

## Recommendation 45: Create a pilot program for contracting directly with information technology consultants through an online talent marketplace.

### Problem

Work in the IT discipline often requires unique expertise of state-of-the-art technologies best provided by independent consultants. These outside experts can bring a specialized skill or new perspective at key decision points in long-term programs or efforts. Being able to quickly and easily use such consulting services to supplement existing IT support ensures government programs can succeed in today's rapidly evolving IT landscape. This real-time flexibility is hard to achieve within the limitations of federal hiring and contracting practices. IT professionals do not always want to become full-time employees or navigate the complexities of becoming a prime government contractor or subcontractor. Instead, such highly qualified professionals choose to work as independent contractors in the *gig* or *freelance economy*, often finding work through online talent marketplaces. The federal government needs to acquire IT experts more in line with commercial best practices, improving the speed, cost, and quality of resources that support complex IT solutions.

### Background

Today's workforce is modular and flexible, characterized by the concept of the *gig economy*, a term that describes the popularity of freelance work for both employees and employers. This kind of work has become more prominent with the rise of companies like Uber as well as other technology-enabled platforms that match workers with short-term or intermittent jobs. In the *gig* economy, employers can use the unique skill sets of independent contractors for specialized projects or limited periods without taking on the liability and expense of full-time employees. Approximately 10 percent of workers count their primary job as contingent or an alternative employment arrangement, with more people supplementing traditional jobs with freelance work.<sup>1</sup> In total, freelance workers contribute approximately \$1.4 trillion annually to the American economy.<sup>2</sup> These freelance working relationships will increase dramatically in the next decade, largely fueled by online talent marketplaces. By 2027, most of the American workforce is predicted to be freelance workers.<sup>3</sup>

IT professionals commonly work as independent consultants to provide short-term assistance. SAP, one of the largest business software companies in the world, trains and certifies numerous IT companies and independent consultants to provide services to support SAP clients. Hundreds of companies provide consultants certified in SAP skill sets as needed to support implementation and integration of SAP systems. "Nearly three-fourths of all SAP-related jobs last somewhere between four and 12 months, with the greater percentage of those falling in the four- to six-month range."<sup>4</sup> Often, these temporary positions fill a growing IT knowledge gap. The 2017 Global Knowledge Salary Report

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<sup>1</sup> "Contingent and Alternative Employment Arrangements News Release," Bureau of Labor Statistics, June 7, 2018, accessed July 6, 2018, <https://www.bls.gov/news.release/conemp.htm>.

<sup>2</sup> "Upwork Press Release," Upwork, accessed October 19, 2018, <https://www.upwork.com/press/2017/10/17/freelancing-in-america-2017/>.

<sup>3</sup> Ibid.

<sup>4</sup> Americas' SAP Users' Group (ASUG), *Seeking Short-Term SAP Superheroes: The Predicament of the SAP Gig Economy*, 2018, 3, accessed October 19, 2018, [https://blog.asug.com/hubfs/Talent%20Hub/2018\\_GIG\\_WP\\_v5.pdf](https://blog.asug.com/hubfs/Talent%20Hub/2018_GIG_WP_v5.pdf).

indicated that more than two-thirds of IT decision-makers recognize “a gap between their team’s skill levels and the knowledge required to achieve organizational objectives.”<sup>5</sup>

The most in-demand skills sets for both the private and public sector are cloud computing, cybersecurity, and networking. An estimated 285,000 open cybersecurity positions exist in the federal government, with a global projected shortage of 1.8 million by 2022.<sup>6</sup> Tyson Meadors, director of cybersecurity policy at the National Security Council, notes that individuals with these skills move frequently between jobs in the public and private sectors, adding that the government needs to make sure “we have the ability to allow people to go and come from federal service over the course of their careers.”<sup>7</sup>

In the private sector, business structures are transforming to reflect the modularity and flexibility of the digital, on-demand workforce enabled by online talent marketplaces. The government is lagging behind this trend. Accenture’s *Workforce Marketplace* report predicts that by 2022, organizations that resist these technological changes and cling to old bureaucratic business models “will experience rapid deterioration of market power.”<sup>8</sup> The government must be more intentional about following commercial innovations in managing its workforce, beginning with IT specialists. The bureaucratic government model no longer fits the way people want and need to work in the digital information economy.

## Discussion

### ***PMs Struggle to Use IT Consultants Strategically***

The ability to rapidly obtain specialized IT support is particularly critical as the federal government acquires state-of-the-art IT and modernizes its complex web of legacy systems. As IT solution complexity grows, programs will continue to need immediate IT consultant services to provide independent, objective advice and recommendations. These consultants bring specialized expertise and commercial best practices that maximize the business value of IT systems. The specialized skill sets needed by the government will become harder to predict and procure as technology continues to evolve.

PMs use consultants for both strategic and tactical guidance, which overlap to varying degrees. Strategic consultants provide guidance at key decision points for issues related to cloud computing,

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<sup>5</sup> Global Knowledge Training, *2017 IT Skills and Salary Report: A Comprehensive Study from Global Knowledge*, 6, accessed October 19, 2018, [https://mindhubpro.pearsonvue.com/v/vspfiles/documents/2017\\_Global\\_Knowledge\\_SalaryReport.pdf](https://mindhubpro.pearsonvue.com/v/vspfiles/documents/2017_Global_Knowledge_SalaryReport.pdf).

<sup>6</sup> “Retrained agency employees can be a key source of cybersecurity talent, NSC official says,” March 8, 2018, Scoop News Group, accessed October 19, 2018, <https://www.fedscoop.com/agencies-can-retrain-employees-get-cyber-talent/>. Center for Cyber Safety and Education, *2017 Global Information Security Workforce Study: Benchmarking Workforce Capacity and Response to Cyber Risk*, accessed October 19, 2018, <https://iamcybersafe.org/wp-content/uploads/2017/07/N-America-GISWS-Report.pdf>.

<sup>7</sup> “Retrained agency employees can be a key source of cybersecurity talent, NSC official says,” March 8, 2018, Scoop News Group, accessed October 19, 2018, <https://www.fedscoop.com/agencies-can-retrain-employees-get-cyber-talent/>.

<sup>8</sup> Accenture, *Workforce Marketplace: Invent Your Future*, 2017, 13, accessed October 19, 2018, [https://www.accenture.com/t20180803T070620Z\\_w\\_us-en/acnmedia/Accenture/next-gen-4/tech-vision-2017/pdf/Accenture-TV17-Trend-3.pdf?la=en](https://www.accenture.com/t20180803T070620Z_w_us-en/acnmedia/Accenture/next-gen-4/tech-vision-2017/pdf/Accenture-TV17-Trend-3.pdf?la=en).

systems analysis, and architecture. Tactical consultants provide technical expertise in areas such as cybersecurity, network management, design and integration, programming, and data conversion.

Specialized IT consultants command a high hourly rate in both the commercial marketplace and on government contracts. Typical rates on government contracts range from approximately \$200 to \$400 per hour for job titles including systems architect, BPR specialist, database specialist, informatic specialist, and subject matter expert (SME). One contractor rate sheet showed a level-one systems architect billing at approximately \$200 per hour, a level-three BPR specialist at \$222 per hour, and a level-three SME at nearly \$400 per hour.<sup>9</sup> Many of these specialists remain permanently on contract; others are brought in for short consulting projects. In the commercial marketplace, such specialists earn similar wages. These unique skill sets justify high wages and empower consultants to accept only those working conditions that suit them.

Faced with an immediate need for new expertise on specific information systems or technological capabilities, a PM managing a multibillion-dollar budget may lack direct access to the global marketplace of individual IT consultants and struggle to get help from the most qualified individuals. An example from the Army illustrates this challenge. The PM for a defense business system spent months troubleshooting an issue with slow logons that was affecting user productivity, but was unable to resolve it by working with the OEM and system integrator. Program staff tried to debug the problem via satellite, creating additional delays. The PM determined the problem needed to be solved by a system architect with expertise in large-scale computing and was aware of an independent consultant with decades of experience in related work. Ultimately, there was no mutually agreeable way to use this person's expertise either as a prime or subcontractor. He did not meet the requirements under the existing Systems Engineering and Technical Assistance (SETA) effort because his rate was too high, and he did not meet educational requirements for the labor description categories in the SETA contract. The expert was also unwilling to become a prime contractor due to the amount of paperwork and time required, a known barrier to entry for small businesses seeking to work directly with the federal government.<sup>10</sup> Five years later, performance problems continue to linger.

In such situations, government PMs have limited strategies for obtaining the right IT expertise. Several acquisition routes are available when the government needs to use IT consulting services. Many of these acquisition strategies are sufficient for maintaining a static IT workforce dedicated to a program, but none of them are ideal for short-term situations in which an outside expert is needed quickly to provide strategic problem-solving support informed by best commercial practices.

### ***Full-time Employees***

Programs may hire government employees who are permanently attached to an organization. These employees are hired by policies that are increasingly acknowledged as outdated, limited by the general service (GS) categorization and pay schema. It commonly takes up to 6 months to hire employees in this way and includes numerous certifications and accommodation of various hiring policies.

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<sup>9</sup> See, for example, Deloitte's contractor-site hourly rates for the federal government, accessed October 19, 2018, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/public-sector/us-fed-contractor-site-hourly-rates-10172014.pdf>.

<sup>10</sup> Representative from Global Combat Support System – Army (GCSS-Army), discussion with Section 809 Panel, May 2018.

Recent and pending changes to direct hire authority acknowledge the need for expedited hiring processes. FAR 37.112, Government Use of Private Sector Temporaries, has been used to acquire short-term help, but the authority remains limited. It allows for “contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries.” The authority for this temporary hiring comes from 5 CFR 300, Subpart E, which clarifies the temporary help must meet a critical need that is defined as “a sudden or unexpected occurrence” with the stipulation that “a recurring, cyclical peak workload, by itself, is not a critical need.”

This type of authority is not enough to meet the demands of today’s IT projects. The civil service needs better and faster access to science, technology, engineering, and math employees, as acknowledged in 2018 by then OPM Director Jeff Pon. Referring to changes recommended in the President’s Management Agenda (PMA), he admitted, “The whole philosophy of having a job for life is a thing of the past.”<sup>11</sup> Efforts to overhaul the federal workforce proposed in the PMA and the FY 2019 President’s Budget are an attempt to fix the problem by retraining existing employees for IT positions and using more flexible hiring policies.<sup>12</sup> The FY 2019 NDAA provides DoD with direct hire authority for high-demand personnel, including for any position involved with cybersecurity.<sup>13</sup>

Additional problems hiring federal employees come from an outdated pay scale that lags behind market rates. The maximum pay rate is GS-15 step 10, which is approximately \$165,000 with locality adjustment for the National Capital Region, translating to about \$80/hour. For IT specialists, this pay scale is too low to compete with the commercial marketplace, and the lengthy bureaucratic hiring process is unappealing. In one case, Army Cyber Command sought to hire a midlevel specialist who was working for a large software firm. To create a reasonably attractive offer, the agency needed to add substantial recruitment bonuses and benefits to the top of the federal pay scale, and even then, the individual had to take a pay cut of more than \$60,000 a year—which he reluctantly did to serve the government.<sup>14</sup>

### **Existing Contracts**

PMs traditionally rely on expert consultants provided by the OEM such as SAP or consultants on existing SETA contracts. In such cases, the consultants’ high labor costs are budgeted into the life of the contract. The PM will keep these resources on board so they are available when needed, although they often have extended periods of downtime when their skills are not called for. This OEM/SETA approach is costly. The government ultimately pays a high ongoing cost for these consultants without obtaining sufficient value out of that resource. Worse, consultants’ skills can atrophy or become suboptimal when they are not working within their niche or continuing to hone their knowledge and skills. The federal government does not keep pace with technological innovation in the private sector, one of many reasons to encourage easy movement between the two worlds.

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<sup>11</sup> “Trump’s management agenda ties together IT, data and workforce overhaul,” Scoop News Group, March 20, 2018, accessed October 19, 2018, <https://www.fedscoop.com/presidents-management-agenda-ties-together-data-workforce-overhaul/>

<sup>12</sup> The White House, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2018: 7. Strengthening the Federal Workforce*, accessed October 19, 2018, [https://www.whitehouse.gov/wp-content/uploads/2018/02/ap\\_7\\_strengthening-fy2019.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/02/ap_7_strengthening-fy2019.pdf)

<sup>13</sup> Section 1101 of FY 2019 NDAA, Pub. L. No. 115-232 (2018).

<sup>14</sup> Representatives from Army Cyber Command, discussions with Section 809 Panel, August 2018.

For example, a consultant experienced with international military systems in disconnected environments was flown from Israel to Washington, D.C., once a month during a business system's development. His high wages were made even more costly with these additional travel costs, and he remained on the contract for more than 5 years. Because he was consulted only intermittently for problems related to disconnected operations, he was frequently available and assigned to simpler tasks for which he was overpaid. The program could have saved money by using and paying for this expert on an as-needed basis, meeting lower-level needs with other workers more suited to those tasks. The program was motivated to keep him on contract to avoid the time-consuming process of getting a new consultant on contract when the intermittent problems arose.

Using an existing SETA support contractor to bring in a technical expert involves many steps that take months to complete. The SETA contractor must find an adequate resource, negotiate a subcontracting agreement or employment agreement, provide a proposal, and negotiate an appropriate labor category and rate with the government. The process is also burdensome for independent consultants who become subcontractors. Discussions with several independent contractors revealed the following common steps:

- Complete a nondisclosure agreement and a teaming agreement with proposed rate structure. (2–3 days).
- Review and sign a subcontract agreement and statement of work that range from 25 to 100 pages (taking 3–6 weeks) and include the following:
  - Terms & Conditions
  - Numerous FAR/DFARS clauses
  - Certificate of insurance (one onerous requirement noted was liability insurance of \$3 million)
  - Pricing templates
  - Representations & Certifications
  - Certification of no conflict of interest
  - Certification of good standing
  - Business size certification
  - Federal Funding Accountability and Transparency Act certification
  - W9 Request for taxpayer identification number and certification
  - Final negotiation of rates
  - Signed subcontracting agreement
- Registration in the System for Award Management (SAM) and if applicable in prime's invoicing systems (5 days).

This process is time-consuming and adds cost to the government. Some consultants use an attorney to review the subcontracting agreement, resulting in additional costs and time.<sup>15</sup> A subcontract administrator at a large prime contractor indicated the company's standard for obtaining signed

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<sup>15</sup> Army Enterprise Systems Integration Hub and Logistics Modernization Program, discussion with Section 809 Panel, August 2018.

subcontract agreements is 21 days from receipt of the purchase request; however, these timeframes can balloon by a few months.<sup>16</sup> All consultants stated they were at a disadvantage when negotiating their rate with prime contractors.

### ***Creating a Blanket Purchase Agreement***

Some federal agencies have devised creative strategies to buy independent consultants without excessively bureaucratic hiring procedures. GSA used the flexibility afforded by FAR 37.112 to establish a Blanket Purchase Agreement (BPA) with an 8(a) Business Development Program company to provide agency components the ability to quickly respond to brief or intermittent IT work requirements. Examples of hiring arrangements using this BPA include full-time personnel employed by the 8(a) and employees hired by the 8(a) as independent contractors. In an interview with the panel, a GSA official explained, “this BPA has become incredibly popular for short engagements,” giving the example of using developers when “we just need a person or two, not an organization, to come in and work a specific project for a short time.”<sup>17</sup>

### ***Direct Contracting with Independent Consultants***

Occasionally, the government contracts with independent consultants directly. In these cases, individuals must be registered in SAM and accept a prime contract with the government, engaging with a contracting process that includes requirements development, market research, competition, and negotiations. Even under simplified acquisition procedures, awarding such a contract would take at least 30–60 days to complete.

Simplified acquisition procedures are not the effective, expedited procurement solution for independent contractors they may appear to be. As the Section 809 Panel’s *Volume 1 Report* and *Volume 2 Report* discuss, such simplified procedures are far from simple, burdened by complex and often conflicting guidance in multiple sections of the FAR.<sup>18</sup> Simplified acquisitions can end up looking more like a last resort than a preferred method. In theory, independent contractors can be acquired by using simplified acquisition procedures and staying below the simplified acquisition threshold of \$250,000, assuming contracts are shorter than 7 months. Contracts could also be awarded using simplified procedures for certain commercial items under \$7 million. In both cases, however, it is rare to find consultants acquired in this way, and the procedures remain more bureaucratic than simple. Even *simplified* contracting with consultants involves months of bureaucratic processes that can discourage both contractors and programs in need of help. As discussed in the *Volume 1 Report*, purchase of commercial items has actually decreased since the implementation of FAR Part 12 in 1995, with recent numbers showing a 29 percent decline from FY 2012 to FY 2017.<sup>19</sup>

To expedite contracting and bypass government bureaucracy, one solution is the new concept of microconsulting, for which a consultant contracts with the government (or private organizations) for a short period of time. When used within the government, microconsulting contracts stay below the FAR

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<sup>16</sup> Former CACI subcontract administrator, discussion with Section 809 Panel, February 2018.

<sup>17</sup> GSA contracting officer, discussion with Section 809 Panel, July 2018.

<sup>18</sup> See Section 809 Panel, *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations: Volume 1 of 3* (2018), Section 1: Commercial Buying, and *Volume 2 of 3* (2018), Section 3: Simplified Commercial Source Selection.

<sup>19</sup> Section 809 Panel, *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations: Volume 1 of 3* (2018), 17.

micro-purchase threshold. This solution treats independent contractors like the commercial service they are, without burdening the acquisition with unnecessary contract clauses or conditions.

Skylight, founded in 2017, offers microconsulting services to the government. The coleader (and former cofounder of 18F, the innovation arm of GSA) explains it this way: “Not every problem requires a full-blown consulting engagement. Often times, a short burst of work on a specific topic is all that’s needed to help propel government managers and teams forward.” This approach is a means to, for example, “obtain quick advice on the suitability and trade-offs of using a particular architectural pattern, delivery practice, or technology from digital experts.”<sup>20</sup> Purchases under the micro-purchase threshold would limit a PM from receiving a complete consulting engagement, corresponding to less than one week at the \$10,000 threshold. This creative solution is appealing to PMs desperate for help, but its limits create the potential for workarounds and abuses where PMs buy many of these small engagements to stay under the threshold.

The legal community has established a process to acquire expert witnesses and consultants on short notice, but even these simplified documentation processes can take several weeks to months to complete. Acquiring these experts follows a simplified procedure, provided the procurement remains below the simplified acquisition threshold.<sup>21</sup> Although this process has a statutory exception to the Contracting in Competition Act (CICA), it still requires as a minimum a resume, funding documents, and a justification and approval document.<sup>22</sup>

### ***A New Approach: Online Talent Marketplaces***

Innovation in the commercial marketplace has combined the gig economy with e-commerce portals, creating numerous online talent marketplaces that match employers with employees or independent contractors who meet company needs. One of the largest talent marketplace companies, Indeed, has more than 200 million unique visitors per month.<sup>23</sup> Others include Upwork, Government Freelance Exchange (GovFlex), Freelancer, Gigster, ShortList, and PwC.

GovFlex, launched in 2016, is attempting to make this innovative workforce model available to the federal government. Designed to match independent contractors with federal agencies needing to access specific expertise quickly, GovFlex operates as an intermediary, profiting by assuming some of the bureaucratic burdens, terms, and conditions imposed on individuals and small businesses working with larger organizations. Currently operating only in the private sector, GovFlex leaders acknowledge the company has hit limitations bringing this marketplace to the government, including the current micro-purchase threshold. The company’s latest move has been to bid on a contract with a government agency to create a virtual business center linking 30,000 companies and 50,000 consultants. GovFlex leaders are in discussion with GSA about providing similar services. The GovFlex talent marketplace connects with high-demand experts and shows details such as their skills and resume, past performance ratings, hourly rates, availability, and security clearance access. Similar to commercial

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<sup>20</sup> Chris Cairns, Skylight Digital, interview with Section 809 Panel, May 7, 2018.

<sup>21</sup> Procurement Notice, 41 U.S.C. § 1708(b)(1)(G).

<sup>22</sup> Industrial mobilization; engineering, developmental, or research capability; or expert services, FAR 6.302-3(a)(2)(iii). The Army Lawyer: JAG Corps Professional Bulletin, 27-50-16-07, July 2016.

<sup>23</sup> “About Indeed,” Indeed, accessed October 19, 2018, <https://www.indeed.com/about>.

talent marketplaces, consultants compete for work, and search algorithms match employer requirements to consultants nationwide.

These marketplaces provide solutions for employers to contract for the best talent faster and at lower cost. GovFlex provided a case study to illustrate. In 2016, Xerox solicited quotes from five Washington D.C., consulting firms. On average, the firms took 3 weeks to respond with quotes that included additional fees ranging from 40 to 100 percent. Xerox posted the same project on GovFlex and received quotes within 1 hour, saving \$84,000 by going directly to the IT consultants.<sup>24</sup> Other companies show similar benefits. In a pilot program, Procter & Gamble delivered products faster and at lower cost 60 percent of the time by using a freelance talent management system instead of conventional methods.<sup>25</sup>

Congress continues to recognize the importance of aligning government buying to commercial practices and technology, most recently by promoting use of e-commerce portals. Section 846 of the FY 2018 NDAA directed GSA to “establish a program to procure commercial products through commercial e-commerce portals for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products.”<sup>26</sup> This initiative will deliver greater access to commercial innovation, increase opportunities to leverage commercial practices, and provide built-in competition of readily available supplies and services in the open marketplace. Based on similar technology, online talent marketplaces provide similar advantages for acquisition of commercial services.

### ***Acquiring Independent Consultants as a Pilot of Readily Available Services***

The Section 809 Panel has recommended new processes that will expedite procurement of readily available products and services (see Section 1), which if adopted, will subsume the existing commercial buying structure. The conceptual models for *readily available* acquisitions will encourage improved collaboration with industry to identify solutions and better leveraging of the dynamic market in which the government functions. Readily available services require no customization and include short-term expert consulting services. Some acquisitions will fall in the category of *readily available services with customization* that are consistent with existing private-sector practices. Services are considered customized when a performance work statement, statement of objectives, or other form of government-specific direction is necessary to describe the required services. Both of these approaches expedite and modernize the process of contracting with IT consultants.

Because it will take time for the *readily available* concept to be implemented, a pilot program for direct contracting with independent consultants using an online talent marketplace as a facilitator could help bridge the gap. The results of this pilot would illustrate the potential of the readily available concept and can inform its development. It also provides an additional tool for accessing the growing community of experts who prefer to offer their services on an ad-hoc basis. As a pilot of the readily

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<sup>24</sup> GovFLEX, “The Government Freelance Exchange White Paper,” July 24, 2018.

<sup>25</sup> “On-Demand Talent vs. Legacy Labor Models: Key Stats,” Greg Andrade, SpareHire Blog, January 11, 2018, accessed October 30, 2018, <https://www.sparehire.com/blog/on-demand-talent-vs-legacy-labor-models-key-stats/>.

<sup>26</sup> Section 846 of FY 2018 NDAA, Pub. L. No. 115-91 (2017). Codified at 41 U.S.C. 1901 note.



available concept, this new authority helps begin transforming government processes to more closely resemble the efficiency and innovation of commercial best practices.

## Conclusions

DoD should pilot an expedited contracting authority for IT consultants facilitated by an online talent marketplace tool with a qualified independent consultant list. This process would allow the federal government to contract quickly with experts in commercial IT, not experts in government-unique contracts. The talent marketplace concept follows both industry best practices and the Section 809 Panel's concept for acquiring products, services, and solutions that are *readily available* or *readily available with customization*.<sup>27</sup> DoD could use these two methods for contracting directly with independent consultants.

Consultant services could be purchased with a government purchase card (GPC) as the transaction method for ordering online via the Talent Marketplace, with no additional FAR-based contract necessary. Using a GPC as the procurement transaction method would align with commercial practices, replace the paper-based contracting process, and reduce procurement lead times. This new authority should be detailed with changes to current GPC guidance in FAR Part 13.

Alternatively, consultants could be purchased with a radically simplified contract that can be completed in less than 2 weeks. This authority should lie within the existing FAR Part 12 commercial framework, with the intent that it would model a simplified strategy for obtaining needed services from independent IT consultants. To highlight this approach as an innovative tool, the pilot program should have its own subpart of FAR Part 12, using the current authority of simplified procedures for certain commercial items falling under the threshold of \$7 million.<sup>28</sup> Contracts would be limited to less than 12 months. This talent marketplace tool would leverage the best practices of commercial industry and presents an opportunity for DoD to gain access to the gig economy. By eliminating unnecessary intermediaries and bureaucracy, DoD would be able to access the right talent faster and at lower cost.

## Implementation

### Legislative Branch

- Authorize a 2-year, governmentwide pilot program for contracting directly with IT consultants via an online talent marketplace. Direct GSA and OMB to implement the pilot and report back to Congress on results.

### Executive Branch

Based on the results of the pilot, implement the following regulatory changes to permanently authorize the program.

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<sup>27</sup> Services are considered customized when a performance work statement, statement of objectives, or other form of government specific direction about how to perform the services is necessary to identify the services to be performed.

<sup>28</sup> Currently this authority exists in FAR 13.5, but Section 809 Panel recommendations in Volume 2 will consolidate all commercial buying policy into FAR Part 12. See *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations: Volume 2 of 3* (2018), Section 3: Simplified Commercial Source Selection.

- Change FAR/DFARS Part 13 to authorize the GPC as the purchasing *and* payment instrument for this pilot at the service level, in accordance with agency procedures and at the discretion of the Head of Contracting Activity (as identified in DFARS PGI 202.101).
- Create a new section FAR 12.7, Independent IT Consultant Services, that provides authority and guidance for contracting with IT consultants via the online talent marketplace. This change places it in the logical part of the FAR that primarily focuses on procurements of commercial products and services.
  - Contracts: Should take no longer than 2 weeks from solicitation to award and will follow these criteria:
    - **Qualification process for independent consultants:** Prequalify independent IT consultants based on professional qualifications, pricing, simplified past performance references on contracts of similar work, and National Agency Check with Inquiries (NACI) background check. Consultants must be the sole employee of their companies and will receive facilitated SAM registration as part of the onboarding process in the talent marketplace.
    - **Combined Public Announcement/Synopsis:** Agencies shall publicly post on Federal Business Opportunities (FedBizOpps) through an open continuous announcement the types of services desired and the process to become prequalified to perform IT Services categories in the online talent marketplace. FAR Part 12 contracts will be selected based on demonstrated competence and qualifications of prequalified consultants to perform the services at fair and reasonable prices. This combined open continuous announcement/synopsis will satisfy the synopsis requirements of FAR Subpart 5.207. Competition is established through market-based competition.
    - **Solicitations:** The contracting officer shall use a request for quote and to the maximum extent practicable include only those clauses:
      - Required to implement provisions of law or executive orders of commercial items, e.g., FAR 52.212-5.
      - Determined to be consistent with customary commercial practice, e.g., FAR 52.212-4.
    - **Response Requirements:** Requirements are posted to the talent marketplace and independent consultant(s) express interest, to include as applicable professional qualifications, pricing, and past performance references. To the greatest extent possible the services will be procured as *readily available*. If a primary weapons system Quality Assurance Surveillance Plan, or security clearance is required, the services will be considered *readily available with customization* and response time will be adjusted as appropriate.
    - **Basis of Award/Selection:** Use FAR 12.602 and abbreviated criteria to evaluate factors including technical, price, and past performance. Technical capability may be evaluated by how well the consultant’s resume meets the proposed government requirement instead of predetermined subfactors. A technical evaluation may include examination of

professional qualifications necessary for performance. Simplified past performance evaluation may be made on any reasonable basis, such as references or quality of work as assessed by the talent marketplace's online rating system of consultant job performance. Price reasonableness is based on multiple offers. Contracting officer will select the offer that is most advantageous to the government and briefly document the rationale for award.

- **Award:** Contracting Officer awards a two-page contract on a Standard Form 1449 contract that uses Block 27 to incorporate FAR 52.212-4, Contract Terms and Conditions Commercial Items.

### ***Implications for Other Agencies***

- The recommended changes to the FAR would apply to DoD and civilian agencies that use the FAR. Both DoD and civilian agencies will benefit from these recommendations.

## RECOMMENDED REPORT LANGUAGE

### SEC. \_\_\_\_. PILOT PROGRAM FOR AUTHORITY TO CONTRACT DIRECTLY WITH INFORMATION TECHNOLOGY CONSULTANTS.

This section would provide authority to implement a pilot program under which designated agencies may contract directly with independent information technology consultants in an expedited manner. This authority may be exercised either using the expedited contracting processes under the Simplified Procedures for Certain Commercial Items designated at section 3305 of title 41, United States Code, or section 2304(g) of title 10, United States Code, or by using the government purchase card as the purchasing and payment instrument. This section includes a provision that directs the establishment of an online talent marketplace to facilitate the process of identifying and contracting with independent information technology consultants.

The committee notes that work in the specialized discipline of information technology often requires unique expertise with state-of-the-art technologies best provided by independent consultants. These consultants are outside experts able to bring a fresh – often commercial – perspective to government programs or efforts. Many of these highly qualified professionals choose to work as independent contractors in the gig or freelance economy, often finding work through online talent marketplaces. The committee also notes the current government model no longer fits the way people work in the digital information economy, and that the government needs an alternative to its contracting practices for this digital market.

1 **SEC. \_\_\_\_ . PILOT PROGRAM FOR AUTHORITY TO CONTRACT DIRECTLY WITH**  
2 **INFORMATION TECHNOLOGY CONSULTANTS.**

3 (a) PILOT PROGRAM.—

4 (1) AUTHORITY.—The Director of the Office of Management and Budget shall  
5 implement a pilot program under which agencies designated under paragraph (3) may use  
6 expedited contracting authority in accordance with this section for contracting directly  
7 with independent information technology consultants. The objective of the pilot program  
8 shall be to enable Government-wide use of such expedited contracting authority.

9 (2) ONLINE TALENT MARKETPLACE.—To support the pilot program, the  
10 Administrator of the General Services Administration shall establish an online talent  
11 marketplace for use by agencies participating in the pilot program to contract directly  
12 with independent information technology consultants.

13 (3) DESIGNATED AGENCIES.—The Director shall designate which executive  
14 agencies are authorized to participate in the pilot program under this section. One of the  
15 agencies designated shall be the Department of Defense. Such designations shall be made  
16 not later than 60 days after the date of the enactment of this Act.

17 (b) DURATION.—

18 (1) EXPIRATION.—Except as provided in paragraph (2), the pilot program shall  
19 terminate three years after the date of the enactment of this Act.

20 (2) AUTHORITY FOR PERMANENCE.—The authorities under the pilot program  
21 under this section shall not terminate if, before the end of the period applicable under  
22 paragraph (1), the Director determines, based upon the experience under the pilot  
23 program, that those authorities should remain in effect.

1 (c) IMPLEMENTATION OF ONLINE TALENT MARKETPLACE.—The Administrator shall  
2 complete the implementation of the online talent marketplace and ensure it is available for use by  
3 the designated agencies under the pilot program within one year of the date of the enactment of  
4 this Act.

5 (d) METRICS.—The Director, in consultation with the Administrator and the designated  
6 agencies, shall establish and track metrics to be used to evaluate the effectiveness of the pilot  
7 program.

8 (e) ELEMENTS.—Under the pilot program, a designated agency —

9 (1) may use the online talent marketplace to identify and select pre-qualified  
10 independent information technology consultants; and

11 (2) may acquire the services of independent information technology consultants  
12 using either—

13 (A) an expedited contracting process, described in Subpart 12.7 of the  
14 Federal Acquisition Regulation, using the authority of Simplified Procedures for  
15 Certain Commercial Items for purchases designated at section 3305 of title 41,  
16 United States Code, or section 2304(g) of title 10, United States Code, as  
17 applicable to the agency implementing the program; or

18 (B) the Government Purchase Card as the purchasing and payment  
19 instrument.

20 (f) REPORTING REQUIREMENTS.—The Director shall submit to the appropriate  
21 congressional committees the following reports:

1 (1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of  
2 this Act, the Director in consultation with the Administrator shall submit a report  
3 providing—

4 (A) a comprehensive description of the pilot program;

5 (B) the metrics to be used to assess the effectiveness of the pilot program;

6 and

7 (C) such other matters relating to the pilot program as the Director  
8 considers appropriate.

9 (2) FINAL REPORT.—Not later than three years after enactment of this Act, the  
10 Director in consultation with the Administrator shall submit a report that includes the  
11 following:

12 (A) An updated comprehensive description of the pilot program.

13 (B) An assessment of the pilot program using the metrics established  
14 pursuant to subsection (d).

15 (C) The Director’s final assessment of whether program should continue.

16 (D) Recommendations for any changes to, or exemptions from, laws  
17 necessary to improve the expedited contracting authority under the pilot program.

18 (g) DEFINITION.—In this section, the term “appropriate congressional committees”  
19 means the following:

20 (1) The Committees on Armed Services of the Senate and House of  
21 Representatives.

1                   (2) The Committee on Homeland Security and Governmental Affairs of the  
2                   Senate and the Committee on Oversight and Government Reform of the House of  
3                   Representatives.

4                   (3) The Committee on Small Business and Entrepreneurship of the Senate and the  
5                   Committee on Small Business of the House of Representatives.



## RECOMMENDED REGULATORY REVISIONS

### 1.603 Selection, appointment, and termination of appointment for contracting officers.

#### 1.603-1 General.

41 U.S.C. 1702(b)(3)(G) requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 05-01, Developing and Managing the Acquisition Workforce, April 15, 2005.

#### 1.603-2 Selection.

In selecting contracting officers, the appointing official shall consider the complexity and dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include—

- (a) Experience in Government contracting and administration, commercial purchasing, or related fields;
- (b) Education or special training in business administration, law, accounting, engineering, or related fields;
- (c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;
- (d) Specialized knowledge in the particular assigned field of contracting; and
- (e) Satisfactory completion of acquisition training courses.

#### 1.603-3 Appointment.

(a) Contracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) Agency heads are encouraged to delegate authority for micro-purchase and simplified procedures described at FAR Subpart 12.7 to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

## **Subpart 12.7 – Pilot Program for Contracting Directly with Independent Information Technology (IT) Consultants Through General Services Administration’s (GSA) Online Talent Marketplace**

### **12.701 – General**

This subpart provides a pilot program for an expedited contracting authority for independent IT consultants facilitated by GSA’s online talent marketplace of qualified independent IT consultants. An Independent Consultant is a self-employed independent contractor.

(a) This subpart authorizes, as a pilot program, use of simplified procedures for the acquisition of commercial services in amounts greater than the simplified acquisition threshold but not exceeding \$750,000 including options, if the services sought are for direct contracting with an independent IT consultant using the GSA online talent marketplace. The purpose of this pilot program is to allow the federal government to award through a talent marketplace independent IT consultants in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

(b) The policies and procedures in this subpart include the authority provided by Section 4202, P.L. 104-106 for acquiring certain commercial products or services exceeding the simplified acquisition threshold using the simplified acquisition procedures contained in FAR Subpart 13.5

(c) The period of performance for an independent IT consultant contract shall not exceed 12 months.

(d) For the period of this pilot, contracting activities must employ the simplified procedures authorized by this pilot program to the maximum extent practicable.

### **12.702 – Taking advantage of the independent IT consultant talent marketplace**

(a) Work in the specialized discipline of IT services often requires unique expertise of state-of-the-art technologies best provided by independent consultants, outside experts able to bring a fresh perspective to programs or efforts.

(b) GSA will establish an IT Consultant Talent Marketplace with pre-qualified independent IT consultants to procure commercial services through an e-commerce portals for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial IT services. Independent IT consultants have been pre-qualified based on professional qualifications, pricing, simplified past performance references on contracts of similar work, and National Agency Check with Inquiries (NACI) background check. Consultants must be the sole employee of their companies to be included in the talent marketplace.

(c) To simplify purchases and avoid unnecessary costs and administrative burdens for agencies and contractors, contracting officers shall use the procedures in this subpart to acquire commercial IT consultant services. This subpart includes the authority to use simplified acquisition procedures (Part 13.5)..

(d) Independent IT Consultant services may be purchased with a government purchase card (GPC) as the transaction method for ordering online via the Talent Marketplace, with no additional FAR-based contract necessary. Using a GPC as the procurement transaction method would align with commercial practices, replace the paper-based contracting process, and reduce procurement lead times.

(e) Alternatively, independent IT consultants may be purchased with a simplified contract with the key flexibilities summarized below. Requirements for market research and competition are satisfied by the nature of the online talent marketplace; no additional documentation to that effect is required.

(1) Combined Public Announcement/Synopsis: Agencies shall publicly post on Federal Business Opportunities (FedBizOpps) through an open continuous announcement the types of services desired and the process to become pre-qualified to perform independent IT Services categories in the online talent marketplace. This combined open continuous announcement/synopsis will satisfy the synopsis requirements of FAR Subpart 5.2—Synopses of Proposed Contract Actions.

(2) Solicitations: The contracting officer may use a Request for Quote (RFQ) posted on the Talent Marketplace and to the maximum extent practicable include only those clauses that are:

- Required to implement provisions of law or executive orders of commercial items, e.g., FAR 52.212-5.
- Determined to be consistent with customary commercial practice, e.g., FAR 52.212-4.

(3) Response Requirements: Requirements are posted to the talent marketplace and independent consultant(s) express interest, to include as applicable professional qualifications, pricing, and past performance references.

- Basis of Award/Selection: Use FAR 12.602 and abbreviated criteria to evaluate factors including technical, price, and past performance. Technical capability may be evaluated by how well the consultant's resume meets the proposed government requirement instead of predetermined subfactors. A technical evaluation may include examination of professional qualifications necessary for performance. Simplified past performance evaluation may be made on any reasonable basis, such as references or quality of work as assessed by the talent marketplace's online rating system of consultant job

performance. Price reasonableness is based on multiple offers. Contracting officer will select the offer that is most advantageous to the government and briefly document the rationale for award.

- Award: Contracting Officer awards a two-page contract on a Standard Form (SF) 1449 contract that uses Block 27 to incorporate FAR 52.212-4, "Contract Terms and Conditions -- Commercial Items."

### **Subpart 13.3 -- Simplified Acquisition Methods**

#### **13.301 -- Governmentwide Commercial Purchase Card.**

(a) Except as provided in 32.1108(b)(2), the Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with 1.603-3. The card may be used only for purchases that are otherwise authorized by law or regulation.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and that are consistent with the terms and conditions of the current GSA credit card contract. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under Part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor. See 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

(c) The Governmentwide commercial purchase card may be used to --

- (1) Make micro-purchases;
- (2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- (3) Make payments, when the contractor agrees to accept payment by the card (but see 32.1108(b)(2))
- (4) Make purchases and payments for the pilot program for contracting directly with independent information technology (IT) consultants through GSA's online talent marketplace (see FAR Subpart 12.7)

### **32.1108 – Payment by Governmentwide Commercial Purchase Card.**

A Governmentwide commercial purchase card charge authorizes the third party (*e.g.*, financial institution) that issued the purchase card to make immediate payment to the contractor. The Government reimburses the third party at a later date for the third party's payment to the contractor.

(a) The clause at 52.232-36, *Payment by Third Party*, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the third party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment, and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the third party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603-3) shall take action to remove the charge, such as by disputing the charge with the third party or by requesting that the contractor credit the charge back to the Government under the contract.

(b)

(1) Written contracts to be paid by purchase card should include the clause at 52.232-36, *Payment by Third Party*, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(2)

(i) When it is contemplated that the Governmentwide commercial purchase card will be used as the method of payment, and the contract or order is above the micro-purchase threshold, contracting officers or individual designated in accordance with FAR 1.603-3(b) are required to verify (by looking in the System for Award Management (SAM)) whether the contractor has any delinquent debt subject to collection under the Treasury Offset Program (TOP) at contract award and order placement. Information on TOP is available at <http://fms.treas.gov/debt/index.html>.

(ii) The contracting officer or individual designated in accordance with FAR 1.603-3(b) shall not authorize the Governmentwide commercial purchase card as a method of payment during any period the SAM indicates that the contractor has delinquent debt subject to collection under the TOP. In such cases, payments under the contract shall be made in accordance with the clause at 52.232-33,

Payment by Electronic Funds Transfer— System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management, as appropriate (see FAR 32.1110(d)).

(iii) Contracting officers or individual designated in accordance with FAR 1.603-3(b) shall not use the presence of the SAM debt flag indicator to exclude a contractor from receipt of the contract award or issuance or placement of an order.

(iv) The contracting officer or individual designated in accordance with FAR 1.603-3(b) may take steps to authorize payment by Governmentwide commercial purchase card when a contractor alerts the contracting officer that the SAM debt flag indicator has been changed to no longer show a delinquent debt.

(c) The clause at 52.232-36, Payment by Third Party, requires that the contract--

- (1) Identify the third party and the particular purchase card to be used; and
- (2) Not include the purchase card account number. The purchase card account number should be provided separately to the contractor.

### **32.1110 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at—

(1) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, in solicitations and contracts that include the provision at 52.204-7 or an agency clause that requires a contractor to be registered in the System for Award Management (SAM) database and maintain registration until final payment, unless—

(i) Payment will be made through a third party arrangement (see 13.301 and paragraph (d) of this section); or

(ii) An exception listed in 32.1103(a) through (i) applies.

(2)(i) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management, in solicitations and contracts that require EFT as the method for payment but do not include the provision at 52.204-7, System for Award Management, or a similar agency clause that requires the contractor to be registered in the SAM database.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (b)(1) of the clause, a particular time after award, such as a fixed number of days, or event such as the submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (b)(1) of the clause shall be “no later than 15 days prior to submission of the first request for payment.”

(b) If the head of the agency has authorized, in accordance with 32.1106, to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232-33 or 52.232-34 that clearly addresses the nondomestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232-35, Designation of Office for Government Receipt of Electronic Funds Transfer Information, or a clause substantially the same as 52.232-35 that clearly informs the contractor where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232-36, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232-36, to the extent the contractor agrees to accept that method of payment. When the clause at 52.232-36 is included in a solicitation or contract, the contracting officer shall also insert the clause at 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management, as appropriate.

(e) If the contract or agreement provides for the use of delivery orders, and provides that the ordering office designate the method of payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232-37, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management;

(2) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management; and

(3) 52.232-36, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract or agreement, the contracting officer, or ordering office (if the contract provides for choices between EFT clauses on individual orders or classes of orders), shall include or identify the EFT clause appropriate for each office and shall identify the applicability by disbursing office and line item.

(g) If the solicitation contains the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management, and an offeror is required to submit EFT information prior to award—

(1) The contracting officer shall insert in the solicitation the provision at 52.232-38, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same; and

(2) For sealed bid solicitations, the contracting officer shall amend 52.232-38 to ensure that a bidder's EFT information—

(i) Is not a part of the bid to be opened at the public opening; and

(ii) May not be released to members of the general public who request a copy of the bid.