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Why Didn't the DoD Defend Their FDO's Listed in GAO Report 06-66?

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Preface & Acknowledgements

During his internship with the Graduate School of Business & Public Policy in June 2010, U.S. Air Force Academy Cadet Chase Lane surveyed the activities of the Naval Postgraduate School's Acquisition Research Program in its first seven years. The sheer volume of research products—almost 600 published papers (e.g., technical reports, journal articles, theses)—indicates the extent to which the depth and breadth of acquisition research has increased during these years. Over 300 authors contributed to these works, which means that the pool of those who have had significant intellectual engagement with acquisition issues has increased substantially. The broad range of research topics includes acquisition reform, defense industry, fielding, contracting, interoperability, organizational behavior, risk management, cost estimating, and many others. Approaches range from conceptual and exploratory studies to develop propositions about various aspects of acquisition, to applied and statistical analyses to test specific hypotheses. Methodologies include case studies, modeling, surveys, and experiments. On the whole, such findings make us both grateful for the ARP's progress to date, and hopeful that this progress in research will lead to substantive improvements in the DoD's acquisition outcomes.

As pragmatists, we of course recognize that such change can only occur to the extent that the potential knowledge wrapped up in these products is put to use and tested to determine its value. We take seriously the pernicious effects of the so-called "theory–practice" gap, which would separate the acquisition scholar from the acquisition practitioner, and relegate the scholar's work to mere academic "shelfware." Some design features of our program that we believe help avoid these effects include the following: connecting researchers with practitioners on specific projects; requiring researchers to brief sponsors on project findings as a condition of funding award; "pushing" potentially high-impact research reports (e.g., via overnight shipping) to selected practitioners and policy-makers; and most notably, sponsoring this symposium, which we craft intentionally as an opportunity for fruitful, lasting connections between scholars and practitioners.

A former Defense Acquisition Executive, responding to a comment that academic research was not generally useful in acquisition practice, opined, "That's not their [the academics'] problem—it's ours [the practitioners']. They can only perform research; it's up to us to use it." While we certainly agree with this sentiment, we also recognize that any research, however theoretical, must point to some termination in action; academics have a responsibility to make their work intelligible to practitioners. Thus we continue to seek projects that both comport with solid standards of scholarship, and address relevant acquisition issues. These years of experience have shown us the difficulty in attempting to balance these two objectives, but we are convinced that the attempt is absolutely essential if any real improvement is to be realized.

We gratefully acknowledge the ongoing support and leadership of our sponsors, whose foresight and vision have assured the continuing success of the Acquisition Research Program:

- Office of the Under Secretary of Defense (Acquisition, Technology & Logistics)
- Program Executive Officer SHIPS
- Commander, Naval Sea Systems Command
- Army Contracting Command, U.S. Army Materiel Command
- Program Manager, Airborne, Maritime and Fixed Station Joint Tactical Radio System

- Program Executive Officer Integrated Warfare Systems
- Office of the Assistant Secretary of the Air Force (Acquisition)
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- Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)
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- Office of Procurement and Assistance Management Headquarters, Department of Energy

We also thank the Naval Postgraduate School Foundation and acknowledge its generous contributions in support of this Symposium.

James B. Greene, Jr. Rear Admiral, U.S. Navy (Ret.)	Keith F. Snider, PhD Associate Professor

Panel 5 – Contemporary Contracting Issues

Wednesday, May 11, 2011	
11:15 a.m. – 12:45 p.m.	**Chair: Lenn Vincent,** RADM, USN, (Ret.), Industry Chair, Defense Acquisition University ***Unintended Consequences of Advocating Use of Fixed-Price Contracts in Defense Acquisition Practice*** Chong Wang and Joseph San Miguel, NPS ***Why Didn't the DoD Defend Their FDO's Listed in GAO Report 06-66?*** James Gill, Space & Missile Systems Center ***Identifying Procurement Fraud in Defense Agencies: An Analysis of the Government Purchase Card Program*** Juanita Rendon, NPS

RADM Lenn Vincent—Industry Chair, Defense Acquisition University (DAU). An independent consultant, RADM Vincent uses his defense and industry experience, expertise, and perspective to advise the DAU management team, OSD, the uniformed services, and industry on matters relative to contracting, program management, logistics, and supply chain management. As a professor at the DAU, he presents views to foster a more viable and effective defense acquisition management system. An international educator, consultant, dynamic speaker, and respected government and industry leader, he has taught and/or consulted in contract management, capture management, project management, supply chain management, and leadership.

As a vice president at American Management Systems and CACI International, RADM Vincent was responsible for working with senior Department of Defense and industry leaders to build long-term business relationships and to help identify solutions to acquisition, logistics, and financial management challenges. His strategic focus was an initiative to create an integrated digital environment that would extend the DoD's automated procurement systems into industry and into the DoD program management offices, in addition to implementation and training strategies for new products and service.

Prior to entering civilian life, RADM Vincent completed a distinguished career in the United States Navy, serving at both sea and ashore. He has over 30 years of broad based and in-depth leadership and management experience in acquisition, supply chain management, logistics, and financial management.

RADM Vincent holds a master's in Business Administration from George Washington University. He also is a Certified Navy Material and Acquisition Professional, and is DAWIA Level III certified in both Contracting and Logistics.

He is past-president of the National Contract Management Association and served on its board of directors as well as the following boards: Navy League National Capital Council; NDIA Washington DC Chapter; Board of Directors Procurement Round Table; and Board of Visitors, Defense Acquisition University.

Why Didn't the DoD Defend Their FDO's Listed in GAO Report 06-66?

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Abstract

In December of 2005, the Government Accountability Office released a report entitled *DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes.* The report was an indictment of the manner in which the DoD executed contracts—especially award fee contracts—and the fee determining officials who were charged with assessing contractor performance and rewarding that performance with their subjective evaluation of that performance. The GAO was asked to determine whether award and incentive fees have been used effectively as a tool for achieving the DoD's desired outcomes. In order to do this, they reviewed a number of major programs and came to the conclusion that award fees were generally not linked to acquisition outcomes. However, many PMs are of an opinion that award fees are an effective tool in communicating the government's expectations and influencing contractor behavior in a positive manner. This paper analyzes the GAO's report and explains why there was such a disconnect between the GAO and DoD Program Managers.

Report Summary

In December of 2005, the Government Accountability Office released a report entitled *DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes.* The report was an indictment of the manner in which the DoD executed contracts—especially award fee contracts—and the fee determining officials who were charged with assessing contractor performance and rewarding that performance with their subjective evaluation of that performance.

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It is my belief, based upon discussing this matter with a number of Program Managers (PMs) that were involved with several of the programs that were reviewed by the GAO, that many PMs are of an opinion that award fees are an effective tool in communicating the government's expectations and influencing contractor behavior in a positive manner.

Why was there such a disconnect between the GAO and DoD Program Managers? To some degree, it is due to the way that success is measured by the parties. The GAO, along with many in Congress and in DoD leadership positions, considers success to be measured in terms of cost, schedule, and performance. In this vein, most major defense programs are significantly unsuccessful. Many, if not most, of these programs experience schedule slippage along with major cost growth and, while explainable, paint a picture of a process that does not effectively reward or punish these results.

The Program Managers understand that cost growth and schedule delays are often a fact of life in the realm that they occupy. Much of these factors are influenced by the government's behavior and are not attributable to contractor failures. Funding turbulence, requirements creep, and technical problems created by state-of-the-art technical challenges are but a few of the reasons why a program may get into trouble.

In some cases, the contractor is put into a bind in trying to work through the known-unknown and unknown-unknown problems that surface during any major systems development. This does not excuse contractor failures but may mitigate some of the perceptions of failure that are visible only to those closely working with the program itself.

Another aspect of the disconnect centers upon the government Program Managers' overriding focus on mission assurance, the need to support the warfighter, and the recognition that while cost and schedule are important, the fact that a program overruns or comes in behind schedule is less important than that the systems work, and meet or exceed the customer's needs. The ultimate proof of whether a program is successful or not will eventually come down to the question as to whether it meets customers' expectations or not. If it eventually exceeds expectations, many will forget that it ran over budget, or that it was late in being fielded.

An example of this reality may be seen in the GPS program. When the program went through initial development, it ran over budget and experienced many delays. There was doubt as to whether it was technically possible to build, and more doubt as to whether it would be of use to the warfighter. The ultimate implementation of the GPS system shows that those initial concerns have been forgotten as the system has worked its way into many aspects of daily life. There are many acquisition professionals who believe that many of the current systems will be viewed in a similar manner once they have been fielded and the results realized by their customers.

The GAO was focused upon cost and schedule in assessing the relative success of the programs that they reviewed and, as a result, came to the conclusion that the fees paid to the contractors did not improve contractor performance and acquisition outcomes. Their focus upon acquisition outcomes indicated that the DoD was awarding too many fees for too little performance.

The report listed seven actions that the DoD should take to improve its use of award fees on all new contracts. These were (1) instructing the military services to move toward more outcome-based award fee criteria that are both achievable and promote accountability for acquisition outcomes; (2) ensuring that award fee structures are motivating excellent performance by only paying for above-satisfactory performance; and (3) requiring the appropriate approving officials to review new contracts to make sure that these actions are being taken. The DoD can improve its use of award fees on all existing contracts by (4) issuing DoD guidance on when rollover is appropriate. In the longer term, the DoD can improve its use of award and incentive fees by (5) developing a mechanism for capturing award and incentive fee data within existing data systems, such as the Defense Acquisition Management Information Retrieval system; (6) developing performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and (7) developing a mechanism to share proven incentive strategies for the acquisition of different types of products and services with contracting and program officials across the DoD.

These recommendations were relatively benign, although the implications throughout the report were clear: the DoD paid fees that were clearly too much for the work that was being performed. It did not directly accuse FDOs of incompetence, but the implications were clear: they were not doing their job properly and needed additional training and oversight.

Another element of the report that was troubling and perhaps an indicator that the GAO did not understand the distinction between a contract where the award fee represented an add-on or bonus and one that represented the entire available fee for performance on the contract. To insist that the fee would only be paid for above-satisfactory performance indicates a lack of understanding as to the right of a contractor to receive fee for meeting the basic requirements of the contract. It is more correct to criticize the report for expecting a contractor to do more than what is on the contract—in earlier times, this would have been portrayed as "gold-plating." Clearly, this is something to be discouraged during the difficult fiscal uncertainties that we see today.

So what did the DoD do with this report? From the perspective of the Program Office, it seemed that the leadership accepted the findings and began to issue policies that reflected concerns with the manner in which award fees had been implemented. The only reasonable explanation for this revised policy would be that the Services did not write their plans to be based upon acquisition outcomes, or that the FDOs charged with implementing the plans were either incompetent or negligent in their decision-making process.

I do not believe that either was the case, but rather that the senior leadership chose the more expedient approach to reduce, if not eliminate, the use of award fee contracts. In today's environment, it is difficult, if not impossible, to get an approval for the use of a CPAF type of contract. It is currently possible to use an award fee as an add-on incentive to a CPIF or FPIF arrangement, but under this structure, the primary incentive is not the award fee.

In the Air Force, there is a legacy of award fee contracting that has been in place since the 1980s. To a certain degree, there is an association with Ms. Darleen Druyun and award fee contracting. During the period that she was the principal deputy for acquisition, it was almost impossible to get an acquisition plan approved without an award fee associated with the contract strategy. She believed, as did a generation of acquisition professionals that followed her, that award fees were invaluable in motivating contractors to perform as directed by government leadership—most notably, the FDO. Ms. Druyun's involvement with the Tanker issues has contributed to her and her policies being exiled from any Air Force acquisition planning structure.

The bottom line with regard to the matter of award fee contracting is that a valuable tool has been taken from the Program Manager's kit. Most would like to use the award fee process to enhance discussions and improve communication between the Program Office and the contractors performing the work. Award fees often provide instant feedback to the contractor's leadership as to how they are performing. Since many of the contractor PMs have their annual bonus tied to the rating that is given, they do pay attention to FDO feedback. Contractors like the opportunity to receive regular fee payments and government program people like to have an element of leverage over contractor performance.

An additional result of this report is the elimination of the use of "rollover" in award fee contracting. This practice allows for unearned fees to be "rolled over" and made available in subsequent periods from that in which it was not earned—a second bite of the apple. It was a favorite practice of Program Managers and is often used by Prime Contractors in their contract with their subcontractors. The use of rollover has been prohibited in a recent FAR directive.

In the Space business, many of our programs have moved from development to production, and there is little need in most cases for CPAF production contracts. Consequently, most new contracts will not have award fees, or award fees will not be the primary incentive on the contract. In the production environment, there is little need for more than the contract requirement: build the item as designed, do it on schedule, and do it for a reasonable price.

As we move into the next cycle of development, there will be little expectation that award fee contracts will be used. Some organizations will not miss them, but those that seek to push technology past the current state of the art will miss the opportunity that they present to enhance communication and encourage a willingness to support the needs of the Program Manager.

Disclaimer

The opinions in this paper are the author's and do not necessarily reflect the opinion of the Air Force.