

SEC. 813. ESTABLISHMENT OF PANEL ON CONTRACTING INTEGRITY.

(a) Establishment-

(1) IN GENERAL- The Secretary of Defense shall establish a panel to be known as the 'Panel on Contracting Integrity'.

(2) COMPOSITION- The panel shall be composed of the following:

(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the panel.

(B) A representative of the service acquisition executive of each military department.

(C) A representative of the Inspector General of the Department of Defense.

(D) A representative of the Inspector General of each military department.

(E) A representative of each Defense Agency involved with contracting, as determined appropriate by the Secretary of Defense.

(F) Such other representatives as may be determined appropriate by the Secretary of Defense.

(b) Duties- In addition to other matters assigned to it by the Secretary of Defense, the panel shall--

(1) conduct reviews of progress made by the Department of Defense to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur;

(2) review the report by the Comptroller General required by section 841 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3389), relating to areas of vulnerability of Department of Defense contracts to fraud, waste, and abuse; and

(3) recommend changes in law, regulations, and policy that it determines necessary to eliminate such areas of vulnerability.

(c) Meetings- The panel shall meet as determined necessary by the Secretary of Defense but not less often than once every six months.

(d) Report-

(1) REQUIREMENT- The panel shall prepare and submit to the Secretary of Defense and the congressional defense committees an annual report on its activities. The report shall be submitted not later than December 31 of each year and contain a summary of the panel's findings and recommendations for the year covered by the report.

(2) FIRST REPORT- The first report under this subsection shall be submitted not later than December 31, 2007, and shall contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting.

(3) INTERIM REPORTS- The panel may submit such interim reports to the congressional defense committees as the Secretary of Defense considers appropriate.

(e) Termination- The panel shall terminate on December 31, 2009.

Conference Report 109-702

Establishment of Panel on Contracting Integrity (sec. 813) The House bill contained a provision (sec. 814) that would establish a Panel on Contracting Integrity to review progress made by the Department of Defense to eliminate areas of vulnerability of the defense contracting system to waste, fraud, and abuse. The panel would be chaired by the Deputy Secretary of Defense. The panel would review the Government Accountability Office report relating to contracting vulnerabilities to waste, fraud, and abuse; and make recommendations on any changes to law, regulations, and policy determined necessary to eliminate such areas of vulnerability.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would: (1) assign a representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics as the chair of the panel; (2) provide the Department with increased flexibility in determining the membership of the panel; (3) require submission of the first annual report to the congressional defense committees by December 31, 2007; and (4) terminate the panel on December 31, 2009. The conferees agree that the panel's initial review should include an examination of the Department's administrative and disciplinary procedures for cases involving lapses in contracting integrity and include recommendations on any changes to such procedures the panel determines appropriate in the first annual report.

PANEL ON CONTRACTING INTEGRITY

Chair: Hon Dr. James. I. Finley, Deputy Under Secretary of Defense, (Acquisition & Technology)

Executive Director: Mr. Shay Assad, Director, Defense Procurement and Acquisition Policy

Subcommittees:

- The Current Structure of Contract Integrity
- Contracting Integrity in a Combat/Contingent Environment
- Sustained Senior Leadership
- Capable Acquisition Workforce
- Adequate Pricing
- Sufficient Contract Surveillance
- Appropriate Contracting Approaches and Techniques
- Recommendations for Change

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Subcommittee: Current Structure of Contract Integrity PoC: Ms. Rosalind Thomas at 703-767-1373, Rosalind.Thomas@dla.mil				
Subject Area: Organization				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
1. Provide an organization chart showing the current structure of your Service or Agency contracting organization. Include headquarters and major commands with acquisition missions.				
Subject Area: Senior Acquisition Official				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
2. Identify the Senior Acquisition Official for your Service or Agency. Include title, rank, or grade.				
Subject Area: Contracting Workforce				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
3. Do all contract specialists report to another contracting professional or to an individual whose primary DAWIA certification is in contracting?				
4. Do all contract specialists have the opportunity to be evaluated by a contracting professional or by an individual whose primary DAWIA certification is in contracting at the first supervisory level, or the next higher supervisory level, or via a matrix arrangement?				
5. Do policies prohibit oversight, source selection, and negotiations from residing in one individual?				
6. Does the organization structure provide for separation of duties and decisions among contracting, finance, and requirements?				
7. Does organization policy provide for separation of duties among contracting, finance, and requirements?				
8. Is there a formal contract review process?				

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Subject Area: Transparency				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
9. Are contracts reviewed by organizations separate from the buying organization?				
10. Is the senior official for contract review equivalent in rank or grade to the senior contract awarding official?				
11. Is there an office or organization with responsibility for contracting integrity?				
12. Is there an ombudsman for contract integrity?				
13. Are there avenues for individuals to voice concerns about acquisition decisions without fear of reprisal?				
Subcommittee: Sustained Senior Leadership				
PoC: Ms. Kyoung Lee, (703) 604-7136, kyoung.lee@us.army.mil				
Subject Area: Senior Leadership				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
1. Does the chief (senior) acquisition official have other significant or primary responsibilities?				
2. Is 360 degree feedback used to evaluate senior acquisition officials?				
3. How long has the senior acquisition official occupied the position?				
a. Less than one year?				
b. One to three years?				
c. Three years or more?				
4. Is any senior acquisition position vacant?				

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Question	Yes	No	Corrective Action (if any)	Projected Completion Date
5. If vacant, for how long?				
a. Longer than six months?				
b. Between three and six months?				
c. Less than three months?				
6. Are these vacancies monitored by the Service or Agency senior official?				
7. Has your organization filled any senior procurement positions using a waiver and/or the process other than OPM-approved guidelines for the need to expedite the process?				
8. Has your organization conducted formal workforce planning as part of strategic human capital management to be ready to fill future senior position vacancies? If so, please provide an electronic copy of the documents.				
9. Are any of the senior leaders in DOD and the Services, including both political appointees and career civil servants, required to have an integrity or ethics goal or objective in his or her performance plan?				
10. Describe your organization's current recruiting and selection procedures for senior leadership positions.				
11. Describe your organization's initiatives, if any, to streamline the process to fill senior-level vacancies. What is the status of each initiative?				

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Subcommittee: Adequate Contract Surveillance PoC: Mr. Robert Johnson, 703-693-2936, robert.f.johnson@navy.mil				
Subject Area: Adequate Contract Surveillance				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
1. Provide electronic copies of your organization’s policies and directives that apply to Contracting Officer’s Representatives (CORs) (to include appointment, training, and accountability).				
2. Address specific issues that your organization has experienced with the use of Contracting Officer’s Representatives (CORs).				
3. Provide Lessons Learned or recommendations to improve effective contract surveillance by CORs.				
Subcommittee: Appropriate Contracting Approaches and Techniques PoC: Col Vincent Napoleon, 703-588-7055, vincent.napoleon@pentagon.af.mil				
Subject Area: Interagency Contracting (The procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency) using the servicing agency’s contract instruments. <i>See FAR 17.501.</i> Also include orders against Federal Supply Schedules and orders using MIPRed funds.)				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
Identify your level within the organization. ___ Execution ___ Planning ___ Leadership				
1. Is guidance or training to address the use and management of Interagency Contracting clear and current? Please provide detail and references.				
a. Does your organization need additional information or guidance?				
2. How does your organization ensure compliance with DoD statutes, regulations and policy regarding obligation of funds?				
a. What safeguards does your organization have in place?				

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Question	Yes	No	Corrective Action (if any)	Projected Completion Date
3. How many interagency contracting vehicles are available for your use?				
a. Are there too many? Just the right number?				
b. How do you select which one is most appropriate for use?				
c. Are the fees commensurate with the tasks to be accomplished on your behalf?				
4. Is the requirement to document the file regarding the use of interagency acquisition clear?				
5. How does your organization provide pre- and post-award oversight of interagency acquisitions?				
6. How does your organization ensure appropriate use of competition? Please provide detail and references.				
7. How does your organization participate in post-award administration of interagency acquisitions?				
Subject Area: Multiple Award ID/IQ Contracts				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
8. Is guidance or training directed at improving the degree of competition among orders placed against Multiple Award ID/IQ Contracts clear and current? Please provide detail and references.				
9. How does your organization ensure a competitive environment in awarding task orders under ID/IQ contracts? Please provide detail and references.				
10. Is the “fair opportunity” process clearly stated in each ID/IQ contract?				
a. Do you document your “fair opportunity” decisions to limit competition among your awardees?				
b. Is the requirement to include this documentation in the contract file sufficiently clear?				

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Subject Area: Award Fees, Incentive Fees and Award-Term Contracts				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
11. Is guidance or training regarding the structure and usage of Award and Incentive Fees and Award-Term contracts clear and current? Please provide detail and references.				
12. Does your organization provide award and incentive fees based on performance occurring during the award fee period or on expected outcome of the total contract? Please provide detail and references.				
13. How does your organization provide oversight regarding appropriate use of award and incentive fees?				
14. How does your organization determine the appropriate contract type when utilizing award fees? Please provide details.				
15. How does your organization assess the effectiveness of award and incentive fees as motivational tools?				
16. Under what circumstances does your organization use award-term contracts?				
Subject Area: Undefined Contractual Actions (UCAs) (Contract actions for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun. See DFARS 217.7401 (d).)				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
17. What oversight and management processes are in place to ensure appropriate use and timely definitization of UCAs?				
18. Is the guidance regarding definitization criteria and timeframes clear and current? a. Is additional guidance necessary?				
19. Are processes, guidance and training regarding appropriate use and definitization of UCAs clear and current? Please provide detail and references.				
20. Under what circumstances are UCAs utilized in your organization?				

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Subject Area: Acquisition Planning				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
21. What management and oversight processes are in place to ensure appropriate time is afforded to Acquisition Planning? Please provide detail and references.				
22. Is Acquisition Planning guidance and training sufficient to minimize a “late-to-need” approach to contracting and acquisition?				
23. Would targeted acquisition planning training, directed at specific acquisition career fields (e.g., contracting, financial management, program management etc.), improve the overall Acquisition Planning process? Please provide detail, indicating which career fields, and include supporting rationale.				
Subject Area: Selection of Contract Type				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
24. Is guidance and/or training to help contracting professionals execute their responsibilities in selecting contract type clear and current? Please provide detail and references.				
25. What issues must be addressed when considering the use of fixed price type contracts for Research and Development (R&D)? Is guidance on this topic clear, current, and sufficient?				
Subject Area: Cost Estimating				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
26. Are the guidance, training, and tools to help improve overall Cost and Schedule Performance clear and current? Please provide detail and references, and identify any areas for which additional guidance is necessary.				
27. Please provide any recommendations you may have for improving Government Cost Estimates for Programs.				
28. Please provide any best practices in which your				

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organization uses Government Cost Estimates as an element to factor into the awarded contract price (vice relying solely on the proposed contract price).				
29. Please provide any recommendations you may have regarding how the Government Cost Estimate can best be used?				
Subject Area: Commercial Item Pricing				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
30. Are the guidance, training, and tools regarding Commercial Item Cost and Pricing clear, current, and sufficient? Please provide any recommended enhancements.				
31. Please provide any recommendations regarding the appropriate level (e.g., a level above the PCO?) at which the “of a type” Commercial Item Determination should be made. Please provide supporting rationale.				
32. Please provide any recommendations regarding the “of a type” language relative to Commercial Item Determinations. Please provide supporting rationale.				
33. In an effort to facilitate a PCO determination of a Fair and Reasonable Price, should policy revisions include language requiring Commercial Item providers to submit Certified Cost and Pricing data when their sales have not been made to the public in the last 12 months? Should the proposed policy change be a mandatory provision, or should it be a provision for use as a last resort when no other means is available to reach a conclusion of a Fair and Reasonable Price?				
Subject Area: Performance Based Services Contracting				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
34. Are the guidance, training, and tools relative to developing and expressing requirements using Performance Based terms clear, current and sufficient?				
Subcommittee: Contracting Integrity in a Combat/Contingent Environment				
PoC: LTC Jeffrey Grover, 703-695-9764, Jeffrey.Grover@osd.mil				

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Subject Area: Contracting Integrity in a Contingent Environment				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
1. Do the Army, Navy/Marine Corps, and Air Force have contingency contracting-specific integrity training that they provide to officers and enlisted personnel?				
2. What is the form of the training?				
3. Where, when, and how is the training provided?				

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Subcommittee: Capable Acquisition Workforce PoC: Paul McMahon, 703-692-9986, paul.mcmahon@osd.mil				
Subject Area: Capable Acquisition Workforce The term “contracted procurement services” is defined as the use of private sector contractors to carry out actions associated with obtaining supplies or services (including construction), from initial description through solicitation and contract award and all phases of contract administration for the U.S. Government-i.e., hiring contractors to do contracting. This section of the survey specifically applies to the contracting out of duties performed by the 1102 job series/and equivalent military occupational codes and is not associated with support roles – i.e. administrative or statistical support.				
Question	Yes	No	Corrective Action (if any)	Projected Completion Date
1. Source Information: a. Name of organization: _____ b. Name of POC: _____ c. Telephone number POC: _____ d. E-mail of POC: _____				
2. Does your organization currently have contractors performing contracting procurement services as defined above? (Please place “x” in only one space.) <input type="radio"/> A1. No <input type="radio"/> A2. No, not currently, but we have in the past <input type="radio"/> A3. No, not currently, but we plan to do so in the future <input type="radio"/> A4. Yes				
If your answer to question #2 above is: <input type="radio"/> A1, please answer question #3. This will complete this section of the survey. <input type="radio"/> A2, complete question #3, then skip to question #9. <input type="radio"/> A3 or A4, proceed to question #4.				

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Question	Yes	No	Corrective Action (if any)	Projected Completion Date
<p>3. If your answer to the previous question was A1 or A2, what are the major reasons you are not contracting out procurement services? (Please check all that apply.)</p> <ul style="list-style-type: none"> ○ A1. Contracting is an inherently governmental function ○ A2. It is not cost efficient ○ A3. Unsatisfactory contractor performance ○ A4. Current resources sufficient and qualified ○ A5. Concern with handling proprietary information ○ A6. Could negatively impact competition ○ A7. Other (Please explain below): 				
<p>4. What procurement services are you or will you be contracting out? (Please check all that apply).</p> <ul style="list-style-type: none"> ○ A1. Procurement planning (i.e., preliminary market research, requirements identification, PR review, validation of funding) ○ A2. Market research ○ A3. Providing assistance in developing a statement of work ○ A4. Recommending procurement strategy (i.e., contract type) ○ A5. Drafting solicitation document ○ A6. Issuing solicitation package ○ A7. Receiving, assessing offers and preparing package for negotiation ○ A8. Performing price/cost analysis ○ A9. Drafting/developing price negotiation memorandum (PNM) ○ A10. Negotiating price, terms, and conditions ○ A11. Processing award decision and distributing contract ○ A12. Reviewing performance and advising the exercise of options ○ A13. Investigating reports of discrepancy ○ A14. Identifying orders for expedited delivery ○ A15. Negotiating contract modifications ○ A16. Preparing contracts for closeout ○ A17. Other (Please explain below): 				

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Question	Yes	No	Corrective Action (if any)	Projected Completion Date
<p>5. What are the major reasons you are contracting out procurement services? (Please check all that apply.)</p> <ul style="list-style-type: none"> ○ A1. Inability to hire adequate resources to meet workload ○ A2. To meet workload surge requirements ○ A3. More cost effective ○ A4. Contracting out is faster than hiring to meet workload ○ A5. Ability to select specific expertise required ○ A6. Bridge to hiring permanent employees ○ A7. Other (Please explain below): 				
<p>6. What percentage of your current procurement workforce (1102s) consists of contractor employees? (Contractor full time equivalents (FTEs)/Government Personnel + Contractor FTEs)</p>				
<p>7. What procurement activities does your organization consider inherently governmental? (Please check all that apply.)</p> <ul style="list-style-type: none"> ○ A1. Determining what supplies or services are to be acquired ○ A2. Approving evaluation criteria ○ A3. Approving incentive plans ○ A4. Committing the government to take some course of action ○ A5. Negotiating price, terms, and conditions ○ A6. Awarding contracts ○ A7. Obligating funds ○ A8. Terminating contracts ○ A9. Determining if costs are reasonable, allocable, or allowable ○ A10. Voting member of the Source Selection Evaluation Board ○ A11. Accepting or rejecting services or products ○ A12. Ordering changes or taking action based on contractor performance ○ A13. Use and disposition of Government Property ○ A14. Other (Please explain below): 				

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<p>8. Where did you look for guidance regarding policy/guidelines on contracting out procurement? (Please check all that apply.)</p> <ul style="list-style-type: none"> <input type="radio"/> A1. Federal Acquisition Regulation and supplement <input type="radio"/> A2. Organization legal office <input type="radio"/> A3. Headquarters legal office <input type="radio"/> A4. OMB A-76 Circular <input type="radio"/> A5. Office of Federal Procurement Policy <input type="radio"/> A6. Other (Please explain below): 				
<p>9. Did you receive any legal limits/concerns in your guidance?</p> <ul style="list-style-type: none"> <input type="radio"/> A1. No <input type="radio"/> A2. Yes (If yes, please explain the legal concern(s) below): 				
<p>10. How do you foresee your future involvement in contracting out procurement services? (Please check only one.)</p> <ul style="list-style-type: none"> <input type="radio"/> A1. Increasing <input type="radio"/> A2. Decreasing <input type="radio"/> A3. About the same <p>(Please explain your rationale for the selection below):</p>				
<p>11. What has gone well in your experience with contracting out procurement services? (Please explain below):</p>				
<p>12. If the contracting community contracts out a substantial portion of the non-inherently governmental procurement functions, how will future contracting officers be developed to perform the inherently governmental functions? (Please explain below):</p>				