Federal contracting is all about statutes, regulations, and contract terms. We're talking about public laws, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement (and other agency supplements), Schedule H, Schedule I, and Schedule K Reps and Certs, just to name a few. These are complex and often ambiguous rules that tell a contractor what to do and how to do it. They set the expectations. Importantly, they tell contractors what may not be done. They are behavioral constraints.

If you are a Federal employee working in the defense acquisition arena, there are even more prescriptions to follow. There are public laws that apply to Federal acquisitions but not to contractors (e.g., the Competition in Contracting Act). There are agency policies and procedures and guidance to worry about. There are local office rules to follow. Legal input must be solicited and followed. For auditors, there is GAGAS and the Contract Audit Manual and the latest Memorandum for Regional Directors—all of which must be complied with. Failure to adhere to any of these prescriptive rules subjects an individual to career-threatening criticism and, in extreme cases, to personal liability.

There are cadres of auditors, investigators, and reviewers that monitor actions at every step in the Federal procurement process. We are talking about the Government Accountability Office, the agency Inspectors General, the GAO bid protest forum, the Boards of Contract Appeals, and the Court of Federal Claims. There are auditors to audit the auditors, and hordes of lawyers eager to file suit on behalf of any company (or individual) who deems any action (or inaction) to have been inequitable or in noncompliance with the codified standards of behavior in the Federal marketplace.

It's a tough environment in which to operate.

We have not been shy about pointing out the layers upon layers of bureaucracy in the modern Federal acquisition environment. We have published our opinion and the quoted the opinions of academics and learned practitioners and corporate executives, and even linked to a report by the Defense Science Board that all said the same thing: The warfighter is being ill-served by a system that is as far from agile and flexible as one can imagine in the United States. The only way to fast-track development of a new weapon system is to grant an organization extraordinary "rapid acquisition authority" powers that, in essence, gives official sanction to the flouting of the rules that everybody else is expected to follow.

It's universally understood that the current acquisition environment is untenable. Speaking at his swearing-in ceremony, the 25th Secretary of Defense, Ash Carter, **stated** —

With budgets tightening and technology and globalization revolutionizing how the world works, the Pentagon has an opportunity to open itself to new ways of operating, recruiting, buying, innovating and much more. America is home to the world's most dynamic businesses and universities. We have to think outside this five-sided box and be open to their best practices, ideas and technologies.

Innovation is the new buzzword, and the Pentagon is focusing on it more and more. The Obama Administration GFY 2016 budget request envisions spending literally billions of dollars on a "National Network for Manufacturing Innovation," according to **this article** . The DoD has requested a NNMI budget increase to $137 million. For comparison purposes, the Pentagon spent $14 million on NNMI in GFY 2014 and $71 million in GFY 2015. And the DoD is not the biggest spender of NNMI funds.

Despite the emphasis on technological innovation, there are doubts whether the entrenched bureaucracy at the Pentagon, Fort Lee and Fort Belvoir will be able to support the necessary changes. We've written about this issue several times, including **here** . In this **article** we explored some reasons why non-traditional defense contractors are reluctant to contract with DoD, and we noted that the recent calls for "less cumbersome" procurement practices of private industry have a long and time-honored pedigree. Suffice it to say that we have our doubts.

Moving beyond our pointed and public **doubts** that the current acquisition workforce and its

leadership are, in the main, ready to support disruptive innovation in both technology and the means by which innovative technology is acquired, we have published many articles on this site that question whether DCMA (and especially DCAA) truly have the best interests of the taxpayers at heart. In one 2012 **blog article** we wrote—

Make no mistake: the current government acquisition environment is broken almost beyond repair. While the finger of blame can point in many directions and at many individuals, we cannot escape our firm conviction that the biggest slice of the blame pie should be served *a la mode* to the Defense Contract Audit Agency, who (as an agency) seems to be actively and with malice aforethought trying to sabotage the defense acquisition machinery.

In another blog article from 2010 we discussed the "conservatism" of DCAA and DCMA, and wrote—

Ever since DCAA came under fire from nearly every stakeholder in the defense acquisition process, it has reacted by circling the wagons, battening-down the hatches, and hunkering down while waiting for the political firestorm to pass. Auditors must now document every audit step (including audit steps not taken) to a demanding level of detail. And multiple layers of management review every aspect of the audit before a draft report is issued to the contractor. … The effect of such behavior on the acquisition process is clear: DCAA is now issuing fewer audit reports, and those it does issue take dramatically longer to reach the customers. …

Not to be outdone by DCAA's 'conservatism,' the Defense Contract Management Agency (DCMA) has instituted multiple 'Boards of Review' (BoRs) that must be convened to review and approve key Contracting Officer decisions before they are implemented. As a result, Contracting Officers are subject to a vastly increased workload (as they must document and prepare for multiple BoRs), while being simultaneously hamstrung, since they cannot issue decisions without the required approvals. What used to take 60 or 90 days, now takes a C.O. as much as six or nine months—and that's assuming all the required BoRs approve the proposed action. We've heard of one situation where three separate BoRs (meeting over many months) approved a proposed action, but that the proposed action subsequently was disapproved at the Defense Procurement and Acquisition Policy (DPAP) level and remanded back to the C.O. for a redo.

The DOD acquisition system is breaking-down, gentle readers, and we're watching it happen in slow motion, just like a train-wreck shown on a reality TV show. But perhaps that's getting a bit overly dramatic, so let's get to the meat of this article. Here's the punchline: If you thought the process was slow now, you ain't seen nothing yet.

So the creeping bureaucracy and its impact on the acquisition environment have been subjects of conversation and blog articles almost since the inception of this site in 2009; not that anybody in power ever read those articles or, you know, actually tried the kind of acquisition revolution that most observers feel is necessary. We'll wrap this up by quoting from a comment posted publicly on LinkedIn by a member of the Office of the Secretary of Defense (OSD) in March, 2015:

Many agency acquisition offices are decimated due to retirements, budget cuts, lack of recognition by senior leadership in the importance of acquisition, and the inability to be flexible in hiring the appropriate number of trained and experienced personnel to meet workload demands. Operational resources suffer at the expense of headquarter girth and inefficient management practices and the constant drone of requests for data, reviews, and briefings. Acquisition has turned into a by-product and an after-thought. But the red tape, the bureaucracy, and the work, continues to grow. I could go on and on about inefficient IT systems; leaders in positions with little experience or the wrong experience; poor acquisition strategy; poor acquisition planning and execution; inefficient oversight; wasteful programs; the list is endless. I couldn't agree more: The system is completely broken; and there is no band-aid that is going to fix it.

As we've noted, there are some contractors who honestly believe that the current system has been *deliberately* broken by DCMA and DCAA, whom (they assert) are motivated either by an anti-contractor animus or else by a misguided attempt to "save" taxpayer budget dollars by breaking the rules in order to extort money from contractors. Is extortion too strong a term? Well, the argument goes that the post-award actions lead contractors to a choice: either they must pay back earned contract billings in the form of "questioned costs" (including penalties and interest) or else they must proceed to lengthy and expensive litigation.

In one 2012 article we **quoted** from a blog written by a small business mired in lengthy and expensive litigation with the DoD. Some of the "lessons learned" by that small contractor included the following advice to other small technology companies contemplating accepting Defense funds:

The biggest mistake many entrepreneurs new to the government contracting game make is to think DCAA has, or under any miraculous set of circumstances, will have even an iota of interest in your success. I promise you … that a DCAA auditor that consistently does not find 'something wrong' with contractor cost calculations will probably be banished to the children's table at their annual agency picnic! Same is true, though with a twist, of DCMA staff, particularly the Administrative Contracting Officers or the ACOs. An ACO who fails to perform as a de facto employee of DCAA and follow the auditor 'recommendations' will probably not be invited to DCMA's holiday party.

In retrospect, I am not sure if we should actually be surprised since the DCMA definitely and directly benefits from beating small businesses into submission and reducing their contract values. In my direct experience … most ACOs simply do not care enough about small businesses to do anything but try to get them off their 'to do' list as fast as possible. … In my direct experience, DCMA also intentionally fosters a defective management structure that promotes lackadaisical and inconsistent enforcement that breeds a contemptible lack of supervisory sophistication. … In short, in my direct experience, DCMA has intentionally structured a management environment that promotes and rewards incompetence by its staff, particularly the ACOs.

I would in fact venture as far as to say that you are NEVER done negotiating terms and pricing on any contract until it is closed. Up until then you should absolutely expect the government, through its duly authorized employees in DCAA and DCMA to focus on reducing your contract's value – or the total amount you will ultimately receive on your contract regardless of what they themselves agreed to, either explicitly or implicitly. This is cheating.

… The bureaucrats you will be dealing with care only about what any bureaucrat cares about – stay under the radar, get the paycheck, and build the pension. These bureaucrats also do know that any contract dispute is likely to spend several years in the agency's internal administrative processes before starting on a long and windy legal road. Given that it could take a decade or more before a dispute is resolved, most bureaucrats simply push it off on to the next guy. At least this has been our experience. And the guy who is stuck with you at the end of this musical ACO game is sure going to let you know just how unhappy s/he is that you do not simply submit to the bureaucrat's will.

Throughout this ordeal, it has been my personal experience that DCMA staff are intentionally hostile and abusive – and they like it that way. It has also been my experience that there are absolutely no management controls in DCMA to rein in the type of abuse we have been subject to over the past FIVE , yes F-I-V-E years. How hard is it, we have continually wondered, to

verify that ACO [Name Withheld] made an error and correct it?

There's more where that came from, since that contractor is still litigating away, ever hopeful that the justice system will provide it with the justice it feels is its due. Did the contractor, who was an SBIR participant, come away from its interaction with DoD feeling bitter and ill-used? Of course. Did the contractor fail to comply with certain rules on cost accounting? Perhaps. We'll have to see what the court says. But one thing is for sure: That small technology business will not be doing business with the DoD again. The warfighters have lost whatever innovative technology that SBIR contractor was going to develop. Moreover, that contractor has publicly warned other similar contractors--potential innovators all--that DoD is a bad customer.

The foregoing is obviously an extreme case, but is it really all that unusual? Nearly every defense contractor (and many contractors of other agencies) experience contract disputes at some point in the process. The larger the contractor, it seems, the more disputes are in process at any given time—and the more litigation, as well. Nearly every large government contractor spends large sums (mostly unallowable sums) on attorneys these days. It's become just another cost of doing business with the Federal government.

That same OSD official who posted on LinkedIn also stated, "As badly as industry feels the crunch of red tape, bureaucracy and incompetence, we on the other side of the table share in the pain. The only difference is, industry gets to beef up its resources to meet the bureaucratic inefficiencies and pass the growing costs on to the taxpayer."

We disagreed with that statement and offered the observation that "While it may be true that contractors have the ability to add to their resources … that ability is limited by the need to report a profit to the shareholders each quarter. To some extent the amount of expenses that they can incur is a zero-sum game, constrained by their sales." Our statement is even more true in these days of "lowest-priced technically acceptable" and "reverse auction" acquisition strategies, where a small difference in price is often the difference between a win and second place. In other words, for most contractors who are struggling in this competitive sequestration-fueled budget environment, there is really very little opportunity to beef up resources to meet bureaucratic inefficiencies and onerous audit requirements. There is only a very limited opportunity to pass on such additional costs to the taxpayer, because there are no taxpayer funds to pay for them.

All bitterness aside, there is no question that DCMA and DCAA requirements drive contractors

to add to their overhead costs. We've posted at least one article, citing an **assertion** from Lockheed Martin to that effect. The real question is whether contractors have the ability to pass that cost on to their customers, or if those additional costs only act to reduce shareholder profits.

Others have asserted that the Pentagon could save as much as 20% of its acquisition costs, simply by being a better customer. Thus, it's possible that additional costs may not be fully passed-on to the customers, but that any savings from improvements in business conditions would be. Something for the policy-makers to think about, perhaps?

Regardless of the foregoing, our first-hand experience is that almost all defense contractors are stuck in a quandary regarding how to spend their limited budget dollars. Do they hire more bean-counters or quality assurance inspectors? Do they hire more compliance staff to better respond to DCMA and DCAA information requests, or do they hire more engineers to think about future product improvements? Do they invest in their "business systems" to meet ambiguous and subjective DFARS requirements, or do they invest in their manufacturing systems to lower production costs? Do they spend their money litigating contract disputes or on performing R&D efforts? In a very real sense, contractors are faced with a zero-sum game and there are winners and losers at the budget table each year.

And too often, we assert, the taxpayers are the real losers here.

The more contractors have to comply with bureaucratic red tape, the less they are focusing on their real business objectives. The more they hire administrators, and back-office staff, and lawyers (both internal and external), the less they have available funds to invest in program execution and next generation technology. In a very real sense, the bureaucrats of DCMA and DCAA are choking the ability of the country to maintain its technological superiority, to invest in innovative R&D efforts, and to meet the needs of today's and tomorrow's warfighters.

Don't believe us? Would you believe the testimony of Norm Augustine?

In 2011 testimony before the U.S. Senate Committee on Armed Services, Subcommittee on Emerging Threats and Capabilities, Mr. Augustine warned lawmakers that "American firms spend over twice as much on litigation as on research." As we **wrote** at the time—

[Augustine's] statements identify wasteful practices that impede effective program management, and they … identify the cause of such waste—an acquisition environment that is excessively rigid, overly legalistic, and which suboptimizes almost every transaction because the interested parties are adversaries instead of partners.

That was in 2011. The same could have been written in 1916, or 2015. *plus ça change, plus c'est la même chose*

As the result of its prescriptive rules, bureaucracy, rigidity, and propensity to force its contractors into expensive litigation, the Department of Defense's sponsored R&D efforts are measurably "the least efficient" among those of all Federal agencies, as measured by the number of patents filed per public research dollar, according to **one study** . Granted, many otherwise patentable ideas at the Pentagon and its contractors may be buried under layers of national security classification, but the study clearly shows the public good that comes from efficient taxpayer-funded R&D (including additional jobs and secondary R&D investments), and thus why freeing up contractor funds to keep innovating is good public policy. The study concludes as follows—

… if policymakers are interested in generating more high-skilled jobs, they should acknowledge the highly innovative nature and tangible returns from programs such as those at NIH, NSF, NIST, DOE and others, and place them on a predictable and sustainable budget path. That would represent an evidence-based policy to stimulate job creation for decades to come

There is one Federal agency notable for being omitted from the study's conclusion—the Department of Defense. We assert that one significant cause for its omission is that its bureaucracy, overly prescriptive practices, and treatment of its contractors cause inefficiencies that impede innovation. We blame DCMA, DCAA, and senior policy-makers at the Pentagon. We're quite sure those same individuals would point the finger back at Congress and its burdensome public laws and reporting requirements. We're fairly sure we would hear about poor work environments where employees are strongly encouraged to follow the party line and the rules, and where they are not rewarded—and may even be punished—for risk-taking. We have no doubt that finger-pointing is justified.

As we've argued before, we don't need any more studies of acquisition improvements. We don't need any more bandaids on the broken system. We don't need any more incremental

improvements or any more gradual evolution using enhanced processes. We desperately need a complete shift in cultural paradigm—an acquisition revolution that throws out “the way it’s been done for the past 60 years” and replaces it with something new, something bold: *some thing that works*

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Who will lead that revolution?

Will it be you?