Recommendation 74: Eliminate redundant documentation requirements or superfluous approvals when appropriate consideration is given and documented as part of acquisition planning.

Problem

Several documents or iterative approvals are required by multiple regulations despite the fact that they are already included in the Acquisition Plan. These requirements create unnecessary work for contracting officers, PMs, and approving officials, and they add little value to the end product or service.

Subrecommendation 74a: Eliminate duplicative documentation when rationale is approved as part of an acquisition strategy or acquisition plan. Delegate authority to approve statutory or regulatory determinations documented within the acquisition strategy or acquisition plan to the approving authority of the strategy or plan.

Background

Acquisition planning is required by statute (10 U.S.C. § 2305 (a)(1)(A)(ii)) and implemented through FAR 7.102 and DFARS 207.1 to promote and provide for acquisition of commercial items and full and open competition, to the maximum extent practicable, and for the selection of appropriate contract types. Acquisition planning should begin as soon as the agency identifies a need and culminate in a written acquisition plan designed to make sure the acquisition can meet its objectives.[1] The acquisition plan is a detailed document with prescribed contents detailed in the FAR, including all the technical, business, and management aspects of the acquisition, as well as any other influences. According to the *Defense Acquisition Guidebook* (DAG),

> *An Acquisition Plan is prepared by the Contracting Officer and formally documents the specific actions necessary to execute the approach delineated in the approved Acquisition Strategy. The Acquisition Plan serves as the basis for contractual implementation as referenced in Federal Acquisition Regulation (FAR) Subpart 7.1 and Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 207.1.*[2]

Discussion

PMs and contracting officers create many planning documents twice—once for the acquisition plan and once for the contract file—then wait for them to be approved, often through separate review chains. This duplication is driven by redundant FAR or DFARS sections. Table 7-2 illustrates this redundancy with some examples of planning required for the acquisition plan (as detailed in FAR Part 7) as well as in other FAR or DFARS subparts.

[1] General Procedures, FAR 7.104. Contents of Written Acquisition Plans, FAR 7.105.
[2] DAU, *Defense Acquisition Guidebook,* September 16, 2013, accessed June 25, 2018, https://at.dod.mil/sites/default/files/documents/DefenseAcquisitionGuidebook.pdf.

Table 7-2. Examples of Redundancy in FAR-Directed Acquisition Planning

	Acquisition Planning Requirements	Other FAR-directed and Unnecessary Requirements
Warranty	FAR 7.105(b)(14)(ii)	DFARS 246.704(2)
Options	FAR 7.105(a)(5)	FAR 17.205
Past Performance Evaluation	FAR 7.105(b)(4)	FAR 15.304(c)(3)(ii)
Electronic and Information Technology Accessibility Standards	FAR 7.103(q)	FAR 39.203
Ozone Depleting Products	FAR 7.103(p)(2)	FAR 11 and FAR 23.8
Consolidation	FAR 7.105(b)(1)(iv)	FAR 7.107-2(b)

In addition to creating more work for contracting officers and PMs, each of these duplications wastes the time of everyone involved in reviewing the various packages. The FAR allows the acquisition plan to be approved at one level above the contracting officer, but the military services typically assign this responsibility to a higher authority, such as the program executive officer, who oversees the PM, or many levels above the contracting officer in the contracting chain.

If a contracting officer has generated documentation demonstrating planning or compliance required by the acquisition plan, it is unnecessary and wasteful to repeat the same process for a different FAR subpart. A single document should suffice for the contract file. While not exhaustive, the six sections below briefly discuss examples of this duplication identified in Table 7-2.

Warranty

Warranties must be justified for both the acquisition plan and agency procedures related to quality assurance. A warranty is "a promise or affirmation given by a contractor to the government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract."[3]

FAR 46.702 indicates,

> *(a) The principal purposes of a warranty in a Government contract are—*
> *(1) To delineate the rights and obligations of the contractor and the Government for defective items and services; and*
> *(2) To foster quality performance.*
> *(b) Generally, a warranty should provide --*
> *(1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the Government; and*
> *(2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.*

[3] Definitions, FAR 2.101.

> *(c) The benefits to be derived from a warranty must be commensurate with the cost of the warranty to the Government*

This subpart goes on to say that warranties must be approved in accordance with agency procedures; however, the requirement for such documentation already exists in the acquisition plan.[4]

Options

Options must be justified for both the acquisition plan and procedures related to special contracting methods. FAR 7.105(a)(5) requires the acquisition plan to describe "the basis for establishing delivery or performance-period requirements." Additionally, FAR 7.105(b)(5)(i) requires use of options to be discussed as part of *acquisition considerations* in the acquisition plan. FAR 17.205 requires contracting officers to justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price. If included in the acquisition plan under FAR 7, the additional contract file documentation required by FAR 17 is unnecessary.

Past Performance Evaluation

Past performance evaluation is also required for both the acquisition plan and procedures related to source selection. FAR 15.304(c)(3)(ii) requires past performance to be considered in negotiated, competitive source selections unless the contracting officer documents the reasons it is not an appropriate evaluation factor. Because FAR 7.105(b)(4) requires the acquisition plan to "discuss source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives" the documentation required in FAR 15 is unnecessarily duplicative.

Electronic and Information Technology Accessibility Standards

Agencies acquiring electronic information technology must ensure that federal employees and members of the public with disabilities have comparable access and use of information to those without disabilities. This requirement is mandated by the Rehabilitation Act of 1973 and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards and implemented by FAR 39.2.[5]

Conflicting regulatory guidance on the timing of exceptions to these requirements creates confusion and unnecessary work in drafting the acquisition plan. FAR 39.203 requires acquisitions comply with accessibility standards at 36 CFR Part 1194 unless a determination of an exception is made prior to contract award. FAR 7.103(q) requires agency heads to ensure acquisition planning addresses EIT accessibility standards in requirements planning—long before the contract award. If an exception applies, it should be addressed during the acquisition planning phase, included as part of the acquisition plan, and omitted as a separate, later determination.

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[4] DFARS 246.704(2) states, "The chief of the contracting office shall approve the use of a warranty only when the benefits are expected to outweigh the cost." FAR 7.105(b)(14)(ii) states, "The reliability, maintainability, and quality assurance requirements, including any planned use of warranties."

[5] Electronic and Information Technology, 29 U.S.C. 794d. Information and Communication Technology Standards and Guidelines, 36 CFR part 1194.

Ozone-Depleting Products

DoD is prohibited by law from contracting for an ozone-depleting substance unless deemed necessary by the senior acquisition official for the procurement.[6] The FAR implements this law in several sections, including requiring compliance as part of acquisition planning, describing the agency need, and again under FAR 23.8, Ozone-Depleting Substances and Greenhouse Gases.[7] Including multiple references to this requirement throughout the FAR is confusing and an inefficient means to achieve an end. When addressed during acquisition planning, the determination should be partof the acquisition plan.

Consolidation

Multiple determinations are required for contract consolidation. Contract consolidation is,

> *use of a solicitation to obtain offers for a single contract or a multiple award contract: (A) to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; or (B) to satisfy requirements of the Federal agency for construction projects to be performed at 2 or more discrete sites.*[8]

By statute, contracts may not be consolidated without the senior procurement executive or chief acquisition officer for the agency making a determination that consolidation is necessary and justified. There are many reasons why an agency may conclude that consolidation is necessary and justified, including cost, improved quality, or shortened acquisition cycle. Rationale for determining whether consolidation is necessary and justified is addressed as part of acquisition planning and must be documented as part of the written acquisition plan in accordance with FAR 7.105(b)(1)(iv). Once documented as part of the written acquisition plan, there is no relief given to the separate determination required by FAR 7.107. This additional determination delays acquisitions by requiring more preparation and staff time. When consolidation is addressed during acquisition planning, the determination should be part of the acquisition plan, and a separate determination should not be required.

Conclusions

One of the main issues with government acquisition is the copious amount of documentation and approvals required. The FAR and other regulations often create duplicative and conflicting requirements to demonstrate compliance with a single statutory mandate. This redundancy creates unnecessary paperwork and wastes time. Much of this duplication comes from overlap between the acquisition strategy and acquisition plan, or between one of these foundational documents and additional regulatory procedures. Eliminating duplicative documentation and obsolete requirements

[6] Definitions, 10 U.S.C. 2302 note.
[7] FAR 7.103(p) indicates the Head of the Agency is responsible for "ensuring that agency planners…comply with the policy in 11.002(d) regarding procurement of…and non-ozone-depleting products, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluoro-carbons." FAR 11.002(d), indicates, "When agencies acquire products and services, various statutes and executive orders (identified in part 23) require consideration of sustainable acquisition (see subpart 23.1) including…(vi) Non-ozone depleting substances, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons (subpart 23.8)."
[8] Consolidation of Contract Requirements, 15 U.S.C. 657q.

would reduce this redundancy. Further, when rationale must be documented or approved by a higher authority, it should be consolidated into one place with a singular approval authority. The elimination of superfluous documentation and time required to garner approval will reduce procurement lead time.

Subrecommendation 74b: Revise statutory and regulatory requirements for contract type determination when already approved as part of a written acquisition plan or acquisition strategy, and when a written acquisition plan or acquisition strategy is not required, streamline contract type determinations to a single approval authority no higher than the Chief of the Contracting Office.

Background

Selection of contract type can be one of the most important decisions made by the PM and contracting officer. Many factors need to be considered when selecting the contract type, including acquisition history, complexity and type of the requirement, and period of performance. The contract type signifies not only the risk the government is willing to accept but also the certainty of the defined requirement and anticipated performance outcomes. In instances when more complex contract types are selected, such as incentive fee or award fee, the contract type can act as a tool to motivate the contractor to increase speed of delivery, reduce cost, or enhance performance.

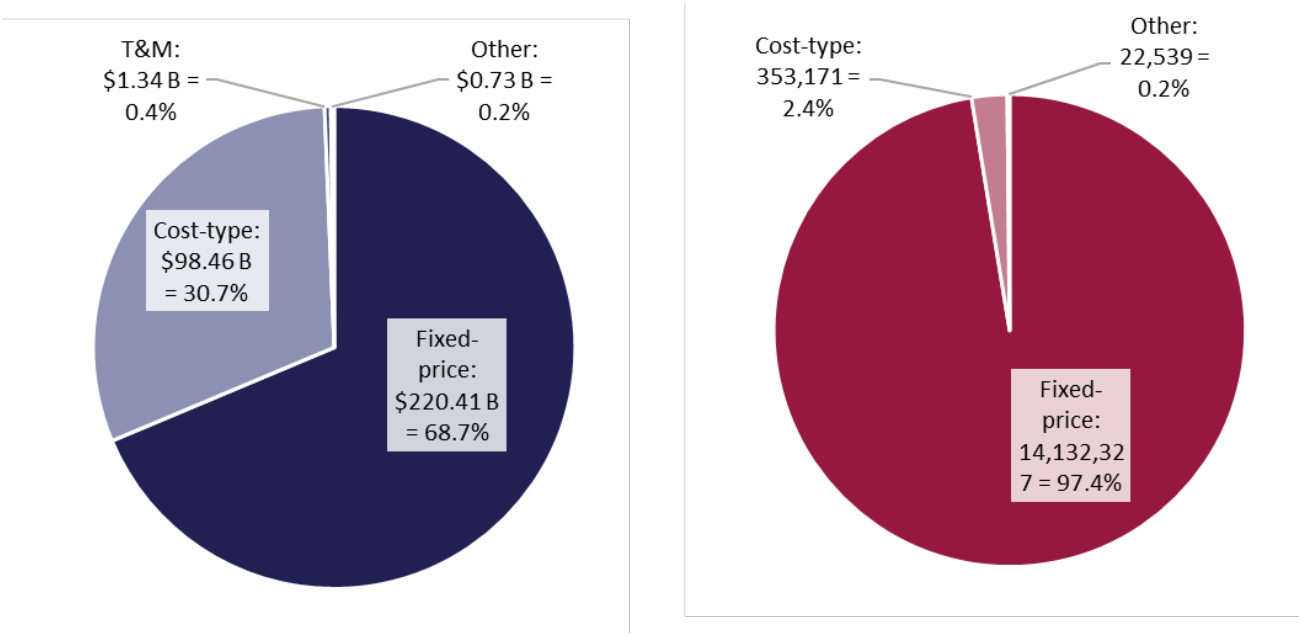
FAR 16 outlines various contract types and the circumstances when each may be deemed appropriate given the nature of the acquisition. The major categories of contract types are fixed-price and cost reimbursement with variations covering circumstances such as contractor incentives or market fluctuation, and, to a lesser degree, time, and material.[9] Depending on the type of contract selected, the authority to approve certain contract types can be many levels above the contracting officer. This requirement for top-level approval can cause delays in early acquisition phases or even act as a deterrent to suitable contract type selection.

Fixed-price contracts are the preferred and most used contract type, whether measured as dollar obligations or contract actions. Figure 7-2 illustrates the extent of DoD's use of these contract types during fiscal year 2017.[10]

[9] FAR 16.202-1 describes a firm-fixed-price contract as one that "provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties." FAR 16.301-1 describes a cost reimbursement contract as one which provides "for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer." FAR 16.601(b) describes a time and materials contract as one that "provides for acquiring supplies or services on the basis of— (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) Actual cost for materials."

[10] Fixed-price includes firm-fixed-price as well as variations, including: fixed-price award fee, fixed-price incentive fee, fixed-price level of effort, fixed-price redetermination, and fixed-price with economic price adjustment. Cost type includes cost only as well as variations, including: cost-plus award fee, cost-plus fixed fee, cost-plus incentive fee, and cost sharing.

Figure 7-2. Comparison of DoD Contract Dollar Obligations and DoD Contract Actions, FY 2017[11]



Despite the preponderance of fixed-price DoD contract actions and obligations, recent law has further encouraged this contract type. The FY 2017 NDAA explicitly establishes a preference for fixed-price contracts and requires a contracting officer to gain approval from the Service acquisition executive or equivalent when entering into cost reimbursement contracts exceeding $50 million, with the threshold lowering to $25 million after fiscal year 2019.[12]

Discussion

Similar to previous examples, multiple instances exist for which the FAR requires duplicative contract type determinations beyond the content of the written acquisition plan. FAR 7.105(b)(3) requires the acquisition plan to address the following:

> *Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, see 16.103(d) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The Contracting Officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.*

This requirement is further emphasized with the requirement for the contract file to include rationale for the contract type selection in the acquisition plan, when an acquisition plan is required.[13] FAR 16.203-3 requires additional documentation for fixed-price contracts with economic price adjustment, which should be supported in the rationale contained in the acquisition plan. FAR 16.401(d) requires

[11] Data from FPDS, extracted September 19, 2018.
[12] Section 829 of FY 2017 NDAA, Pub. L. No. 114-328 (2016).
[13] Negotiating Contract Type, FAR 16.103(d)(1).

the head of the contracting activity to sign a determination and finding for incentive and award-fee contracts. Justifying their use is in the best interest of the government. Additionally, FAR 16.601(d) requires the head of the contracting activity approve a determination and finding for time-and-material contracts exceeding 3 years.

The rationale for contract selection already must be thoroughly documented in the acquisition plan. This documentation is a non-value-added, time-consuming processes when duplicated outside the acquisition plan. The additional determination and finding requires more time preparing and staffing a duplicative document to support a solicitation and contract, when often the secondary approval authority would have already reviewed or been in the staffing chain of the acquisition plan.

Conclusion

Multiple instances of redundant, time-consuming contract type approvals exist within the FAR, e.g., economic price adjustment, time and materials greater than 3 years, and incentive or award fee. Further, the FAR identifies the acquisition plan as the appropriate place for documenting the selected contract type. Additional documentation and approvals at levels other than the contracting officer categorically undermine contracting officers' authority, knowledge, and experience with the acquisition. The redundancies hinder the contracting officer's ability to exercise business acumen and delay the procurement process; therefore, they should be revised. Further, inconsistent approval authorities for various contract types, in particular approval authorities many levels above the contracting officers or outside contracting officers' immediate chain of command, cause confusion and further delays in the precontract award phase. When an approved acquisition plan is not required, the contract type determinations should have a single approval path no higher than the chief of the contracting office.

Subrecommendation 74c: Revise 10 U.S.C. 2304a(d) and 41 U.S.C. 4103(d) to eliminate requirement for approval from the head of the agency for single-source task-order or delivery-order contracts.

Background

Section 843 of the FY 2008 NDAA included, among other requirements, prohibition of awarding single-source task order or delivery order contracts. This statutory requirement at 10 U.S.C. § 2304a(d) is implemented under FAR 16.504(c)(1). A task-order or deliver-order contract is used when the government has a specified requirement with an indefinite quantity, within stated limits, of supplies or services during a fixed period, also referred to as an indefinite-quantity contract. The government subsequently places orders for individual requirements as needed. Quantity limits may be stated as number of units or as dollar amounts. The FAR indicates a preference for multiple awards when executing an indefinite-quantity contract, meaning contracting officers award to a pool of qualified contractors who will receive future orders for specific quantities once the quantity is known.[14] This practice ensures continuous competition when orders are placed after the initial indefinite-quantity contract is awarded.

[14] Indefinite-Quantity Contracts, FAR 16.504(a)&(c).

Discussion

The contracting officer is responsible for determining the number of awardees as part of acquisition planning. Further, "The Contracting Officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file."[15] The FAR then contradicts itself by requiring the head of the agency to make a written determination that,

> *(i) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;*
> *(ii) The contract provides only for firm fixed price (see 16.202) task or delivery orders for—*
> *(A) Products for which unit prices are established in the contract; or*
> *(B) Services for which prices are established in the contract for the specific tasks to be performed;*
> *(iii) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or*
> *(iv) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.*

The FAR contradicts itself by giving the contracting officer authority to make this determination and then later takes it away, reserving the determination for a higher authority. This authority requires concurrence and eventual approval five levels above the contracting officer.

Acquisition plan content requirements, outlined at FAR 7.105, address indefinite-quantity contract preferences in multiple sections. First, FAR 7.105(b)(2) addresses competition and "how competition will be sought, promoted, and sustained throughout the course of the acquisition." Under FAR 7.105(b)(3), the acquisition plan must address "the rationale for the selection of contract type." If an indefinite-quantity contract is selected, whether for single- or multiple-award preference, the acquisition plan is required to address the rationale for the selection in conjunction with the acquisition risks, industry support, competition maximization objectives, and other concerns. The acquisition plan does so more comprehensively than the determination required by FAR 16. The requirement to seek a head of the agency determination for single-source task order or delivery order contracts is both duplicative and unduly burdensome.

Conclusion

FAR 16.504(c)(1) is contradictory, first delegating responsibility for determining the number of awardees to the contracting officer, then reserving the determination for a higher authority. Additionally, the written acquisition plan already requires the planning team to address the salient components of FAR 16. The statutory requirement to obtain head of the agency approval for single-source task-order or delivery-order contracts exceeding $112 million should be revised and FAR 16.504(c)(1) should be repealed.

[15] Indefinite-Quantity Contracts, FAR 16.504(c)(1)(ii)(A)&(C).

Subrecommendation 74d: Direct DoD to justify, consolidate, or eliminate requirements in the FAR and DFARS relative to acquisition plans and acquisition strategies.

Problem

FAR Part 7 establishes requirements for acquisition planning and contents of an acquisition plan, but this regulation has become overly complex and overlaps with other subparts of the FAR and DoD Instructions (DoDIs), especially DoDI 5000.02, 5000.74, and 5000.75, relative to acquisition strategies.

Background

DoD must report to Congress annually on major defense acquisition programs and does so using data collated in program acquisition strategies. According to the DAG,

> *The Acquisition Strategy is a top-level description, in sufficient detail to allow senior leadership and the Milestone Decision Authority (MDA) to assess whether the strategy makes good business sense, effectively implements laws and policies, and reflects management's priorities.* [16]

DoD implements acquisition strategy requirements through FAR 34.004 and DoDI 5000.02 for Major System Acquisitions and through FAR 37 and DoDI 5000.74 for services contracts. Yet another DoDI, 5000.75, governs acquisition strategy requirements for defense business systems. The FAR also requires the acquisition strategy for major systems be prepared in accordance with Subpart 7.1, the same subpart that governs acquisition plans and indicates that the strategy "shall qualify as the acquisition plan for the major system acquisition."[17] According to the DAG, "in practice, DoD Components often prefer to provide a more general acquisition strategy to the milestone decision authority (MDA) for approval and choose to prepare a separate, more detailed [acquisition plan]."[18] Further, DoD implements acquisition strategy requirements for service contracts through FAR 37 and DoDI 5000.74.

Both the acquisition strategy and the acquisition plan include statutory and regulatory components, but their purposes differ. The acquisition strategy is a higher level document that delineates programmatic goals for full lifecycle performance. The acquisition plan is more detailed and focuses on the business arrangement structured in the contemplated contract. Table 7-3 compares the two documents.

Table 7-3. Summary of Distinctions between the Acquisition Strategy and Acquisition Plan[19]

	Acquisition Strategy	Acquisition Plan
Required by	DoDI 5000.02, Enclosure 2, paragraphs 5(c) and 6(a)	FAR 7.1
Required for	All acquisition categories	Contracting or procuring for development activities when the total cost of all contracts for the acquisition program is estimated

[16] DAU, *Defense Acquisition Guidebook,* September 16, 2013, accessed June 25, 2018, https://at.dod.mil/sites/default/files/documents/DefenseAcquisitionGuidebook.pdf.
[17] Acquisition Strategy, FAR 34.004.
[18] DAU, *Defense Acquisition Guidebook,* September 16, 2013, accessed June 25, 2018, https://at.dod.mil/sites/default/files/documents/DefenseAcquisitionGuidebook.pdf.
[19] Ibid.

	Acquisition Strategy	Acquisition Plan
		at$10 million or more; procuring products or services when the total cost of all contracts is estimated at$50 million or more for all years or $25 million or more for any one fiscal year; and other procurements considered appropriate by the agency.
Approval Authority	MDA	Component Acquisition Executive or designee in accordance with Agency FAR supplements.
Purpose	Describes overall strategy for managing the acquisition program. The acquisition strategy describes the PM's plan to achieve programmatic goals and summarizes the program planning and resulting program structure.	Comprehensive plan for implementing the contracting strategy.
Use	Required at program initiation. The acquisition strategy should be updated for all subsequent milestones, at the full-rate production decision review, and whenever the approved strategy changes.	Integrates the efforts of all personnel responsible for significant aspects of the contractual agreement. The purpose is to ensure that the government meets its needs in the most effective, economical, and timely manner.
Level of Detail	Strategy level. Needed by MDA for decision-making. Also planning level for some discrete information requirements.	Execution level. Provides the detail necessary to execute the approach established in the approved acquisition strategy and to guide contractual implementation and conduct acquisitions.
Content	Prescribed by DoDI 5000.02 ; additional guidance in the DAG	Prescribed by FAR 7.1; DFARS 207
Individual Responsible for Preparing the Document	PM	Person designated as responsible.

Discussion

Acquisition planning is a multifunctional team effort. The results of planning efforts are detailed in the acquisition plan and include "the technical, business, management, and other significant considerations that will control the acquisition."[20] The FAR is itself a comprehensive and detailed set of rules in which various subparts often create overlapping requirements. Notably, the acquisition strategy and the acquisition plan overlap to such an extent that is unclear why all this documentation is necessary, especially when it bogs down the acquisition process.

Statute requires agencies to document aspects of both an acquisition plan and acquisition strategy, but there is no prohibition to doing so in one document. In the case of major system acquisitions, the acquisition strategy actually qualifies as the acquisition plan.[21] Table 7-4 identifies the required content of both documents. Some similarities within the documents present clear opportunities for streamlining. Duplicative requirements include contract type determination (including a discussion on multiyear procurement and business strategies), risk management, market research (including available sources), and background and objectives such as cost and procurement history.

Table 7-4. Acquisition Plan and Acquisition Strategy Requirements and Commonalities

Acquisition Plan Contents[22]	Statutory Requirements for an Acquisition Strategy[23]
▪ Acquisition background and objectives: – Statement of need – Applicable conditions – Cost – Capability or performance – Delivery or performance-period requirements – Trade-offs – Risks – Acquisition streamlining ▪ Plan of action: – Sources – Competition – Contract type selection – Source-selection procedures – Acquisition considerations – Budgeting and funding – Product or service descriptions – Priorities, allocations, and allotments – Contractor versus government performance – Inherently governmental functions – Management information requirements – Make or buy – Test and evaluation	▪ Acquisition approach ▪ Benefit analysis and determination ▪ Business strategy ▪ Contracting strategy – Contract type determination – Termination liability estimate ▪ Cooperative opportunities ▪ General equipment valuation ▪ Industrial base capabilities considerations ▪ Intellectual property strategy ▪ Market research ▪ Modular open systems approach ▪ Multiyear procurement ▪ Risk management ▪ Small Business Innovation Research/Small Business Technology Transfer Program technologies

[20] Contents of Written Acquisition Plans, FAR 7.105.
[21] Acquisition Strategy, FAR 34.004.
[22] Adapted from FAR 7.105.
[23] Extracted from DoDI 5000.02, Enclosure 1, Table 2 (2017).

Acquisition Plan Contents[22]	Statutory Requirements for an Acquisition Strategy[23]
– Logistics considerations – Government-furnished property – Government-furnished information – Environmental and energy conservation objectives – Security considerations – Contract administration – Other considerations – Milestones for the acquisition cycle – Identification of participants in acquisition plan preparation	

Naval Sea Systems Command published an *Acquisition Strategy Guide* in April 2010, which calls out a single acquisition management plan (SAMP) combining the acquisition plan and acquisition strategy requirements into one document.[24] According to the guide, "Use of a SAMP is at the PEO's discretion for [Acquisition Category (ACAT)] I and II programs where the [Milestone Decision Authority] is Navy, but is highly recommended when there is a common approval authority for both [acquisition strategy] and [acquisition plan] such as ACAT III, IV, and [Abbreviated Acquisition Program] programs."[25] One former Navy official interviewed indicated that during his time as a procurement analyst, out of the more than 100 acquisition plans he reviewed, only one used the SAMP format.[26] For the Defense Information Systems Agency, the agency acquisition regulation supplement requires use of a combined, standard, or streamlined plan; however, as noted earlier, in the DAG, DoD acquisition planners often prefer to prepare separate documents.[27]

Conclusions

It is best for DoD and the individual Military Services to review the acquisition planning documentation requirements and reduce them to basics. DoD should focus documentation requirements on those required by statute or truly critical to "satisfying the mission need in the most effective, economical, and timely manner."[28] The growing demand for documentation should be reduced by eliminating requirements that are obsolete or not value added. DoD should compare these requirements with those in DoDI 5000.02, 5000.74, and 5000.75, then revise—and right size—these acquisition instructions to eliminate redundancy with FAR requirements or other unnecessary requirements.

[24] Naval Sea Systems Command, *Acquisition Strategy Guide v1.0,* April 2010, accessed October 10, 2018, http://www.dtic.mil/dtic/tr/fulltext/u2/a550109.pdf.
[25] Ibid, 18.
[26] Data collection interviews, conducted by Section 809 Panel Team 6: IT Acquisition, October 2018.
[27] DISA Acquisition Regulation Supplement (DARS), Subpart 7.103 indicates, "A written plan (combined AS/AP, standard, or streamlined) shall also be prepared for… (1) Acquisitions with a total value, including options, of $50M and above."
[28] Acquisition Strategy, FAR 34.004.

Implementation

Legislative Branch

- Revise Section 829 of the FY 2017 NDAA (Pub. L. No. 114–328; 10 U.S.C. § 2306 note), which requires senior acquisition executive approval for cost type contracts.
- Revise 10 U.S.C. § 2304a(d), which requires head of the agency approval for single source task order or delivery order contracts.
- Revise 41 U.S.C. § 4103(d) which requires head of the agency approval for single source task order or delivery order contracts.

Executive Branch

- Revise FAR and DFARS to explicitly eliminate separate determinations, when rationale documented in an approved acquisition plan or acquisition strategy. Delegate authority to approve determinations documented within the acquisition plan or acquisition strategy to the plan or strategy approving authority.
- Revise FAR and DFARS to eliminate contract type determinations when already approved as part of a written acquisition plan or acquisition strategy. When a written acquisition plan or acquisition strategy is not required, revise FAR and DFARS to delegate contract type determinations to a single approval authority no higher than the Chief of the Contracting Office.
- Direct DoD to consolidate or eliminate requirements in the FAR and DFARS relative to acquisition plans and Acquisition Strategies. DoD should compare these requirements with those in DoDI 5000.02, 5000.74, and 5000.75, then revise—and right size—these acquisition instructions to eliminate redundancy with FAR requirements or other unnecessary requirements. This study should begin no later than 180 days after passage of the Act, and conclude within 1 year.

Implications for Other Agencies

- The recommended changes to the statutes and 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. ___. ADMINISTRATIVE SIMPLIFICATION.

This section would revise procurement planning and compliance by making a number of repeals and amendments to current law. Specifically, this section would repeal Section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2306 note) to eliminate certain approval requirements for cost-type contracts. This section would also repeal Section 2304a(d) of title 10, United States Code and Section 4103(d) of title 41, United States Code, to eliminate determinations by the head of the agency before making a single source award of a task order or delivery order contract. This section would amend Section 326(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2302 note) to repeal the limitation of delegation of authority with respect to contracts requiring use of certain ozone-depleting substances. Further, this section would be amended to repeal expired reporting requirements. Finally, this section would require the Department of Defense to consolidate or eliminate redundant or unnecessary requirements in the Federal Acquisition Regulation, its defense supplement, and defense acquisition directives

This committee notes this section is intended to eliminate processes, reviews, and approvals that are redundant, non-value-added, or unduly restrictive, which ultimately reduce acquisition agility and delay delivery of capability to the warfighter. The committee expects these amendments would advance efforts to streamline acquisition procedures, reducing procurement lead time and associated costs while maintaining rigor in oversight.

SEC. ___. ADMINISTRATIVE SIMPLIFICATION.

(a) REPEAL OF APPROVAL REQUIREMENT FOR COST-TYPE CONTRACTS ABOVE A CERTAIN THRESHOLD.—

(1) REPEAL.—Section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2306 note) is amended by striking subsection (b).

(2) TECHNICAL AMENDMENT.—Such section is further amended by striking "(a) and all that follows through "to establish" and inserting "The Defense Federal Acquisition Regulation Supplement shall establish".

(b) REPEAL OF REQUIREMENT FOR CERTAIN DETERMINATIONS BY HEAD OF AGENCY BEFORE MAKING A SINGLE SOURCE AWARD OF A TASK OR DELIVERY ORDER CONTRACT EXCEEDING $112,000,000.—

(1) DEFENSE CONTRACTS.—Section 2304a(d) of title 10, United States Code, is amended by striking paragraph (3).

(2) CIVILIAN AGENCY CONTRACTS.—Section 4103(d) of title 41, United States Code, is amended by striking paragraph (3).

(c) REPEAL OF LIMITATION ON DELEGATION OF CERTAIN AUTHORITY WITH RESPECT TO CONTRACTS REQUIRING USE OF CERTAIN OZONE-DEPLETING SUBSTANCES.—

(1) LIMITATION ON DELEGATION.—Section 326(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2302 note) is amended by striking the second sentence of paragraph (3).

(2) EXPIRED REPORTING REQUIREMENT.—Such section is further amended by striking paragraphs (4) and (5).

(d) REDUCTION IN REGULATORY REDUNDANCY, ETC.—

(1) The Secretary of Defense shall revise the DFARS and defense acquisition directives as necessary—

(A) to eliminate redundancy in those documents with requirements in the FAR;

(B) to eliminate or reduce, to the extent possible, requirements (including requirements for documentation) in those documents that are redundant or unnecessary;

(C) with respect to the Acquisition Plan and Acquisition Strategy for a program or system, to provide for reduction and elimination of redundant requirements (including requirements for documentation) and, to the extent possible, for consolidation of the Plan and Strategy.

(2) DEFINITIONS.— In this section:

(A) DEFENSE ACQUISITION DIRECTIVES.—The term "defense acquisition directives" means the following:

(i) Department of Defense Instruction 5000.02.

(ii) Department of Defense Instruction 5000.74.

(iii) Department of Defense Instruction 5000.75.

(B) FAR.—The term "FAR" means the Federal Acquisition Regulation.

(C) DFARS.—The term "DFARS" means the defense supplement to the FAR.

(3) LIMITATION.—Paragraph (1) does not authorize the Secretary of Defense to eliminate a regulation that implements a requirement imposed by law or Executive order.

(4) DEADLINE.—The Secretary shall complete the actions required by paragraph (1) not later than one year after the date of the enactment of this Act.

RECOMMENDED REGULATORY REVISIONS

Recommendation 74a

Revise DFARS by adding proposed language below:

SUBPART 246.7—WARRANTIES

246.704 Authority for use of warranties.

(1) Unless included as part of an approved Acquisition Plan or Acquisition Strategy the chief of the contracting office must approve use of a warranty, except in acquisitions for—

(i) Commercial items (see FAR 46.709);

(ii) Technical data, unless the warranty provides for extended liability (see 246.708);

(iii) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or

(iv) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

(2) The chief of the contracting office shall approve the use of a warranty only when the benefits are expected to outweigh the cost.

Revise FAR by adding proposed language below:

Subpart 17.2 – Options

17.205 -- Documentation.

(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and shall include the justification document in the contract file unless included as part of an approved Acquisition Plan or an Acquisition Strategy.

Revise FAR by adding proposed language below:

Subpart 15.3 -- Source Selection

15.304 -- Evaluation Factors and Significant Subfactors.

[see DoD deviation below]

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must --

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A) (ii) and 41 U.S.C. 3306(c)(1)(B)) (also see Part 36 for architect-engineer contracts).

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 3306(c)(1)(A).

(3)

(i) Past performance, except as set forth in paragraph (c)(3)(iii) of this section, shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

[Deviation per DAR Tracking Number: 2013-O0018, 15.304-(c)(3)(i), Effective until incorporated in the FAR or DFARS or otherwise rescinded.]

215.304 Evaluation factors and significant subfactors (DEVIATION).

(c)

(3)

(i) In lieu of the threshold specified at FAR 15.304(c)(3)(i), except as provided at FAR 15.304(c)(3)(iii), evaluate past performance in source selections for negotiated competitive acquisitions as follows:

(A) For systems and operations support acquisitions expected to exceed $5,000,000;

(B) For services and information technology acquisitions expected to exceed $1,000,000; and

(C) For ship repair and overhaul acquisitions expected to exceed $500,000.

(ii) For solicitations that are not set aside for small business concerns, involving consolidation or bundling, that offer a significant opportunity for subcontracting, the contracting officer shall include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition. When documented as part of an approved Acquisition Plan or Acquisition Strategy no additional file documentation is required.

Revise FAR by adding proposed language below:

Subpart 39.2 – Electronic and Information Technology

39.203 Applicability.

(a) Unless an exception at 39.204 applies, acquisitions of EIT supplies and services must meet the applicable accessibility standards at 36 CFR part 1194.

(b)

(1) Exception determinations are required prior to contract award, except for indefinite-quantity contracts (see paragraph (b)(2) of this section).

(2) Exception determinations are not required prior to award of indefinite-quantity contracts, except for requirements that are to be satisfied by initial award. Contracting offices that award indefinite-quantity contracts must indicate to requiring and ordering activities which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (*e.g.,* vendor's or other exact website location).

(3) Requiring and ordering activities must ensure supplies or services meet the applicable accessibility standards at 36 CFR part 1194, unless an exception applies, at the time of issuance of task or delivery orders. Accordingly, indefinite-quantity contracts may include noncompliant items; however, any task or delivery order issued for noncompliant items must meet an applicable exception.

(c)

(1) When acquiring commercial items, an agency must comply with those accessibility standards that can be met with supplies or services that are available in the commercial marketplace in time to meet the agency's delivery requirements.

(2) Unless included as part of an Acquisition Plan IAW FAR 7.103(q) or Acquisition Strategy , the requiring official must document in writing the nonavailability, including a description of market research performed and which standards cannot be met, and provide documentation to the contracting officer for inclusion in the contract file.

39.204 Exceptions.

The requirements in 39.203 do not apply to EIT that--

(a) Is purchased in accordance with Subpart 13.2 (micro-purchases) prior to April 1, 2005. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

(c) Is acquired by a contractor incidental to a contract;

(d) Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or

(e) Would impose an undue burden on the agency.

(1) *Basis*. In determining whether compliance with all or part of the applicable accessibility standards in 36 CFR part 1194 would be an undue burden, an agency must consider--

(i) The difficulty or expense of compliance; and

(ii) Agency resources available to its program or component for which the supply or service is being acquired.

(2) *Documentation.*

(i) Unless included as part of an Acquisition Plan IAW FAR 7.103(q) or Acquisition Strategy, the requiring official must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.

(ii) When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or service available in the commercial marketplace in time to meet the agency

delivery requirements (see 39.203(c)(2) regarding documentation of nonavailability).

◆ Revise FAR by adding proposed language below:

7.107 – Additional Requirements for Acquisitions Involving Consolidation, Bundling, or Substantial Bundling.

7.107-2 -- Consolidation.

(a) Consolidation may provide substantial benefits to the Government. However, because of the potential impact on small business participation, before conducting an acquisition that is a consolidation of requirements with an estimated total dollar value exceeding $2 million, the senior procurement executive or chief acquisition officer shall make a written determination that the consolidation is necessary and justified in accordance with 15 U.S.C. 657q, after ensuring that--

(1) Market research has been conducted;

(2) Any alternative contracting approaches that would involve a lesser degree of consolidation have been identified;

(3) The determination is coordinated with the agency's Office of Small Disadvantaged Business Utilization or the Office of Small Business Programs;

(4) Any negative impact by the acquisition strategy on contracting with small business concerns has been identified; and

(5) Steps are taken to include small business concerns in the acquisition strategy.

(b) The senior procurement executive, ~~or~~ chief acquisition officer, or designee may determine that the consolidation is necessary and justified if the benefits of the acquisition would substantially exceed the benefits that would be derived from each of the alternative contracting approaches identified under paragraph (a)(2) of this subsection, including benefits that are quantifiable in dollar amounts as well as any other specifically identified benefits.

(c) Such benefits may include cost savings or price reduction and, regardless of whether quantifiable in dollar amounts--

(1) Quality improvements that will save time or improve or enhance performance or efficiency;

(2) Reduction in acquisition cycle times;

(3) Better terms and conditions; or

(4) Any other benefit.

(d) *Benefits*.

(1) Benefits that are quantifiable in dollar amounts are substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to--

(i) Ten percent of the estimated contract or order value (including options) if the value is $94 million or less; or

(ii) Five percent of the estimated contract or order value (including options) or $9.4 million, whichever is greater, if the value exceeds $94 million.

(2) Benefits that are not quantifiable in dollar amounts shall be specifically identified and otherwise quantified to the extent feasible.

(3) Reduction of administrative or personnel costs alone is not sufficient justification for consolidation unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the consolidated requirements, as determined by the senior procurement executive or chief acquisition officer (15 U.S.C. 657q(c)(2)(B)).

(e)

(1) Notwithstanding paragraphs (a) through (d) of this subsection, the approving authority identified in paragraph (e)(2) of this subsection may determine that consolidation is necessary and justified when--

(i) The expected benefits do not meet the thresholds for a substantial benefit at paragraph (d)(1) of this subsection but are critical to the agency's mission success; and

(ii) The procurement strategy provides for maximum practicable participation by small business.

(2) The approving authority is--

(i) For the Department of Defense, the senior procurement executive, or approving authority for an Acquisition Plan or Acquisition Strategy when included within the plan or strategy; or

(ii) For the civilian agencies, the Deputy Secretary or equivalent, or approving authority for an Acquisition Plan or Acquisition Strategy when included within the plan or strategy.

(f) If a determination is made that consolidation is necessary and justified, the contracting officer shall include it in the acquisition strategy documentation and provide it to the Small Business Administration (SBA) upon request.

Recommendation 74b

Revise FAR by adding proposed language below:

16.203 -- Fixed-Price Contracts with Economic Price Adjustment.

16.203-3 -- Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices. When included as part of an approved Acquisition Plan IAW or Acquisition Strategy, additional file documentation is not required.

Revise FAR by adding and striking proposed language below:

Subpart 16.4 -- Incentive Contracts

16.401 -- General.

(a) Incentive contracts as described in this subpart are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by--

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to --

(i) motivate contractor efforts that might not otherwise be emphasized and

(ii) discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see 16.403 and 16.404) and cost-reimbursement incentive contracts (see 16.405). Since it is usually to the Government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. Cost-reimbursement incentive contracts are subject to the overall limitations in 16.301 that apply to all cost-reimbursement contracts.

(d) Unless included as part of an approved Acquisition Plan or Acquisition Strategy , a determination and finding, signed by the chief of the contracting office ~~head of the contracting activity~~, shall be completed for all incentive- and award-fee contracts justifying that the use of this type of contract is in the best interest of the Government. This determination shall be documented in the contract file and, for award-fee contracts, shall address all of the suitability items in 16.401(e)(1).

(e) Award-fee contracts are a type of incentive contract.

(1) Application. An award-fee contract is suitable for use when--

(i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, schedule, and technical performance;

(ii) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(iii) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis to be included in the Determination and Findings or Acquisition Plan or Acquisition Strategy referenced in 16.401(e)(5)(iii).

(2) Award-fee amount. The amount of award fee earned shall be commensurate with the contractor's overall cost, schedule, and technical performance as measured against contract requirements in accordance with the criteria stated in the award-fee plan. Award fee shall not be earned if the contractor's overall cost, schedule, and technical performance in the aggregate is below satisfactory. The basis for all award-fee determinations shall be documented in the contract file to include, at a minimum, a determination that overall cost, schedule and technical performance in the aggregate is or is not at a satisfactory level. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(3) Award-fee plan. All contracts providing for award fees shall be supported by an award-fee plan that establishes the procedures for evaluating award fee and an Award-Fee Board for conducting the award-fee evaluation. Award-fee plans shall--

(i) Be approved by the FDO unless otherwise authorized by agency procedures;

(ii) Identify the award-fee evaluation criteria and how they are linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. Criteria should motivate the contractor to enhance performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas;

(iii) Describe how the contractor's performance will be measured against the award-fee evaluation criteria;

(iv) Utilize the adjectival rating and associated description as well as the award-fee pool earned percentages shown below in Table 16-1. Contracting officers may supplement the adjectival rating description. The method used to determine the adjectival rating must be documented in the award-fee plan;

Award-Fee Adjectival Rating	Award-Fee Pool Available To Be Earned	Description
Excellent	91%--100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good	76%--90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Good	51%--75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory	No Greater Than 50%.	Contractor has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

(v) Prohibit earning any award fee when a contractor's overall cost, schedule, and technical performance in the aggregate is below satisfactory;
(vi) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g. six months, nine months, twelve months, or at specific milestones); and

(vii) Define the total award-fee pool amount and how this amount is allocated across each evaluation period.

(4) Rollover of unearned award fee. The use of rollover of unearned award fee is prohibited.

(5) Limitations. No award-fee contract shall be awarded unless--

(i) All of the limitations in 16.301-3, that are applicable to cost-reimbursement contracts only, are complied with;

(ii) An award-fee plan is completed in accordance with the requirements in 16.401(e)(3); and

(iii) A determination and finding is completed in accordance with 16.401(d) addressing all of the suitability items in 16.401(e)(1), unless included as part of an approved Acquisition Plan or Acquisition Strategy .

Revise DFARS by adding and striking proposed language below:

PGI 216.4—INCENTIVE CONTRACTS

PGI 216.401 General.

(e) *Award-fee contracts*.

(i) It is DoD policy to utilize objective criteria, whenever possible, to measure contract performance. In cases where an award-fee contract must be used due to lack of objective criteria, the contracting officer shall consult with the program manager and the fee determining official when developing the award-fee plan. Award-fee criteria shall be linked directly to contract cost, schedule, and performance outcomes objectives.

(ii) Award fees must be tied to identifiable interim outcomes, discrete events or milestones, as much as possible. Examples of such interim milestones include timely completion of preliminary design review, critical design review, and successful system demonstration. In situations where there may be no identifiable milestone for a year or more, consideration should be given to apportioning some of the award fee pool for a predetermined interim period of time based on assessing progress toward milestones. In any case, award fee provisions must clearly explain how a contractor's performance will be evaluated.

(iii) FAR 16.401(d) requires a determination and findings (D&F) to be completed, unless included in an approved Acquisition Plan or Acquisition Strategy, for all incentive- and award-fee contracts, justifying that the use of this type of contract is in the best interest of the Government. The D&F for award-fee contracts shall be signed by the chief of the contracting office, unless included in an approved Acquisition Plan or Acquisition Strategy. ~~head of the contracting activity or designee no lower than one level below the head of the contracting activity.~~ The D&F required by FAR 16.401(d) for all other incentive contracts may be signed at one level above the contracting officer. This authority may not be further delegated.

~~(iv) The head of the contracting activity for each defense agency shall retain the D&F for (a) all acquisition category (ACAT) I or II) programs, and (b) all non-ACAT I or II contracts with an~~

~~estimated value of $50 million or more. The head of the contracting activity shall forward the D&Fs for ACAT I programs to Defense Procurement and Acquisition Policy/ Contract Policy and International Policy directorate (DPAP/CPIC) within 1 month of the end of the quarter. Copies of D&Fs on all contracts shall also be included in the contract file.~~

Revise FAR by adding and striking proposed language below:

Subpart 16.6 -- Time-and-Materials, Labor-Hour, and Letter Contracts

16.601 -- Time-and-Materials Contracts.

(a) Definitions for the purposes of Time-and-Materials Contracts.
"Direct materials" means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
"Hourly rate" means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualification of a labor category specified in the contract that are—

(1) Performed by the contractor;
(2) Performed by the subcontractors; or
(3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

"Materials" means—

(1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
(2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
(3) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
(4) Applicable indirect costs.

(b) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of—

(1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
(2) Actual cost for materials (except as provided for in 31.205-26(e) and (f)).

(c) *Application.* A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. See 12.207(b) for the use of time-and-material contracts for certain commercial services.

(1) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.
(2) *Fixed hourly rates.*

(i) The contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor (see 16.601(f)(1)).

(ii) For acquisitions of noncommercial items awarded without adequate price competition (see 15.403-1(c)(1)), the contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(A) The contractor;

(B) Each subcontractor; and

(C) Each division, subsidiary, or affiliate of the contractor under a common control.

(iii) For contract actions that are not awarded using competitive procedures, unless exempt under paragraph (c)(2)(iv) of this section, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control—

(A) Shall not include profit for the transferring organization; but

(B) May include profit for the prime contractor.

(iv) For contract actions that are not awarded using competitive procedures, the fixed hourly rates for services that meet the definition of commercial item at 2.101 that are transferred between divisions, subsidiaries, or affiliates of the contractor under a common control may be the established catalog or market rate when—

(A) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor of any division, subsidiary or affiliate of the contractor under a common control; and

(B) The contracting officer has not determined the price to be unreasonable.

(3) M*aterial handling costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.

(d) *Limitations.* A time-and-materials contract or order may be used only if—

(1) The contracting officer prepares a determination and findings that no other contract type is suitable, unless the rationale is included in an approved Acquisition Plan or Acquisition Strategy. The determination and finding shall be—

(i) Signed by the contracting officer prior to the execution of the base period or any option periods of the contracts; and

(ii) Approved by the chief of the contracting office ~~head of the contracting activity~~ prior to the execution of the contract ~~base period when the base period plus any option periods exceeds three years~~; and

(2) The contract or order includes a ceiling price that the contractor exceeds at its own risk. Also see 12.207(b) for further limitations on use of time-and-materials or labor hour contracts for acquisition of commercial items.

Revise DFARS by adding and striking proposed language below:

SUBPART 216.6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

216.601 Time-and-materials contracts. (*DEVIATION 2018-O0018*)

(d) *Limitations*.

(i)(A) *Approval of determination and findings for time-and-materials or labor-hour contracts.*

(*1*) ~~*Base period plus any option periods is three years or less.*~~

(*i*) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis exceeds $1 million, the approval authority for the determination and findings shall be the chief of the contracting office, unless included in an approved Acquisition Plan or Acquisition Strategy. ~~senior contracting official within the contracting activity. This authority may not be delegated.~~

(*ii*) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis is less than or equal to $1 million, the determination and findings shall be approved one level above the contracting officer, unless included in an approved Acquisition Plan or Acquisition Strategy.

~~(*2*) *Base period plus any option periods exceeds three years.* The authority of the head of the contracting activity to approve the determination and findings may not be delegated.~~

~~(*3*) *Exception.* The approval requirements in paragraphs (d)(i)(A)(*1*) and (*2*) of this section do not apply to contracts that, as determined by the head of the contracting activity —~~

~~(*i*) Support contingency or humanitarian or peacekeeping operations; or~~

~~*(ii)* Facilitate defense against or recovery from conventional, cyber, nuclear, biological, chemical or radiological attack;~~

~~(*iii*) Facilitate the provision of international disaster assistance; or~~

~~(*iv*) Support response to an emergency or major disaster.~~

Recommendation 74c

Revise FAR by striking language below:

Subpart 16.5 -- Indefinite-Delivery Contracts

16.504 -- Indefinite-Quantity Contracts.

(a) *Description*. An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(8)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application*. Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for

the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference—*

(1) *Planning the acquisition.*

(i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)

(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if--

(1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected orders are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is less than the simplified acquisition threshold; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see subpart 1.7).

~~(D)~~

~~*(1)* No task or delivery order contract in an amount estimated to exceed $112 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that —~~

~~*(i)* The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;~~

~~*(ii)* The contract provides only for firm fixed price (see 16.202) task or delivery orders for —~~

~~*(A)* Products for which unit prices are established in the contract; or~~

~~*(B)* Services for which prices are established in the contract for the specific tasks to be performed;~~

~~*(iii)* Only one source is qualified and capable of performing the work at a reasonable price to the Government; or~~

~~*(iv)* It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.~~

~~*(2)* The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)*(1)(iv)* of this section.~~

~~*(3)* The requirement for a determination for a single-award contract greater than $112 million —~~

~~*(i)* Is in addition to any applicable requirements of Subpart 6.3; and~~

~~*(ii)* Is not applicable for architect-engineer services awarded pursuant to Subpart 36.6.~~

(2) *Contracts for advisory and assistance services.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and $13.5 million, including all options, the contracting officer must make multiple awards unless--

(A) The contracting officer or other official ~~designated by the head of the agency~~ determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official ~~designated by the head of the agency~~ determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official ~~designated by the head of the agency~~

determines that the advisory and assistance services are incidental and not a significant component of the contract.

Recommendation 75a

Revise DFARS by striking language below:

SUBPART 215.3--SOURCE SELECTION

215.371 Only one offer.
215.371-1 Policy.
It is DoD policy, if only one offer is received in response to a competitive solicitation—

(a) To take the required actions to promote competition (see 215.371-2); and

(b) To ensure that the price is fair and reasonable (see 215.371-3) and to comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

215.371-2 Promote competition.
Except as provided in sections 215.371-4 and 215.371-5—

(a) If only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer shall—

(1) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

~~(2) Resolicit, allowing an additional period of at least 30 days for receipt of proposals; and~~

(b) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, follow the procedures at PGI 215.371-2.

215.371-3 Fair and reasonable price.

(a) If there was "reasonable expectation… that …two or more offerors, competing independently, would submit priced offers" but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).

(b) Except as provided in section 215.371-4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 215.371-4(a)(3) or has been waived in accordance with section 215.371-5), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is required; or