Summary of Recommendations Published in Volume

Rec. 1: Revise definitions related to commercial buying to simplify their application and eliminate inconsistency. The FAR's commercial buying terms are commonly poorly defined, and vary widely from industry to industry. For more than 2 decades, Congress and DoD have encouraged use of commercial buying by easing the regulatory, procedural, and discretionary framework for buying commercial goods and services, yet DoD has struggled to interpret and apply commercial buying policy. Previous recommendations would have established a prescriptive framework for acquiring commercial items.

Rec. 2: Minimize government-unique terms applicable to commercial buying. The Federal Acquisition Streamlining Act was intended to allow the government to operate more commercially—like in its dealings with the commercial market. Success has been limited. To effectively use the commercial marketplace, selling products to the government must be much simpler and more closely reflect commercial practices. Streamlining contracts for commercial items by eliminating as many government-unique contract terms as possible will support expanded commercial buying.

Rec. 3: Align and clarify FAR commercial termination language. Policy for terminating commercial contracts has been subject to litigation in the last 24 years, and policy guidance in FAR parts 12 and 49 does not fully address needs in this area. Additionally, the language at FAR 52.212-40(1)(m) requires further clarification to elucidate the fair compensation framework in paragraph (l) and the use of a cure notice for termination for cause in paragraph (m).

Rec. 4: Revise DFARS sections related to rights in technical data policy for commercial products. DFARS clauses 252.227-7015 and 252.227-7037 establish rights in intellectual property for DoD that are not aligned with commercial practice. The policies in FAR 27.102 and DFARS 227.7102-1 are generally adequate to support DoD and balance the government and the contractor, yet subsequent paragraphs of DFARS 227.7102 deviate from commercial practice. Adopting commercial practice will remove barriers that inhibit access to innovations in the commercial market.

Rec. 5: Align DCAA's mission statement to focus on its primary customer, the contracting officer. Although DCAA was established to provide accounting, auditing, and financial advisory services to DoD contracting officers, in 2010, the organization's mission statement shifted emphasis to taxpayer and public interest. Aligning DCAA's mission statement to focusing on serving contracting officers will support the full range of contracting, audit, and management work, which will, in turn, benefit taxpayers.

Rec. 6: Revise the elements of DCAA's annual report to Congress to incorporate multiple key metrics. Congress's reporting requirement for DCAA lacks critical merit to adequately measure DCAA's performance. The current reporting requirement emphasizes the number of audits and the questioned costs. Congress should allow DCAA to measure its performance using a balanced scorecard that keeps the focus on serving contracting officers.

Rec. 7: Provide flexibility to contracting officers and auditors to use audit and advisory services when appropriate. Prior to requesting field pricing/audit assistance, contracting officers should consider other available internal resources and tailor their request for assistance to the maximum extent. To help contracting officers understand, this request should be defined so there are clear distinctions between audits and advisory services. DCAA should use the full range of audit and nonaudit services available. The roles of DCAA/DCMA should be reviewed to ensure alignment and eliminate redundancies.

Rec. 8: Establish statutory time limits for defense oversight activities. Financial and business system oversight of DoD's contractors often starts too late and takes too long. DCAA's work is untimely, causing delays in contract awards, as well as other negative effects. Congress should establish statutory oversight time limits to focus oversight on providing contracting officers what they need in a timely manner, to reduce unnecessary delays, to provide more timely audits and other services, and to forgo more cooperative relationships among contracting officers, compliance professionals, and contractors.

Rec. 9: Permit DCAA to use IPAs to manage resources to meet time limits. DCAA cannot eliminate its current backlog of unainted final indirect cost rate proposals and current backlog of mandatory financial and advisory services to contracting officers. DCAA should use independent professional auditors (IPAs) to provide timely audit and advisory services in accordance with statutory time limits. Timely performance of risk management activities will facilitate faster corrective action, reduce risk of noncompliance, and reduce DoD's oversight burden.

Rec. 10: Replace system criteria from DFARS 252.242-7006, Accounting System Administration, with an Internal control audit to assess the adequacy of contractors' accounting systems. DoD is not obtaining timely assurance that internal controls for defense contractors' accounting systems are properly designed and functioning. DoD should use the framework provided by the Sarbanes-Oxley Act as a basis for development and testing of tools and metrics, which in turn will reduce time needed to make that framework operational. Internal control audits should be performed for assessing adequacy of defense contractors' accounting systems because these audits (a) use an engagement framework used in the private sector that is well established and understood; (b) provide more useful and relevant information to the acquisition team, contracting officer, and contractor; and (c) offer clear and objective criteria for accounting system requirements.

Rec. 11: Develop a Professional Practice Guide for DoD's oversight of contractor costs and business systems. DoD's oversight functions within DCAA provide professional services and skilled advice to contracting officers. The quality and consistency of these services is highly dependent on the quality and consistency of foundational standards that guide the professionals' work. Although professional standards are common in the accounting and auditing profession, none have been collectively developed or interpreted for the unique purpose of federal government contract oversight. A Professional Practice Guide would clarify the types of engagements that may be performed to accomplish DoD's contract compliance oversight objectives.

Rec. 12: Require DCAA to obtain peer review from a qualified external organization. Peer reviews are designed to validate a professional service organization's compliance with professional standards. DoDIG currently performs peer review for DCAA; however, DoDIG's mission is vastly different than that of DCAA's, so the two organizations do not perform similar services. DoDIG cannot serve as an independent, qualified peer reviewer of DCAA or replacing DCAA in oversight of contract audits. DCAA peer review should be performed by an organization other than DoDIG. Congress should amend the targeted DOD-specific portions of the IG Act and other relevant sections of U.S. Code to eliminate DoDIG as the peer reviewer for DCAA.

Rec. 13: Increase coverage of the effectiveness of contractor internal audits by leveraging IPAs. DoD has not provided sufficient reviews and audits of contractor business systems that would be required in any DoD oversight framework of the FAR. Deficiencies almost always are identified. Leveraging IPAs would allow timely assurance that DoD is effectively leveraging IPAs. Internal controls is an essential component of all cost-effective compliance frameworks.
of losing the race to advanced capabilities. DoD’s small business policies and programs currently focus on acquiring supplies and services that further socioeconomic goals but do not fully leverage innovative and unique capabilities of small businesses to support DoD’s mission. Establishing the infrastructure necessary to create and execute a DoD small business strategy, ensuring alignment of DoD’s small business programs with the agency’s critical needs, and building on the successes of the SBIR/STTR and RIF programs could enable innovation in the acquisition system and foster more effective inclusion of small businesses.

Rec. 22: Eliminate, or sunset within 5 years, statutory offices and Secretary of Defense designated officials when practical to increase flexibility and/or reduce redundancy.

Codifying the existence and structure of certain offices may unnecessarily restrict the Secretary’s ability to adapt the DoD organizational structure to improve efficiency and effectiveness consistent with the intent of the FY 2017 NDAA. Congress should repeal or sunset the statutory requirement for acquisition-related offices or Secretary of Defense designated officials.

Rec. 23: Establish a permanent, automatic 5-year sunset provision for DoD congressional reporting requirements.

Excess reporting requirements can impose costs on DoD that outweigh the specific benefits of each individual report. Automatic sunsets can be an effective means to encourage Congress to regularly assess the value of a report. A sunset created by Congress will always be susceptible to the decisions of a later Congress. Inevitably, sunset provisions are only as strong as the congressional will to uphold them, yet an automatic sunset for reporting requirements is still a useful tool for maintaining congressional discipline. A sunset forces Congress to make an active decision to explicitly reauthorize a reporting requirement, prevents the unwitting growth of reports, and imposes an evaluation of costs and benefits for determining the necessity of a report.

Rec. 24: Repeat, preserve, or maintain various DoD congressional reporting requirements.

Despite widespread support for reporting requirement reform, remedies have repeatedly failed. Congress should repeat, preserve, or maintain the statutory requirement for various reports in a manner consistent with Recommendation 23 above.

Advisory Panel on Streamlining and Codifying Acquisition Regulations

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