Use this site's search feature (hint: it's over there on the far right of the home page) and type in "Palantir." You'll see that we've written several articles either about (or perhaps only mentioning) that Silicon Valley Company. We're going to assume you've seen those articles and so we won't be linking to them in this one.

Anyway, the title says it all.

The Palantir story is the story of how the DoD views innovation. Truly, it doesn't want it. What we mean to say is, if you are a defense contractor that can offer a small innovation that marginally improves performance or marginally decreases costs, then that's great and those innovations will be accepted gratefully. But if you are not a defense contractor and you offer a disruptive innovation that dramatically changes the paradigm, then forget it. DoD doesn't want you or your product.

We suspect the reason for the above behavior is grounded in bureaucracy and career management. Major programs have Program Executive Offices. Major programs have Strategic Program Offices or Special Program Offices. Those various offices are staffed by military service members and civilian employees, each of whom has a career to manage. If you put their programs at risk, then you also put many careers at risk. Or so we suspect. You may have your own notions of how things work, including how lobbyists and politicians influence program decisions.

In fact, at least one Industry Association offers training entitled "How Washington Works® -- Navigating the DOD" which is a "fast-paced" two-day course covering "the three principal DOD decision-making support systems and how they are used by the Army, Navy, Air Force, Marine Corps, and USSOCOM to provide an integrated approach to strategic planning, capabilities needs assessment, systems acquisition, and program and budget development." We have not taken the course, so our assertions are simply speculation. Those who have taken the course may well have better notions about the system than we do.

But back to Palantir's story. In 2016, Palantir filed suit against the US Army, alleging that it was violating statutes and regulations in its acquisition plan for the "Distributed Common Ground System-Army Increment 2." The first bid protest, at GAO, did not go Palantir's way. But Palantir was successful at its second bid protest, when Court of Federal Claims Judge Horn told the

Army to do better market research to determine whether or not its needs could be met by commercial items (*e.g.*, Palantir's products), as required by the Federal Acquisition Streamlining Act (FASA). Judge Horn also issued a rare permanent injunction preventing the Army from awarding the DCGS-Increment 2 contract until it had done so.

Meanwhile, Palantir and Raytheon were partnering. Perhaps Raytheon saw the writing on the wall and thought that half a loaf was better than nothing. Or perhaps Palantir realized that Raytheon already knew How Washington Works® and could smooth any Army concerns about using an outside-The-Beltway contractor. In any case, that approach seeming promising to both companies—so promising, that General Dynamics (another DCGS-2 bidder) filed its own bid protest at the GAO when it learned that the partnership was going to win the $876 million contract award. But that protest was **denied** .

So the Palantir/Raytheon team won the DCGS-2 contract. But that didn't stop the government from appealing the COFC decision and injunction. Recently the Court of Appeals, Federal Circuit, **ruled** on the government's appeal, affirming the COFC decision.

The respected law firm of Arnold Porter published a client advisory **article** , written by Nathaniel Castellano, Charles Blanchard, and Dominique Casimir. In that article, the Palantir decision is described as being possibly "one of the most significant procurement precedents of the decade." What makes the decision so important, according to the attorney authors is that it –

… breathed new life into the government's obligations under the Federal Acquisition Streamlining Act (FASA) to prioritize, to the maximum extent practicable, the acquisition of commercial and nondevelopmental solutions. Weaning agencies off their historic preference for developmental solutions is critical now more than ever, as it is readily apparent that maintaining the United States' technological and battlefield superiority depends on its ability to harness technologies from the commercial sector and become a more commercial-friendly business partner. The decision will have the practical impact of requiring agencies to more carefully document their market research. *Palantir* will also provide useful leverage for companies seeking to eliminate (whether by negotiation or protest) solicitation provisions that are not accommodating to commercial vendors.

In other words, the decision creates gaping holes in the barriers that have historically prevented non-traditional defense contractors from successfully selling their goods and services to the

DoD. It requires DoD acquisition folks to perform more robust market research, seeking to identify commercial sources with already-developed solutions. It requires that, if they are available, those commercial sources be given preference over funding development of new solutions by traditional sources. As such, it's kind of a big deal.

The Arnold Porter article noted "Technology Network (TechNet), an association of chief executive officers and senior executives of leading technology companies from across the nation, submitted an *amicus curiae* brief in support of Palantir. TechNet argued that the Army's approach to DCGS is product of a DoD culture predisposed to favor full development of government-unique solutions instead of relying on the commercial and nondevelopmental solutions that FASA directs agencies to favor."

The Federal Circuit agreed with Palantir and the Court of Federal Claims, finding (in a unanimous decision) that "the Army did not rationally use its market research results to determine whether there are available commercial items that: '(A) meet the agency's requirements; (B) could be modified to meet the agency's requirements; or (C) could meet the agency's requirements if those requirements were modified to a reasonable extent.'" The Court also found that the Army's decision to focus on developing a new solution, rather than exploring whether a commercial solution might be available, was "arbitrary and capricious."

For several years now, we have documented the entrenched DoD bureaucracy's fight against true innovation, using the Palantir story as the poster child for that fight. We are very happy to now report that Palantir won on all fronts, and that its victory might pave the way for other innovative commercial firms to enter into the defense marketplace.