



National Contract Management Association San Diego Chapter March Midday Workshop

What's New in Contracting and Acquisition?

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Agenda

▼ Team SPAWAR Overview

▼ What's New?

1. Laws and Regulations

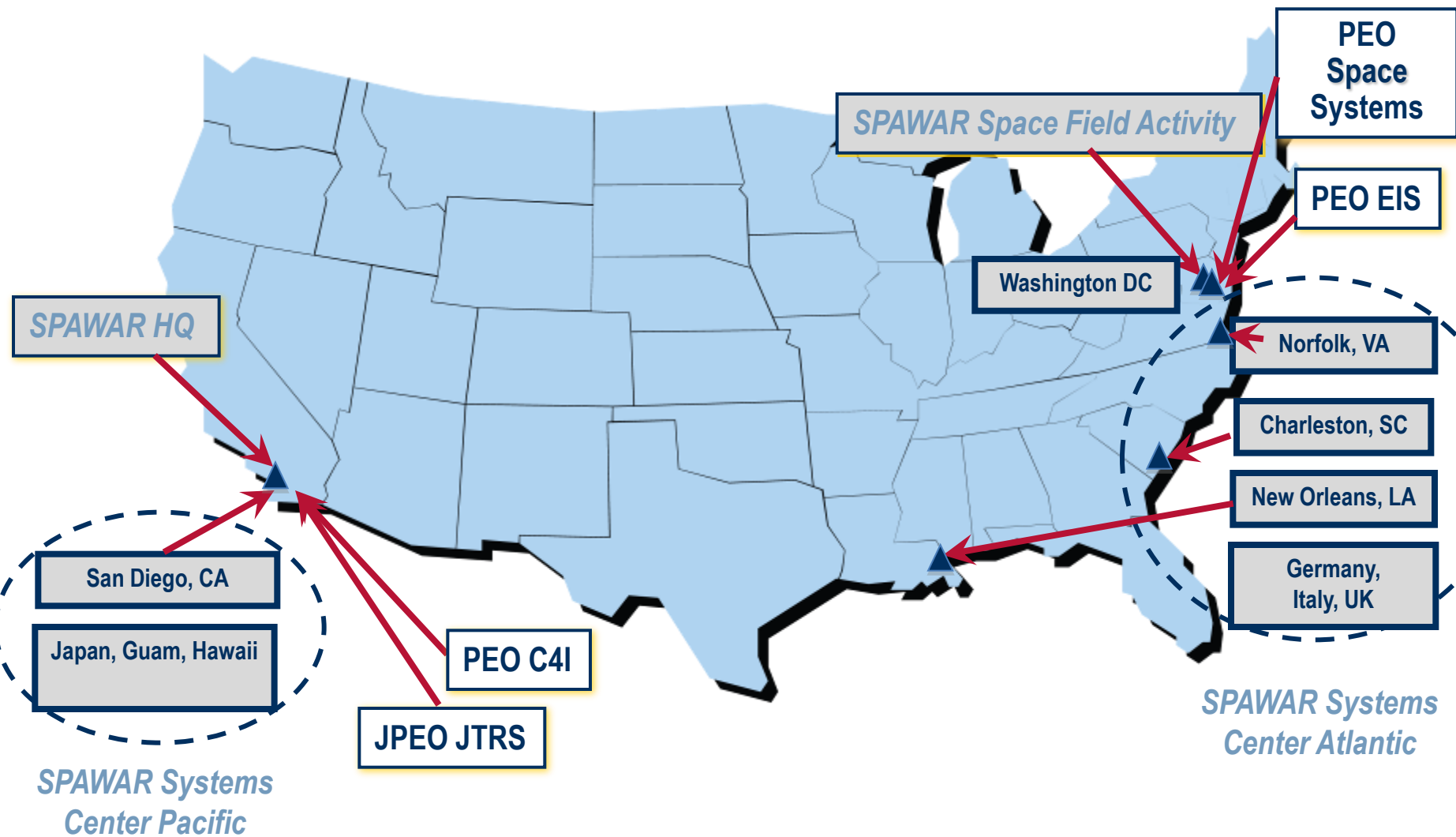
2. Policies

3. Initiatives

4. Summary



Where We Are



LAWS and REGULATIONS



Peer Reviews of DoD Solicitations & Contracts

- ▼ **DFARS 201.170** - requirement for solicitations & contracts for services > \$1 billion

- ▼ OSD/DPAP organizes teams of reviewers & facilitates process
 - Promoting quality & consistency
 - Sharing best practices & lessons learned

- ▼ SPAWAR - two OSD peer reviews (incl. CANES); participated in two peer reviews

Continued...



Peer Reviews of DoD Solicitations & Contracts

- ▼ **Pre-award Peer Reviews** - Solicitations > \$1B (including options).
- ▼ **Post-award Peer Reviews** - Contracts for services > \$1B (including options).
- ▼ **Emphasis** - source selection procedures, evaluation criteria, etc.
- ▼ Applies to sole source & competitive buys.
- ▼ Military, defense agencies, & DoD field activities - must establish procedures for pre-award peer reviews of solicitations < \$1B, & post-award peer reviews.



DoN Peer Review Thresholds & Authorities

| Type of Action | Threshold | Review Level | Peer Review Authority |
|-------------------------------|--|--------------|-----------------------|
| Services/Supplies/ Systems | > \$1 billion | OSD | DPAP |
| DoD Special Interest | Identified by OSD as "Special Interest" | OSD | DPAP |
| Services | \$250M to \$1B | DoN | DASN (A&LM) |
| DoN Special Interest | "Special Interest" by Peer Review Authority or referred from Contracting Activity | DoN | DASN (A&LM) |
| Supplies / Systems | \$50M to \$1B | HCA | HCA/Senior Official |
| Services | \$50M to \$250M | HCA | HCA/Senior Official |



Award Fee (Oct 14, 2009) 74 Fed. Reg. 52856

▼ Changes for award fee contracts

- Linked to acquisition objectives e.g. cost, schedule
- Base fee of zero may be included in cost plus award fee type contract
- Prescribes narrative ratings in award fee evaluations
- Prohibiting award fees if contractor not satisfactory
- Conduct a risk / cost benefit analysis
- Include specific content in award fee plans
- Prohibiting “rollover” of unearned award fees



Effective Use of Award Fee Contracting

Ratings system:

- ▼ **Unsatisfactory** Failure to meet basic (min. essential) requirements of contract
- ▼ **Satisfactory** Basic (min. essential) requirements met
- ▼ **Good** Basic (min. essential) requirements met; at least 50% of criteria established in award fee plan met
- ▼ **Excellent** Basic (min. essential) requirements met; at least 75% of criteria established in award fee plan met
- ▼ **Outstanding** Basic (min. essential) requirements met; at least 90% of criteria established in award fee plan met



American Recovery and Reinvestment Act

(Feb 17,2009)

▼ Background

- Effort to jumpstart the economy, create/save jobs, address challenges

▼ Recovery Act Reporting

- Section 1512 (also called Jobs Accountability Act) requires recipients of recovery funds received through contracts, grants, or loans to report

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American Recovery and Reinvestment Act

(Feb 17,2009)

- **Reports must contain:**
 - Amount of recovery funds received
 - Amount of funds expended / obligated to projects
 - Detailed list of projects / activities
 - Estimate of # of jobs created and retained
 - Infrastructure investments by state & local governments
 - Detailed info on subcontracts / grants awarded by recipient

▼ See FAR 52.204-11 for more detail



Fraud Enforcement and Recovery Act

(May 20, 2009)

▼ Broadens False Claims Act:

- **Eliminated** – requirement that a claim be presented to the Gov't to get payments by the Gov't
- **Now requires** – Request / demand for \$ / property to be spent or used on Gov't's behalf or advance Gov't program if it provides a portion of \$ / property or reimburse a contractor / grantee / other recipient for portion of \$ / property.

Continued...



Fraud Enforcement and Recovery Act

(May 20, 2009)

▼ Materiality

- Unlawful knowingly to make / use / cause a false record or statement “material to a false or fraudulent claim”
- Some commentators say it eliminates the “intent requirement”



Weapons System Reform Act of 2009

(May 22, 2009)

▼ Conflicts of Interest:

- Requires DoD to revise DFARS; tighten existing requirements for OCI
- **Possible conflicts of interest:**
 - Lead system integrator contracts
 - Systems engineering/ tech. assistance for Gov't while competing as prime contractor or supplier
 - Award of subcontracts to affiliate business units
 - Contractors performing technical evaluations on major defense acquisition programs



National Defense Authorization Act 2010

(Oct 28, 2009)

- ▼ Sec. 325 temporarily suspended public-private competitions under OMB Circular A-76 until DoD performs comprehensive review of policies.
 - ▼ **Publication of Bundling**
 - New requirement – notice consistent with FAR 10.001(c)(2) at least 30 days prior to release of solicitation
 - ▼ **Third Party Rights in Data**
 - Contractor given access to tech. data delivered under a Gov't contract. Support contractor must enter a non-disclosure agreement with owner of data & subject to civil actions.
- Continued...*



National Defense Authorization Act 2010

(Oct 28, 2009)

▼ DoD IG Subpoena Authority

- Subpoena witnesses for attendance & testimony necessary in performance of the IG's functions. New provisions not applied to federal employees.

▼ Non-Price Evaluation Factors

- Comptroller General directed to study DoD procurements. **Study must consider:**
 - Frequency of procurements
 - Types of contracts when eval. factors most used
 - Reasons for DoD's use of such factors
 - Extent when use of such factors is/not in interest of DoD



Contractor Performance Information

(July 1, 2009)

- ▼ Final rule amended contractor performance information process in FAR 42.1502.
- ▼ Contractor performance evaluations must be prepared & submitted to PPIRS for all contracts that, for DoD include:
 - \$5 million - systems & operations support contracts
 - \$1 million - services & IT
 - \$100,000 - fuels & health care contracts
 - No dollar threshold for evaluating science & technology (*i.e.*, R&D) contracts



Contractor Code of Business Ethics & Conduct

(Dec 2008)

Within 30 days after contract award, Contractor shall:

- Have a written code of business ethics & conduct
- Ensure each employee involved has copy of code
- Prevent & detect criminal conduct
- Encourage ethical conduct & commitment to compliance with the law
- In writing to OIG, assure timely disclosure of procurement fraud

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Contractor Code of Business Ethics & Conduct (Dec 2008)

- ▼ **FAR 52.203-13** - included in solicitations & contracts if value of contract > \$5 million & performance period is \geq 120 days.
- ▼ Code must be established & given to contractor employees within 30 days of award.
- ▼ Prime contractors required to flow-down requirements of FAR 52.203-13 to subcontractors.



Personal Conflicts of Interest (PCIs)




▼ Background:

- **Duncan Hunter National Defense Authorization Act for FY09** – OFPP to issue policy to prevent PCIs by contractors performing acquisition functions associated with inherently governmental functions.

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Personal Conflicts of Interest (PCIs)

▼ PCIs:

- Potential  due to Gov't's reliance on contracted tech., business & procurement expertise
 -  risk to Gov't on fixed-price, supply contracts
 - Risk  with more supplies / services or relationships with Gov't & contractor blur into inherently governmental functions.
- ▼ Guidance issued from USD (AT&L) in Nov '09 regarding PCIs related to Contractors supporting Government contracts.

POLICIES



Increase Fixed Price & Competitive Contracts

White House Memo (March 2009):

- ▼ Non-competitive & cost reimbursement contracts misused, wasteful
- ▼ Since 2001, spending on Gov't contracts more than doubled, reaching over \$500 billion in 2008.
- ▼ Between FY00 & FY08, dollars obligated under cost-reimbursement contracts went from \$71B to \$135B.

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Increase Fixed Price & Competitive Contracts

- ▼ A GAO study of 95 major defense acquisition projects found cost overruns of 26%, totaling \$295B
- ▼ DoD established goals for increased competition & fewer cost type contracts



FY10 Competition Report

Competition Report SPAWAR FY10 through 2-4-2010 *Report Generated 2-5-2010*


| Department | % Competed (\$) |
|------------------|-----------------|
| HQ | 86% |
| SSCLANT | 79% |
| SSCPAC | 94% |
| SPAWAR TOTALS | 86% |



Time to Augment the Acquisition Workforce

Federal government acquires > \$500B of goods & services annually supporting missions


▼ The FY11 Budget:

- Allocates \$158M to improve capabilities of civilian agency acquisition workforce
- Continues a government-wide moratorium on A-76 competitions for federal work.
-  # of personnel by 20,000 in next 5 yrs.
~ 10,000 positions will convert from contractors to civil service positions.

**Funds allow agencies to  acquisition workforce by 5%*



DCAA: *New Direction*

3 GAO recommendations will  auditor independence from contracting officers:

1. Mission must address protecting public interest to help assure contractors charge fair & reasonable prices
2. A risk-based approach to contract audits; allows DCAA to decide what should be audited
3. Congress considers a change in DCAA's position so it can operate independent of DoD influence

Conclusion: DoD & DCAA have adopted some/all of the above. Director of DCAA has been reassigned; DCAA has issued new audit guidance.

INITIATIVES



Acquisition Initiatives


- ▼ Emphasize C4I program of record products in new ship construction

- ▼ **Navy ERP**
 - “Live” at SPAWAR HQ 1 October 2009
 - Visibility & improved business processes
 - Deployed at NAVAIR, NAVSUP, SPAWAR; NAVSEA is next

Continued...




Acquisition Initiatives

- ▼ Continuous process improvement (LSS)
 - Targeting high payoff readiness & cost processes
 - Study & improve what  cost

- ▼ Planning for next contract writing system; successor to SPS

Naval Open Architecture

- ▼ **Goal of Navy:** Decouple hardware from software; yield more modular, interoperable systems that adhere to open standards with published interfaces and fosters software reuse
 -  competition
 - Life cycle affordability
- ▼ Guide book developed for program managers for the enterprise on open architecture tenets with sample language for requirements, evaluation factors, data rights and CDRLs

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Naval Open Architecture

- ▼ Key evaluation factors in Sections L and M of our RFPs to implement OA tenets consider:
 - Modular designs
 - Scalability of proposed designs
 - Minimization of unique proprietary design for interfaces
 - Use of open standards
 - Software reuse or COTS
 - Data rights (Government-purpose rights)



DoN Energy Strategy for Acquisitions Memo

(Jan 4, 2010)

- ▼ **5 energy goals** established by SECNAV, including:
 - Lifecycle energy cost of platforms, weapons systems
 - Cost of fuel in powering capital investments
 - Overall energy efficiency & energy footprint of competing companies
- ▼ Contracts must be structured to hold industry contractually accountable for meeting energy targets.
- ▼ Experts from program management, tech. & contracting, Navy Energy Coordination Office, will develop evaluation policies & procedures.



Naval Strategic Sourcing Governance

Background:

- Nov 2008, ASN (RD&A) established the DoN Strategic Sourcing Governance Structure & Charter
- Naval Strategic Sourcing Working Committee (SSWC), chaired by RDML Baucom, (ASN, AL&M) responsibility to approve DoN-wide strategic sourcing initiatives
- NAVSUP is Executive Agent via Strategic Sourcing Program Office
- Focus is now on services

Continued...



Naval Strategic Sourcing Governance

Goals:

- Optimize performance
- Streamline & standardize processes
- Minimize price
- Increase socio-economic acquisition goals
- Evaluate total life cycle management costs
- Improve vendor access to business opportunities



SUMMARY

- ▼ Many changes
- ▼ In several instances, details have yet to be promulgated
- ▼ Emphasis on acquisition management, competition, fixed price contracts, and contractor accountability

Questions?



Resources

Federal Business Opportunities

<https://www.fbo.gov/>

Government Executive

<http://www.govexec.com/dailyfed/0210/020210rb1.htm>

FAR

<http://farsite.hill.af.mil/VFFARA.HTM>

DFARS

<http://farsite.hill.af.mil/VDFDARA.HTM>

ASN (RD&A) Policy Memos

https://acquisition.navy.mil/rda/home/policy_and_guidance/policy_memos



Acronyms

| | |
|-------|---|
| A&LM | Acquisition and Logistics Management |
| C4I | Command, Control, Communications, Computers, and Intelligence |
| CANES | Consolidated Afloat Networks and Enterprise Services |
| CDRL | Contract Data Requirements List |
| COTS | Commercial Off-The-Shelf |
| DASN | Deputy Assistant Secretary of the Navy |
| DCAA | Defense Contract Audit Agency |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| DoD | Department of Defense |
| DoN | Department of Navy |
| DPAP | Defense Procurement and Acquisition Policy |
| EIS | Enterprise Information Systems |
| ERP | Enterprise Resource Planning |



Acronyms

| | |
|--------|----------------------------------|
| FAR | Federal Acquisition Regulation |
| FY | Fiscal Year |
| GAO | Government Accountability Office |
| HCA | Head of the Contracting Activity |
| HQ | Headquarters |
| IG | Inspector General |
| JPEO | Joint Program Executive Officer |
| JTRS | Joint Tactical Radio System |
| LSS | Lean Six Sigma |
| NAVAIR | Naval Air Systems Command |
| NAVSEA | Naval Sea Systems Command |
| NAVSUP | Naval Supply Systems Command |



Acronyms

| | |
|-------|---|
| OA | Open Architecture |
| OCI | Organizational conflict of interest |
| OFPP | Office of Federal Procurement Policy |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| OSD | Office of Secretary of Defense |
| PCI | Personal Conflict of Interest |
| PEO | Program Executive Officer |
| PPIRS | Past Performance Information Retrieval System |
| R&D | Research and Development |
| RD&A | Research, Development, and Acquisition |
| RFP | Request for Proposal |



Acronyms

| | |
|-----------|--|
| SECNAV | Secretary of the Navy |
| SPAWAR | Space and Naval Warfare Systems Command |
| SPS | Standard Procurement System |
| SSCLANT | SPAWAR Systems Center Atlantic |
| SSCPAC | SPAWAR Systems Center Pacific |
| USD(AT&L) | Under Secretary of Defense for Acquisition, Technology and Logistics |



Defense FAR Supplement (DFARS) Federal Acquisition Regulation (FAR)

- ▼ DFARS 201.170 – Peer Reviews
- ▼ FAR 10.001 – Market Research- Policy
- ▼ FAR 42.1502 – Contractor Performance Information-Policy
- ▼ FAR 52.203-13 – Contractor Code of Business Ethics and Conduct
- ▼ FAR 52.204-11 – American Recovery and Reinvestment Act