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Emerging Policy and Practice Issues (2012)

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EMERGING POLICY AND PRACTICE ISSUES

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I. CRISIS, OR KICKING THE CAN DOWN THE STREET?

A. Sequestration and the Fiscal Cliff: January 2, 2013, and Beyond. The (dominant, inescapable) emerging issue in government contracting, looking ahead, is the money (or lack of it). As the fiscal belt tightens, the procurement landscape – what the government buys, from whom, and how – will necessarily change. Much of 2012 was spent anticipating some dramatic, difficult decision-making which, apparently, will now be further delayed. While a worst case scenario may have been avoided with a New Year’s deal, nothing suggests that the major underlying structural concerns have been addressed. In other words, the can may have been kicked down the street, but neither the uncertainty nor the anxiety surrounding acquisition forecasting has been in any way diminished.

B. But What Have We Learned? Of course, that does not mean there is nothing to discuss – innumerable interesting issues remain unresolved. See, e.g., Mary Beth Bosco, *Feature Comment: “Sequestration—What It Means, Will It Happen, What To Do If You Are A DOD Contractor,”* 54 GC ¶ 239; 54 GC ¶ 244(e); Robert H. Koehler, *Feature Comment: Can Contractors Rely On OMB’s WARN Act ‘Guidance’?*, 54 GC ¶ 335; *Nonprofit Report Suggests DOD Sequestration Cuts Are Doable*, 54 GC ¶ 350 (“task force report from the Center for American Progress ... suggests that the cuts to the [DoD] budget mandated by sequestration and the Budget Control Act of 2011 ... are ‘readily achievable with no sacrifice to our security – if the cuts are done in a thoughtful manner over the next decade.’”), see also *Rebalancing Our National Security: The Benefits of Implementing a Unified Security Budget*, available at www.americanprogress.org/wp-content/uploads/2012/10/UnifiedSecurityBudget.pdf; *Groups Urge Sequestration Action, Highlight Risks*, 54 GC ¶ 338(c); *House Committee Wants OMB Communications on Sequestration*, 54 GC ¶ 322(d); *OMB Memo Reiterates DOL WARN Act Sequestration Guidance, Clarifies Cost Liability*, 54 GC ¶ 315, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-19.pdf>; *White House Gives Sequestration Report to Congress*, 54 GC ¶ 288(c); see also, *President Signs Sequestration Transparency Act*, 54 GC ¶ 250; *President Exempts Troops from Sequestration*, 54 GC ¶ 244(e); *Sequestration Transparency Bill Goes To President, DOL Issues WARN Act Guidance*, 54 GC ¶ 236; *Contractors, Industry Warn Of Sequestration Risks*, 54 GC ¶ 223; *Sequestration Debate Continues, Impasse Looms*, 54 GC ¶ 213; *Senators Call For Action To Avert Sequestration*, 54 GC ¶ 206; *Deputy Defense Secretary, House Intel Chair Oppose Sequestration*, 54 GC ¶ 179; *White House Memo Provides Inside Look At Government Shutdown Preparations*, 54 GC ¶ 3; www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-03.pdf; David J. Berteau & Ryan Crotty, *Super Committee Fallout and the Implications for Defense*, available at <http://csis.org>. Rather, it means that – at this point – we have few, if any, answers to the most important questions regarding the future of federal public procurement. So, stay tuned.

II. FINALLY? THE END OF THE POST-MILLENIUM PROCUREMENT SPENDING BINGE

A. The New Economic Reality? Regular attendees of this conference are familiar with this chapter’s coverage of the post-millennium federal procurement spending trend. Readers also recognize that, while federal procurement spending was always significant, it wasn’t always *this* significant. In Fiscal Year 2001, federal procurement spending rose to just over \$223 billion. The following years, in 2002 and 2003, we witnessed 18 and 20 percent spending increases. More recently, in 2011, we witnessed a *fourth consecutive fiscal year in which federal procurement spending exceeded \$535 billion*.

Using adjusted figures (yes, between the Federal Procurement Data System (FPDS) and USASpending.gov, history is consistently being re-written), it appears that the annual increases in federal procurement – from 2001 through 2008 – were never less than three times the rate of inflation. The experts correctly predicted that the growth rate eventually would taper; in 2009, the rate slowed and, apparently, growth finally stalled. Yet, in retrospect, the dire warnings that the current spending binge was a blip – and that procurement spending would promptly retract – were unfounded.

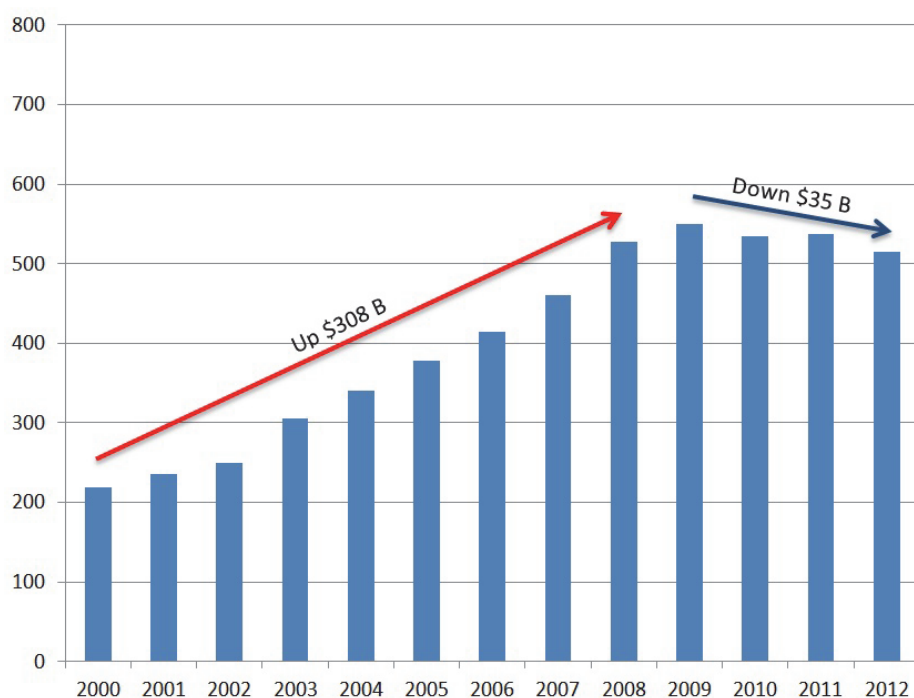
Now, after years of waiting, we see the first empirical evidence that the procurement spending growth cycle finally has run its course. But the news is not all bad for contractors. The \$500+ billion plateau represents the high-end of a robust and sustained growth curve. Now, only time will tell how far the reductions go and whether they can be sustained.

Federal Procurement Spending 2001-2012*			
Fiscal Year	Procurement Spending (in Billions of Dollars)	Percentage Increase or (Decrease) From Previous Year	Percentage Increase or (Decrease) in Consumer Price Index (CPI)
2012	\$514*	(~3-4)	1.8*
2011	\$537.3 (\$535.1) †	(~1)	3.2
2010	\$538.6 (\$537.7)	(~1)	1.6
2009	\$540.6 (\$541.3)	(~0)	(0.4)
2008	\$541.0 (\$541.8)	13.9	3.8
2007	\$469.0 (\$475.3)	10.5	2.8
2006	\$432.0	9.8	3.2
2005	\$391.3 (\$391.2)	13.1	3.4
2004	\$346.4	8.8	2.7
2003	\$318.1 (\$318.3)	20.6	2.3
2002	\$263.4	18.0	1.6
2001	\$223.1		
*FY 2012 figures reflects only an estimate based upon preliminary reporting and the OMB memo, referenced below.			
† Dollar figures in parentheses reflect last year’s reported numbers. Other parentheses reflect negative numbers.			

See *www.USASpending.gov*. Annual increases in the Consumer Price Index for All Urban Consumers (CPI-U) were extracted from the annual Detailed Report Tables and the Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present, U.S. Department of Labor, Bureau of Labor Statistics, available at *http://www.bls.gov/cpi/#tables*.

B. Good News or Strange Misinformation? Late in the calendar year, the White House embarked on a surprising campaign trumpeting the dramatic savings that its policies have wrung out of the previously inefficient and bloated acquisition regime. The story line sounds great, but it appears dubious upon closer examination. Here's the administration's good news graphic, and an excerpt from the announcement follows:

Annual Spending on Contracts (\$B)



Since the beginning of the Administration, President Obama has challenged Federal agencies to strengthen their acquisition and contracting practices by eliminating inefficiencies and buying smarter. In response, agencies have cut unnecessary contracts and launched new efforts to pool the government's buying power to deliver a better value for the American people.

These efforts are paying off. The Administration reduced contract spending by over \$20 billion in Fiscal Year (FY) 2012 compared to last year. This reduction is the largest single year dollar decrease in Federal contract spending on record, and establishes a three-year downward trend from 2009-2012....

This progress is remarkable, and we are pleased that we have not only stemmed but reversed the unsustainable growth in contracting under the previous Administration....

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Joe Jordan, *Historic Savings in Contracting – and Plans for More*, OMB Blog (December 6, 2012), available at <http://www.whitehouse.gov/blog/2012/12/06/historic-savings-contracting-and-plans-more>.

This strikes us a slightly overblown and, frankly, somewhere between deceptive and disingenuous. Our antennae rise when – on a second reading – recognition dawns that the neither Iraq nor Afghanistan are mentioned in this spending trend success story. That seems like a rather dramatic omission. We think there might be more to the story, and we recommend consulting, for example, Amy Belasco, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, Congressional Research Service Report RL33110 (March 29, 2011)(emphasis added), available at <http://www.fas.org/sgp/crs/natsec/RL33110.pdf>, which explains, among other things:

- [As of last year,] the cumulative total appropriated from the 9/11 for those war operations, diplomatic operations, and medical care for Iraq and Afghan war veterans [wa]s \$1.283 trillion including[, among other things]: \$806 billion for Iraq; \$444 billion for Afghanistan; and \$29 billion for enhanced security....

- 94% of this funding goes to the Department of Defense (DOD) to cover primarily *incremental* war-related costs, that is, costs that are in addition to DOD's normal peacetime activities.... (Emphasis in original.)

- Total war funding for **Iraq** rose sharply ... in the fall of 2002 to \$53 billion in the invasion year of 2003, almost trebling to \$131 billion in FY2007, and peaking at \$142 billion during the surge in FY2008. ... With the ... withdrawal plan ..., total war costs for Iraq have begun to decline, dropping to \$96 billion in FY2009 to \$66 billion in FY2010 and \$51 billion in FY2011 when troop levels drop to 43,000. In FY2012, costs are likely to be substantially less once the U.S. withdrawal is completed....

- ***Much of the large increases between FY2006 and FY2008 was due to higher procurement funding***, that, in turn, reflects primarily an expansive definition adopted by the Bush Administration of the amounts needed to reset or reconstitute units returning from deployments, that included not only repairing and replacing war damaged equipment but also upgrading equipment to meet future needs for the “long war on terror”....

- After hovering around \$15 billion in FY2003 and FY2004, total war costs for **Afghanistan** grew to about \$20 billion in FY2005 and FY2006.... Funding then doubled to \$39 billion in FY2007, and \$44 billion in FY2008, as troop levels increased ... and the intensity of conflict grew.... Since then, costs have increased sharply to \$60 billion in FY2009, and \$105 billion in FY2010 assuming the pending supplemental is approved, and \$119 billion in the FY2011 request. ... Future costs in Afghanistan remain uncertain as it is not clear at what pace

U.S. troops may withdraw starting in June 2011 or how long U.S. involvement will persist.

C. Slicing and Dicing the Data at DOD. We continue to be interested in more sophisticated data that provides better, more accessible insights into how the federal government's procurement dollars are spent. A number of additional reports and studies build upon data we have previously reported. See, e.g., Defense-Industrial Initiatives Group, Center for Strategic & International Studies, *U.S. Department of Defense Contract Spending and the Supporting Industrial Base* (September 2012), and *U.S. Department of Defense Service Contract Spending and the Supporting Industrial Base, 2000-2011* (May 17, 2012), available at www.csis.org/diig; see also, *DOD Contract Data Show Industrial Base Trends*, 54 GC ¶ 292; *DOD Competes More Services Contracts Than Contracts For Goods*, 54 GC ¶ 94. Some highlights from these data rich resources include:

- Between 2001 and 2011:
 - dollars obligated to contract awards by DoD more than doubled,
 - contract spending outpaced growth in other DoD outlays; and
 - the growth in products and services experienced a 21-year compound annual growth rate (CAGR) of 8.4 percent and 9.4 percent, respectively, compared to 5.4 percent annual growth in R&D.
- From 2008 to 2011, there was a profound shift in DoD contract spending.
 - absolute obligations for services contracts declined by \$25 billion and dropped from 64 percent of total DoD acquisition outlays to 55 percent, and
 - noncontract defense spending increased by \$71 billion and increased from 36 percent of DoD acquisition outlays to 45 percent.
- Stability? There was no significant change in overall DoD contract spending between 2010 and 2011, suggesting a possible equilibrium in the ratio between DoD contracts spending and other spending has been reached. (Such a steady relationship for DoD spending, split between contracts and other accounts, has not been seen since the years 1995 to 2001.) Anticipated reductions in defense spending, however, likely will affect future DoD outlays.
- In 2011, DoD spending on service contract actions totaled \$198 billion, accounting for slightly under 30 percent of total DoD outlays and 56 percent of total DoD contract spending for the year (up from 50 percent the year before and 48 percent in 2000).
- For much of the past decade, the Army was the primary driver of growth in DoD's service contract spending, increasing at an average of 8.9 percent per year for the period. After reaching

a peak of \$89 billion in 2009, Army service contract spending decreased substantially to \$76 billion in 2011, largely as a result of the U.S. force drawdown in Iraq. For the past three years, the Army's spending on service contracts has declined by 2.5 percent per year.

- During the recent years of defense drawdowns (2008-2011), DoD services contract spending decreased by some \$18 billion (a 9 percent decline) while spending on products decreased by \$26 billion (almost 13 percent).
- The highest growth rate in spending on services occurred in the "Other" category (the main elements of which are the Defense Logistics Agency and the Missile Defense Agency), which grew from \$9 billion to \$36 billion between 2000 and 2011. Unlike the key military departments, the "Other" category expanded after 2009, from \$32 billion in 2010 to \$36 billion in 2011.
- Between 2009 and 2011, the total value of fixed-price contracts for defense services rose 6 percent, while that of cost-reimbursement contracts grew more than 13 percent. Time and materials contracts dropped in combined value by almost 38 percent.
- The makeup of the top 7 defense service contractors has been stable, with the only differences between 2000 and 2011 being the disappearance of TRW (acquired by Northrop Grumman) and the entry of L3 into 7th place in 2011.
- More significant upheaval occurred within the rest of the top 20, with eight newcomers compared to 2000, including three health care service providers: Humana, TriWest Healthcare, and Health Net.
- Mergers and acquisitions also played a role as Northrop Grumman acquired three of the top 20 contractors from 2000: TRW, Litton, and Newport News Shipbuilding.

D. More Insight at the Department of Homeland Security (DHS). In a separate report, CSIS developed a prior data set for the DHS, tracking trends for 2004-2011 (with the disclaimer that 2002-2003 mainly reflected DHS start-up costs). Defense-Industrial Initiatives Group, Center for Strategic & International Studies, *U.S. Department of Homeland Security Contract Spending and the Supporting Industrial Base, 2004-2011* (November, 2012), available at <http://csis.org>; *DHS Services Contracting Trending Down, But Still Significant, CSIS Finds*, 54 GC ¶ 370. CSIS found that DHS's contract spending was relatively stable, with the most fluctuation in FEMA following major disasters. Some interesting observations include:

- Contract obligations were stable between 2010 and 2011, indicating that DHS was spared from the effects of current budget drawdowns;
- DHS experienced a decline in contracts for services, obligations for which have declined by over a billion dollars since 2009; and

- Contract obligations for products, largely stagnant for the second half of the last decade, increased dramatically in 2011, due almost entirely to Coast Guard contracts;
- While only about half of DHS contract dollars were obligated as a result of competitions that received multiple offers, the amount of dollars obligated via competition increased steadily, particularly in post-Katrina years, while those that were obligated with no competition decreased;
- Since 2007, there has been a rise in DHS fixed-price contracts and a relative decline in cost-reimbursement contracts; and
- As DHS priority missions shifted from disaster relief and cleanup to building technology-intensive capabilities, so did the composition of DHS' largest contractors. Between 2006 and 2011, engineering and construction firms were overtaken by IT and consulting firms (including Computer Sciences Corp., IBM, Lockheed Martin, and SAIC).

E. And Peeking Behind the Curtain at the Department of State and the Agency for International Development (AID). CSIS also provided additional insight into procurement spending at State and AID. Defense-Industrial Initiatives Group, Center for Strategic & International Studies, *Contract Spending by the Department of State and the U.S. Agency for International Development* (June 2012)), available at www.csis.org/diig.

- Services dominated procurement spending, increasing from \$1.7 billion in 2000, to \$11.4 billion in 2011, an increase of 575 percent. As a percent of procurement spending, services accounted for 73 to 91 percent during this period.
 - During the 2000-2011 period, the largest category of services was professional, administrative, and management (PAMS), accounting for approximately \$53 billion. PAMS purchasing increased from \$800 million to \$5.8 billion (or 605 percent) over 11 years, peaking between 2006 and 2010, during which it accounted for more than 54 percent of AID's and State's procurement spending.
- Product or supply purchasing accounted for more than a quarter of AID and State spending in 2000-2001, but decreased to between 8 and 15 percent during the 2002 to 2011 timeframe.
- State and AID contracting has become increasingly competitive. Except for 2006, the majority (between 52 and 68 percent) of contract actions were awarded each year on a competitive basis after receiving multiple offers.
 - The total value of competitively awarded contracts with multiple offers increased by 9.4 percent between 2008 and 2011.
 - During the same period, however, the total dollars awarded competitively after a single offer was received increased by 24 percent per year.

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F. A Reminder on Grants: Follow The Money. Despite all of the attention focused upon government contracting, grant spending continues to outpace procurement spending. Consistent with the trend we've previously reported, grant spending exceeded procurement spending last year, as it has for *ten of the last twelve years*. We continue to hope that, eventually, the oversight and regulatory community shifts its focus from procurement to grants. If the government is serious about reducing its debts and its annual deficits, this seems unavoidable.

Federal Procurement and Grant Spending 2001-2012*		
Fiscal Year	Procurement Spending (in Billions)	Grant Spending (in Billions)
2012	\$514*	\$531.5*
2011	\$537.3	\$566.3
2010	\$538.6	\$613.8
2009	\$540.6	\$664.9
2008	\$541.0	\$419.5
2007	\$469.0	\$430.1
2006	\$432.0	\$490.0
2005	\$391.3	\$441.7
2004	\$346.4	\$450.1
2003	\$318.3	\$493.7
2002	\$263.4	\$406.3
2001	\$223.1	\$330.8

*FY 2012 figures reflects only an estimate based upon preliminary reporting and the OMB memo, referenced above.

Total Federal Spending, www.USASpending.gov.

III. THE ONGOING DEBATE: QUANTIFYING AND QUALIFYING THE OUTSOURCING-INSOURCING CONVERSATION

On the one hand, little changed in the contentious philosophical battleground of outsourcing and insourcing. Still, we continue to believe that the use of data may prove more meaningful than emphatic, ideological rhetoric (particularly if not backed up with meaningful information). We remain skeptical of the validity of service contract inventories (artificially tied to FTE's) or apples-to-oranges cost comparisons, and fear that bad (or inaccurate) information will be used to support ill-conceived positions. Great opportunities for chicanery exist. See, generally, *Agency Services Contract Inventories Incomplete, Improving*, 54 GC ¶ 313 ("Civilian agencies did not fully comply with statutory requirements for compiling fiscal year 2011 services contract inventories"); *Civilian Service Contract Inventories: Opportunities Exist to Improve Agency Reporting and Review Efforts* (GAO-12-1007), available at www.gao.gov/assets/650/648939.pdf; *Industry Group Asks DOD to Assess Insourcing Costs*, 54 GC ¶ 249(d); *Slow Data Collection Risks DOD Contractors Performing Inherently Governmental Functions*, *GAO Says*, 54 GC ¶ 124 ("Reliance on contractors and delays implementing an enterprise-wide system to collect relevant contractor

information are putting the [DoD] at risk of contractors performing inherently governmental functions[.... For some components,] GAO found that although DOD has made some incremental progress from FY 2009 to FY 2010, it has yet to resolve ‘the fundamental issue of how to collect the required data to meet the legislative inventory requirements, including manpower data directly from contractors.’”); *Contracting Oversight Panel Compares Public, Private Employee Costs*, 54 GC ¶ 103.

IV. BETTER BUYING POWER 2.0: RECALIBRATION OR REPACKAGING?

On November 13, USD(AT&L) Frank Kendall rolled out DoD’s Better Buying Power 2.0. See Better Buying Power 2.0 Fact Sheet, available at [http://www.acq.osd.mil/docs/BBP_Fact_Sheet_\(13_NOV\)_Final.pdf](http://www.acq.osd.mil/docs/BBP_Fact_Sheet_(13_NOV)_Final.pdf), see also <https://dap.dau.mil/bbp>. DoD explained (with emphasis added) that:

[BBP] 2.0 reflects [DoD’s] commitment to continuous improvement. Significant progress has been made since BBP was first introduced. **Affordability analysis** is now part of the standard Defense Acquisition Board (DAB) planning process to facilitate investment decisions; **Should-Cost** estimates are being used as standard practice within the military Services; and **competitive incentive** contracts, services acquisitions, and small business opportunities are receiving greater attention and focus. Many initiatives that were first introduced will remain, while a set of new initiatives have been identified and are being added to address current fiscal realities. The basic goal of BBP remains: deliver better value to the taxpayer and Warfighter by improving the way the Department does business.

BBP 2.0 initiatives are organized into seven focus areas:

- Achieve Affordable Programs
- Control Costs Throughout the Product Lifecycle
- Incentivize Productivity and Innovation in Industry and Government
- Eliminate Unproductive Processes and Bureaucracy
- Promote Effective Competition
- Improve Tradecraft in Acquisition of Services
- Improve the Professionalism of the Total Acquisition Workforce

We applaud DoD’s BBP 2.0 for adding “a new focus area to support and recognize members of the acquisition workforce.” To that end, DoD articulated initiatives that:

- (1) raise standards for key leadership positions;
- (2) increase professional qualification requirements;
- (3) seek to recognize excellence in acquisition management; and
- (4) change culture with an eye towards greater cost consciousness throughout the acquisition workforce.

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We are less sanguine about some of the other initiatives, although it is unclear to what extent DoD can simultaneously pursue such a broad range of initiatives, including:

- enforcing affordability caps;
- controlling costs...;
- incentivizing industry by aligning profitability ... with [DoD] goals and employing appropriate contract types;
- increasing the effective use of performance-based logistics;
- reducing cycle times while ensuring sound investment decisions;
- using the technology development phase for true risk reduction; and
- strengthening contract management

See also, *DOD Rolls Out Second Generation Buying Initiative*, 54 GC ¶ 358; *Government Is Not Leveraging Its Aggregate Buying Power, GAO Says*, 54 GC ¶ 319; *Strategic Sourcing: Improved and Expanded Use Could Save Billions in Annual Procurement Costs*, (GAO-12-919) available at www.gao.gov/assets/650/648644.pdf; *DAU Revises Defense Acquisition Guidebook*, 54 GC ¶ 322(a); *DOD Releases New Taxonomy for Acquisition of Services, Supplies and Equipment*, 54 GC ¶ 278(d); *AT&L Describes Goals, Challenges*, 54 GC ¶ 225(a); *Acting USD AT&L Discusses Budget, Strategic Guidance*, 54 GC ¶ 44.

See also, Defense-Industrial Initiatives Group, Center for Strategic & International Studies, *A Case Study for Better Buying Power: Information Analysis Centers of the Defense Technical Information Center*, (April 2012) (“Realigning and refocusing Information Analysis Center (IAC) capabilities and products on defense system affordability is an essential task for DoD and Defense Technical Information Center (DTIC) leadership going forward.”), available at <http://csis.org>. The report offers the following Tactical Recommendations:

1. Focus IAC program products on three BBP Initiative elements:
 - a. Mandating affordability as a requirement,
 - b. Incentivize productivity and innovation in industry,
 - c. Promote real competition.
2. Revise and refocus internal DTIC/IAC program policies, procedures, and products to contribute to several other desired BBP Initiative outcomes:
 - a. Identify and address causes of poor tradecraft in services acquisitions,
 - b. Eliminate redundancy in warfighter portfolios and reduce non-productive processes,
 - c. Identify and suggest alternatives to eliminate/reduce barriers to small business participation.

V. ACQUISITION WORKFORCE: STALLED REPLENISHMENT, LOST MOMENTUM, BLEAK PROSPECTS

While we were encouraged by Frank Kendall's efforts to increase the profile of the acquisition workforce in BPP 2.0, above, it is clear that DoD no longer intends to fulfill its prior pledge to increase the acquisition workforce with an infusion of 20,000 new professionals. No one should be surprised by this harsh reality. See, e.g., Daniel I. Gordon, *Feature Comment: Reflections On The Federal Procurement Landscape--Part II*, 54 GC ¶ 51 (emphasis added):

Although the progress was limited and the outlook remains problematic, I believe that we made headway in strengthening the federal acquisition workforce. ... Despite the investment of much time on the Hill and the generally supportive reaction we received from both Republicans and Democrats, in both houses, ***we did not get the full \$158 million we asked for*** – but we nonetheless saw agencies devote more resources to their acquisition professionals. That pattern repeated itself for FY 2012 as well.

We succeeded in reversing the trend of slashing the numbers of 1102s, both across DOD and in many (but not all) civilian agencies. The numbers of 1102s are up, on the order of a 5- to 12-percent increase from a few years earlier. ... [Nonetheless], I am confident that ***we are not yet at an adequate level***. Moreover, ... we must anticipate a large number of retirements over the next five years.

With the mood on the Hill not favorable to further federal hiring, I am concerned that ***we will repeat the mistake of the past and let the number of 1102s go down again***.

See also, generally, *Acquisition Workforce Fund Needs Metrics, Distribution Guidance*, 54 GC ¶ 203 (“[DoD] ... should issue guidance on the Defense Acquisition Workforce Development Fund (DAWDF) to clarify when and how funds should be collected, distributed and used; establish DAWDF outcome-based performance metrics; and clearly align DAWDF’s funding strategy with DOD’s strategic human capital plan for the acquisition workforce.... DOD’s acquisition workforce grew by 17,536 personnel, from about 118,445 in fiscal year 2009, to 135,981 in December 2011.... Approximately \$321 million in DAWDF funding has also been allocated to increase the ... the contract oversight workforce at the [DCAA] and the [DCMA].”) See also (from after we went to print last year), *Acquisition Workforce Grew In FY 2010, FAI Finds*, 54 GC ¶ 61; FAI, *FY2010 Annual Report on the Federal Acquisition Workforce*, available at www.fai.gov/pdfs/FAI_2010_Annual_Report_12_21_11_FINAL.pdf.

VI. THE BIENNIAL PSC SURVEY: MORE OF THE SAME, WITH A TWIST

One of the more interesting resources last year was the biennial survey of federal acquisition and procurement professionals, now in its

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sixth iteration. Professional Services Council & Grant Thornton, *The Balancing Act: Acquisition in Unabated Crisis* (December 2012), available at <http://www.pscouncil.org/>. On the one hand, the “2012 findings reinforce the notion that the more things change, the more they stay the same.” Not surprisingly, however, last year “budget stability was added as a top concern[.]” As always, the survey results are thought-provoking. While this only scratches the surface, some of this survey’s highlights include:

- “general[] concern[] about the implications of both ongoing budget reductions and pending sequestration cuts, regardless of whether the sweeping cuts come to fruition.”
- “significant concerns about the state, readiness, size and support for the acquisition workforce.... [R]eal concern that fiscal realities will place increasing pressure on the acquisition workforce. The poaching of experienced acquisition resources for better pay among federal agencies has also ... [raised] issues, from loss of institutional knowledge to unjustified promotions creating execution risk.”
- “participants ... rate[d] the importance and competency of their workforce’s ability to obtain the best price, outcome, modifications and other related aspects of a contract. One acquisition professional reporting that his office does not use negotiation at all. ... Nearly two-thirds ... cited such skills as being extremely important, but only one in 10 believe their acquisition workforce is highly competent in that area, and more than 25 percent ... said the skill is either nonexistent or in need of improvement.”
- “resources were overextended in responding to the oversight community, and that few if any resources were available to respond. ... Acquisition executives reported feeling inhibited about taking reasonable business risks, especially when it could require additional explanation or reporting to oversight authorities. ... A majority ... felt the demand for oversight was going to increase, even with declining budgets.”
- “budget pressures, the increase in risk from oversight activity and the comparative clarity for decision justifications have all driven the increases in LPTA as the primary source selection criteria[.]”

See also, *Contractors’ Relationships With COs, Auditors Continue To Deteriorate, Survey Says*, 54 GC ¶ 68 (“The percentage of contractors that rate their relationships with Government contracting officers and auditors as fair or poor increased in the last year..... ‘DCAA’s production-oriented culture has been replaced by a system in which the DCAA takes far longer to issue lower quality reports,’ Grant Thornton said.”); <http://www.grantthornton.com/staticfiles/GTCom/Government%20contractors/FINAL17thSurveyCoverhighlightsSMALLcomplete.pdf>.

VII. SAYING THE WORDS “SHARED SACRIFICE”: CONTRACTOR FATALITIES BEGIN TO ENTER THE MAINSTREAM

By the end of 2012, nearly 3,000 contractors had died in Iraq, Afghanistan, and Kuwait. We continue to be frustrated with the extent to which these extraordinarily high contractor fatalities (and, more broadly, injuries) remained almost entirely outside the public’s consciousness. Among other things, we believe that, in a representative democracy, public awareness of the human cost of our nation’s security and foreign policies is critical. A significant body of research suggests that the public is at least somewhat sensitive to military casualties, and we continue to wonder what impacts, if any, derive from a significant substitution of contractor deaths for military fatalities. See, generally (long-delayed, but finally in print), Steven L. Schooner & Collin D. Swan, *Dead Contractors: The Un-Examined Effect of Surrogates on the Public’s Casualty Sensitivity*, 6 J. OF NAT’L SEC. L. & POL’Y 11 (2012), also available at <http://ssrn.com/abstract=1826242>. The Labor Department continues to earn kudos for transparency for posting on the Internet the data it generates based upon claims filed under the Defense Base Act and the War Hazards Compensation Act, which make contractor employees eligible for worker’s compensation benefits pursuant to the Longshore and Harbor Workers’ Compensation Act. See generally www.dol.gov/owcp/dlhwc/lldbareports.htm.

Last year provided some progress, particularly in terms of DoD leadership and rhetoric. Frank Kendall, now the Under Secretary of Defense for Acquisition, Technology and Logistics, raised the issue at the Cowen Group’s 33rd Annual Aerospace/Defense Conference (New York, Feb. 8, 2012):

Terence Hildner ... was a brigadier general in the army [who died in Kabul]. He came back to Dover ... on a C17. I went to Dover for the transfer of the remains. ... There’s a dignified transfer which is a very solemn and kind of heart wrenching for the families but moving ceremony. . . .

There was one other person on that C-17 and it was a contract employee of a Canadian firm. After we had done the transfer for General Hildner, General Austin, myself, General Mason and the Colonel did the Dignified Transfer for that Canadian citizen who was a contractor serving with us in Afghanistan.

I find that very symbolic of the service that industry is providing to us and that you really are part of all this with us. I think that the respect and the dignity with which we did that and the fact that we all stayed to do it, sends sort of a message about how we feel It is ... a way to say, “Thank you” for that.

See also *SIGIR Counts Lives Lost In Iraq Reconstruction*, 54 GC ¶ 241; *Special Report Number 2: The Human Toll of Reconstruction or Stabilization during Iraqi Freedom*, available at www.sigir.mil/files/lessonslearned/SpecialReport2.pdf. (“Reconstruction or stabilization operations conducted in combat zones present potentially lethal threats

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to all participants, including military, contractors, U.S. government civilians, third-country nationals, and host country citizens. Planning for such operations must anticipate this threat.... The human losses suffered in Iraq (and outlined in this report) underscore the point that when such operations are conducted in combat zones, they are dangerous for everyone involved, military and civilian, U.S. and non-U.S. alike..... Poor casualty data management during reconstruction or stabilization operations obscures the actual human cost of such operations. ...Without accurate records, there cannot be a reasonably complete evaluation of the human cost of reconstruction or stabilization efforts.”)

Finally, on February 12, 2012, The NEW YORK TIMES became the first major news outlet to devote a front-page article to the risks facing contractors in the battlespace. Rod Nordland, *War's Risks Shift to Contractors*, N.Y. TIMES, Feb. 12, 2012, at A1 (“This is a war where traditional military jobs, from mess hall cooks to base guards and convoy drivers, have increasingly been shifted to the private sector. Many American generals and diplomats have private contractors for their personal bodyguards. And along with the risks have come the consequences: More civilian contractors working for American companies than American soldiers died in Afghanistan last year for the first time during the war.”). On this issue, we continue to believe that transparency serves the public’s interest.