

Contractor Purchasing System Reviews (CPSR)

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- Period 1:
 - The Who, What, Why, and When of CPSR
 - What is a CPSR?
 - Why are they done?
 - Who conducts them?
 - When will I have one?
 - Consequences of failure
 - CPSR – Ever Changing

- Bryan Felber

What is a CPSR?

- A Government risk mitigation measure which evaluates purchasing systems down its supply chain
- Primarily evaluates 24 criteria found at DFARS 252.244-7001, especially regarding:
 - Compliance with public laws
 - Price/cost analysis
 - Competition/justification for not competing
 - Policies/procedures
 - Purchasing control of the process

Why?

- The Government desires to reduce its risks that would result from an inadequate contractor purchasing system
- To evaluate both a contractor's efficiency and effectiveness when spending government funds and a contractor's compliance with government policy when subcontracting (*See FAR Part 44 (Subcontracting Policies and Procedures)*)
- Provides an Administrative Contracting Officer (ACO) with a basis for granting, withholding, or withdrawing approval of a contractor's purchasing system

Who Conducts Them?

- Defense Contract Management Agency (DCMA)
- Reps from other entities may participate, e.g., DCAA, though not common
- Usually consists of a review team of 2 to 5 people for two weeks; depends on contractor size and size of the PO universe

When Will I Have One?

- When the ACO determines based on, but not limited to, past performance, and the volume, complexity and dollar value of the subcontracts
 - Usual trigger for review determination: sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items) are expected to exceed \$25 million (FAR 44.302)* during the next 12 months
 - Process often begins with the ACO requesting completion of a risk assessment form
 - After system approval, usually every 3 or 4 years thereafter
 - After system disapproval, usually about a year later
 - Annual surveillance by ACO (mini CPSR)

* DCMA CPSR 1/18/17 & 5/9/17 Guidebooks say \$50M (Section 1.2)

Does This Apply to Me?

I'm far from the threshold, so I don't need to worry about, right?

WRONG!!!

If the Government perceives risk, ACO can order a CPSR at any time

READ YOUR CONTRACT!!

- Many requirements reviewed in a CPSR are found as clauses in your contract, e.g., public laws, anti-lobbying, DPAS, debarment, small business subcontracting, etc.
- If 52.244-2 is in your contract, you need evidence of the CO's prior consent to subcontract per 52.244-2(c), unless waived in writing

What Are the Consequences of Failure?

- Withhold of payments of 5% or 10% if 252.242.7005 in contract(s)
- Negative Impact on New Business
 - Disqualified from bidding
 - Loss of a competitive proposal
- Additional Government Oversight
 - DCAA or other audit agencies notified
 - Additional Audits
 - CO prior consent requirements will be imposed
 - Delay in placing orders
 - Increased admin expenses
- Impact to Reputation
- Corrective Action Plan development, monitoring
- Follow-up review

CPSR – Ever Changing

- Necessity to keep abreast of current trends and practices
 - Regular training (lots of opportunities)
 - Information exchanges
- Expectations very different than in the past
- Review is much more formal and rigorous
- Companies doing the same thing under successful CPSRs 4 or more years ago are failing

Resources

- DCMA Contractor Purchasing System Review (CPSR) Guidebook (current 5/9/17)
- LinkedIn
 - Contractor Purchasing System Review (CPSR) Forum
 - CPSR Helps and Hints
 - FAR & DFARS Discussions
- Various training opportunities
 - Webinars
 - Seminars
- Consultants

- Period 2:
 - What do they review in a CPSR
 - Competition or justification for not competing
 - Price/cost analysis

- Mark Hajar, presented by Bryan Felber

Key CPSR Preparation Points

- DFARS 252.244-7001(c) provides the 24 general elements of CPSR focus
- While wide in scope, the requirements provide several narrow areas of focus that come up consistently during CPSRs
- General Focus Areas during DCMA CPSRs:
 - Data Call Preparations
 - Policies and Procedures
 - Public Law Compliance
 - Competition and Source Justification Documentation
 - Price Analysis and Negotiations
 - System Functionality, including Approvals and Lead-Time

Data Calls

- What must be included in a CPSR Data Call: Subcontract Awards made under prime contracts that include FAR 52.244-2 as a mandatory flowdown during a proscribed 12 month period [see 52.244-2(i)]
- CPSR Data Call will require the tracking of multiple data points, including but not limited to:
 - Competition
 - Commerciality of Purchase
 - Business Size
 - DPAS Rating
 - Value tracking (Award, In-Period Transactions, Cumulative)

Data Calls

- What subcontracts and purchase orders should not be included in a CPSR data call?
 - Subcontracts under Competitively Awarded FFP Prime Contracts
 - Subcontracts under Commercial Contracts (including FAR Part 12)
 - Lower tier subcontracts [52.244-2(i)]
 - Intercompany Work Orders (FAR 15.407-2; 44.101)
 - Contracts awarded with discretionary funds (FRB, FDIC, FBI, etc)
 - Contracts awarded by clandestine agencies (CIA, NSA; Why not?)
 - ID/IQ subcontracts / BPAs awarded outside the data call period with funding releases in the data call period within original ceiling and scope

Policies and Procedures

- DCMA will review policies and procedures during CPSR [see DFARS 252.244-7001(c)(1)]
- What are CPSR Policies and Procedures?
 - Top level of corporate QMS
 - Address top level requirements for corporate activities enforced at enterprise level
 - Endorsed, Released, and Maintained by Corporate Officer(s)
 - Once approved by DCMA during CPSR, “major changes” to P&P must be approved by ACO
 - *Does not* include Work/Desk Instructions. What is the implication?

Policies and Procedures

- What policies and procedures does DCMA expect?
 - CPSR Public Laws (TINA, CAS, FFATA, Sub SBSP, etc.)
 - Proposal Evaluation Documentation (Price Analysis, CID, etc.)
 - Subcontractor Evaluation and Monitoring (Vendor Rating System)
- What policies are not required for CPSR review?
 - Non-CPSR public laws (FCPA, Export, Service Contract Act)
 - Ancillary procurement responsibilities (receiving, inspection)
 - Post-procurement responsibilities (Invoice processing, accruals)
 - Prime Contractor responsibilities that do not include input from subcontractors (ISR/SSR reporting, etc.)
 - Pre-Procurement Activities (re: Business Development, Target Rate Development, etc.)

Public Law Compliance

- What is a “CPSR Public Law”?
 - Act of Congress;
 - That legislates the administration and allocation of financial and performance risk;
 - Within the supply chain of federally funded acquisition activities;
 - Via incorporation into the Federal Acquisition Regulations (FAR) and/or the Defense Federal Acquisition Regulation Supplement (DFARS).

Public Law Compliance

- What isn't a "CPSR Public Law"?
 - Acts of Congress that expressly apply only to Government Contracting Officers (Competition In Contracting Act; Anti-Deficiency Act); and
 - Acts of Congress that do not allocate performance or financial risk between the Government and the federal supply chain (Export Laws, Foreign Corrupt Practices Act)

Public Law Compliance

- Why are public laws so important during a CPSR?
- A CPSR is an evaluation of how close to government standards a contractor administers its procurement activities
- Public law compliance is the main charter of government Contracting Officers
- Contractors who cannot comply with public laws do not meet minimum requirements for unsupervised procurement activities

Competition

- Competition is emphasized in FAR 15.4, FAR 52.244-5 and DFARS 252.244-7001(c)(7).
- Competition is documented when adequate price competition is completed via FAR 15.404-1(b)(2)(i) and 15.403-1(c)(1)
- DCMA would prefer for the balance of the data call (at least) to be competitively sourced
- Noncompetitive procurements are closely scrutinized during CPSRs ... Well documented competitive procurements get less scrutiny in general. Why?

Price Analysis and Negotiations

- Price Analysis and Negotiations are referenced in 13 of the 24 criteria listed in DFARS 252.244-7001(c) [Negotiations are specifically referenced in (c)(11)].
- Competition is the most favored form of price analysis along with Prices Previously Paid (redacted invoiced / POs).
- Reference to internal historical pricing can “open the door” to review of other files. How do you avoid?
- DCMA frowns upon the use of GSA rates during price analysis? Why? Do these issues apply to contractors?
- DCMA expects attempted negotiations on ALL noncompetitive procurements. Is this a true regulatory requirement?

System Functions and Lead Time

- DCMA will ask to see your systems of record as they are used in the procurement process. These include:
 - Requisition system
 - Electronic file storage system(s)
 - FFATA reporting
- Review of Systems of Record revolves around validation process for approvals (Requisition) and date/time stamps (FFATA)
- Lead time is tracked as metric during CPSR. Lead time is tracked as time elapsed between submission of approved requisition to Procurement to Award

- Period 3: How Does a CPSR Work?
 - What to expect during the CPSR and first-time CPSR Strategies
 - Purchase Order Pre-reviews and pre-CPSR corrective action planning
 - Communicating with the CPSR team and (D/C)ACO
 - Process: Q&A, Training, Audit Week Schedules

- Will Cannon

CPSR Preparation

- Getting Ready
- Gap Analysis
- Policies & Procedures Assessment
- Review Purchase Order files
- Logistics
- Organizational Awareness

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Getting Ready

- Consult 'DCMA CPSR Guidebook' appendices (current rev: 5/9/2017)
- Review DCMA-INST-109 (current rev: 1/9/2014)
- Review DFARS 252.244-7001 "Contractor Purchasing System Administration"
- Re-review regulations/prescriptions
 - Compliant yesterday does not mean compliant today
- Re-read previous audit reports
 - DCAA/DCMA, Quality Assurance (QA) and other functional areas
- Inform other functional areas that they may be contacted prior to and during the audit, such as QA, for information.

Gap Analysis

- Create a spreadsheet to track compliance to all review areas:
 - CPSR Major Purchasing Areas/Requirements
 - Relevant Policies and Procedures
 - Problem/gap description (if any?)
 - People, Process, Tools (“Practice”)
 - Corrective Action required/action to address gap
 - Training
 - Other affected processes, such as Counterfeit Parts Mitigation and Surveillance or make-or-buy process.
- Make this a continual on-going practice

Policies & Procedures

- Review Policies and Procedures (P&P)
 - Avoid major re-writes, unless necessary
 - Ensure clarity in all elements (29 Major Purchasing Areas)
 - Ensure P&P 'work together'
 - Avoid unnecessary duplication
- Review Terms and Conditions
 - Ensure mandatory flowdowns covered for Part 15 and Part 12 items
 - DCMA will request P&P 60-90 days before review
- Review against 'DCMA CPSR Guidebook' appendices

Review Files

- Create a review checklist
 - Categorize items according to focus areas
- Organize transaction report by extended dollar value
 - Focus on purchase orders/subcontracts over public law threshold
 - Sample will include purchase orders/subcontracts at all values
- Determine if all files are available
- Utilize Management/Procurement to support the pre-reviews
- Collect and analyze data
- Summarize issues/build awareness (Management-level)
- Contemplate internal corrective actions for weak areas
- Remain transparent, document everything

Logistics

- Access to facility
- Parking
- IT/Internet Access
- Access to files
- Security/Citizenship documentation
- Reserve Conference Rooms
 - Entrance, daily and exit conferences
 - Audit room - close to work areas, but quiet
- Schedule Entrance Conference

Logistics (cont'd)

- Maintain meeting records
- Assign one scribe to attend each meeting (silent/in every discussion)
- Create a question log
 - Track times (strive for 24 hours)
 - Track assignees
 - Establish POC for collection/follow-up/response
- Utilize a standard response template
 - Answer similar questions in a similar manner
- Keep electronic and physical records

Organizational Awareness

- What is a CPSR?
- Set expectations
- How to talk to Auditors
- Ensure Management involvement/back-up
- Expect interviews with key Purchasing personnel

- Period 4: What do I need to do to comply with public laws & regs
 - TINA
 - CAS
 - FFATA
 - Debarment
 - Anti-lobbying
 - Advanced notification and consent
 - Small business subcontracting plans
 - Counterfeit goods

- Bryan Felber

Public Law Compliance

- Be sure your policies and procedures address all of these (and much more)
- DCMA CPSR Guidebook 1/18/17 appendices provide a lot of background and detail as to what's behind the requirement and what they expect to see
- The following are most typical. Circumstances may dictate other, less typical rqmts.
- Inherent in each is that the file is documented to show compliance

Public Law Compliance - TINA

- Truth in Negotiations Act (nka Truthful Cost or Pricing Data) (52.215-12 and -13)
 - Applicable at \$750,000, unless exempt (15.403-1(b))
 - Obtain cost or pricing data
 - Perform cost analysis
 - Negotiate based on cost analysis
 - Obtain Certificate of Current Cost or Pricing Data
 - Flow down clauses, as applicable

Public Law Compliance - CAS

- Cost Accounting Standards (52.230-X)
 - Applicable at \$750,000, unless exempt (FAR App 9903-201-1)
 - Obtain disclosure, usually via CAS cert 52.230-1
 - Flow down clauses, as applicable
 - NOTE: no self deleting clauses
 - Provide notice to ACO of CAS covered award within 30 days

Public Law Compliance – Limitation on Pass Throughs

- Applicable at \$750,000 (52.215-22 and -23), unless exempt at 15.408(n)(2)(i)(B)(2)
- Flow down clause 52.215-23, unless exempt per 15.408(n)(2)(i)(B)(2)
- Notify the Contracting Officer as required in the clauses

Public Law Compliance – Small Business Subcontracting

- Applicability \$700,000/\$150,000 (52.219-9)
 - \$700,000
 - Award to large business, obtain subcontracting plan
 - Have evidence of written acceptance of the plan in the purchase file
 - Compliance with 52.219-9 (usually part of small bus audit, but certain portions included in 2017 Guidebook)
 - \$150,000
 - Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating whether small business concerns (et al) were solicited and if not, why not

Public Law Compliance – Anti-lobbying

- Payments to Influence Certain Federal Transactions
 - Applicable at \$150,000
 - Obtain 52.203-11 certification
 - Flow down 52.203-12
 - A copy of each subcontractor disclosure form (not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures.

Public Law Compliance – Specialty Metals

- Applicability \$150,000 (252.2225-7008/-7009, as applicable)
 - Flow down 252.225-7009
 - -7008 has no specific flowdown provision, but may be prudent
 - Ensure subcontractors comply with requirements of the clause

Public Law Compliance – DPAS

- Defense Priorities Allocation System (52.211-14, -15)
 - Applicable at \$75,000
 - Include in the award:
 - the rating and 15 CFR 700 language
 - Specific due dates
 - Ensure written acceptance or rejection of the order is received within 10 days of a DX rated order or 15 days of a DO rated order.
 - Rejection reason(s) must be in writing
 - Ensure written notice of any delays and reason(s)
 - Flow down the rating and clause
 - No unrated awards may include a rating and language

Public Law Compliance – Debarment

- Applicable at \$35,000 (52.209-6)
- Obtain written debarment certification
 - 2017 Guidebook admits time of disclosure not in FAR and says, “the disclosure should be at a time on or before award to cover the requirement, generally less than 10 days prior to award.”
 - Method not prescribed in FAR or Guidebook. Guidebook allows for options
 - In subcontract/PO
 - Separate cert
 - Email
- Flowdown 52.209-6 unless <\$35,000 or for a COTS item(s)

Public Law Compliance - FFATA

- Federal Funding Accountability and Transparency Act (Executive Compensation)
 - Applicable at \$30,000 if in prime contract to first tier subcontractors
 - Obtain data required in 52.204-10
 - Report in Federal Subaward Reporting System (FSRS) by the end of the month following the month of award AND annually thereafter
 - Have evidence in PO file of reporting

Public Law Compliance – Counterfeit Electronic Parts

- Be ready to demonstrate compliance with 252.246-7007, -7008
 - Have policies
 - DCMA may interview buyers, QA, ops
 - DCMA may expect to see processes at work
- Flow down 252.246-7007, -7008

Public Law Compliance – Notification and Consent

- Obtain prior consent as required in the contract (52.244-2(b), (c), or (d))
- Provide notifications (52.244-2(e)(1) or Alt1 (e)(2))

Public Law Compliance - Cyber

- Not yet in Guidebook, but . . .
- Safeguarding Covered Defense Information and Cyber Incident Reporting Applicable (252.204-7012)
- Flow down clause
- Have evidence of surveying source
- For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

➤ Period 5: Corrective action planning and response

➤ Will Cannon

Actions Following CPSR

- Timeline
- Response Planning
- Report Elements
- Response
- Annual Surveillance
- Stay Prepared

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Timeline

- ❑ 10 Days – Team Lead provides work package to supervisor
 - ❑ Peer, supervisory, second line supervisory and Director reviews required prior to CO
- ❑ ~30-45 Days – Team Lead provides work package and CPSR Report to CO
 - ❑ If deficiencies - includes draft Level II and III (material/significant) CAR
- ❑ 10 days – CO drafts and transmits Initial Determination or Approval Letter
 - ❑ Deficiencies identified as ‘Material’ require response to the CO (letter format)
 - ❑ Deficiencies identified as ‘Non-material’ require limited response to CPSR Team Lead
- ❑ 30 days – Contractor deadline for response to Initial Determination
- ❑ ~45 days – CO deadline for Final Determination
 - ❑ Remaining Significant (Material) deficiencies
 - ❑ Withholds, if applicable (5%/2%)
 - ❑ Approval/Disapproval (disapproval=CAP)
- ❑ 45 days – CAP, if required
 - ❑ System disapproved
 - ❑ Correct and contain deficiencies/submit formal CAP

Response Planning

- ❑ Starts when CPSR begins!
- ❑ Take good notes during daily meetings and exit briefing
 - ❑ Address everything (take advantage of your weekend)
- ❑ Utilize the DCMA Internal Planning Worksheet (provided by CPSR TL)
 - ❑ Write clear action plans for all items addressed in exit briefing
- ❑ Re-audit DCMA selected sample in order to avoid surprises in the report
- ❑ Ensure Management agrees with action plan
- ❑ Seek out CO to discuss actions taken (at their discretion)
 - ❑ Share plan to address 'Material/Significant' deficiencies
- ❑ Establish 'tiger teams,' staffed with subject matter experts (SMEs) and decision makers

CPSR Report Elements

- ❑ Contractor's Current Effectiveness in Major Purchasing Areas
 - ❑ Summary of each Purchasing Area
 - ❑ References to specific regulations (primarily DFARS 252.244-7001)
 - ❑ Summary of CPSR Team observations (reviewed/results)
 - ❑ Recommendations of severity (Material/Non-Material)
 - ❑ Sufficient detail provided to facilitate a response (DFARS 252.244-7001 (d))
- ❑ Reviewed by DCMA Contractor's Business Systems Review Panel
- ❑ If CO disagrees with CPSR Team, Board-level review is required

Response

- Review the report in detail!
- Address all items for each major purchasing area deemed inadequate, usually stated by:
 - Procedure
 - Practice
- Best to respond with a solution/corrective action
 - It is not necessary to admit fault
 - Provide sufficient data to validate implementation of actions
 - Meet with CO before you submit the response
- Ensure you have a plan for Management Review
- Meet the response deadline!!!!

Annual Surveillance

- ❑ Yearly, but could be within months following system approval
- ❑ Review FAR 44.304 “Surveillance”
- ❑ Read DCMA Tasking Memo 13-220
- ❑ Review DCMA-INST-109
- ❑ COs are being trained on surveillance reviews
 - ❑ Utilizes ‘ACO Surveillance Workbook’
- ❑ Surveillance supported by functional groups such as CPSR team, pricing, technical and other specialists
- ❑ Generally 5-10 files (no specific rule)
- ❑ Contractor responsible for facilitating (make your files available)
 - ❑ Failure to cooperate could result in disapproval (‘power of the pen’)

Stay Prepared

- Continue to update Gap Analysis
 - Refresh every 6 months
 - Use SME and Process Owner input
 - Establish a Purchasing System Champion
- Stay tuned to CPSR Guidebook updates
 - Maintain your own revision history
- Keep abreast of QA and other functional DCMA in-plant audits/reviews
- Watch Forums/Professional Groups
 - LinkedIn
 - NCMA, etc.
 - DCMA.mil
- Attend annual CPSR Hot Topics!

- Period 6: Common pitfalls, problem areas in CPSRs and how to avoid them

CPSR – Problem Areas

- Commercial Items
- Questionable Review Team interpretations/application of regs
 - Micro-purchases
 - Intercompany orders
 - Consultants
 - Ts & Cs

CPSR – Problem Areas

➤ Commercial Items

- Effective determinations
- If using “of a type” must have tech eval
- Ineffective determination can result in multiple findings
 - Ineffective commercial determination
 - TINA violation, if applicable

Questionable Applications – Negotiations

- **ALL** negotiations are to be documented in accordance with FAR 15.406-3 (DFARS 252.244-7001(c)(11))
 - Regardless of value

Questionable Applications – Micro-purchases

- Orders below micro-purchase threshold
 - Selected a good number (28%)
 - Recommend procurement files include documentation supporting the vendor selected and a fair and reasonable price. DFARS 252.244-7001(c)(4), despite FAR 13.203

Questionable Applications – Micro-purchases

➤ Orders below micro-purchase threshold

- FAR 13.203(a) *Solicitation, evaluation of quotations, and award.*

(1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases **may be awarded without soliciting competitive quotations** if the contracting officer or individual appointed . . . considers the price to be reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if --

(i) The contracting officer . . . suspects that the price may not be reasonable, or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available

(b) *Documentation.* **If** competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

Questionable Applications – Intercompany Orders

- DCMA expected:
 - TINA and CAS applicability
 - Small bus plans
 - Anti-lobbying and Exec Comp
 - Make/buy analysis
 - Explanation why intercompany transaction is in the best interest of the government
 - Price/cost analysis

Questionable Applications – Intercompany Orders

- Intercompany orders useful definitions:
 - “Contractor” means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing. 44.101
 - “Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor. 44.101
 - “Make item”, . . . means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions. 15.407-2(b)
 - “Affiliates” means associated business concerns or individuals if, directly or indirectly--
 - (1) Either one controls or can control the other; or
 - (2) A third party controls or can control both.
- “Subcontract” (except as used in 15.407-2) also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 2306a(h)(2) and 41 U.S.C. 3501(a)(3)). 15.401

Questionable Applications – Intercompany Orders

- Intercompany TINA and Small Business Plans:
 - DCAA Memorandum PSP 730.5.1/2010-009, March 2, 2010, excludes TINA applicability to inter-organizational transfers.
 - DCMA Small Business analyst confirmed in 2014:, “The affiliate/other division, does NOT do a plan for you as the prime”

Questionable Applications – Intercompany Orders

- Intercompany make/buy and price/cost analysis:
 - Make/Buy analysis only done if doing out of the ordinary, e.g., buying something we usually make, vice versa
 - 15.401 only applies Part 15 requirements to transfers of commercial items
 - Just as purchasing doesn't perform price/cost analysis on the make portions of the contract awarded to the contractor, it also does not perform price/cost analysis of an affiliate

Avoiding Problems

- Be prepared
- Know and understand the DCMA Guidebook Appendices
- Know the regs
- Have robust policies/procedures
- Have an internal review process
- Be forward thinking and proactive
- Monitor current trends

➤ Panel Q&A

- Will Cannon, Procurement Compliance Manager
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