a SOO. SLAs, performance management metrics and tripwires are discussed in DODI 5000.74 and other best practices.
- Multiple options exist for overseeing SLAs, including simply sharing which contracts are using SLAs and sharing the SLA metrics during contract execution.

3. Intelligence agencies should maximize the flexibility inherent in the best value tradeoff process by awarding to the contractor whom the Agency has the highest confidence will achieve the program's objectives. Where appropriate, the Government should consider awarding to the most highly rated technical solution provided it falls within a price range the Government has deemed to be acceptable or is accompanied by a justification for deviating from this range. (Themes 3, 5)

### **Key Points:**

- The degree of complexity and innovation should be considered when weighing the balance between cost/price factors and non-cost/non-price factors.
- Commodity services for static requirements can be delivered with similar quality by many contractors, and thus the best value decision is appropriately determined with a strong emphasis on cost/ price. This may result in Industry perceiving that the Government has awarded to the lowest price technically acceptable offer when the Government has in fact appropriately awarded to the best value. Many in industry refer to this as "LPTA [Lowest Priced Technical Acceptability] by default" even though the award decision was not made using a LPTA approach.
- Complex services that include innovative technology solutions are likely to have significantly different solutions proposed by each contractor. This can lead to situations where the Government may have to choose between a technical solution that is highly preferred and a lower price from another contractor who has an acceptable, but lower rated, proposal. In these circumstances, the Government has the greatest flexibility if their acquisition strategy employs the full breadth of the Best Value Continuum in the FAR. Specifically, FAR 15.101 states "The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection." This option to award to a higher priced, technically more valuable solution (best value) if it achieves technical superiority emphasizes innovative solutions while still controlling costs by focusing on outcomes, particularly when Fixed Price contracts are used.

- The Government may also consider establishing a price range in appropriate situations. Acceptable price ranges may be established by the Government's Independent Cost Estimate (ICE) and/or through market research; in particular, solutions that use commercially available technologies will have many data points available as input to the ICE. Acquisition organizations such as the General Service Administration's (GSA's) Federal Systems Integration and Management Center (FEDSIM) have had success with this method. Specifically, the acquisition may stipulate that, "Price/Costs that are excessively high or low (without sufficient justification) may be considered unrealistic and unreasonable and may receive no further consideration."
- Awarding contracts on the basis of the quality of the proposed solution rather than on cost/ price provides incentives for contactors to make investments that enable service quality and improvements. It also avoids the "race to the bottom" syndrome, in which contractors propose unrealistically low prices. Fixed Price contracts that reinforce accountability may also mitigate this risk.
- To address issues with measuring past performance, the DNI should establish and fund an IC- specific Contractor Performance Assessment Reporting System (CPARS) database for use by agencies when executing services contracts under DoD or DNI authorities. (Theme 4)

- A DNI-funded IC-wide CPARS database based on responses to a standardized questionnaire – would improve information-sharing on contractor performance and bring new efficiencies to the IC acquisition process.
- Such a database would, among other things, make it easier to evaluate companies' past performance by standardizing metrics and including performance data in RFPs; reward industry participants who perform well by allowing them to more effectively compete for new work; and facilitate improved outcomes by building on companies demonstrated performance and experience.

 If the circumstances of the acquisition warrant, agencies should establish the contract base period for services contracts to align with completion of major milestones (e.g. implementation). (Themes 2, 3)

### **Key Points:**

- Rather than use arbitrary one-year periods of performance, services contracts lend themselves to base periods that align with major delivery milestones (e.g. implementation); however, contracts should include Government "off-ramps" in the event of poor contractor performance.
- Longer base periods allow the contractor to recoup its investment in innovative solutions and to re-invest in the continuous improvement of its services—thereby aligning incentives with accountability over the long term.
- Performance measures would continue on a quarterly or biannual basis to reinforce contractor accountability and performance.
- Longer overall periods of performance (base plus options) give the Government added flexibility when to incur the cost of acquisitions and the resulting transition effort. The Government has no obligation to exercise all options.

 Consistent with the key tenets contained in the Principles of Intelligence Transparency Implementation Plan released on October 27, 2015, the IC should implement a 360-degree review program which would enable greater transparency and continuous process improvement across the IC acquisition ecosystem. (Themes 6, 7)

### Key Points:

- A robust agency-level feedback and suggestion process would enable contractors to comment on agency performance and recommend improvements.
- Maintaining the feedback at an agency level rather than at a contract level would focus on continuous improvement and ensure feedback is both constructive and anonymous.
- A review program could potentially reduce the number of protests by facilitating greater transparency.
- 7. Integrated Product Teams (IPTs) are a best practice that supports inclusion of all stakeholders into the acquisition lifecycle for services. (Themes 1, 2, 5)

- Integrated Product Teams broaden the range of expertise incorporated into acquisition decisions and yield a shorter feedback cycle, more agile decision making, and faster results.
- Effective IPTs will require advance planning to promote consistency for long term capabilities.

8. Industry should exercise restraint in filing protests that lack discernible merit. The Government should share as much information as possible during post-award debriefings, which may indirectly minimize one of the reasons contractors file protests with little to no merit. (Theme 7)

# **Key Points:**

- If industry wants the acquisition process to work efficiently and fairly for everyone, contractors must refrain from filing protests in which the firm's primary objective is to forestall the new contract.
- Industry may consider creating more transparency around publicly available protest statistics, thus creating a market-driven hesitation for filing meritless protests. A third party association could host this information.
- Because contractors are more likely to protest awards when the reasons for the Government's decision are unclear, agencies should maximize transparency of the solicitation and evaluation process through such steps as comprehensive presubmission information-sharing and meaningful (rather than *pro forma*) debriefings. This may minimize one of the reasons contractors file protests without knowing the degree of merit.

 Agency directors should receive regular status updates on large ongoing and projected services acquisitions within their agencies. Additionally, ODNI may consider fostering best practice discussions among agencies to promote continuous learning and synergies. (Themes 1, 2, 5)

# Key Points:

- Agency directors should receive regular updates on mission-critical acquisitions, which would enable them to ensure that contracts continue to reflect the agency's goals and priorities.
- Information reported to agency directors would include pre-award acquisition milestones and the acquisition strategy, post-award would include SLA results and milestone achievements.
- 10. The ODNI should partner with industry groups such as INSA to create an IC Business Panel (ICBP), modeled after the Defense Business Board, to provide advice on the improvement of acquisitionrelated business practices. (Themes 2, 4, 5, 6, 7)

- Given the DNI's significant responsibilities relating to budget, personnel, program management, and acquisition, an independent advisory group with senior-level business and management expertise could help the IC identify corporate best practices that could improve efficiency.
- In the acquisition sphere, such an advisory panel could provide the IC leadership with trusted, independent counsel regarding the evolving nature of acquisition and innovation.

# INTRODUCTION

Procurement for the Department of Defense (DoD) and the Intelligence Community (IC) is increasingly directed toward the acquisition of services such as information technology, software, and advisory services. For example, in FY2014, services acquisitions amounted to 45 percent of total DoD contract obligations and 68 percent of total contract obligations for the rest of Government. The IC is also undergoing a similar trend, as Government and industry grapple with the associated issues that stem from an acquisition process better suited for the procurement of traditional hardware and systems. The process for procuring services should enable agencies to quickly acquire the capabilities that satisfy mission requirements. In light of shrinking budgets and rapidly changing mission demands, it is imperative that the IC improve the effectiveness and timeliness of its mechanisms for procuring and overseeing services contracts.

At the request of the Assistant Director of National Intelligence for Acquisition, Technology, and Facilities (ADNI/AT&F), the Intelligence and National Security Alliance (INSA) formed an Acquisition Management Working Group – since upgraded to a standing INSA Council on Acquisition Management – to identify opportunities for improving the IC's management and oversight of high-end services contracts. As part of an industry-driven plan of action, the Working Group held three roundtable discussions with: (1) experts in industry and academia; (2) IC senior acquisition and procurement executives; and (3) industry CEOs with commensurate experience in the IC marketplace.

Those discussions identified contracting inefficiencies that could be grouped into seven key themes:

- 1. Lack of collaboration between acquisition and mission personnel
- 2. The need for consistent performance-based contracting
- 3. Challenges to awarding true Best Value solutions
- 4. Difficulties quantifying and qualifying past performance
- 5. Quality and innovation in the acquisition process
- 6. Restrictive communication between Government and industry
- 7. Increase in the number of baseless contract protests

Using these seven themes to focus its examination of the issue, the Working Group developed ten recommendations for substantially improving the management and oversight of high-end services contracts over both the short and long term. Many of these recommendations can be undertaken by agency directors, although the ODNI may, by virtue of its mission to coordinate and deconflict IC-wide activities, wish to lead the implementation of the recommendations across the Community. It is the belief of INSA's Acquisition Management Council that the Intelligence Community can implement a majority of these recommendations expeditiously without new legislation.

# ANALYSIS & RECOMMENDATIONS

1. Agencies should adopt policies that emphasize outcome-based acquisition as opposed to the prevailing specification-based acquisitions. (Themes 1, 2, 3, 5)

#### **KEY POINTS:**

- An outcome-based services acquisition approach would select and reward contractors who are best positioned to generate agencies' desired results instead of those who come closest to providing specified inputs.
- Requests for Proposals (RFPs) that are based on Statements of Objectives (SOOs) instead of Statements of Work (SOWs) or Performance Work Statements (PWSs) would require contractors to propose unique, innovative solutions that would give the Government more choices for meeting mission goals.
- Government could also select and incentivize a contractor based on its achievement of specified mission-focused outcomes rather than mere contract compliance.
- To enable outcome-based RFPs, it is incumbent on agency leadership to communicate its strategic objectives to the contracting workforce.

The Government services acquisition landscape is rapidly changing, which will require services contractors to "do more without more." However, the Government has historically contracted for services based on labor hours using a staff augmentation model. The net effect is that the services contractor is incentivized to maximize the number of labor hours worked without regard for mission outcome, productivity, or impact to overall performance. In this acquisition approach, labor hours are maintained within Government-defined "swing" tolerances, but innovation, creativity, efficiency, and overall mission focus are stifled.

Right-sized and right-skilled staffing is a critical component for mission success. Companies with accurate and effective accounting practices possess accurate, historical metrics or basis of estimates on size and scope of effort required to create deliverables and deliver outcomes. However, the Government often prescribes the level of effort (LOE)—and even the labor class and skills—to execute a specific contract based primarily on the current executing contract (which is often the only basis for the Independent Government Cost Estimate). As a result, successive contracts are based on maintaining existing staffing levels without regard to changes in desired outcomes. The flaw in such an approach is that no measures of improvement or innovation may be incorporated in a new competition for the same LOE at the same skill level. A decade ago, President George W. Bush challenged acquisition professionals to embrace innovation, arguing that "rather than micromanaging the details of how contractors operate, the Government must set the standards, set the results and give the contractor the freedom to achieve it in the best way."<sup>1</sup> An outcome-based services acquisition approach links Government objectives and desired outcomes by selecting and rewarding contractors who most effectively enable those outcomes.

An outcome-based services acquisition approach links Government objectives and desired outcomes by selecting and rewarding contractors who most effectively enable those outcomes. In this model, the Government receives the most capable staff, the highest service levels, and the potential of lifecycle cost efficiencies without sacrificing a commitment to mission success. To implement an outcomes-based model, agencies should, to the greatest extent possible, base Requests for Proposals (RFPs) on Statements of Objectives (SOOs) instead of Statements of Work (SOWs) or Performance Work Statements (PWSs). A SOO aligns proposals more closely to mission outcomes, providing contactors with greater flexibility to deliver innovative solutions while satisfying requirements. Indeed, use of a SOO would require contractors to propose unique solutions that would give the Government more choices through increased innovation, whereas detailed requirements encourage every contractor to propose nearly the same solution.

A SOO would require the Government to take a different approach to acquisition in which desired outcomes are emphasized over specifications. In other words, RFPs would place less emphasis on what contractors will provide and more focus on what contractors will achieve. For Contracting Officers (COs) to capture agency goals effectively in a SOO, however, they need to understand what their leadership wants to accomplish. The burden is thus on agency leadership and program directors to communicate their strategic mission needs to the contract workforce. Government could also select and incentivize a contractor based on its achievement of specified mission-focused outcomes. Such outcomes could be the achievement of major milestones ahead of schedule, a successful readiness event measured by resolution of critical outstanding items, improvement of mission capabilities, attainment of an efficiency target, or other meaningful accomplishments correlated to the Government's desired objectives. Mission outcomes are defined by specifying the services required to achieve them (i.e., the scope of work) and metrics that measure both mission and contractor performance, where performance can be evaluated using the metrics and fee incentives derived. Adopting a performance method based on mission outcome- based evaluation provides the Government with multiple options to assess services contractors' performance. These options promote collaborative, performance-oriented teamwork with a focus on program performance, improvement, and innovation rather than mere contract compliance.

 Intelligence agencies should use comprehensive service level agreements (SLAs) as the primary performance measures for services acquisitions. SLAs should be developed by contractors as part of their proposals in response to a SOO.

(Themes 1, 2, 3, 5, 6)

#### **KEY POINTS:**

- Defining the levels of service to be provided clarifies Government and contractor expectations, establishes measurable output goals, and establishes enforcement mechanisms for mitigating shortfalls in performance.
- For all service acquisitions, SLAs should be developed by the contractor and be included as part of the response to a SOO. SLAs, performance management metrics and tripwires are discussed in DODI 5000.74 and other best practices.
- Multiple options exist for overseeing SLAs, including simply sharing which contracts are using SLAs and sharing the SLA metrics during contract execution.

Effective SLAs are a fundamental underpinning to any service contract. They define clear expectations of output in measurable terms and include enforcement mechanisms for when service expectations are not met. Additionally, SLAs are important because they facilitate a clear understanding between the contractor and agency, thereby minimizing (but not eliminating) disputes between the two parties.<sup>2</sup> The use of clearly defined SLAs for IT services contracts is a widely accepted best practice in the private sector. Over the last five years, the Federal Government has tried to encourage a similar use of SLAs across Federal agencies. In 2012, a joint publication by the CIO Council and the Chief Acquisition Officers Council included the use of clearly defined SLAs as one of ten "best practices for acquiring IT as a service."3 Contractor-developed SLAs improve Government-industry communication because contractors clearly communicate to the Government the SLAs they believe will support the mission. Then, the Government evaluates proposals based on, among other factors, whether those SLAs would support mission needs.

SLAs should include several key provisions. First, service levels should be established and expressed as a quantifiable metric. For example, "the quality of the software code that the contractor provides is 98% void of any security vulnerabilities" is an effective and clearly articulated metric. Secondly, an SLA should explain exactly how the standards and metrics are being measured and

> monitored. For example, service quality could be assessed by tracking the number of help desk tickets and the time it takes to close them. Finally, an SLA should identify the corrective measures the provider must undertake if it fails to implement the SLA, such as break-fix at no cost, service credits, or refunds. Enforcement mechanisms are the most important component of an SLA because they incentivize the service provider to meet IC agencies' specified service levels and give the service provider "skin in the game."

Normally, an SLA attaches to an underlying agreement, such as a particular Statement of Work. SLAs should be developed by the contractor as a general practice for all service acquisitions and be included as part of the response to a SOO as a means for assuring acceptable quality levels (AQL) of quantifiable, measured performance. This approach also allows the Government to gain insight into the metrics used for SLAs by the private sector, potentially offering Government agencies innovative new ways to measure performance.

SLAs offer a simple mechanism to communicate the overall effectiveness of a program, and in that regard support oversight activities. Oversight can be supported relatively simply once the SLAs are established. Options include simply communicating which contracts are using SLAs to promote adoption, creating transparency of the SLA metrics during contract execution to monitor performance, and sharing of SLA best practices for others to mirror as appropriate.

<sup>2</sup> Government Accountability Office, Cloud Computing: Agencies Need to Incorporate Key Practices to Ensure Effective Performance, GAO-16-325, April 7, 2016, p. 9. Available at: http://www.gao.gov/products/GAO-16-325.

<sup>3</sup> CIO Council and the Chief Acquisition Officers Council, Creating Effective Cloud Computing Contracts for the Federal Government: Best Practices for Acquiring IT as a Service, "February 24, 2012, pp. 3-4, 7-8. Available at: https://cio.gov/wp-content/uploads/downloads/2012/09/cloudbestpractices.pdf.

3. Intelligence agencies should maximize the flexibility inherent in the best value tradeoff process by awarding to the contractor whom the Agency has the highest confidence will achieve the program's objectives. Where appropriate, the Government should consider awarding to the most highly rated technical solution provided it falls within a price range the Government has deemed to be acceptable or is accompanied by a justification for deviating from this range. (Themes 3,5)

When an RFP emphasizes the best solution as the principal selection criterion, the Government will receive more innovative proposals. This also results in the highest probability of achieving the program's objectives. There is a wide range to be considered when assessing the relative importance of the technical solution to the cost/price. Whereas industry may refer to an award based on price as "LPTA by default," awarding based on cost/price when the technical solutions are all very similar is an appropriate best value tradeoff. At the other extreme, the best value tradeoff approach is philosophically similar but practically very different for acquisitions in which the Government is choosing among very different solutions, as may be the case with innovative technology services contracts. In this case, the Government may have significantly greater confidence in one solution over another and thus requires the flexibility to award

based on its confidence in the contractor to achieve the program objectives. This flexibility may be achieved by awarding to the most highly rated technical proposal within a specified acceptable price range, and requiring justification to propose outside that price range.

#### KEY POINTS:

- The degree of complexity and innovation should be considered when weighing the balance between cost/price factors and non-cost/non-price factors.
- Commodity services for static requirements can be delivered with similar quality by many contractors, and thus the best value decision is appropriately determined with a strong emphasis on cost/price. This may result in Industry perceiving that the Government has awarded to the lowest price technically acceptable offer when the Government has in fact appropriately awarded to the best value. Industry refers to this as "LPTA [Lowest Priced Technical Acceptability] by default" even though the award decision was not made using a LPTA approach.
- Complex services that include innovative technology solutions are likely to have significantly different solutions proposed by each contractor to achieve the same objectives and quality levels. This can lead to situations where the Government may have to choose between a technical solution that is highly preferred and a price analysis that leads to another contractor who also has an acceptable proposal. In these circumstances, the Government has the greatest flexibility if their acquisition strategy includes an option to award to the most highly rated technical proposal within a specified acceptable price range, requiring justification to propose outside that price range. This method emphasizes innovative solutions while still controlling costs by focusing on outcomes, particularly when Fixed Price contracts are used. Acquisition organizations such as the General Service Administration's (GSA's) Federal Systems Integration and Management Center (FEDSIM) have had success with this method.
- Acceptable price ranges may be established by the Government's Independent Cost Estimate (ICE) and/or through market research; in particular, solutions that use commercially available technologies will have many data points available as input to the ICE.
- Awarding contracts on the basis of the quality of the proposed solution rather than on cost/price provides incentives for contactors to make investments that enable service quality and improvements. It also avoids the "race to the bottom" syndrome, in which contractors propose unrealistically low prices. Fixed Price contracts that reinforce accountability may also mitigate this risk.

When an acceptable price range is used in conjunction with a SOO and its mission-related SLAs, cost becomes less of a determining factor in contract award because each proposal becomes more unique and distinguishable. Acceptable price ranges may be established by the Government's Independent Cost Estimate (ICE) without revealing the Government's budget through market research; in particular, solutions that use commercially available technologies will have many data points available as input to the ICE. Costs can still be controlled by identifying the acceptable price range in the RFP that is based on the ICE and by making clear that the highest rated proposal within the acceptable price range will be selected - a practice that is available to, but not widely used by, agencies. FEDSIM is one example of an acquisition organization that regularly uses this approach. Contractors would also be required to justify proposed pricing outside the acceptable price range. For example, the proposal instructions may state, "Prices/Costs that are excessively high or low (without sufficient justification) may be considered unrealistic and unreasonable and may receive no further consideration. Any proposal that is not within the total estimated Price/ Cost cited in Section B and Section L shall include an explanation that specifically draws the Government's attention to any unique technical aspects of the proposal the offeror would like the Government to consider as the justification for the deviation from the range." This approach empowers the Government to make the most appropriate award decision, and in no way compels the Government to award a higher price if the proposed solution is not the best approach to achieve the Government's stated outcomes. This method is more applicable for services contracts to implement and operate innovative commercial technologies, but it is less applicable for highly customized major system acquisitions or contracts to augment Government staff.

This method will address three concerns expressed by Industry:

- Innovation and investment are discouraged if the Government lacks a mechanism to effectively value these investments in the tradeoff process.
- Industry perceives that some acquisition organizations are less likely to award to a higher rated technical proposal with a price that is more than 5%-10% higher than another acceptable solution.
- As the services market has become increasingly more competitive, some contractors may propose unrealistically low prices/costs. When two or more companies do this Industry refers to this as a "race to the bottom." This occurs because industry perceives that the Government is more likely to accept delivery risk in order to award to a lower price.

Prevailing sentiment across industry is that the use of Lowest Priced Technical Acceptability (LPTA) as a determining factor has increased over the last several years. This trend includes both the direct use of LPTA (as opposed to Best Value Tradeoff) and when Industry perceives an award has been made predominantly based on price, which occurs when multiple bidders receive very similar technical scores, leaving source selection teams no choice but to use price as the determining factor. Conversely, our talks with acquisition executives from IC agencies revealed the Government's belief that LPTA is rarely used anymore and that Tradeoff is the preferred approach. However, a July 2014 GAO report, which utilized the Federal Procurement Data System-Next Generation (FPDS-NG), revealed that the direct use of LPTA within DOD for contracts with obligations of \$25 million or more increased 10 percent from FY2009 to FY2013 and now accounts for an estimated 36 percent of those contracts above the \$25 million threshold.<sup>4</sup> While specific statistics for the IC are not publicly available, one can reasonably assume a similar trend exists within the Community.

When price is emphasized, either directly or inadvertently, important factors such as the proposed solution or a contractor's past performance are no longer significant determining factors in source selection. As a result, contactors have less incentive to make investments in service quality. The short-term cost savings obtained through awarding to the lowest price rather than the highest rated technical solution is thus offset by industry's long-term reluctance to invest in innovative capabilities on which the IC relies for mission success.

<sup>4</sup> Government Accountability Office, Defense Contracting: Factors DOD Considers When Choosing Best Value Processes Are Consistent with Guidance for Selected Acquisitions, GAO-14-584, July 30, 2014, p. 12. Available at: http://www.gao.gov/products/GAO-14-584.

Contractors who win LPTA source selections face lower margins than they otherwise would through a Tradeoff source selection. This is on top of the fact that acquisitions are shifting away from high- margin hardware and weapons acquisitions and moving toward lower margin services contracts. As a result, many defense contractors have divested their Federal services

portfolios (e.g. the divesture of Lockheed Martin's Information Systems and Global Solutions division to Leidos). In this particular instance, as Lockheed Martin noted in its 10-K filing for 2015, the division's revenues were hurt by, among other things, "the fragmentation of large contracts into multiple smaller contracts that are awarded primarily on the basis of price" (emphasis added).<sup>5</sup>

To procure quality solutions rather than simply get the lowest price, agencies should consider their full range of options when establishing their acquisition strategy. Where applicable, awarding based on an acceptable price range within which the most highly rated technical solution will be awarded would signal to industry that the Government is actively emphasizing non-cost/non-price factors. ln turn, contractors may provide more innovative proposals. Additionally, when a SOO is utilized alongside the proposed acceptable price range, proposals will become more

innovative and unique—further reducing reliance on cost.

To procure quality solutions rather than simply get the lowest price, agencies should consider their full range of options when establishing their acquisition strategy.

4. To address issues with measuring past performance, the DNI should establish and fund an IC- specific Contractor Performance Assessment Reporting System (CPARS) database for use by agencies when executing services contracts under DoD or DNI authorities. (Theme 4)

### KEY POINTS:

- A DNI-funded IC-wide CPARS database based on responses to a standardized questionnaire – would improve information-sharing on contractor performance and bring new efficiencies to the IC acquisition process.
- Such a database would, among other things, make it easier to evaluate companies' past performance by standardizing metrics and including performance data in RFPs; reward industry participants who perform well by allowing them to more effectively compete for new work; and facilitate improved outcomes by building on companies' demonstrated performance and experience.

In a fiscal environment of rate compression and cost challenges, past performance can and should be a critical differentiator in awarding contracts. Across the IC in the present competitive environment, companies are trying to broaden their business portfolios, deliver meaningful value across multiple agencies, and help bring best practices from other agencies to new customers.

<sup>5</sup> Loren Thompson, "Exodus: Big Defense Companies Are Exiting Federal Services," Forbes, Aug. 4, 2015. Available at http://www.forbes.com/sites/ lorenthompson/2015/08/04/exodus-big-defense-companies-are-exiting-federal- services/#3a3b3473afa6. When successful, a more stable environment exists for the industrial base. This creates the potential to lower operating costs, which, in turn, offers both cost-saving and mission benefits to Government from further contractor investment in resources and ideas. Unfortunately, the general inability of IC agencies to share insights with each other on contractor past performance hinders the Intelligence Community's ability to identify and leverage industry best practices and performance. Moreover, this comes at a time when the IC seeks operational efficiencies

to break down interagency stovepipes around classification, mission, and performance—an effort which industry can assist.

A DNI-funded IC-specific CPARS database – based on responses to a standardized questionnaire – would address these issues and bring new efficiencies to the IC acquisition process. Such a database would:

- Standardize past-performance metrics across the IC so that Contracting Officers do not have the burden of trying to figure out what is or is not acceptable and relevant to their upcoming acquisitions;
- Help ensure relevant past performance from contractors is routinely included and considered in new IC-based RFPs;
- Reward industry participants who perform well in other parts of the IC by allowing them to more effectively compete for new work;
- 4. Help accommodate classification and need-to-know hurdles that often stand as barriers to leveraging past performance across different IC agencies;
- 5. Generate better mission and contracting outcomes for the Government by building on companies' demonstrated performance and experience; and
- 6. Be supportive of DNI and agency-specific goals focused on inter-agency collaboration and horizontal mission integration.

This database would be useful for all types of competitions, but it would be especially valuable for services-based contracts where, frequently, contractors have limited opportunity to differentiate their solutions based on technical or management factors. 5. If the circumstances of the acquisition warrant, agencies should establish the contract base period for services contracts to align with completion of major milestones (e.g. implementation). (Themes 2,3)

### **KEY POINTS:**

- Rather than use arbitrary one-year periods of performance, services contracts lend themselves to base periods that align with major delivery milestones (e.g. implementation); however, contracts should include Government "off-ramps" in the event of poor contractor performance.
- Longer base periods allow the contractor to recoup its investment in innovative solutions and to re-invest in the continuous improvement of its services—thereby aligning incentives with accountability over the long term.
- Performance measures would continue on a quarterly or biannual basis to reinforce contractor accountability and performance.
- Longer overall periods of performance (base plus options) give the Government added flexibility when to incur the cost of acquisitions and the resulting transition effort. The Government has no obligation to exercise all options.

When considering the period of performance for a services-based acquisition, a key consideration is determining the length of the base period and the length (and number) of option periods. Contract period of performance should reflect a length that is consistent with technological dependencies and risk, industry participation, and sufficient time to stabilize program performance. To achieve fair and meaningful competition, contractors who are not incumbents may be required to make significant investments in both technology and personnel to demonstrate a credible offer, as well as to be prepared to begin execution on day one.

Longer base periods of performance put greater risk on the Government but encourage innovation by allowing contractors to make investments necessary to build a capability. Since different agencies may have different requirements, and although requirements may vary from contract to contract, it is unrealistic to arbitrarily assign a standard base period of one year, which has become the default standard. Rather, the base period should align to the major milestones. If a system will take 18 months to implement then the most logical base period would be 18 months. Similarly, if the Initial Operating Capability (IOC) can be achieved in nine months and the Government views IOC as a significant assessment milestone, then the base period would be nine months. Generally, the longer the base period, the greater the industry investment and the opportunity for full stabilization before performance can be fully assessed. The contractor and the Government should allow time for performance stabilization and then one year of "sustained" performance prior to the need to exercise an option or begin the follow-on source selection. This principle applies to the transition of existing O&M contracts as well, as services often align with programmatic timelines.

On a related point, option year periods should be no shorter in length than the time that the Government can reasonably be expected to begin, conduct, and complete source selection and award. This allows the Government to exercise its authority to refrain from exercising an option, conduct the competition, and transition contract performance (if needed) without the need to exercise bridge option extensions (which are often added, after the fact, in three-month increments). Based on historical source selection performance for complex service acquisitions, option periods should be 18 months, not 12 months; two 18-month options would be preferable to three 12-month options.

Longer base periods and option periods allow contractors to recoup investments made to effectively position and compete for large acquisitions, while minimizing the cost of source selections to the Government and the mission risk that occurs during any contract transition. Given the decline in award and incentive fee percentages, as well as a reduction in the contractor and Government workforce, it is necessary to minimize non-productive time to the greatest extent possible. Doing so would return more time to the mission, while stabilizing the industry base. Repeated delays in source selections and awards are often attributable to the availability of qualified personnel to perform such an acquisition. Doing those acquisitions more frequently exacerbates the problem across the board.  Consistent with the key tenets contained in the Principles of Intelligence Transparency Implementation Plan<sup>6</sup> released on October 27, 2015, the IC should implement a 360-degree review program which would enable greater transparency and continuous process improvement across the IC acquisition ecosystem. (Themes 6, 7)

### **KEY POINTS:**

- A robust agency-level feedback and suggestion process would enable contractors to comment on agency performance and recommend improvements.
- Maintaining the feedback at an agency level rather than at a contract level would focus on continuous improvement and ensure feedback is both constructive and anonymous.
- A review program could potentially reduce the number of protests by facilitating greater transparency.

A widely accepted practice on any journey of continuous improvement is to solicit solutions-oriented feedback from a diverse set of stakeholders. This practice, often referred to as a 360-Degree Review, is most commonly applied on an individual's performance. This practice is most effective when the individual and those providing the feedback and inputs are open, transparent, and willing to commit the time and energy to facilitate continuous improvement.

The 360-Degree Review can be equally effective when the subject is a group of people involved in a process. The same conditions must exist for groups involved in a process as is the case for individuals – that is, an open, transparent environment consisting of people willing to commit to continuous improvement. Fortunately, in the case of the IC acquisition community, the DNI has already established the foundation for an open and transparent environment through consistent messaging and the advent of the Transparency Council. Individuals across the IC acquisition community have expressed interest in improving the process. Therefore, the DNI has the ideal environment to institute a 360-Degree Review of the IC acquisition process. A robust feedback and suggestion process would enable contractors to comment on agency performance during an acquisition while providing recommendations for improvement. Moreover, consistent with the existing CPARS, this initiative will enable the private sector to submit anonymized reviews on exemplar agency practices and performance. This process may also facilitate and connote greater transparency, potentially reducing the

> number of protests hindering the IC mission. A trusted non-Government organization would be the ideal third party to host these anonymized reviews.

> The DNI should task the Associate Deputy Director for Acquisition, Technology and Facilities (ADD/ATF) to establish a pilot 360-Degree Review for select acquisition programs as an initial proof of concept. The subject of the review will be the identification of best practices and actionable

recommendations for continued improvement of the IC's acquisition system. The identification of best practices would enable the DNI to establish an invaluable best practice knowledge base spanning the entire spectrum of acquisition processes.

Those providing feedback and inputs will include stakeholders from Agency leadership, ODNI leadership, the user community, and industry. The focus of the review will be to evaluate a standard set of key attributes of the acquisition process by collecting a statistically relevant set of responses so as to identify best practices and areas for improvement opportunities. The aforementioned best practice knowledge base would directly support the *Principles of Intelligence Transparency Implementation Plan* with all member organizations of the IC having access to approved recommendations.

<sup>6</sup> Office of the Director of National Intelligence, Principles of Intelligence Transparency Implementation Plan, October 27, 2015. Available at https://www.dni. gov/files/documents/Newsroom/Reports%20and%20Pubs/Principles%20of%20Intelligence%20Tr ansparency%20Implementation%20Plan.pdf. 7. Use of Integrated Product Teams (IPTs) is a best practice that supports inclusion of all stakeholders into the acquisition lifecycle for services. (Themes 1, 2, 5)

#### **KEY POINTS:**

- Integrated Product Teams broaden the range of expertise incorporated into acquisition decisions and yield a shorter feedback cycle, more agile decision making, and faster results.
- Effective IPTs will require advance planning to promote consistency for long term capabilities.

Greater communication is needed between stakeholders for services acquisitions in the Intelligence Community. Multiple participants in INSA roundtables involving Government acquisition executives and industry CEOs stated that end users and technical experts are not fully represented in the acquisition process. Given tight budgets and the ever growing need for agile innovation, the IC cannot afford to be hampered by inefficient decision making and missed opportunities for innovation. Integrated Product Teams enable an organization to have "the right team making the right decisions at the right time."<sup>7</sup> Timelines, budgets, and needs of the mission require a more holistic process to accelerate the acquisition lifecycle. Integrated Product Teams bring together a number of different areas of expertise and professions to ensure faster results, a reduction in the feedback cycle, and greater agility to meet end-user objectives. IPTs have been used

> in industry and Government decision making for decades. In a 2001 evaluation of eight case studies across commercial contractors and DOD programs, the Government Accountability Office concluded:

Integrated product teams work. Effective integrated product teams can make significant product development decisions quickly and without relying on consultations with organizations outside the team. These teams have developed and delivered superior products within predicted time frames and budgets often cutting calendar time in half.<sup>8</sup>

Combining necessary knowledge and adequate authority allowed teams to recognize problems and make efficient and effective decisions. The Department of Homeland Security, for example, has recently spearheaded efforts to incorporate IPTs into its research and development processes to ensure that resources are prioritized to focus on mission needs.<sup>9</sup> These integrated and cooperative discussions allow for the acquisition of services specifically tailored to the mission. IC agencies could use a similar model to enable stakeholders from diverse perspectives to close mission gaps, provide greater transparency into the acquisitions process, and allow leadership to gain a better understanding of emerging needs.

<sup>&</sup>lt;sup>7</sup> Mike Ipsaro, "How Integrated Product Teams Can Improve Performance and Save Money," Integrity Management Consulting, no date. Available at: http:// www.integritymc.com/files/Integrated\_Product\_Teams.pdf.

<sup>&</sup>lt;sup>8</sup> Government Accountability Office, Best Practices: DOD Teaming Practices Not Achieving Potential Results, GAO-01-510. April 10, 2001, p. 3. Available at http://www.gao.gov/products/GAO-01-510.

<sup>&</sup>lt;sup>9</sup> Department of Homeland Security Science and Technology Directorate, "Integrated Product Teams," no date. Available at: https://www.dhs.gov/sites/ default/files/publications/Integrated%20Product%20Team-IPT-508.pdf.

 Industry should exercise restraint in filing protests that lack discernible merit. The Government should share as much information as possible during post-award debriefings, which may indirectly minimize one of the reasons contractors file protests with little to no merit. (Theme 7)

### **KEY POINTS:**

- If industry wants the acquisition process to work efficiently and fairly for everyone, contractors must refrain from filing protests in which the firm's primary objective is to forestall the new contract.
- Industry may consider creating more transparency around publicly available protest statistics, thus creating a market-driven hesitation for filing meritless protests. A third party association could host this information.
- Because contractors are more likely to protest awards when the reasons for the Government's decision are unclear, agencies should maximize transparency of the solicitation and evaluation process through such steps as comprehensive pre-submission information-sharing and meaningful (rather than pro forma) debriefings. This may minimize one of the reasons contractors file protests without knowing the degree of merit.

Under Federal contracting rules, companies are entitled to fair competition, and they are entitled to protest award decisions they believe were reached unfairly. However, egregious protests undermine the efficiency of the acquisition lifecycle even though the majority of protests are denied or withdrawn. Not only does it take time to defend a protest, but even the perceived risk of protests results in pre-award delays, as agencies often take additional time to make solicitations "protest proof" before releasing RFPs and award decisions. One reason contractors may protest without sufficient merit is the simple lack of understanding of why they lost. Thus the only way to learn why they lost – and assess whether a legitimate protest is justified – is to file an initial protest. The Government has two options to address this concern:

- 1. Agencies could conduct meaningful substantive debriefs. Fear of protest often leads agencies to conduct hollow and unproductive loss debriefs. Rather than controlled legal interactions, these debriefs should be comprehensive and transparent in-person dialogues in which the chairs of the evaluation panels present and discuss the content. Transparent and constructive loss debriefs would provide more context for contractors to assess the reasoning behind the source selection. which could ultimately reduce the number of frivolous protests. However, in the event of a protest subsequent to the debrief, Evaluation Panel Chairs and the Source Selection Authority, along with the Contracting Officer and agency legal representative, should meet with the protesting contractor to determine if the reasons for protest are clarification for the loss or a legitimate concern about how the evaluation process was conducted. Such discussions could potentially address contractor concerns without requiring further legal action.
- 2. When a contractor is considering a protest, agencies should require that a contractor's first step be a discussion with the Source Selection Authority (SSA) to see if an appropriate resolution without legal action is possible.
- 3. Contractors also need to police their own behavior and refrain from filing protests they have little or no chance of winning. Industry may consider creating more transparency around publicly available protest statistics, thus creating a market driven hesitation for filing meritless protests. A third party association could host this information.

4. A protest filed by an incumbent who fails to secure a renewal of its contract may receive an additional three months of revenue while the protest is resolved due to stop work orders associated with protests and potentially longer if remediation is required. With nothing to lose and everything to gain, contractors may therefore file protests on thin rationales. While

the Government cannot stop this behavior and should not actively dissuade protesting for this reason, industry has a role to play to stem this behavior. For example, while firms compete on some contracts, they may partner with each other on other opportunities. Companies will be less likely to team with a firm that regularly files protests with little merit.

5. Contractors are also less likely to protest when they feel that they had all the information necessary to develop their proposals; if a contractor feels that the incumbent had a better understanding of the contract requirements, for example, it may be more likely to protest the fairness of the competition. Government should thus use both the pre-submission Q&A period and contractor one- on-one sessions to encourage contractors to ask all questions that will create maximum transparency, such that all contractors, not just incumbents, have the information needed to write a compelling proposal. Agencies could also use the Market Research and Advisory Multi-Step Process (FAR 15.202) to inform contractors of their general capability strengths and gaps. This informal feedback enables contractors to assess whether they have a strong change to compete before investing in compiling a proposal.

 Agency directors should receive regular status updates on large ongoing and projected services acquisitions within their agencies. Additionally, ODNI may consider fostering best practice discussions among agencies to promote continuous learning and synergies. (Themes 1, 2, 5)

#### **KEY POINTS:**

- Agency directors should receive regular updates on major mission-critical acquisitions, which would enable them to ensure that contracts continue to reflect the agency's goals and priorities.
- Information reported to agency directors would include pre-award acquisition milestones and the acquisition strategy, post-award would include SLA results and milestone achievements.

Services acquisitions involve a diverse set of internal and external stakeholders whose knowledge, expertise, and organizational positions vary. Senior leadership buy-in is thus crucial to secure support from across the organization for contracted solutions.<sup>10</sup> Just as Agency directors receive frequent briefs on intelligence and management matters that affect their agencies' operations, they should also receive regular updates on the major acquisitions. As one participant from academia proclaimed during INSA's first acquisition management roundtable, "The mission is acquisition." Without acquisition, there is no technological or human capital to pursue and achieve mission success. Ultimately, regular briefs on services acquisitions would allow agency directors to provide advice and recommendations regarding those acquisitions and ensure that acquisitions continue to reflect the agency's goals and priorities. Moreover, improvements to acquisitions could be driven from the top-down, potentially optimizing cost, schedule, and performance.

<sup>10</sup> General Services Administration, Department of Defense, Department of Treasury, Department of Agriculture, and Department of Commerce, Seven Steps to Performance-Based Services Acquisition, no date, p. 5. Available at: http://www.gsa.gov/graphics/fas/VETS\_Attach\_8\_Seven\_Steps\_to\_PBA.pdf.

 The ODNI should partner with industry groups such as INSA to create an IC Business Panel (ICBP), modeled after the Defense Business Board, to provide advice on the improvement of acquisition- related business practices. (Themes 2,4,5,6,7) The ODNI does not currently have a similar resource which focuses exclusively on the business of intelligence. (The ODNI Strategic Advisory Group provides policy, technology and solutions to current intelligence issues.) Given the DNI's significant responsibilities relating to budget, personnel, program management, and

#### **KEY POINTS:**

- Given the DNI's significant responsibilities relating to budget, personnel, program management, and acquisition, an independent advisory group with senior-level business and management expertise could help the IC identify corporate best practices that could improve efficiency in the IC.
- In the acquisition sphere, such an advisory panel could provide the IC leadership with trusted, independent counsel regarding the evolving nature of acquisition and innovation.

An Intelligence Community Business Panel (ICBP) could examine critical issues such as strategic sourcing within the IC, ways to attract innovative startups to the marketplace, and methods to improve hiring and retention and security clearance crossovers.

The Defense Business Board was established by the Secretary of Defense in 2002 to advise the Secretary and Deputy Secretary of Defense on how corporate best business practices might be applied to the management of DoD. The Board's members, appointed by the Secretary of Defense, are corporate leaders and managers with demonstrated executive-level management and governance expertise. They possess a proven record of sound judgment in leading or governing large, complex corporations and are experienced in creating reliable solutions to complex management issues guided by best business practices. acquisition, an independent advisory group with senior-level business and management expertise could provide very useful input.

In the acquisition sphere, an Intelligence Community Business Panel (ICBP) could examine critical issues such as strategic sourcing within the IC, ways to attract innovative startups to the marketplace,

and methods to improve hiring and retention and security clearance crossovers. An ICBP would provide the DNI, PDDNI, and ADNI/AT&F with trusted, independent counsel regarding the evolving nature of acquisition and innovation. An ICBP would also provide Government stakeholders with a channel to communicate important acquisitionrelated initiatives back to industry.

# CONCLUSIONS

Selected modifications to the IC's services acquisition processes could improve the effectiveness, efficiency, and timeliness of IC procurement while promoting innovation and generating superior outcomes. Such changes could enable agencies to take greater advantage of private sector capabilities and resources as they work toward their mission objectives.

An outcome-based services acquisition approach, for example, would incentivize contractors to generate measurable results that advance agencies' goals while also creating enforcement mechanisms to mitigate performance shortfalls. Awarding contracts based on the quality of the proposed solution rather than on cost would encourage industry to develop cutting-edge and advanced capabilities, which agencies can draw on in current as well as future contracts. Tracking contractors' past performance and considering it as a factor in award decisions would incentivize companies to perform well and enable agencies to benefit from companies' successes and experience. Steps to prevent meritless protests would expedite the issuance of RFPs, the selection of vendors, and the execution of contracts.

A more effective and efficient services acquisition process would improve contractor performance, generate higher-quality work, enhance agencies' mission effectiveness, and reduce costs and delays. Over the long-term, a modified process that rewards innovation, quality, and performance would improve the health of the industrial base on which the Intelligence Community depends for expertise and support, thereby enhancing both national security and economic growth.

# SUMMARY OF RECOMMENDATIONS

- 1. Agencies should adopt policies that emphasize outcome-based acquisition as opposed to the prevailing specification-based acquisitions.
- Intelligence agencies should use comprehensive service level agreements (SLAs) as the primary performance measures for services acquisitions. SLAs should be developed by contractors as part of their proposals in response to a SOO.
- 3. Intelligence agencies should maximize the flexibility inherent in the best value tradeoff process by awarding to the contractor whom the Agency has the highest confidence will achieve the program's objectives. Where appropriate, the Government should consider awarding to the most highly rated technical solution provided it falls within a price range the Government has deemed to be acceptable or is accompanied by a justification for deviating from this range.
- 4. To address issues with measuring past performance, the DNI should establish and fund an IC-specific Contractor Performance Assessment Reporting System (CPARS) database for use by agencies when executing services contracts under DoD or DNI authorities.
- 5. If the circumstances of the acquisition warrant, agencies should establish the contract base period for services contracts to align with completion of major milestones (e.g. implementation).
- Consistent with the key tenets contained in the Principles of Intelligence Transparency Implementation Plan released on October 27, 2015, the IC should implement a 360-degree review program which would enable greater transparency and continuous process improvement across the IC acquisition ecosystem.
- 7. Integrated Product Teams (IPTs) are a best practice that supports inclusion of all stakeholders into the acquisition lifecycle for services.
- 8. Industry should exercise restraint in filing protests that lack discernible merit. The Government should share as much information as possible during post-award debriefings, which may indirectly minimize one of the reasons contractors file protests with little to no merit.
- Agency directors should receive regular status updates on large ongoing and projected services acquisitions within their agencies. Additionally, ODNI may consider fostering best practice discussions among agencies to promote continuous learning and synergies.
- The ODNI should partner with industry groups such as INSA to create an IC Business Panel (ICBP), modeled after the Defense Business Board, to provide advice on the improvement of acquisition- related business practices.

### ABOUT THE ACQUISITION MANAGEMENT COUNCIL

The Acquisition Management Council (AMC) will seek to optimize the acquisition process (pre-andpost-award) utilized by the Intelligence Community (IC) and knowledge-based service acquisitions. Additionally, the AMC will approach its work with an explicit emphasis on strengthening the partnership between the IC and the Industrial Base upon which it relies for mission.

### **ABOUT INSA**

INSA is the premier intelligence and national security organization that brings together the public, private and academic sectors to collaborate on the most challenging policy issues and solutions. As a nonprofit, nonpartisan, public-private organization, INSA's ultimate goal is to promote and recognize the highest standards within the national security and intelligence communities. INSA has over 160 corporate members and several hundred individual members who are leaders and senior executives throughout government, the private sector and academia.





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