



U.S. Department of Defense Procurement Update

The Buy American Act and Beyond

October 5, 2017



TALKING POINTS



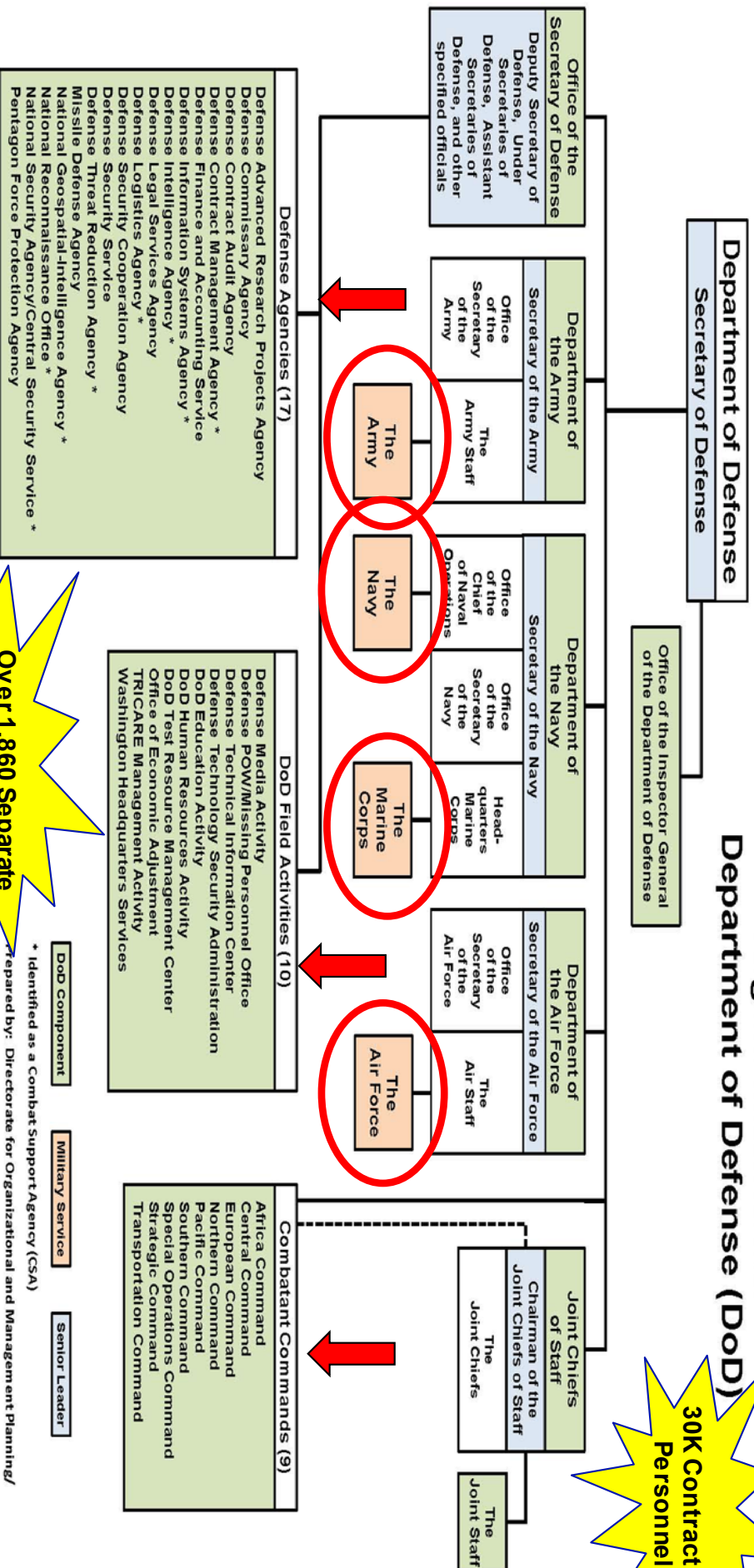
- Summary of the U.S. DoD Procurement Organization
- Summary of DoD Contract Actions
- Summary of the DoD Procurement System
- The Buy American Act and Beyond
- Actions Foreign Industry Can Take to be Competitive
- Summary of the U.S. Presidential Executive Order on Buy American and Hire American
- Questions and Answers



U.S. Department of Defense



Organization of the Department of Defense (DoD)



Over 1,860 Separate Contracting Offices

30K Contracting Personnel

* Identified as a Combat Support Agency (CSA)
 Prepared by: Directorate for Organizational and Management Planning/
 Office of the Director of Administration and Management/Office of the
 Secretary of Defense - March 2012

DOD Component

Military Service

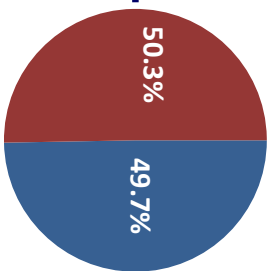
Senior Leader



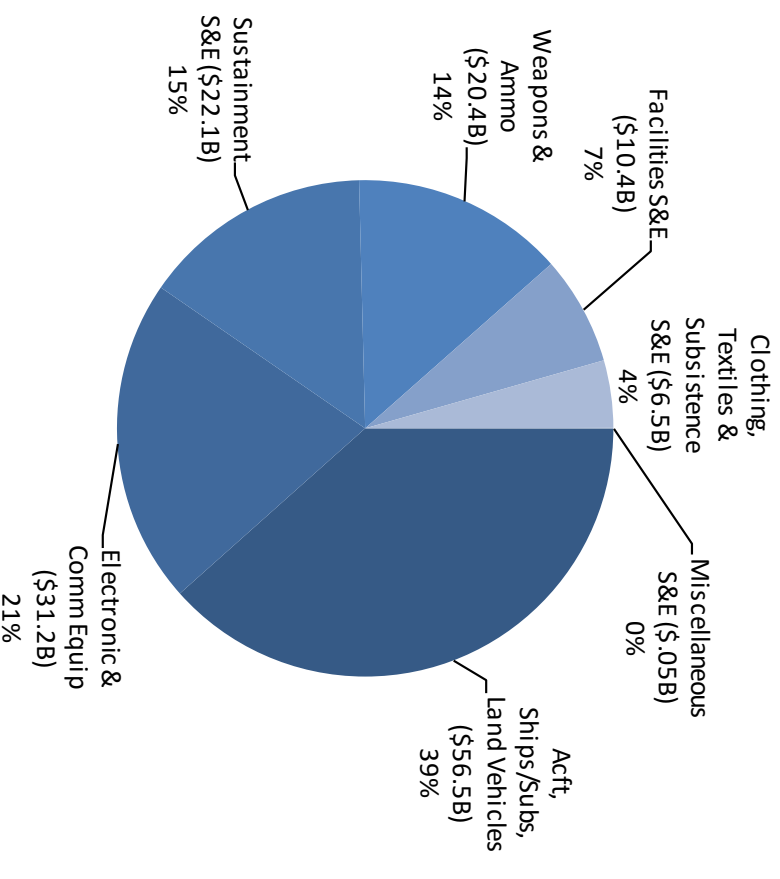
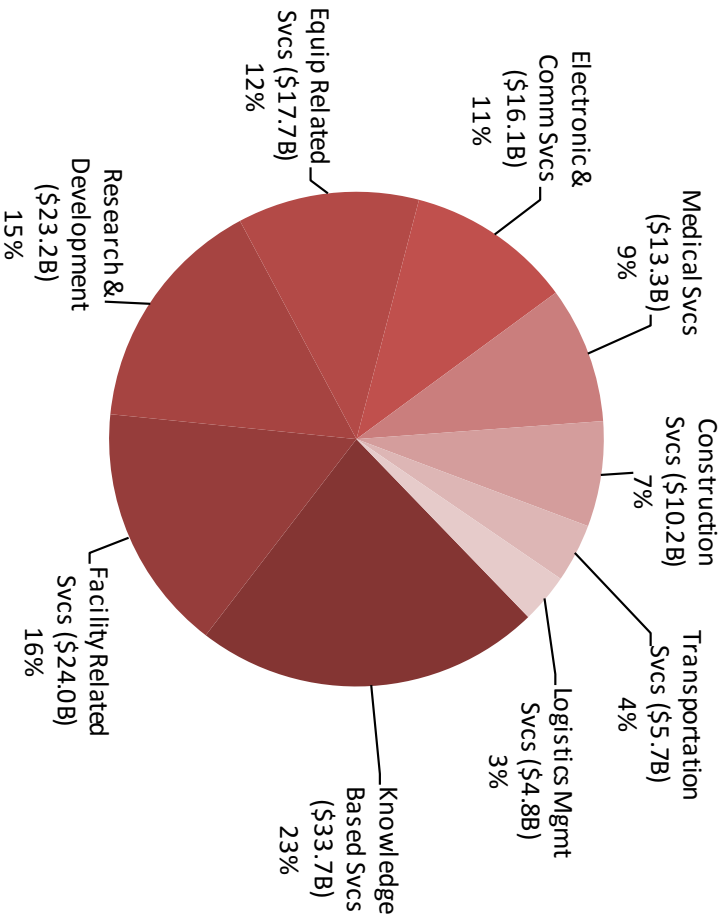
Fiscal Year 2016 Spending by The Department of Defense



Services
(\$148.7B)



Supplies & Equipment
(S&E) (\$147.0B)





Top 10 Procurements from Foreign Industry in Fiscal Year 2016

Note: The U.S. DoD procurement statistics presented ONLY include prime contracts. This data does not include sub-contracts with foreign companies or foreign owned or controlled companies registered and operating in the U.S. as a U.S. company.



Product or Service	Actions	Contract Obligations \$10.2B	Percentage 96%
SERVICES	47,339	2,990,690,387	28%
PETROLEUM	33,007	2,240,023,257	21%
CONSTRUCTION	8,371	2,219,504,515	21%
ALL OTHERS NOT IDENTIFIABLE TO ANY OTHER PROCUREMENT PROGRAM	21,596	786,709,069	7%
SUBSISTENCE	57,710	742,602,729	7%
OTHER AIRCRAFT EQUIPMENT	1,065	316,979,521	3%
SHIPS	6,494	295,460,961	3%
ELECTRONICS AND COMMUNICATION EQUIPMENT	888	244,822,624	2%
AIRFRAMES AND SPARES	2,199	243,306,165	2%
COMBAT VEHICLES	757	132,782,083	1%



Defense Department Procurements from Brazilian Industry Fiscal Years 2013 - 2017



Contract Actions - 5

Prime Contract Obligations - \$55,100

Sub-Contract Obligations - \$1,132,088

Prime Contractor:

1. Comercial Milano Brasil LTD

Sub-Contractors:

1. Kitchens Comercio De Aparelhos
Domesticos Ltd
2. Salvador Ghelfi Raza – ME
3. Maria Do Carmo De Albuquerque Lins Me



The U.S. Defense Procurement System Guiding Principles



- Conduct Market Research and Planning
- Provide all an opportunity to compete for government contracts
- Publicize opportunities and contract awards
- Select contractors fairly based on objective criteria with no outside influence
- Provide an opportunity to protest
- Advance Government social economic goals
- Award contracts only to responsible contractors



The Defense Procurement System



- Centralized, uniform procurement policy and procedures
 - Laws, regulations, and guiding principles are the same for all defense procurement offices
- Decentralized procurement offices and execution
 - Army, Navy, Air Force, Defense Logistics Agency, and other Defense agencies have individual commodity and procurement offices in different locations around the world.



Procurement Regulations



- Federal Acquisition Regulations (FAR):
Applies to virtually all Federal procurement
- Defense Federal Acquisition Regulation Supplement (DFARS): Applies only to DoD
- Military Department Supplements: Applies only to the Military Department (e.g., Army) that issues the Supplement



The Buy American Act (BAA)



- Restricts the purchase of supplies that are not domestic end products for use within the U.S.
- Requires use of domestic construction materials
- Does not prohibit purchase of non-domestic end products
- Establishes evaluation preference for domestic end products
- Applies to Small Business Set-Asides
- Micro-purchase threshold



Domestic End Product



- What is a domestic end product?
 - Manufactured in the US, and
 - Domestic components exceed 50% of the cost of all components
 - ✓ Component test waived for commercial-off-the-shelf (COTS) items



Authority Where the Restrictions of the BAA Do Not Apply



- The Buy American Act does not apply
 - Use outside the U.S.
- Waivers of the Buy American Act
 - Qualifying Countries
 - WTO GPA and Free Trade Agreements
- Authorized Exceptions to the Buy American Act
 - Domestic Non-availability Determinations
 - Commercial IT
 - Resale
 - Unreasonable Cost
 - Public Interest Exception



DoD Obligations for Which the Restrictions of the Buy America Act were not Applied in FY 2016



Authority	Actions	Dollars	% of Total
The Buy American Act does not apply			
Use outside the U.S.	44,503	\$3,293,044,965	65.41%
Waivers of the Buy American Act			
Qualifying Countries	17,988	\$1,136,923,370	22.58%
WTO GPA and Free Trade Agreements	2,138	\$145,120,940	2.88%
	20,126	\$1,282,044,310	25.47%
Authorized Exceptions to the Buy American Act			
Domestic Non-availability Determinations	2,561	\$294,923,657	5.86%
Commercial IT Resale	897	\$141,437,560	2.81%
Unreasonable Cost	261	\$13,739,714	0.27%
Public Interest Exception	1,952	\$8,570,417	0.17%
	34	\$570,467	0.01%
	5,705	\$459,241,815	9.12%
Total:	70,334	\$5,034,331,090	100.00%



Domestic Preference Background

- US legislated buying preferences for American products since the Great Depression (1930s)
- [1933 Buy American Act \(BAA\) 41 USC §8301](#)
 - Great Depression protectionist legislation
 - [FAR 25.1](#) and [DFARS 225.1](#)
- [1941 Berry Amendment 10 USC §2533a](#)
 - WWII patriotic measure to ensure military members clothed, equipped, and consumed American products
 - Applicable to 6 categories of supplies and materials
 - Extremely limited waivers in Berry Amendment



Background, continued



- Specialty Metals [10 USC §2533b](#)
 - Originally part of Berry Amendment statute
 - ✓ Added during Vietnam War (1960s)
 - Now a separate statute and DFARS provision
 - ✓ 10 USC 2533b
 - ✓ [DFARS 225.7003](#) and [PGI 225.7003](#)



Background, continued



- Trade Agreements Act 19 USC §2501
 - Exception to Buy American Act
 - ✓ Allows certain non-domestic items to receive equal consideration with domestic offers
 - Implements international trade agreements
 - Does not waive Berry Amendment or Specialty Metal restrictions



Key Steps Industry Should Consider When Selling to DoD Part 1



- Clearly identify your end product, service, component, or assembly
- Market your capabilities (*industry and Government*)
- Identify contracting activities that are soliciting for the items/services you sell
- Understand how your potential customers do business (*both industry and Government*)
- Build relationships and partner with U.S. industry; consider contacting U.S. defense industry associations (like AIA and NDIA)
- Maintain current international industrial standards and certifications such as in quality and manufacturing



Key Steps Industry Should Consider When Selling to DoD Part 2



- Register your company on the System for Award Management (SAM) (www.sam.gov)
- Compete for contracts at Federal Business Opportunities (www.fbo.gov)
- Follow the proposal submission instructions
- Provide the best proposal based on Cost/Price, Technical, and/or other performance-based requirements
- Negotiate and communicate with US DoD Contracting Officers
- Build successful portfolio of past performance



Contractor Registration A Step by Step Approach



- **BACKGROUND**
 - The U.S. established the Commercial and Government Entity Code (CAGE), a code assigned to organizations (manufacturers, distributors, organizations, etc.) to facilitate the supply chain.
 - The NATO Codification System (NCS) was established in 1958. In order to differentiate between the U.S. and NATO systems, CAGE was referred to as NATO COMMERCIAL and GOVERNMENT ENTITY CODE (NCAGE) in the NCS community. When a business/organization is assigned a CAGE/NCAGE, they are in fact the same type/structure of code but identifies which nation or if NATO Support Agency (NSPA) assigned the CAGE/NCAGE.
- The registration process begins with two critical elements:
 - Physical location of your business/organization
 - Who your business/organization wishes to conduct business with. If you are a Non-U.S. Business/Organization, wishing to conduct business (contracts/grants) with the U.S. Government and/or Non-US Government, Proceed to STEP 1



Contractor Registration

A Step by Step Approach

continued



- **STEP 1: REQUEST NEW NATO CAGE CODES (NCAGE) WITH U.S. GOVERNMENT CONTRACTS/GRANTS. (Processing new NCAGE requests take approximately 10 days)**
 - Entities physically located OUTSIDE of the U.S. and territories and wishing to conduct business (contracts/grants) with the U.S. Government, must FIRST request a NCAGE Code, followed by a obtaining a Dun & Bradstreet Number i.e. DUNS Number and registration in the System for Award Management i.e. SAM.
 - Entities register with NATO Support and Procurement Agency (NSPA) by using the NATO Codification Tool webpage to request a NCAGE Code by selecting the CAGE/NCAGE Code Request link at <https://eportal.nspa.nato.int/AC135Public/scage/Cagelist.aspx>.
 - Check to see if a NCAGE Code is already assigned for the company.
 - If the search does not result in a match to an existing NCAGE code:
 - ✓ Click [Request New] button in the bottom right hand corner of the screen.
 - ✓ Follow the directions to obtain an NCAGE Code.
 - ✓ Submit the request. A validation email message is sent to the POC in the NCAGE Request for confirmation.
 - See detailed handout for all STEP 1 Instructions.
 - Contact the applicable National Codification Bureau (NCB) point of contact for your country at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>. (May require to cut and paste of link in browser to access)



Contractor Registration

A Step by Step Approach

continued



- **STEP 2: REQUEST A DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER**
(Processing new DUNS Number requests take approximately 1-2 business days)
 - You must register your Entity (business, individual, or government agency) to do business with the Federal Government. If you do not have a DUNS Number, contact Dun and Bradstreet to obtain one using the web-form at <http://fedgov.dnb.com/webform>.
 - Ensure the entity's Legal Business Name and Physical Address match exactly with what was registered for the NCAGE Code.
- **STEP 3: REGISTER WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)**
(Processing new SAM requests take approximately 10 days)
 - You must have the NCAGE Code and the DUNS Number before registering in SAM.
 - Register in SAM once the D&B number and NCAGE Code are granted.
 - Follow the quick guide for international registrations at <https://www.sam.gov> for registrants who are physically located outside the U.S. and its territories.
 - See SAM User Guide.



U.S. Presidential Executive Order on Buy American and Hire American *(summary)*



- Promote economic and national security and to help stimulate economic growth
- Support the American manufacturing and defense industrial bases
- Policy of the executive branch to use of goods, products, and materials produced in the United States
- Comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.
- "Waivers" means exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.

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