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# WHY TRAINING FOR SERVICE CONTRACT MANAGEMENT IS MISSION ESSENTIAL

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The time has passed when management of service contracts could be haphazardly assigned to inexperienced and poorly trained contract administrators. Today, contracts are more pervasive and critical to mission performance throughout the Department of Defense (DoD), and make up the largest segment of DoD procurements. Even battlefield contracts, like the Army Logistics Civil Augmentation and the Air Force Contract Augmentation Programs provide vital services and act as force multipliers for forward deployment units. Consequently, a transformation in contracting and acquisition leadership along with proper planning is necessary to manage today's contracts. This article explores some of the problems inherent in this requirement and offers some practical suggestions for decision analysis for more effective contract administration.

**C**ontract management, contract administration, and contract oversight are often used interchangeably by acquisition personnel, but these terms are not synonymous. Although not specifically defined in the Federal Acquisition Regulation (FAR), it does say at Part 37: "Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function" (FAR, 37.102(h), 2004, p. 886). Contract administration can thus be seen as a broader term that includes both contract management and contract oversight. In *The Government Contracts Reference Book*, the authors define contract administration to include "steps taken by the government representatives responsible for ensuring Government and contractor compliance with the terms of the contract" (Nash, Schooner, & O'Brien, 1998, p. 121). This is a very broad definition that concerns making sure both parties comply with the terms of the contract. John Cibinic and Ralph Nash (1995), in their preeminent work, *Administration of Government Contracts*, adopt a legalistic view that, "contract administration includes all relationships between the government

and the contractor that arise out of contract performance,” and that the goal of contract administration is to ensure that the government “obtains the needed work on time and at the quality level called for by the contract” (Cibinic & Nash, 1995, p. 1). Here again, it is implied that there will be adequate management and oversight to accomplish this during contract administration. But, as concluded by Susan Harvey in a recent article on contract management, “Ultimately the success or failure of a business relationship between a service contractor and the government rests on the back of the Contracting Officer’s Representative (COR). Successful contract performance does not happen by accident” (Harvey, 2002, p. 60). Contract management that will ensure performance by the contractor is critical today and has been recognized by practitioners for some time, but it has not received the same emphasis from leadership as contract awards. John Cavadias (2004), a contracting officer for the Marine Corps, stated in a recent article, “Contract performance management urgently requires an infusion of investment into post-award contract administration operations” (p. 327). His insightful article compares the lack of post-award contract administration to a mortgage company’s lack of loan servicing after the loan has been made. Improper administration of a contract is illogical and callous, and American soldiers and taxpayers deserve better from their government.

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The Office of Federal Procurement Policy (OFPP) identified a number of contract administration concerns in *A Guide to Best Practices for Contract Administration* by stating, “The technical administration of government contracts is an essential activity. It is absolutely essential those entrusted with the duty to ensure the government gets all that it bargained for must be competent in the practices of contract administration,” and that “the COTR plays a critical role in affecting the outcome of the contract administration process” (OFPP, 1994, p. 4). When it comes to the administration of service contracts, proper oversight is even more critical because in these contracts there is often no end product that can be pointed to as the result of the expenditure of tax dollars; rather, there is supposed to be monitoring and surveillance of the contractor to ensure they are providing the services contracted for in accordance with the terms of the agreement. As it says in the FAR at 37.102(f), “Agencies shall establish effective management practices in accordance with Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in service contracting” (FAR 37.102(f), 2004, p. 886). So the requirement for effective

contract management is well established, but the actual oversight and management of service contracts is still not always successful, or in some cases, even attempted.

## GOVERNMENT CONTRACTOR DEBATE

The debate over government contractor oversight is not new. It has been going on since there have been government contracts and has escalated since the advent of *big government* after World War II. In the 1960s, the government grew at an unprecedented rate, increasing from 1.8 million civilian employees in 1960 to almost 2.3 million in 1968 (Light, 1999, p. 43). This tremendous growth was fueled by the cold war arms race and the Great Society programs enacted during this period. This increase led to a backlash by the public and ultimately to their elected representatives' efforts to cut or *downsize* the federal government. This effort to downsize the government has been going on under one guise or another ever since. In 1996, then President Bill Clinton declared "the era of big government" over. This announcement was made to call attention to the fact that his administration had cut 280,000 federal jobs under the *reinventing government* campaign, and that total federal employment was down over 400,000 from its high in 1968 (Light, p. 1, 38). What is not well known is that the contractor workforce has continued to expand. According to Paul Light (1999) of the Brookings Institution, there were 6,790,000 contractor jobs at the tail-end of the cold war in 1984 (p. 38). This workforce went down by over one million, as part of the peace dividend, from 1984 to 1996 (p. 38). The workforce has recently started growing again, increasing by about 727,000 from 1999 to 2002. This growth was occurring even as federal civilian employees were reduced by another 46,000 positions (Peckenpaugh, 2003). However, the number of contractor employees are only estimates because, according to Light, no one really knows how many there are. The one "irrefutable finding is that the true size of government is much larger than the civil service headcount suggests," and faced with the constant pressure to downsize, agencies have "pushed more and more of their mission to contractors" (Light, p. 44). The point here is that while the government civilian workforce has declined in real terms, the contractor workforce has grown substantially and continues to expand. As a result of personnel ceilings, hiring freezes, early retirements, outsourcing, and Reductions in Force (RIFs), the federal government has kept the number of employees down, but has not maintained the proper mix of employees in light of this new service contracting environment.

## ACQUISITION AND CONTRACT DECLINE

Acquisition and contracting positions were cut during the 1990s even as the number of contractors was increasing. This led to imbalances in the federal civilian workforce skills available to manage and oversee the burgeoning contractor workforce. This problem has been documented in many books and articles, and as Stephen Goldsmith (2004) of the Brookings Institution has noted, "As Government relies more and more on third parties to deliver services, its performance depends ever more on its ability

to manage partnerships and to hold its partners accountable” (Goldsmith & Eggers, p. 21). Daniel Guttman (1976) of Johns Hopkins University, and author of *The Shadow Government* believes that today “most agencies can no longer effectively oversee their contractors” (Peckenpaugh, 2003). Likewise, distinguished Professor Steven Schooner of George Washington University Law School has stated in a recent paper on outsourcing, “The Government lacks sufficient qualified acquisition and contract management professionals to administer its requirements” (Schooner, 2004, p. 267). Although some disagree with this assessment, the public perception persists through anecdotal evidence and news reports that show the government is not in control of its contractors. The widely reported overcharging by Kellogg Brown & Root for gasoline during the Iraq invasion, the Abu Ghraib prisoner abuse scandal, and the Air Force tanker lease deal with Boeing are among the stories that have contributed to this impression of mismanagement of DoD contracts. A look at some recent government audit findings also tends to support this perception.

## CONTRACT AUDITS

The Inspector General (IG) of the DoD, in a 2003 audit of contracts for administrative and management support services (Report No. D-2004-015 [PDF] Project No. D2002CF-0216.000), agrees with this assessment. He states, “This report stresses a need for defining performance requirements, supporting price reasonableness decisions, and monitoring cost on contracts for professional, administrative, and management support services” (p. i). The report identified a number of problems in the award and administration of these service contracts and determined that “controls were not in place that would ensure adequate surveillance was performed on contracts, particularly cost reimbursable and time and materials type contracts” (p. ii). The IG also recommended in this report that “the Undersecretary for Acquisition, Technology and Logistics needs to ensure that contracting officers designate in writing any personnel who perform surveillance on cost reimbursable and time and materials type contracts and ensure that surveillance personnel are properly trained” (p. i).

Further evidence of poor contract management is provided by the Government Accountability Office (GAO) studies. One of these was at the National Nuclear Security Administration (NNSA), an agency of the Department of Energy that is responsible for the management and security of the nation’s nuclear weapons and naval reactor programs. This study found that NNSA downsized its federal workforce in a major reorganization beginning in 2002 and continuing into 2004 “without first determining the critical skills and capabilities needed to meet its mission and program goals” (GAO, June 2004, p. 1). This study went on to state that “NNSA runs the risk of facing further, more serious staff shortages or skills imbalances, thereby diminishing its ability to adequately oversee its contractors” (GAO NNSA, 2004, p. 1). This is a very serious problem if the agency responsible for our nuclear weapons cannot adequately oversee their contractors, and it should give us good reason to pause and consider the importance of managing federal contractors. An example of how dependent the federal government is on its contractors and why the technical competence of contract monitors

is important is demonstrated in the National Aeronautics and Space Administration (NASA) contract with the United Space Alliance (USA) Company. As pointed out by Donald Kettl concerning the disintegration of the space shuttle *Columbia* in 2003: “NASA knew only the information that USA shared. It had no capacity for independent judgment, and it could not know what it did not think to ask. When the company’s engineers concluded that the shuttle had been in no danger from the collision with a piece of foam, NASA had little choice but to accept the judgment. It did not have sufficient expertise of its own to do anything else” (Goldsmith & Eggers, 2004, p. viii). This is a disturbing revelation that illustrates just how far some government agencies have gone in contracting out their core mission and even their functional ability to challenge the contractor’s performance.

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Another GAO study looked at DoD’s use of logistics support contracts in a contingency operations environment. The four contracts studied were the Army Logistics Civil Augmentation Program and Balkans Support contracts, the Air Force’s Contract Augmentation Program, and the Navy’s Construction Capabilities Augmentation Program. Because of the wars in Afghanistan and Iraq, these have been high-dollar and high-visibility contracts. The GAO concluded that overall “DoD’s contract oversight processes were generally good, although there is room for improvement” (GAO, 2004 July, p. 1). Specifically, GAO found that “DoD did not have sufficient numbers of trained personnel in place to provide effective oversight of its logistics support contractors” (p. 1). The GAO’s recommendations included that “the Secretary of Defense improve planning, establish procedures to assure that contractors are performing as economically and efficiently as possible, and develop training programs for personnel responsible for using and managing logistics support contracts” (p. 1). Experience indicates that poorly trained and inexperienced personnel who are assigned to contract administration pose a significant risk to successful contract performance.

## CONTRACT MANAGEMENT

As DoD’s dependence on contractors increases, it is critical that the government manages contracts in a way that ensures successful performance and mission accomplishment. Training in contract administration is the key to good management, and this deficiency has been observed by David Walker, Comptroller General of the

United States, in testimony before Congress on Iraq reconstruction contracts. Walker stated, "Shortages in personnel trained in contract management and oversight is also an issue that needs to be addressed" (Walker, 2004, p. 3). But, as Stan Soloway, president of the Professional Services Council, has said, the government "as an institution has not invested in its people very well, they do not have the most contemporary skill sets available" to handle complex business processes and technological change (Jossi, 2004, *Federal Times*, p. 1). Some of the skill sets needed are those necessary to effectively manage service contracts, and this has to change. It has never been more important than it is now for the contracting and acquisition workforce to be well trained and motivated to do their jobs.

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The DoD contractors carry an increasing burden in almost all areas of military operations. As Joseph Petrillo noted in a recent article, "Contractors may retain their expanded role and even become more important in military operations. If so, managing them needs to be an equally important part of defense transformation" (Petrillo, 2004, p. 36). Emphasizing this need is a DoD IG report on the Iraq reconstruction that examined 24 humanitarian assistance and other non-construction contracts worth \$122.5 million. Of these, 16 were for services and eight were for computer equipment. The IG found that "In 22 of the 24 contracts, contracting officers did not support price reasonableness determinations, and in 13 others little or no government oversight was provided after award" (Federal Contracts Report, 2004, March 30, p. 339). In fairness, the IG did recognize that part of the problem was due to the situation, but the IG also said DoD needs to perform better in the future. Like the old contracting adage says, *Where there is no audit, there is no ethics*. The recent Enron debacle provides an excellent example of just how true this adage can be. This is not the way DoD contracting and acquisition personnel want to be remembered in a contingency contracting environment, and it is definitely not the way business is typically done. But good contract administration requires commitment and resources, and this means action, not just words, on the part of leadership. To avoid the situations discussed above, better planning and proactive management is needed to ensure adequate personnel are available for contract management and oversight.

This sentiment has been recognized in DoD to some extent. A recent policy memorandum from Diedre Lee, former Director of Defense Procurement and Acquisition policy, in response to a DoD IG report, instructed DoD personnel to "consider the need for increased vigilance and government oversight" on cost reimbursement and time and materials contracts. It also prescribed the appointment of Contracting Officer's

Representatives (CORs), in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 201.602-2 (Lee, 2004, September 13, p. 1). Essentially, the DFARS says that CORs should be government employees qualified by training and experience commensurate with the responsibilities to be delegated, and specified limitations on their authority. This appointment is made by the contracting officer in writing and the letter of appointment must be furnished to the contractor and the COR and be maintained in the COR's contract files. This may seem rather elementary, but as we have seen in the GAO studies and DoD IG reports, these instructions are not always followed. As we all know, in the heat of battle or the *fog of war* things have to be done and sometimes the rules are forgotten or adapted to our purpose, but when the war is over we still have to live with the result. In contracting this may mean we have to live with the terms of the contract for months or even years to come.

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Why is it important that DoD leadership insist on better contract management and administration, aside from the obvious reasons of obeying the law, following regulations, and protecting the government's interest? It is important because in our form of government the legitimacy of the organization to exercise political authority is based on the public's belief that government employees have technical competence and expertise, are politically neutral, obey the law, and act rationally and reasonably in the public interest (Rosenblum, 1993, p. 143). Thus, in the final analysis, the legitimacy of an organization depends on the rationality of their decisions. If a service contract cannot be monitored to ensure the government is getting what they paid for, then it is not reasonable to award the contract in the first place. Failure to make rational, reasonable decisions undermines the authority and legitimacy of the leadership, the organization, and ultimately the government they represent.

Although the procuring contracting office may delegate many contract administration functions under FAR 42.2, they typically retain most of the administration responsibilities on a service contract and appoint a COR and other monitors to help ensure performance. The contract surveillance policy in FAR 42.1103 basically states that the contractor is responsible for timely contract performance and that the government will rely on their quality inspection system. The inspection policy in FAR 46.102 states the government will monitor timely performance and inspect work performed to make sure it complies with contract requirements. The award as well as administration of the contract are both objectives of the procurement process and both are important. With this in mind, here are some suggestions for a simplified decision analysis for contract administration that should help to avoid some of the more obvious problems. The following are some

basic considerations in planning for the administration of a service contract (for a more detailed analysis, see OFPP Policy Letter No. 93-1 and A Guide to Best Practices for Contract Administration):

1. What is the dollar value of the contract and what will it cost for administration and oversight? Weigh the costs against the need for surveillance.
2. Read the contract. Is a contract administration plan needed or required? The FAR does not require a plan, but agency policy might require one. A formal plan may be needed for large-dollar or technically complex contracts that place duties and responsibilities on both contracting parties. If a plan is needed, keep it simple and flexible.
3. Where will the services be performed, and are there qualified government employees available at this location, or will relocation or travel be necessary?
4. How complex is the service(s) and is technical or contracting knowledge most important? Maybe both are equally important. This is a judgment call and the type and extent of monitoring will be determined by the dollar value, the complexity, and the criticality of the service being provided.
5. Are costs associated with task orders and modifications reasonable? Document the decision on cost reasonableness.
6. Is government property properly accounted for, protected, and being used for government purposes? Remember, if there is government-furnished property it has to be transferred to the contractor and this takes time. A property administrator may need to be appointed.
7. Who will be responsible for contract administration and are their duties spelled out? Who will inspect and accept for the government? If a COR is needed, is the COR appointment letter adequate?
8. How will the contractor be held accountable and how will their performance be documented? Remember, if it is not in the contract, the contractor cannot be held accountable, and you can only request the documentation specified in the contract or readily available to the contractor. On large contracts with only a few monitors, you must decide what is important and how much you will inspect.

Contract administration is a complex undertaking and should merit serious consideration and planning. The FAR 37.503 says that agency heads are responsible for ensuring that staff are adequately trained to manage and oversee the contract administration function. Although there is no substitute for experience, training can go a long way in helping personnel administer contracts effectively. The Defense Acquisition University (DAU) and many others offer training courses in contracting,

COR/COTR training, and contingency contracting. These courses are available to contracting personnel as well as non-contracting personnel and can help to avoid some of the problems identified above.

Most improperly awarded contracts and poor contract oversight are not caused by a lack of regulations and guidance. Rather, they are caused by ignorance of them or a conscious decision to ignore them. Often the momentum to award a contract overrides the need to see that there is proper contract administration. But the award of a contract is of no consequence if it is not performed correctly, and the only way we will know if performance conforms to the contracts requirements on a service contract is if we have effective contract management and monitoring. Proper training and planning are critical for the acquisition community to retain the public confidence and ensure the efficient use of tax dollars. Failure of the government and DoD to do a better job of managing their service contracts will invite Congress to step in and mandate changes in the law and the organizations that may not be needed. If you have no contract oversight, or if you have no capability for enforcing violations of the contract's terms, more laws are not the answer. The answer is to have a sufficient number of well trained and motivated contracting and acquisition personnel available to administer the contracts. This will require a transformation of leadership emphasis from contract award to contract administration. Once contract administration and management is seen by procurement personnel to be as important to leadership as contract award, especially in the areas of training and career enhancement, this transformation will be complete. Then, at the end of the day, contracting and acquisition personnel must act in the best interest of the government always bearing in mind that "public service is a public trust." If they do this to the best of their training and ability, the mission will be accomplished and the public interest should be well served.



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