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Non-Competitive Contracting: Lessons from Contracting Personnel

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- Non-competitive contracting in the DoD is big.
 - 63% and 65% of total \$ spent by AF and Navy are non-competed.
- What are the views of government contracting personnel on working in non-competitive environments?
- We survey a small group of military and civilian AF contracting personnel at the F-22 Program Office.
 - Most of their contract awards are non-competitive.



- 2018 NDAA tasked the Under Secretary of Defense for Acquisition and Sustainment to:
 - Assess if there are any “gaps in knowledge of industry operations, industry motivation and business acumen in the workforce”?
- RAND submitted a detailed report (RAND 2019), but was unable to speak to the views of acquisition personnel.
- Our survey addresses this gap. It has two parts.
 - Part 1 asks demographic and background questions.
 - Part 2 asks about their experience in non-competitive contracting.

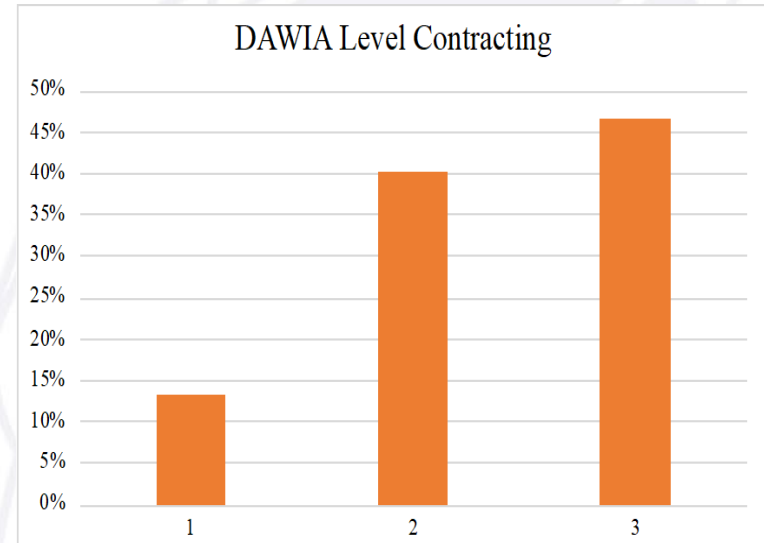
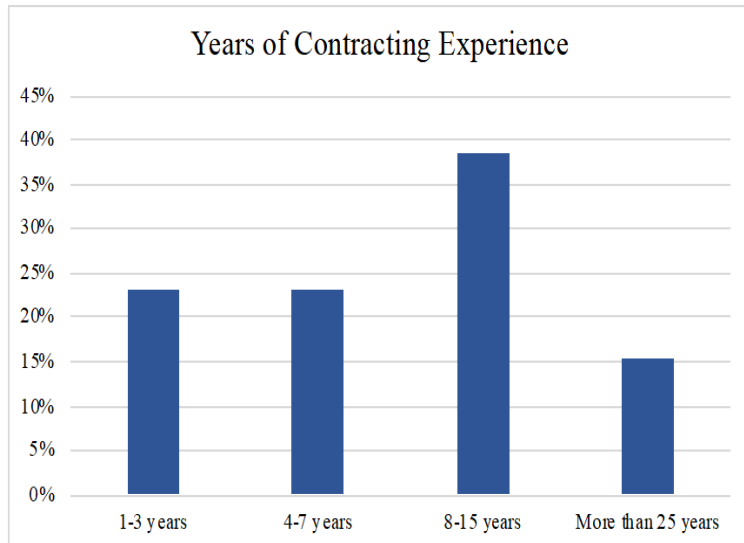


Survey and Response Rate

- 57 people at the F-22 Program Office were sent the survey.
 - 5 Air Force Officers (9%)
 - 52 Air Force Civilians (91%)
- Responses: 16 people (28%)
 - Some were incomplete responses (5 people).
 - 13 people (23%) responded to most questions.
 - 3 AF Officers Responded (60%)
 - » 2 O-1 to O-3 respondents; 1 O-4 to O-6 respondent
 - 10 AF Civilians Responded (19%)
 - » 4 GS-12; 4 GS-13; and 2 GS-14 respondents
 - 69% Male, 31% Female

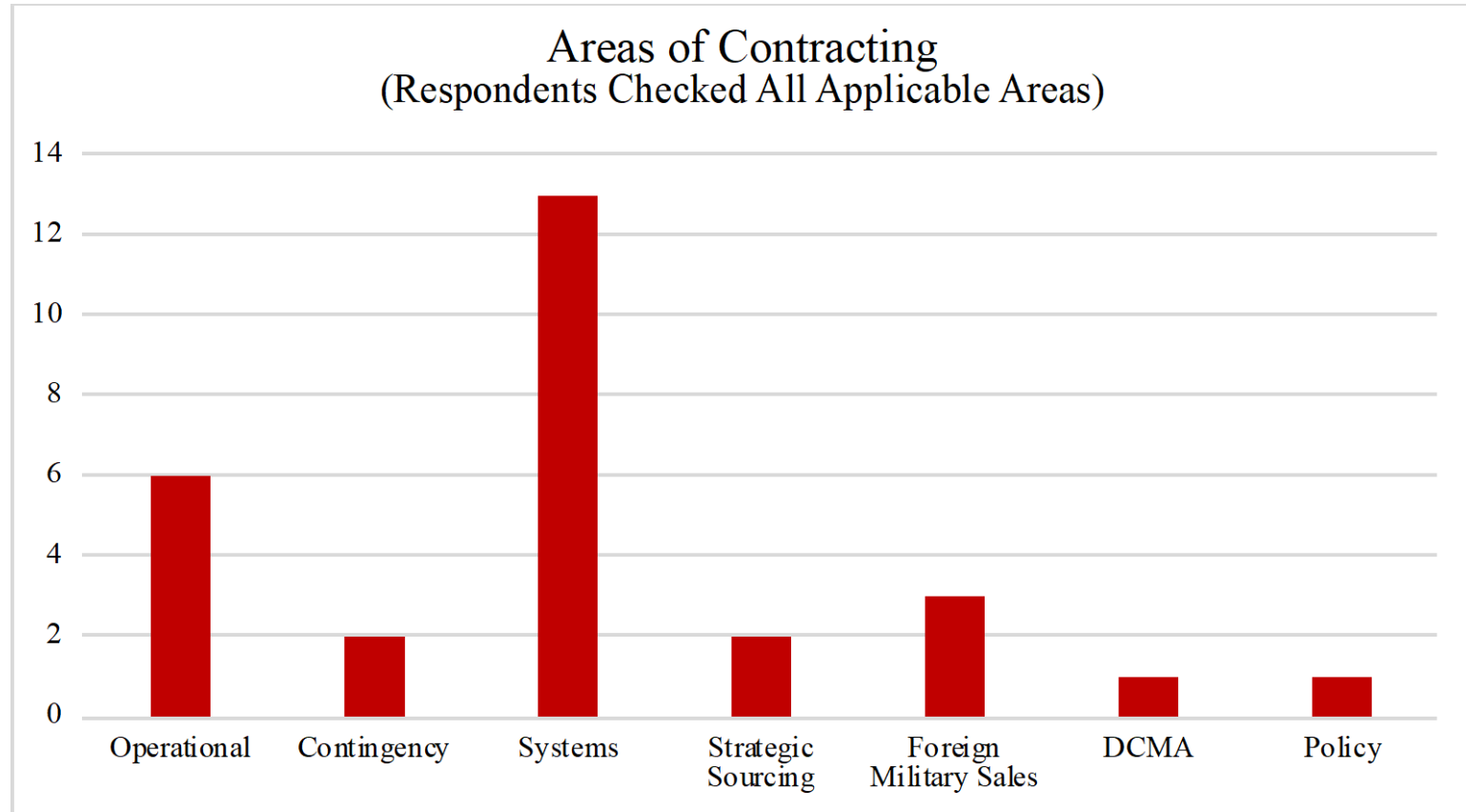


- Warranted Contracting Officers (56%)
 - Of these, 67% have an unlimited warrant





Contracting Background





1. Non-Competitive Acquisitions

- Have any of your acquisitions, current or past, been in a non-competitive relationship with the incumbent contractor?
- **67%** responded “Yes”
 - Of these “Yes” respondents, **91%** feel they are at a negotiating disadvantage with the contractor.
 - Of this group that feels they are at a negotiating disadvantage, **90%** feel they are at a disadvantage even with certified cost and pricing data.



Why do they feel disadvantaged?

- (1) Contractors leverage sole-source environment.
 - Usual reasons of monopoly power among sellers.
 - Military does not buy in competitive markets, rather they buy custom products designed and built to their needs.
 - Yet, private firms also order custom products.
 - But they dual source to increase competition.
- (2) Military has an information disadvantage.
 - “Program Office is not trained or knowledgeable [sic] on their requirements.”
 - Government contracting personnel, do not have a “very deep understanding” of “true cost” or the government’s “negotiated price”
 - Many respondents mentioned that the Truth in Negotiations Act (TINA) certification does not include data on the terms between contractors and their sub-contractors.

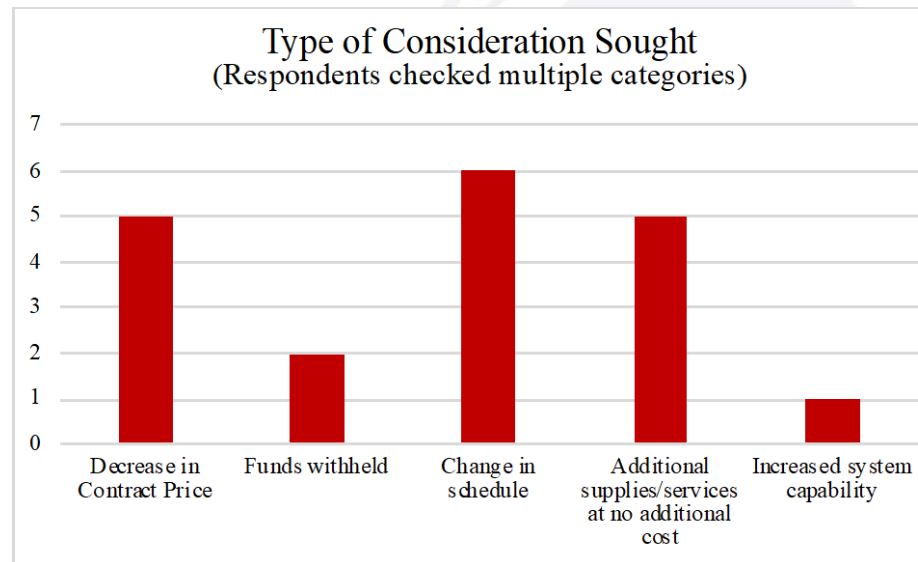


2. Incentive “Family” (CPAF/CPIF, FPIF, etc.)

- If you have used a contract within the incentive “family”, do you feel the contract incentives placed within the terms and conditions incentivized the necessary performance of the contractor?
 - 50% responded “No”
 - Why did incentives fail?
 - One respondent mentioned contractors are not motivated by fees, rather their business model works around “cash flow” and “quarterly earnings”.
 - Another respondent noted contractors seem to pursue a revenue maximization strategy over profit maximization.
 - Most incentive contracts assume firms seek to maximize profits by cutting costs. Yet, these responses suggest these firms have goals that the government does not consider in the negotiation process.

3. Nonconforming Supplies

- In your career, have you experienced contractor non-conformance?
 - 50% responded “Yes”
 - Of these “Yes” respondents, 88% said consideration was sought for nonconformance.





4. Nonconforming Supplies - Consideration

- When consideration was sought, **57%** of respondents said consideration was recovered.
 - Was it fair?
 - Of these, **75%** responded it was fair.
- In cases where consideration was not recovered, why was it not recovered?
 - “The power position was on in the acquisition that we did not have any meaningful leverage and they understood that.”
 - “Because Contractor was sole source they refused to provide consideration, because the Government contributed to the problem.”
 - “Contract type used makes it difficult to get consideration. Contractor believes they do not owe consideration on CPFF contracts.”



- We surveyed AF contracting personnel at the F-22 Program Office.
- **90%** of contracting personnel operating in sole-source environments feel they are at a negotiating disadvantage.
 - Certified cost and pricing data does not help.
 - Both sole-source and informational disadvantages.
 - Contracts in “incentive” family marginally help.



- Small survey with low response rate.
- We recommend the AF undertake a larger survey in scope and population.
 - Scope: basic business questions on non-competitive markets
 - Scope: specific questions on contracts.
 - Population: multiple program offices.
- Detailed study on dual-sourcing.