

## Recommendation 70: Authorize DoD to develop a replacement approach to the inventory of contracted services requirement under 10 U.S.C. § 2330a.

### Problem

Congressional staffers and senior DoD leaders indicate that spreadsheets produced in compliance with the ICS requirement add little or no value to DoD decision-making processes.<sup>1</sup> One senior DoD acquisition official described the ICS requirements as “a waste of time.”<sup>2</sup> Another senior official, when addressing how to improve the requirements, said, “kill them all.”<sup>3</sup> Program office and contracting personnel indicate the requirement adds substantial bureaucratic complexities to the acquisition process.<sup>4</sup> According to private-sector contractors who must collect and report data, the requirement creates additional work that adds to administrative overhead. One technical specialist for a defense contractor estimated that his company spent about three workdays per year complying with service contract reporting requirements. He described the requirements as “an unfunded mandate” and “an onerous thing that I don’t get anything out of.”<sup>5</sup>

DoD has set up complicated, customized information management systems in response to 10 U.S.C. § 2330a. Congress should allow DoD to report on the information it collects on services contracts, without requiring DoD to maintain unique IT systems to collect specific data elements. DoD should center its services contracts reporting on broad, strategic purposes; objectives; and key performance results of the contracts being assessed.

### Background

ICS is essentially a count of contractor full-time equivalents (FTEs), as well as several other data points.<sup>6</sup> The term, under 10 U.S.C. § 2330a(c)(2)(E), refers to “number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).” Most ICS data on contractor labor hours and costs are collected directly from vendors via the Contractor Manpower Reporting Applications (CMRAs). The Military Service CMRAs are more modernized versions of the original Army CMRA, which dates back to the initial establishment of the Army’s system for tracking contractor manpower. Four separate data systems have been developed in DoD—in addition to the Army’s they included one for the Navy, one for the Air Force, and one for other DoD components. There has been discussion of an enterprisewide CMRA to serve as a common IT system for collecting ICS data on contracts throughout DoD.<sup>7</sup> Other ICS data are extrapolated using service contract obligation data from FPDS.

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<sup>1</sup> DoD officials, interviews with Section 809 Panel, May 2018.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Military department program managers and other acquisition staff, interviews with Section 809 Panel, May 2018.

<sup>5</sup> Technical specialist for medium-sized DoD contractor, phone interview with Section 809 Panel, May 2018.

<sup>6</sup> ICS is required under 10 U.S.C. § 2330a.

<sup>7</sup> See GAO, *DoD Inventory of Contracted Services: Timely Decisions and Further Actions Needed to Address Long-Standing Issues*, GAO-17-17, October 2016, accessed March 23, 2018, <https://www.gao.gov/assets/690/680709.pdf>.

DoD vendors report service contract information to the CMRAs, which in turn feed into ICS. The physical ICS consists of very large compressed files posted to Defense Procurement and Acquisition Policy's website. The compressed files contain Excel spreadsheets with thousands of line items displaying a mixture of vendor-reported and FPDS-derived contractor full-time equivalents (CFTEs). As of March 2018, the most recent uploaded version of ICS was the 66 MB (compressed) FY 2016 version. Ideally, Congress and other stakeholders use ICS for analysis and oversight. Like all other data collection and reporting processes, ICS costs time and money, including up-front investments in developing policy and new or modified IT systems. Costs also include the ongoing data entry and other administrative work by acquisition professionals and vendor employees.

Observers have questioned whether the ICS data collection process is useful.<sup>8</sup> At the congressional level, direct feedback from staffers indicates that ICS does not aid in the legislative or oversight process. The authors of a 2017 study interviewed 11 congressional staffers from both chambers and both major parties, and found that all of them "indicated disappointment with DoD's actions and deliverables with respect to the inventory."<sup>9</sup> For vendors, the time spent meeting ICS reporting requirements may constitute a substantial impediment to the service contracting process. In the acquisition and contracting community, this additional time spent on vendor compliance may mean longer timeframes and higher costs.

ICS is built largely using data from the CMRAs, the stated purpose of which is to achieve the following:

- Understand workforce composition to allow for "more informed decisions on workforce staffing and funding decisions."
- Improve workforce oversight to "avoid duplication of effort or shifting of in-house reductions to contract."
- "Better account for and explain the total workforce."<sup>10</sup>

CMRA data-entry work is performed by vendors, not DoD acquisition personnel. To ensure the collection of FTE data for the CMRA, DoD contracting officers must require vendors to agree to enter information into the system via the Internet.<sup>11</sup>

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<sup>8</sup> One senior official said that ICS's "intent is good" but the "execution is incredibly poor, in fact so much that it's a waste of time." Acquisition official, discussion with Section 809 Panel, May 2018.

<sup>9</sup> See Nancy Young Moore et al., *A Review of Alternative Methods to Inventory Contracted Services in the Department of Defense*, RAND Corporation (2017): 17, doi: 10.7249/RR1704.

<sup>10</sup> "Enterprise Contractor Manpower Reporting Application: ECMRA Overview," DoD, accessed March 19, 2018, <https://www.ecmra.mil/help/help.html>.

<sup>11</sup> Enterprise-wide Contractor Manpower Reporting Application (ECMRA) clause inclusion requirements vary by DoD component. Army regulations state that contracting officers "shall ensure that the requirement to report contractor manpower is included in all contracts, task/delivery orders and modifications" (AFARS Subpart 5137.91). Navy and Marine Corps regulations require a standard EMCRA clause to be inserted into all service contracts, but exempt IT service contracts from this requirement (NMCARS 5237.102-90). Neither the Air Force FAR Supplement's chapter on service contracting (AFFARS Part 5337) nor Air Force Instruction 63-138, "Acquisition of Services" (as published May 11, 2017) require contracting officers to include mandatory ECMRA clauses in their contracts. Defense Information Systems Agency (DISA) regulations require contracting officers to require vendors to report data to the ECMRA "for all contracts and orders for services and supplies" (DARS 37.102-90).

### **Legislative History**

In the FY 2002 NDAA, Congress directed DoD to create a “data collection system to provide management information with regard to each purchase of services.”<sup>12</sup> This requirement was arguably already being met at the time through the DD-350 contract data reporting system and its successor, FPDS.

Many of the current ICS requirements date back to the early 2000s and the Iraq War. Citing congressional staffers, researchers have noted that “the impetus for the ICS requirement sprung from concern over DoD contractor activities early in Operation Iraqi Freedom,” adding that ICS was a “direct outgrowth of security contractor issues and well-publicized events.”<sup>13</sup>

In 2005 the Secretary of the Army announced “an Army initiative to obtain better visibility of the contractor service workforce.”<sup>14</sup> The Army was already in the process of developing the CMRA, a system for tracking several data elements present in FPDS as well as direct labor hours, which are not reported to FPDS.

In the FY 2008 NDAA, Congress added requirements for DoD to create “inventories and reviews for contracts of services” and make them available to the public as well as Congress.<sup>15</sup> The FY 2011 NDAA provided \$4 million for the Air Force and Navy to use the Army’s CMRA, “modified as appropriate for Service-specific requirements, for documenting the number of full-time contractor employees (or its equivalent).”<sup>16</sup>

The FY 2012 NDAA changed data collection requirements and also mandated aggregate caps on service contract spending based on data collection.<sup>17</sup> The FY 2014 and FY 2015 NDAA extended those measures for subsequent years.<sup>18</sup> The Senate Armed Services Committee (SASC), in which the provision originated, justified the caps on service contracts spending by noting,

*Expected savings from the reduction in staff augmentation services and the civilian workforce freeze could easily be lost if other categories of services contracts are permitted to grow without limitation so*

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<sup>12</sup> Section 801(c) of FY 2002 NDAA, Pub. L. No. 107-107 (2001).

<sup>13</sup> Researchers quoted a congressional staffer’s explanation that “during the war in Iraq, when services contracting went through the ceiling in terms of expenditures, and issues with security firms arose... The committee wanted visibility on what we’re spending money on, where we’re spending it, and what kinds of functions are being performed.” See Nancy Young Moore et al., *A Review of Alternative Methods to Inventory Contracted Services in the Department of Defense*, RAND Corporation (2017): 18, doi: 10.7249/RR1704

<sup>14</sup> Assistant Secretary of the Army – Manpower and Reserve Affairs, Department of the Army memo, *Accounting for Contract Services*, January 7, 2005, accessed February 28, 2018, <http://www.asamra.army.mil/scra/documents/SA%20Memo%2007JAN05%20-%20Accounting%20for%20Contract%20Services.pdf>.

<sup>15</sup> Section 807 of FY 2008 NDAA, Pub. L. No. 110-181 (2008).

<sup>16</sup> Section 8108 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10 (2011).

<sup>17</sup> Sections 808 and 936 of the FY 2012 NDAA, Pub. L. No. 112-81 (2011). Section 808 of the FY 2012 NDAA mandated that “the total amount obligated by the Department of Defense for contract services in fiscal year 2012 or 2013 may not exceed the total amount requested for the Department for contract services in the budget of the President for fiscal year 2010.” Section 936 modified data collection requirements under 10 U.S.C. § 2330a.

<sup>18</sup> Section 951 of FY 2014 NDAA, Pub. L. No. 113-66 (2013).

*that spending can shift to these contracts. Over the last decade, DOD spending for contract services has more than doubled, from \$72.0 billion in fiscal year 2000 to more than \$150.0 billion.<sup>19</sup>*

The FY 2017 NDAA eliminated earlier requirements that ICS be made publicly available and that the DoD Inspector General and GAO each issue annual reports assessing ICS's accuracy and use in strategic planning. The law also raised the threshold above which DoD must report ICS data on service contracts, from the simplified acquisition threshold to a flat \$3 million.<sup>20</sup>

The FY 2018 NDAA added a new section to U.S. Code immediately preceding the ICS section of Title 10.<sup>21</sup> Among other provisions, the section required that DoD ensure "appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for services contracts and inform the planning, programming, budgeting, and execution process of the Department of Defense."<sup>22</sup> The FY 2019 NDAA added clarification to the ICS statute to include applicability to contracts for services "closely associated with inherently governmental functions."<sup>23</sup>

The House-passed version of the bill would have substantially expanded the required applicability of ICS.<sup>24</sup> Instead of requiring ICS data collection for purchases of services in excess of \$3 million, the provision would have required ICS data collection for purchases of services in excess of the simplified acquisition threshold.<sup>25</sup> It would also have required DoD to collect data on all nine service contract acquisition portfolio groups defined by Defense Pricing and Contracting, rather than just four of them. These provisions would have reversed changes made under the FY 2017 defense authorization.<sup>26</sup> The changes were not, however, adopted in the bill conference report.

### **Current Law and Regulation**

As of 2018, Title 10 requires DoD to "establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency."<sup>27</sup> This requirement explicitly applies to logistics management services, knowledge-based services, and electronics and communications services.<sup>28</sup> For both IT service contracts and other service contract

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<sup>19</sup> Senate Armed Services Committee report to S. 1253, *National Defense Authorization Act for Fiscal Year 2012*, (S.Rept. 112-26, see Section 823 of the Senate bill), June 22, 2011, accessed April 12, 2018, <https://www.congress.gov/congressional-report/112th-congress/senate-report/26/1>.

<sup>20</sup> Section 812 of FY 2017 NDAA, Pub. L. No. 114-328 (2016). At the time, the simplified acquisition threshold varied based on acquisition type but was generally \$150,000.

<sup>21</sup> 10 U.S.C. § 2329.

<sup>22</sup> Section 851 of FY 2018 NDAA, Pub. L. No. 115-91 (2017).

<sup>23</sup> Section 819 of Conference Report to Accompany H.R. 5515, *John S. McCain National Defense Authorization Act for Fiscal Year 2019*, July 2018, accessed July 26, 2018, <https://docs.house.gov/billsthisweek/20180723/CRPT-115hrpt863.pdf>.

<sup>24</sup> H.R. 5515, *John S. McCain National Defense Authorization Act for Fiscal Year 2019*, accessed June 6, 2018, <https://www.congress.gov/bill/115th-congress/house-bill/5515/text>.

<sup>25</sup> Although the simplified acquisition threshold was raised to \$250,000 in the FY 2018 NDAA, the change had not been incorporated into the FAR at the time the House passed the FY 2019 NDAA. At the time of House passage in May 2018, the standard threshold was still listed in regulation as \$150,000. See Section 805 of FY 2018 NDAA, Pub. L. No. 115-91 (2017).

<sup>26</sup> See Section 812 of FY 2017 NDAA, Pub. L. No. 114-328 (2016).

<sup>27</sup> 10 U.S.C. § 2330a(a).

<sup>28</sup> *Ibid.*

inventories, data are uploaded to a public DoD website.<sup>29</sup> These provisions apply to all contracts for services as defined under the product and service code system.

Within 90 days of an inventory filing, each DoD component head is required to review and verify the required certifications.<sup>30</sup> Effective starting in FY 2022, DoD is required to submit annual information to Congress on service contracting that “clearly and separately identifies the amount requested for each category of services to be procured.”<sup>31</sup>

ICS is completely separate from the Synchronized Predeployment and Operational Tracker system used to track operational support contractors that accompany U.S. forces during overseas deployments.<sup>32</sup> For this reason, modifying ICS and CMRA data-collection processes would not affect the military’s ability to track support contractors operating overseas.

### ***Civilian Agency ICS Equivalent***

In the FY 2010 omnibus appropriations law, Congress required civilian agencies to collect and report data on service contracts in a way that mirrored practices in DoD.<sup>33</sup> Agencies were required to collect data “for each service contract” on the following:

- Descriptions of services purchased and their roles in achieving agency objectives.
- Offices administering and sponsoring the contract.
- Funding sources and dollar amounts obligated.
- Dollar amounts invoiced.
- Contract types and dates of award.
- Contractor names and locations of contract performance.
- Numbers and work locations of contractor and subcontractor employees, expressed as full-time equivalents for direct labor.
- Whether contracts were for personal services.
- Whether contracts were awarded on a noncompetitive basis.

There was no explicit requirement in law that civilian agencies build or deploy data collection systems akin to DoD’s CMRA systems, or that they require vendors to enter employee data into such systems.

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<sup>29</sup> Section 813 of FY 2015 NDAA, Pub. L. No. 113-291 (2014). “Inventory of Services Contracts,” Defense Procurement and Acquisition Policy, accessed February 20, 2018, [https://www.acq.osd.mil/dpap/cpic/cp/inventory\\_of\\_services\\_contracts.html](https://www.acq.osd.mil/dpap/cpic/cp/inventory_of_services_contracts.html).

<sup>30</sup> 10 U.S.C. § 2330a(d)(2).

<sup>31</sup> 10 U.S.C. § 2329(b).

<sup>32</sup> See Office of the Assistant Secretary of Defense for Logistics & Materiel Readiness, *Synchronized Predeployment and Operational Tracker – Enterprise Suite*, accessed June 12, 2018, [https://www.acq.osd.mil/log/ps/.spot.html/Info\\_Sheet\\_SPOT-ES\\_FINAL.pdf](https://www.acq.osd.mil/log/ps/.spot.html/Info_Sheet_SPOT-ES_FINAL.pdf).

<sup>33</sup> Section 743 of the Consolidated Appropriations Act, 2010, Pub. L. No. 111-117 (2009).

OMB was tasked with developing and disseminating implementation guidance to executive agencies. A 2010 memorandum noted that the majority of data elements required under the law were already reported and available via FPDS. OMB recognized that three required data elements were not available in FPDS: number of contractor employees, total dollar amount invoiced for services, and descriptions of the role services play in achieving agency objectives. The memorandum added that “separate efforts are being pursued to facilitate a standard, government-wide data collection process for this information so that it may be incorporated into agency inventories beginning in FY 2011.”<sup>34</sup>

A 2012 GAO report analyzed developments since the FY 2010 appropriations enactment, and concluded that agencies “did not fully comply with statutory requirements” on service contract inventories.<sup>35</sup> GAO noted that complying with these requirements would necessitate developing new mandatory contract clause language, which would require contractors to conduct additional data collection and reporting via existing IT systems.<sup>36</sup>

In FY 2014, a rule was finalized requiring agencies to add two new contract clauses to contracts above a set threshold (as of 2018 the threshold was set at \$500,000).<sup>37</sup> These clauses require contractors to collect and report the following to a centralized database: (a) contract identification numbers, (b) dollar amounts invoiced, (c) direct labor hours, and (d) related subcontractor data.<sup>38</sup>

## Discussion

To assess whether the ICS data collection process is useful, the intended purposes of ICS must be established. Congress has provided indications of ICS’s intended purposes in committee reports, hearings, and congressionally requested GAO reports.

### **Congressional Intent**

The SASC has stated that the main purpose for the original 2002 provisions was because DoD

*has never conducted a comprehensive spending analysis of its services contracts and has made little effort to leverage its buying power, improve the performance of its services contractors, rationalize its supplier base, or otherwise ensure that its dollars are well spent.*<sup>39</sup>

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<sup>34</sup> OMB Memorandum, *Service Contract Inventories*, November 5, 2010, accessed May 15, 2018, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>.

<sup>35</sup> GAO, *Civilian Service Contract Inventories: Opportunities Exist to Improve Agency Reporting and Review Efforts*, GAO-12-1007, September 2012, accessed May 15, 2018, <https://www.gao.gov/assets/650/648939.pdf>.

<sup>36</sup> *Ibid*, 8.

<sup>37</sup> Federal Acquisition Regulation; Service Contracts Reporting Requirements, Fed. Reg. 78 FR 80369 (Dec. 31, 2013).

<sup>38</sup> FAR 4.17 establishes thresholds and requires contracting officers to include mandatory data collection clauses in service contracts. FAR 52.204-14 requires contractors to collect and enter data on service contracts. FAR 52.204-15 requires contractors to collect and enter data on indefinite-delivery service contracts.

<sup>39</sup> Senate Armed Services Committee, *National Defense Authorization Act for Fiscal Year 2002 Report*, S. Rept. 107-62, September 12, 2001, accessed March 20, 2018, <https://www.congress.gov/107/crpt/srpt62/CRPT-107srpt62.pdf>.

SASC also stated that DoD's professional, administrative, and support service contracts showed "an almost complete failure to comply with basic contracting requirements" and had "barely begun to implement requirements for performance-based services contracting."<sup>40</sup>

In a committee report on the FY 2008 provisions that formally established the ICS reporting process, SASC provided the following as justification:

*[T]he Department's expenditures for contract services have nearly doubled, but DOD still has not conducted a comprehensive analysis of its spending on these services. The specific criteria and timelines established in this provision for the inventory and review of activities performed by contractors would ensure that such analyses are conducted.*<sup>41</sup>

At the time the ICS data collection infrastructure was being built, it appears that the congressional intent mainly fell into three categories: improve buying power, improve service contractor performance, and increase DoD transparency to allow for better oversight.<sup>42</sup>

The House Armed Services Committee's Subcommittee on Readiness has also shown a recurring interest in ICS. Subcommittee Ranking Member Madeleine Bordallo clarified in 2012 that an accurate and useful ICS was "imperative" prior to "any further arbitrary cuts in the civilian workforce."<sup>43</sup> Ranking Member Bordallo also questioned U.S. Transportation Command's Gen. William Fraser on DoD's use of ICS to "insource contracted work more cost-effectively performed by civilians."<sup>44</sup> In 2014, Ranking Member Bordallo characterized ICS as "integral to the implementation of a robust total force management policy."<sup>45</sup>

Defense appropriators have also shown an interest in ICS. House Appropriations Committee's defense subcommittee Ranking Member Pete Visclosky has noted that having a "reliable and comprehensive" knowledge of service contracts is important to "help identify and control those costs as we do already with the costs of civilian employees."<sup>46</sup>

In the Operation and Maintenance (O&M) title of the FY 2010 NDAA, Congress penalized all DoD components excluding the Department of the Army for their reported failure to comply with ICS

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<sup>40</sup> Ibid.

<sup>41</sup> Senate Armed Services Committee, *National Defense Authorization Act for Fiscal Year 2008 Report*, S. Rept. 110-77, June 5, 2007, accessed March 20, 2018, <https://www.congress.gov/110/crpt/srpt77/CRPT-110srpt77.pdf>.

<sup>42</sup> Data collection infrastructure consists of the original Army CMRA, the component-specific CMRAs, and the associated rules, policies, and processes.

<sup>43</sup> GPO, *Civilian Workforce Requirements—Now and Across the Future Years Defense Program*, Hearing before the Subcommittee on Readiness of the Committee on Armed Services, House of Representatives, July 26, 2012, 4, accessed March 20, 2018, <https://www.gpo.gov/fdsys/pkg/CHRG-112hrg75669/pdf/CHRG-112hrg75669.pdf>.

<sup>44</sup> GPO, *Hearing on National Defense Authorization Act for Fiscal Year 2013 and Oversight of Previously Authorized Programs before the Committee on Armed Services, House of Representatives*, March 7, 2012, 135, accessed March 20, 2018, <https://www.gpo.gov/fdsys/pkg/CHRG-112hrg73438/pdf/CHRG-112hrg73438.pdf>.

<sup>45</sup> GPO, *Defense Reform: Empowering Success in Acquisition*, Committee on Armed Services, House of Representatives, July 10, 2014, 29, accessed March 20, 2018, <https://www.gpo.gov/fdsys/pkg/CHRG-113hrg89508/pdf/CHRG-113hrg89508.pdf>.

<sup>46</sup> GPO, *Department of Defense Appropriations for 2016, Hearings before a Subcommittee of the Committee of Appropriations, House of Representatives*, 340-341, accessed March 20, 2018, <https://www.gpo.gov/fdsys/pkg/CHRG-114hrg97457/pdf/CHRG-114hrg97457.pdf>.

requirements.<sup>47</sup> Non-Army O&M accounts were reduced by a total of \$550 million. The House Appropriations Committee stated that this reduction was “directly attributed to the negligence of the Departments of the Navy and the Air Force, and the Defense Components to comply” with ICS requirements under 10 U.S.C. § 2330a.<sup>48</sup>

Committee report language for the FY 2017 NDAA provides additional clarification on why ICS exists. The Senate committee’s report for the bill stated that its intended ICS modifications were designed to “clarify the applicability of the contractor inventory requirement to staff augmentation contracts and to reduce data collection and unnecessary reporting requirements.”<sup>49</sup> The Senate intent was not to catalog the granular details of every single DoD service contract, but rather to provide Congress with a clearer view of the use of contractors for staff augmentation.

The conference report joint explanatory statement for the FY 2017 NDAA added,

*The conferees direct the Secretary of the military department or the head of the Defense Agency to focus on the 17 Product Service Codes identified by the Office of Federal Procurement Policy and the Government Accountability Office in report GAO–16–46 as high risk for including services that are closely associated with inherently governmental functions.*<sup>50</sup>

As of 2017, it appears that at least part of the rationale for ICS was to ensure congressional notification in the event that contractors were performing inherently governmental functions.<sup>51</sup>

### **Intent Behind ICS Within DoD**

Many DoD and Military Service offices, particularly in the Department of the Army, were involved in the initial establishment of the policies and IT systems used to implement ICS. There were several reasons why these offices had an interest in creating a well-functioning ICS. One of the most important was the hope that a fully developed ICS would enable more effective total force management throughout DoD.

### **Total Force Management**

Total force management (TFM) is defined in statute as, “Policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the

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<sup>47</sup> Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118 (2009).

<sup>48</sup> House of Representatives, *Report of the Committee on Appropriations to Accompany H.R. 3326*, July 24, 2009, accessed April 30, 2018, <https://www.congress.gov/111/crpt/hrpt230/CRPT-111hrpt230.pdf>.

<sup>49</sup> Senate Armed Services Committee, *Report to Accompany S. 2943, National Defense Authorization Act for Fiscal Year 2017*, S.Rept. 114-255, accessed April 2, 2018, <https://www.congress.gov/114/crpt/srpt255/CRPT-114srpt255.pdf>.

<sup>50</sup> GPO, *National Defense Authorization Act for Fiscal Year 2017, Conference Report to accompany S. 2943*, Rept. 114-840, accessed April 2, 2018, <https://www.congress.gov/114/crpt/hrpt840/CRPT-114hrpt840.pdf>. The joint explanatory statement references an OMB memo from 2010 and GAO report from 2015, both of which list product service codes focused on administrative support services and IT services. See OMB memorandum, *Service Contract Inventories*, November 5, 2010, accessed April 2, 2018, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>. GAO, *DoD Inventory of Contracted Services: Actions Needed to Help Ensure Inventory Data Are Complete and Accurate*, GAO-16-46, November 2015, accessed April 2, 2018, <https://www.gao.gov/assets/680/673731.pdf>.

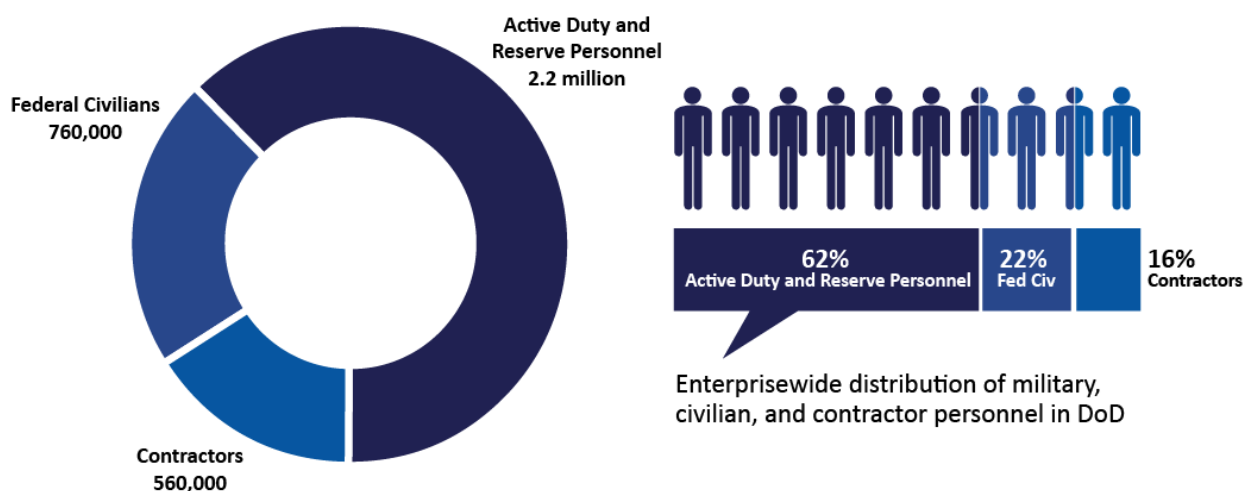
<sup>51</sup> The term “inherently governmental” is defined with extensive examples in FAR Subpart 7.5. In addition to ICS, FPDS reports information on whether each reported contract action is considered inherently governmental.



mission of the Department of Defense.”<sup>52</sup> TFM has been a matter of concern to both DoD and Congress since at least the 1970s.<sup>53</sup> The basic idea of TFM is that DoD should understand the different costs structures associated with different combinations of personnel categories. This understanding will, in theory, allow DoD to run more efficiently across the entire enterprise.

As a core part of TFM, the Under Secretary of Defense for Personnel and Readiness “establishes policy, assigns responsibilities, and prescribes procedures for determining the appropriate mix of manpower (military and DoD civilian) and private sector support.”<sup>54</sup> Figure 6-5 displays GAO’s assessment of enterprisewide distribution of military, civilian, and contractor personnel in DoD.

**Figure 6-5. Distribution of DoD Workforce<sup>55</sup>**



Some DoD stakeholders consider TFM one of the main purposes for ICS data collection requirements. GAO reported in 2016 that a potential policy revision, proposed by the Under Secretary of Defense for Personnel and Readiness, would “explicitly require use of the inventory to inform budgeting and total force management decisions.”<sup>56</sup>

<sup>52</sup> Total Force Management (TFM) definition from 10 U.S.C. § 129a(a). 10 U.S.C. § 129 and 10 U.S.C. § 2463 also contain TFM-related provisions.

<sup>53</sup> See GAO, *DOD ‘Total Force Management’ – Fact or Rhetoric?*, January 24, 1979, accessed August 22, 2018, <https://www.gao.gov/assets/130/125320.pdf>.

<sup>54</sup> Policy and Procedures for Determining Workforce Mix, DoDI 1100.22 (2017).

<sup>55</sup> GAO, *Civilian and Contractor Workforces: DOD’s Cost Comparisons Addressed Most Report Elements but Excluded Some Costs*, GAO-18-399, April 2018, accessed August 22, 2018, <https://www.gao.gov/assets/700/691305.pdf>.

<sup>56</sup> GAO, *DOD Inventory of Contracted Services: Timely Decisions and Further Actions Needed to Address Long-Standing Issues*, GAO-17-17, October 2016, 33, accessed August 22, 2018, <https://www.gao.gov/assets/690/680709.pdf>. The policy in question had not yet been revised as of late 2018. See Guidance for Manpower Management, DoDD 1100.4 (2005).

Using bulk services contract data to inform strategic-level decision making would require relatively advanced analytical capabilities. For this reason, usefully applying ICS to TFM decisions might require DoD to further develop its data analytics workforce.

### **Performance-Based Service Contracting**

Congress has explicitly directed that federal procurement regulations, including those applicable to DoD, do the following:

*Establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:*

- (1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.*
- (2) Any other performance-based contract or performance-based task order.*
- (3) Any contract or task order that is not a performance-based contract or a performance-based task order.<sup>57</sup>*

*Performance based* is defined in law as setting forth contract requirements “in clear, specific, and objective terms with measurable outcomes.”<sup>58</sup> Congress has given DoD an explicit mandate to prioritize measuring the quality of outcomes associated with service contracts.

### **Summary of Intent Behind ICS**

Congress has consistently conveyed two major goals behind ICS: improving services acquisition strategy in DoD and improving oversight. The reality of ICS, however, shows that it has not met either of these goals and has imposed substantial costs and administrative burdens on the defense acquisition system. Like many other data collection and reporting requirements, ICS has ultimately manifested itself as a legal compliance requirement rather than a strategic decision-making tool.

### **GAO Assessments**

Several years’ worth of GAO analyses show DoD has seen mixed success and limited utility in its collection of ICS data.<sup>59</sup> GAO reported in 2015 that DoD’s ICS data collection process suffered from a lack of documentation that resulted in “inventory review processes incorrectly reporting” contract data.<sup>60</sup> The report recommended that DoD “focus increased attention on contracts more likely to include services closely associated with inherently governmental functions during the review

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<sup>57</sup> See 10 U.S.C. § 2302 note, Improvements in Procurements of Services. This section of U.S. Code originated in Section 821 (Improvements in Procurements of Services) of FY 2001 NDAA, Pub. L. No. 106-398 (2000). Amendments were added in Section 1431 (Additional Incentive for Use of Performance-Based Contracting for Services) of FY 2004 NDAA, Pub. L. No. 108-136 (2003).

<sup>58</sup> 10 U.S.C. § 2302 note.

<sup>59</sup> See, for example, GAO, *Defense Acquisitions: Continued Management Attention Needed to Enhance Use and Review of DOD’s Inventory of Contracted Services*, GAO-13-491, May 2013, accessed March 1, 2018, <https://www.gao.gov/assets/660/654814.pdf>.

<sup>60</sup> GAO, *DoD Inventory of Contracted Services: Actions Needed to Help Ensure Inventory Data Are Complete and Accurate*, GAO-16-46, November 2015, accessed February 28, 2018, <https://www.gao.gov/assets/680/673731.pdf>.

process.”<sup>61</sup> DoD was devoting too much of its administrative bandwidth to collecting ICS data on contracts unlikely to include inherently governmental services.

At a hearing on the FY 2016 NDAA, defense officials discussed the technical challenges of developing IT infrastructure to implement ICS. Then-Air Force Assistant Secretary for Acquisition William LaPlante said at a hearing on the FY 2016 NDAA,

*The primary difference in our system versus the Army’s system is the maturity of the data and the enabling processes and procedures. The Army’s reporting system is more robust since they have been using it for years. The Air Force, DoD fourth estate, and Navy applications have been able to incorporate many of the Army’s lessons learned, but are still not 100 percent fully implemented primarily due to contractor reporting ‘ramp-up.’<sup>62</sup>*

Then-Army Assistant Secretary for Acquisition, Logistics, and Technology Heidi Shyu added to Assistant Secretary LaPlante’s comments by listing some of the major technical costs to implementing ICS.

*First, the Department lacks sufficient dedicated resources to successfully manage a common reporting application. To remedy this, representatives from the Army and other military departments are currently working with the Acting Assistant Secretary of Defense (Readiness and Force Management) to redefine and re-scope the missions, functions, organizational placement and composition of the Total Force Management Support Office (TFMSO). Second, the Department lacks a methodology to consistently identify Closely Associated with Inherently Governmental (CAIG) functions. Some of the inventory review processes may not be sufficient to accurately identify CAIG functions. Consistent methodologies must be established across the Department of Defense as an initial step in developing and applying a common reporting application.<sup>63</sup>*

Even assuming perfect success at solving the technological challenges in ICS data collection, getting vendors to report information to CMRA systems poses a separate challenge. In 2014, DoD proposed an acquisition rule that would have added a new, mandatory contract clause to defense service contract regulations.<sup>64</sup> The new clause would have required the entry of ICS data on prime contracts and subcontracts into CMRAs, but it was not finalized and was withdrawn in December 2016.<sup>65</sup>

In October 2016, GAO reiterated past recommendations on ICS. The report pointed out that although the Army’s contractor manpower data software was completed and functional, DoD lacked an enterprisewide system and associated business processes. GAO reported that DoD was considering the

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<sup>61</sup> Ibid.

<sup>62</sup> GPO, *Department of Defense Authorization for Appropriations for Fiscal Year 2016 and the Future Years Defense Program, Hearing before the Committee on Armed Services, United States Senate*, April 22, 2015, accessed March 20, 2018, <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg99481/pdf/CHRG-114shrg99481.pdf>.

<sup>63</sup> Ibid.

<sup>64</sup> Defense Federal Acquisition Regulation Supplement: Service Contract Reporting (DFARS Case 2012-D051), Fed. Reg. 79 FR 32522 (Jun. 5, 2014).

<sup>65</sup> Timetable information from OMB, Office of Information and Regulatory Affairs, Regulation Identifier Number (RIN) 0750-AI24, withdrawn December 28, 2016, accessed March 20, 2018, <https://www.reginfo.gov>.

development and deployment of an enterprisewide CMRA, but awaiting the results of a study by the RAND National Defense Research Institute.<sup>66</sup>

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<sup>66</sup> GAO, *DoD Inventory of Contracted Services: Timely Decisions and Further Actions Needed to Address Long-Standing Issues*, GAO-17-17, October 2016, accessed March 1, 2018, <https://www.gao.gov/assets/690/680709.pdf>.

## GAO's Standing Recommendations on ICS

GAO reports list several open recommendations related to ICS, some of which are described as not implemented and others partially implemented. They include the following:

- "Provide updated information in certification letters on how [military departments] resolved the instances of contractors performing inherently governmental functions or unauthorized personal services in prior inventory reviews."<sup>67</sup>
- "Revise annual inventory review guidance to clearly identify the basis for selecting contracts to review and to provide approaches the components may use to conduct inventory reviews that ensure the nature of how the contract is being performed is adequately considered. If DOD intends for components to review less than 100 percent of its contracts, then the guidance should clearly identify the basis for selecting which contracted functions should be reviewed."<sup>68</sup>
- "Approve a plan of action, with timeframes and milestones, for rolling out and supporting a department-wide data collection system as soon as practicable after December 1, 2014. Should a decision be made to use or develop a system other than the Enterprise-wide Contractor Manpower Reporting Application system currently being fielded, document the rationale for doing so and ensure that the new approach will provide data that satisfies the statutory requirements for the inventory."<sup>69</sup>
- "Identify an accountable official within the departments with responsibility for leading and coordinating efforts across their manpower, budgeting, and acquisition functional communities and, as appropriate, revise guidance, develop plans and enforcement mechanisms, and establish processes."<sup>70</sup>
- "Provide clear instructions, in a timely manner, on how the services requirements review boards are to identify whether contract activities include closely associated with inherently governmental functions."<sup>71</sup>
- "Require acquisition officials to document, prior to contract award, whether the proposed contract action includes activities that are closely associated with inherently governmental functions."<sup>72</sup>
- "Ensure that military departments and defense agencies review, at a minimum, those contracts within the product service codes identified as requiring heightened management attention and as more likely to include closely associated with inherently governmental functions."<sup>73</sup>
- "Clearly identify the longer term relationships between the support office, military departments, and other stakeholders."<sup>74</sup>

A March 2018 GAO report cited manpower officials who noted some benefits of ICS, crediting it with helping them to analyze cost factors as well as respond to questions from Congress and DoD

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<sup>67</sup> Ibid, 29.

<sup>68</sup> Ibid. 30.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, 31.

<sup>74</sup> Ibid.

leadership. Officials also, however, noted that ICS was in many cases “too outdated to help inform strategic decisions.”<sup>75</sup> The report cited the Air Force as an example of relatively low strategic utility:

*Under the program objective memorandum (POM) process, the Air Force identifies future budget requests and workforce needs 2 years before the beginning of a fiscal year, whereas the most recent inventory data available may already be 2 years old when that process starts. To illustrate the issue, the officials noted that they were already planning for the 2020 POM in early fiscal year 2018, although the fiscal year 2016 inventory was not yet available. As a result, if the Air Force were to use inventory data to plan for the 2020 POM, they would have to rely on fiscal year 2015 inventory data.*<sup>76</sup>

### **Utility of ICS to Policymakers**

The RAND study, released in 2017, represents one of the most comprehensive and up-to-date assessments of ICS reporting requirements. The authors concluded that ICS, in general, “falls short of meeting the needs of Congress and DoD.”<sup>77</sup>

The authors interviewed both congressional staffers and DoD personnel to hear their perceptions of the usefulness of ICS. Congressional staffers stated that the ICS format is “not useful and hinders assessment of the data.”<sup>78</sup> The data reporting was described as “too detailed and would be more useful if it were synthesized before reporting.”<sup>79</sup> The congressional intent behind 10 U.S.C. § 2330a appears not to have been a collection of detailed data at the transaction level, but rather an analysis of DoD’s service contracts at the aggregate level.

The data that would be needed for such an analysis is already reported to existing systems by all Military Services and Defense Agencies. For the purpose of service contract data analysis, the ICS IT systems akin to the Army’s CMRA and its successors may be unnecessary. A short annual report providing an overview of DoD service contracts could be completed solely with currently-available non-ICS, non-CMRA tools and data systems. Historically, however, Congress has regularly expressed the view that existing data reporting systems are inadequate.

### **Redundant Data Collection**

Redundancies in service contract data collection have spurred complaints from both acquisition personnel and DoD contractors. Many of the data elements collected via ICS processes are already available in FPDS and the System for Award Management (SAM, a governmentwide repository of contractor company information).

The 2017 RAND report on ICS noted government requirements for vendors to “enter a significant amount of overlapping data into CMRA and SAM.”<sup>80</sup> The report also noted that each one of the

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<sup>75</sup> GAO, *DOD Contracted Services: Long-Standing Issues Remain about Using Inventory for Management Decisions*, GAO-18-330, March 2018, accessed April 2, 2018, <https://www.gao.gov/assets/700/690954.pdf>.

<sup>76</sup> *Ibid.*

<sup>77</sup> Nancy Young Moore et al., *A Review of Alternative Methods to Inventory Contracted Services in the Department of Defense*, RAND Corporation (2017), doi: 10.7249/RR1704.

<sup>78</sup> *Ibid.*, xiv.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, 40.

customized, component-specific versions of CMRA has “its own login information and password, with various inconsistencies across the systems.”<sup>81</sup>

A 2017 GAO report reviewed the quality of DoD’s ICS data on personal services contracts. The report noted that relevant ICS data is also reported in FPDS, but found that discrepancies between the two information collection processes showed an “absence of accurate data.”<sup>82</sup>

### ***Underlying Data Incompatibility***

In addition to the problem of collecting redundant data in multiple systems, CMRAs have an underlying data architecture that is incompatible with preexisting contracting data systems. CMRA is designed to collect data on contract performance, specifically the number of full-time equivalents, whereas FPDS and related systems are designed to collect data on contract actions. This distinction may appear to be a subtle; however, from a data science perspective it results in a need for customized interfaces and human specialists to convert from one data architecture into another.

Assuming there is a net benefit to ensuring collection of accurate data on the number of people associated with service contracts, the solution may be to add data elements and/or machine-to-machine interfaces to existing IT systems rather than implementing ICS through the development of new IT systems.

### **Conclusions**

ICS, although designed with the good intention of enabling strategic decision making in DoD’s acquisition of services, has not achieved this goal. ICS and the IT systems that enable it are focused largely on legal compliance, not utility or accuracy.<sup>83</sup>

ICS does not appear to add substantial value, but it does impose costs. The development and continued maintenance of CMRA systems, like for any business software system, require time and money. ICS compels acquisition professionals to dedicate time that would otherwise be used for more directly acquisition-related tasks. Vendors must also allocate limited resources to calculating and entering data on contractor FTEs. This effort indirectly increases contract costs to the government.

Although the costs imposed by ICS data collection are potentially nontrivial, there is little value added from a large spreadsheet of raw data. The data collection process may, in fact, reduce value by diverting high-level attention away from what really matters. The focus on how many people work on a given contract, rather than the performance of the contract, may lead to a reduction in strategic thinking about how to get more value out of services contracts. One expert said that in focusing largely on numbers of people, Congress has for years been “asking the wrong question.”<sup>84</sup>

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<sup>81</sup> Ibid.

<sup>82</sup> GAO, *Federal Contracting: Improvements Needed in How Some Agencies Report Personal Services Contracts*, GAO-17-610, July 2017, accessed March 20, 2018, <https://www.gao.gov/assets/690/686179.pdf>.

<sup>83</sup> One acquisition professional, discussing ICS and CMRA systems, said, “Is the data useful? My guess is it isn’t... We were living just fine before it, we’d be living just fine without it.” Air Force contracting officer, discussion with Section 809 Panel, April 2018.

<sup>84</sup> Military department acquisition official, discussion with Section 809 Panel, August 2018.

DoD should provide Congress and other oversight bodies with more intelligible and useful information on services contracts. Congress should direct DoD to develop and propose a Services Contracting Reporting and Analysis System as a replacement for the existing ICS requirements. The proposal should include suggested statutory authorization language, a funding requirements estimate, and policy implementation language, including addressing contractor reporting requirements. It should be specifically designed to support and integrate with DoD's total workforce management system and acquisition requirements development processes.

## **Implementation**

### ***Legislative Branch***

- Direct DoD to develop and propose a Services Contracting Reporting and Analysis System as a replacement for the existing ICS requirements.
- Direct DoD to develop proposed statutory authorization language, a funding requirements estimate, and proposed policy implementation language, including addressing contractor reporting requirements, for the new system.

### ***Executive Branch***

- Comply with the new requirement by developing suggested statutory authorization language, a funding requirements estimate, and policy implementation language for a new Services Contracting Reporting and Analysis System.
- Design the new system specifically to support and integrate with DoD's total workforce management system and acquisition requirements development processes.

### ***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.