

[H.A.S.C. No. 112-99]

**DOING BUSINESS WITH DOD:  
CONTRACTING AND REGULATORY ISSUES**

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HEARING

BEFORE THE

PANEL ON BUSINESS CHALLENGES  
WITHIN THE DEFENSE INDUSTRY

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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HEARING HELD  
FEBRUARY 6, 2012



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U.S. GOVERNMENT PRINTING OFFICE

72-937

WASHINGTON : 2012

PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY

BILL SHUSTER, Pennsylvania, *Chairman*

BOBBY SCHILLING, Illinois

JON RUNYAN, New Jersey

ALLEN B. WEST, Florida

RICK LARSEN, Washington

BETTY SUTTON, Ohio

COLLEEN HANABUSA, Hawaii

LYNN WILLIAMS, *Professional Staff Member*

TIMOTHY MCCLEES, *Professional Staff Member*

CATHERINE SENDAK, *Research Assistant*

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#### DOING BUSINESS WITH DOD: CONTRACTING AND REGULATORY ISSUES

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[There were no Documents submitted.]

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[There were no Questions submitted during the hearing.]

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## **DOING BUSINESS WITH DOD: CONTRACTING AND REGULATORY ISSUES**

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE  
INDUSTRY,

*Washington, DC, Monday, February 6, 2012.*

The panel met, pursuant to call, at 3:00 p.m. in room 2212, Rayburn House Office Building, Hon. Bill Shuster (chairman of the panel) presiding.

### **OPENING STATEMENT OF HON. BILL SHUSTER, A REPRESENTATIVE FROM PENNSYLVANIA, CHAIRMAN, PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY**

Mr. SHUSTER. The hearing will come to order. I first want to welcome our panelists here today.

Thank you, and a little trivia, they are fraternity brothers from Wesleyan, and I was just trying to figure out who hazed who.

Mr. BURMAN. He hazed me.

Mr. SHUSTER. Okay. All right. So you are the younger?

Mr. BURMAN. I am the younger.

Mr. SHUSTER. Well, again, thank you very much for taking the time to be here today.

As most of you know, the panel has traveled around the country over the past few months to hold roundtable discussions with companies that are trying to do business with the Department of Defense. No matter where we went or what sector of the industrial base we met with, we heard time and again that red tape and bureaucracy are getting in the way of innovation, efficiency, and jobs.

In Rock Island, Illinois, we heard complaints that export controls are overly restrictive. Many of the businesses we spoke to highlighted that we currently take a one-size-fits-all approach to determining what is placed on the U.S. munitions list. There is no mechanism for items to smartly be moved off of that list as technology advances and specific items become readily available in the global market.

In Santa Clarita, California, we heard from a gentleman who ran a company that was last audited by the Defense Contracting Audit Agency in 2005, and the audit was still open due to failures on the part of DCAA [Defense Contracting Audit Agency]. He estimated that having his open audit on the books has cost his company \$3 to \$4 million in lost business over the last 6 years.

In Akron, Ohio, we heard that although programs like the Small Business Innovative Research program aid in technology development, the technology rarely goes anywhere because there is no

mechanism to assist in completing the stringent military test requirements nor is there resourcing to get the technology into production.

In Honolulu, Hawaii, we met with a small business owner who commented that small businesses are simply not equipped to deal with the bureaucracy of DOD [Department of Defense] acquisition system. And in San Diego, California, we heard from a businessman who felt that the large primes don't want small business to innovate and another who commented that anyone that wants to partner with a small business simply wants your technology. Both these gentlemen agreed that more needs to be done to protect the intellectual property of small businesses.

Here is the thing, it isn't just one guy in Ohio or a CEO [Chief Executive Officer] in California or a small business owner in Illinois. These issues were consistently raised everywhere we went, from the shipyard workers in Hawaii to the nanotechnology developers in Ohio.

Mr. SHUSTER. We invited three witnesses to meet with us today to explore those issues and provide us with recommendations to eliminate some of the red tape. Unfortunately, one of our witnesses, Mr. Raj Sharma, President of the FAIR [Federal Acquisition Innovation and Reform] Institute, needed a few more days to recover from surgery he had last week and will not be able to join us. He did provide us with written testimony and is standing by to respond to any questions we may have for him following the hearing. We wish him a speedy recovery and ask his written statement be entered into the record.

[The prepared statement of Mr. Sharma can be found in the Appendix on page 53.]

Mr. SHUSTER. Today with us are Dr. Allan Burman, President of the Jefferson Solutions, and Dr.—or, Mr. Joel Johnson, former Vice President of the Aerospace Industries Association of America. Both of these gentlemen bring a unique set of—brings a unique set of experience and expertise to the table. I hope that we will have a fruitful exchange today and you will be able to assist this panel in formulating recommendations to improve the business environment out there.

And with that, I will yield to Mr. Larsen if he has an opening statement.

[The prepared statement of Mr. Shuster can be found in the Appendix on page 29.]

**STATEMENT OF HON. RICK LARSEN, A REPRESENTATIVE FROM WASHINGTON, RANKING MEMBER, PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY**

Mr. LARSEN. Thanks, Mr. Shuster, and I am pleased to be joining you and the other panel members today in what is the last hearing of the panel's first 6 months.

Mr. SHUSTER. Is it?

Mr. LARSEN. The staff is confirming it is in fact our last hearing of the panel's first 6 months to look at the challenges of doing business with the Department of Defense.

Since this panel kicked off, we have heard from countless large and small defense contractors, DOD officials, noted academics, and

nonprofit and think tanks about doing business with the Department. While each individual had their own take on doing business with DOD, many common themes emerged. The Federal acquisition process consists of many onerous rules and regulations. There is not enough communication between industry and the Government buyer. The technology valley of death continues to grow. The accounting and auditing standards used by DOD agencies are antiquated and don't differentiate between large and small companies. There is a lack of skilled acquisition professionals. And Government export control policies hinder the sale of U.S. goods and services to foreign buyers.

Today's hearing focuses on some of the most complex issues that negatively impact small businesses' ability to become and remain viable partners to the Department contracting and procurement processes as well as regulatory policies.

While U.S. goods and services and the process in which the DOD buys them has repeatedly proven to be world class, it is not without limitations. For many companies, doing business with the DOD either the cost to enter the defense market or the cost to comply with defense regulations is prohibitive. This panel would benefit from hearing recommendations from our witnesses that might lead to DOD's contracting system becoming more flexible, allowing more entrants into the defense market. We would also like to hear your recommendations for ideas to bolster the existing defense industrial base while taking steps toward creating a 21st-century defense industrial base that is more diverse, more agile, and more able to respond to an array of potential threats.

Shifting to a more agile 21st-century defense industrial base will mean making difficult choices about what we want our defense industrial base to look like and what goods and services we want it to provide.

I would like to thank each of our witnesses for appearing before the panel this afternoon and ask that they offer the panel, this panel, their expert viewpoints on what they feel are some necessary steps needed to create a more flexible acquisition process. I am also interested in hearing about what steps DOD and industry can take to increase communication and transparency, not just at the top leadership levels but trickling down to the buying commands and program officers.

Last, I am interested in hearing what our witnesses believe are the most significant challenges that DOD faces in buying goods and services, and briefly offer your thoughts on at least one significant barrier faced by the industry to remain a viable defense partner. For example, I can't help but recall a couple of export control challenges that were presented to the panel while we were conducting the roundtable discussion in Chairman McKeon's district a few weeks ago.

One small business noted that on a particular contract to provide air conditioners for a weapons platform, that the basic air conditioner was required to be ITAR [International Traffic in Arms Regulations]-compliant simply because DOD wanted it to be painted similar to the platform it supported. Another participant who manufactures lithium ion batteries described how unnecessary ITAR re-

strictions impacts his, “competitiveness, not only in exporting but also how it impacted his domestic sales as well.”

These are tough issues that fall largely outside the jurisdiction of this committee but nonetheless should be addressed if we as a nation seek to help our industrial base, particularly our small businesses, remain viable to defense and to our economy.

So I want to thank Dr. Burman and Mr. Johnson for their participation this afternoon, and I look forward to hearing from each of you.

And again thank you again, Mr. Chairman, and as well, Mr. Chairman, it looks like we, in fact, will have Representative Hanabusa’s presence at this hearing, maintaining her stellar attendance.

[The prepared statement of Mr. Larsen can be found in the Appendix on page 31.]

Mr. SHUSTER. Thank goodness.

I wouldn’t know what to do if she wasn’t here.

Welcome.

Welcome to all. We have a full house here today, so welcome all the Members to the hearing today.

And with that, Dr. Burman, if you would proceed with your testimony.

**STATEMENT OF DR. ALLAN V. BURMAN, PRESIDENT,  
JEFFERSON SOLUTIONS**

Dr. BURMAN. Thank you very much, Mr. Chairman. Chairman Shuster, Ranking Member Larsen and Members of the committee, I am Allan Burman.

Mr. SHUSTER. Your microphone, sir. Your microphone, you have to press the button.

Dr. BURMAN. Now do you hear me? Sorry.

And Members of the committee, I am Allan Burman, president of Jefferson Solutions, a woman-owned small business, and chairman of the Procurement Round Table. I am also a former administrator for Federal procurement policy of the United States and served in that post under Presidents Reagan, Bush, and Clinton. I appreciate the opportunity to testify on challenges facing companies doing business with the Department of Defense, and I would ask that my statement be submitted for the record, and I will summarize its main points.

Jefferson has done many acquisition reviews across the Government, and the same issues tend to come up again and again. Contracting officers are often overworked and underequipped. Collaboration between program and contract staff is poor. And there is a lot of confusion on what Government can say to industry and when. Some of these problems come from the mismatched growth of dollars and staff. If you look at DOD’s contract obligations from fiscal year 1999 to fiscal year 2010, they went from \$165 billion to \$366 billion, an increase of 122 percent. However, if you take a look at staffing over that same time frame, contract staffing, you are seeing a growth of about 20 percent. The fix to a lot of these kinds of problems tends to be additional layers of policy and regulation, and what ends up is added complexity, burden, and cost, and costs particularly for small businesses.



I think the committee recognizes and those who are in this profession looking at acquisition, the acquisition community, agree that we need to strike some kind of balance between workload and staffing, efficiency and risk, and regulation and cost.

Today I would like to speak to four major topics of concern and challenges: Communications between Government and industry; the imbalance between Federal contracting workload and staffing; the risks involved with the improper use of Lowest Price Technically Acceptable contracting techniques; and the costs of increasing use of regulation.

With regard to communications, as I mentioned, there seems to be a lot of confusion and misinformation on the level and timing of communication between Government and industry, and people are hesitant to talk. Dan Gordon, as procurement administrator, the most recent administrator who just recently resigned, came up with a Mythbusters Top 10 list, and here are some things to do: When requests for information go out, Government should follow up with meetings to perform market research. One-on-one meetings help both sides in understanding capabilities and needs. And debriefs should be as thorough as possible to help small businesses better compete and to reduce protests. When we first started, when Solutions started in the mid-1990s, we went through a lot of procurements where it definitely helped us to come in and find what we had done wrong to be able to correct those kinds of things. We ended up doing a lot better as a result. So more communication and more understanding of how the other side operates I think is a great benefit for both.

With regard to staffing, we find overworked and understaffed personnel. They don't have the time to get the training, development, and refreshers they need, and you see low morale and high turnover. Procurements are delayed and customer service suffers, and staff are not developing the competencies they need. As a result of this, agencies are looking to use less complicated evaluation schemes inappropriately, such as Lowest Price Technically Acceptable ones, as a way to sidestep the inability of staff to perform a best value analysis effectively. Even with reduced budgets—and we see this coming—the agency must invest in the necessary support training and staffing of its workforce.

Now, I mentioned Lowest Price Technically Acceptable and the risks associated with it. This really is a focus on price, and it results in big risks for the Department because it drives innovation off the table. Competitors only show enough qualification to get by. Evaluations start at prices, and if the low cost offer is technically acceptable, then they win, and no one else's proposal can be even seen or is even seen. So small businesses that can't offer incredibly low bids are forced out of the process. I know this is an issue that has already been raised before this committee.

The end result is Government gets unrealistically low bids and firms can't do the work. A former—Jacques Gansler, a former Under Secretary of Defense, cited this as something that the NRO [National Reconnaissance Office] was using as a contracting technique for buying security services. He called it a failure waiting to happen. I see the same thing happening now with the Navy going down the path for its highly sophisticated multibillion dollar next-

generation enterprise network contract. By essentially denying the best products, services, and ideas, LPTA [Lowest Price Technically Acceptable] sends a message that subpar work is good enough for Government.

With regard to small business goals, I know the Department is behind on its goals and missed some of its goals in 2010. There is a common complaint that the agency tends to favor large businesses. This isn't a new complaint. When I was procurement administrator, I had to arbitrate between the SBA [Small Business Administration] and the Department to get the Department to raise its goals, and for a department with large sophisticated procurements, it is hard to hit these numbers. Certain categories of activities that lend themselves to small business participation, like construction or base repair work, they tend to bear the brunt, and larger businesses in these fields then see themselves as being treated unfairly. The goals will not be met without the strongest possible leadership in the Department. I know that Secretary Panetta has mentioned this a number of times; it is a key issue for him.

Then the increased tendency toward regulation. This creates the same types of costs and process delays that the regulations are meant to remedy. For example, the Department of Labor's final rule on nondisplacement of qualified workers under service contracts ends up creating new hurdles for getting rid of poor performing incumbent contractors, even after the company employing them loses the work. The most comprehensive assessment of this regulatory constraint is the 1994 Coopers & Lybrand study for Bill Perry. It was a major effort, a thousand interviews. They came up with a result of 18 percent cost differential for firms doing business with DOD. Maybe it is time to look at this again, and it may be time to redo this study.

I hope the points I have raised have been helpful to the committee. I strongly support the work of this committee to address the issues that make it hard for firms to do business and to provide meaningful support to the Department.

Mr. Chairman, Ranking Member Larsen, committee Members, this concludes my prepared remarks. Thank you for the opportunity to testify, and I would be pleased to answer any questions you or other committee Members may have.

Mr. SHUSTER. Thank you very much, Dr. Burman.

[The prepared statement of Dr. Burman can be found in the Appendix on page 33.]

Mr. SHUSTER. And with that, Mr. Johnson, if you would proceed.

**STATEMENT OF JOEL L. JOHNSON, FORMER VICE PRESIDENT,  
INTERNATIONAL, AEROSPACE INDUSTRIES ASSOCIATION OF  
AMERICA, INC.**

Mr. JOHNSON. Thank you, Mr. Chairman and Members of the panel.

I, too, am pleased to be here. I am testifying on my own behalf, although as you noticed, I am unsuccessfully retired from 20 years in the trade association world and a few more years in the Government, including 2 years—3 years on the other body across the way here.

I was particularly interested in reading the summaries of your industry roundtables. My experience when I was at AIA [Aerospace Industries Association] was certainly that you never were in doubt as to what the large primes wanted. They made sure you knew. But for small guys, you really needed to go out to them because they weren't set up in Washington to express what their concerns were, and they didn't particularly want to necessarily express them in front of primes or DOD. So you had to go to them.

I think this is going to be a very challenging time for the small guys, as the procurement budget shrinks. Not only does the procurement budget shrink but the primes pull work in house, so it is double jeopardy for the small guys and that means that people who aren't in the defense arena are going to be even more hesitant to get into it when they look at the newspapers. So we need to work to get them involved.

The big thing about small companies is they are small. They don't have contracting and accounting experience or capabilities that the big guys have. In the private world, they basically focus on inventing and manufacturing and marketing their product for a price. They don't deal in a world where contracting, accounting, and even lobbying are comparative advantages, which they are in the world we deal here in Washington. They are also handicapped by the fact that it is probably easier for DOD to deal with a prime than it is with those guys, and that means the primes have the—the primes are better able to search out capability and to use commercial market prices to buy stuff.

On the other hand, this risks the small companies losing their technology to the primes, and of course, the primes are going to take a percentage as they work with DOD. So bottom line, if DOD is going to directly seek out and take advantage of innovation that maybe in the small business sector, it has to go out of its way to do so.

There are several suggestions I would have, most of which you are familiar with, use FAR [Federal Acquisition Regulation] Part 12 commercial contracting where you can; raise the threshold for TINA [Truth in Negotiations Act] maybe to a million, possibly 2 million; make sure that you have extended SBIR [Small Business Innovation Research] and STTR [Small Business Technology Transfer] programs if they are funded; assure small companies they won't have their intellectual property hijacked either by DOD or the primes; develop good outreach programs so that the small guys actually know what is available to them and the DOD really "honest injun" is interested to them.

Finally, because I spent much of my professional career tilting at export controls, I noted the subject consistently came up in your roundtables, and both of you mentioned it this morning. I would be happy to discuss, if there is anything more mysterious than FAR and DFARS [Defense Federal Acquisition Regulation Supplement], it is ITAR. And if there is anything that small companies know less about than FAR and DFARS, it is ITAR. And if there is a valley of death, this is the kiss of death very often if you want to get into the export world or even in terms of what you have to do on your own shop floor in protecting your technology from your own engineer, for example, who happens to be Indian born and on an H-

2 visa. In any case, I appreciate the opportunity to talk with you all, and over to you.

[The prepared statement of Mr. Johnson can be found in the Appendix on page 46.]

Mr. SHUSTER. Thank you very much, Mr. Johnson.

With that, we will open it up for questions. I am going to start, change it up here a little bit, start down with Mr. West for the first round.

Mr. WEST. Thank you, Mr. Chairman and also Mr. Ranking Member, and thanks for the panel for being here today.

I think one of the things that are really causing us to bust budgets in the military is the acquisition process and system, the special weapons system development, I mean, 10, 15, 20 years. So when I read and I look at, we have the Acquisition Systems Reform Act of 2009, I would like to get an assessment from you two gentlemen, how do you see this act in its early stages? Have we seen any changes moving toward a betterment and a streamlining of this acquisition process?

Dr. BURMAN. I think, clearly, the act is meant to try to improve how these major systems are acquired, but frankly, I think it is too early to really get any sense with new systems to see whether things have really improved, so I would say it is a wait-and-see kind of an effort. I think the policies are in place to try to improve the process, but I don't think we see much at this point.

Mr. JOHNSON. I couldn't disagree with that. Or let's put it this way, I would agree with that. The policies are just getting underway. I think some of the basic notions are, you know, do 80-, 85-, 90-percent solutions, but don't push the state of the art to the point where you wind up procuring forever but not getting a product at the end of the day, which has been an Army problem, obviously, over the last few years.

Mr. WEST. Yeah, I know that well.

Mr. JOHNSON. You design for the absolute best and ultimately don't wind up with a product—

Mr. WEST. So my question then, when is the first maybe evaluation point that you all would recommend? I mean, I don't want to see us, you know, go 5, 6 or 7 years down the road and no one asks the question about, okay, have we seen anything? I mean, is there some type of, you know, measuring of effectiveness that we have at a 2-year, 3-year point?

Dr. BURMAN. I don't think anything has been set up in terms of doing that. My recommendation would be to have a GAO [Government Accountability Office] investigation, a GAO report and review, but wait 3 or 4 years, pick the systems that you want to look at, and see what has been going on in terms of dealing with this question of are you asking for everything or are you actually trying to deal with these issues? I know the same complaint has been made about the new fighter plane in terms of how long that is gone through an acquisition process. I mean, people are talking 30 years or so in terms of the time frame. It is sort of incredible. And then when you think about the technology development that occurs in an 18-month timeframe, you can see why dealing with the integration issues and the other kinds of issues, it becomes almost an impossible job to get that resolved and to bring anything in under

price, you know, and on schedule, given these kinds of problems. So I would say that would be the suggestion I would recommend, and clearly, the GAO is well accustomed to doing those kinds of reviews.

Mr. JOHNSON. I think I would add, at risk of offending some of my former employers, but there is a problem when the colonel or the general says, I want to do this, the contractor says yes, sir; no one asks, what will it cost and is it worth it? And you add on, you add on, you add on. That is what happened to the President's helicopter. I mean, you start out with a perfectly serviceable helicopter that had 100,000 hours of combat experience, and first the Navy wanted to do it the Navy way, and so you start dismantling a helicopter that is supposed to be off the shelf, and then you keep adding electronics, and everybody says, yes, sir, we can do that, and you wind up with Air Force One with a rotor. And somehow the system somewhere, whether it be in the Pentagon or even on the Hill has to say, well, what does that cost and what percentage improvement is it going to give me? And somehow that doesn't happen.

Mr. WEST. Next question. Last week, I sat down with Brigadier General Avieli, who is the Israeli one-star general, head of their Israeli Defense Export and Cooperation Department. Question, can we do a better job, do you think, when it comes to our acquisition process of working with our allies to, you know, look at how we can have common operating systems and maybe getting more commercial off-the-shelf technology instead of going through these long, exorbitant procurement processes that we have here in America?

Mr. JOHNSON. Well, now you are starting to get into the old ITAR issue among other things that is very difficult to talk to some of our allies, even our closest allies, at least at the company level, as to what do you do, what do I do, and we played around with these notions of different kinds of licenses; which by and large, State has never been terribly enthused about. We had a—you go all the way back to Clinton-Bush, the so-called ITSI initiatives, they were a set of initiatives where, one, they were going to issue a program license where, say, two companies could get together and brainstorm, and if they came up with something, then they will tell you, come back and get a license, but at least let the engineers talk to each other about what each of them could do. It was used once for a Raytheon-Talus program, you know, at the big think level. It has never been used again. Somehow you have to—we need to find ways, I know engineers always talk too much, and they all want to solve the problem, but, you know, that is the only way two companies can find out what they know. They don't know what they don't know until they talk about it, and again, this is an area where I think we could be much more imaginative in how we work export controls, especially at the pre-think level.

Mr. WEST. Okay.

Thank you, Mr. Chairman, I yield back.

Mr. SHUSTER. Was there a reason why they never used it again or just—I mean, just did it and said, ah, enough of that?

Mr. JOHNSON. I think basically State never liked the whole idea. I mean, there were several approaches to this, and basically you had to trust people to do, work within parameters, and the system

would much rather define very carefully exactly what you can and can't do. Well, the problem is you don't know what that is until you have had a chance to talk, and talk about that a little, I will give you an anecdote later if we are still on ITAR.

Mr. SHUSTER. Yeah, I am sure we will be.

With that, Mr. Larsen.

Mr. LARSEN. Well, don't let me stop you. Let's get on with ITAR. I know that there has been legislation introduced in Congress to look at the export control policies of the Government, and efforts started under Secretary Gates and continued under Mr. Panetta along with the other relevant departments to rework the munitions list. What specific reforms do you think would be most helpful that this panel should be promoting with regards to export control and ITAR?

Mr. JOHNSON. Well, I realize it is not your jurisdiction, but as I pointed out in my testimony, most export control legislation in the last 10 years has been done in Armed Services bills, not—in fact, SFRC [Senate Foreign Relations Committee] sometimes have problems getting their bills done and out. One thing one might want to look at, for example, is 250—DOD has chaired all of the inter-agency review panels to argue, try to figure out, what do we want to keep on the munitions list and what can go over to the commerce list that is easier, of less interest, which has never been done before. I mean, people think of the munitions list, as if there is actually a list there. It is a list of tanks and guns, and then down below, it says, and anything designed or modified for anything above is on the munitions list, so this is what kills the small guy.

He has got a machine shop. In theory, if he has ever worked for a defense contractor, he should be registered with the State Department at 2750, 1750 the first year and X amount. Even if it is never exported, the law says he should be registered. Most of them, of course, aren't because they never heard of the ITAR.

One of the things at a minimum that was done is DOD ultimately identified a bunch of stuff they thought, we don't care at all about this stuff: this radiator hoses, hydraulic hoses, engine mounts, with all due deference; in the Air Force, piddle bags. I mean, all of these are on the munitions list, and they said, no, no, no, no, this is commercial stuff; we don't care. It has been identified. Someone should ask the Administration, at least send that, do their 38 E—38 F notification to Congress and see what Congress says. Congress will probably say, fine put it over here, and when it is over here, we are not going to even—we are not worrying about it. A whole lot of small companies suddenly then are completely free of this business. They don't know anything about ITAR. They will never have to know about ITAR because what they are building isn't that kind of stuff and that is not the kind of stuff you are terribly interested in, but at least it would solve an immediate problem. It may be that one might want to look at legislation that would say, when you are exploring a technology with a small company, maybe DOD decides upfront whether this is something they want to control as a military item or not. And I go back to one of my first field trips 25 years ago, and nothing has changed. I was at a university, and the Army was putting some money into a program where, this is all, of course, pre-Nooks and pre-all kinds of

things, this is 30 years ago. They wanted a flexible display sheet, just something like a piece of paper that you could fold up, but when you got to a table, you could open it up, plug it into your computer, and out would be a whole map, and the Army was so afraid of talking, of getting this stuff caught up in the ITAR that they didn't dare talk to the people they were giving the money to as to what they wanted. It had to go circuitously, because as soon as it was built to a military spec, it became an ITAR item, and the Army knew that if it had been an ITAR item, they could never afford it. They had to get it out into the commercial world. That is what they wanted to do, make, you know, gazillions of them, and we will ruggedize it, and that can be on the ITAR, but don't get the immediate technology on ITAR or this company is never going to have a market.

And so that might be one thing one could look at is when you start putting money into the technology, you decide upfront whether you would like to see this commercialized or not, and then we will pick the cherry off the tree when it does, and now I can afford it because in the electronics world, the stuff that is most affordable is the stuff that you can buy at Best Buy, and then you can ruggedize it, but don't start out with it as a military item upfront, or you are in this morass. It is not the valley of death; again, it is the kiss of death. So there is a couple of thoughts.

Mr. LARSEN. Dr. Burman, do you have some thoughts on this?

Dr. BURMAN. I would say the same thing, it is very analogous to the kinds of issues that we were dealing with on the acquisition front, and back in the early 1990s, just trying to get someone to move away from putting specifications, military specifications on everything was just a tremendous, tremendous problem, and you couldn't get people to want to participate because of all of these kinds of constraints. Ultimately Bill Perry, Secretary of Defense at the time, put in a requirement that said that people had to justify it if they were going to put military specifications for commercial type items, and we had legislation passed that encouraged people to buy commercially.

I mean, one of the problems that I tended to deal with is the community, the acquisition community tends to be a very risk-averse community, and so people, even from Congress, would say to me, well, you know, they can do these things, they can buy that stuff, they don't need to do all of that. But when push came to shove, unless there was something there that really gave people an opportunity to see that, yeah, they weren't going to get in trouble by going down that path, they weren't going to do it. And so ultimately, we had legislation passed—this committee certainly supported that legislation—to try to make it clear that we were looking down this commercial product path and commercial services path and reduce, trying to reduce the burdens for people and small businesses doing business with the Government. It was a major accomplishment. It was a bipartisan accomplishment, but it took a lot of work to get there.

Mr. LARSEN. I yield back.

Mr. SHUSTER. Mr. Schilling.

Mr. SCHILLING. Thank you, Chairman, Ranking Member.

Thank you, gentlemen, for being here. I am going to start with Mr. Johnson. Your statement also touched on ways for the DOD to reach out into the communities to encourage small businesses to do contracts with the DOD. Are public-private partnerships like those under 4544 with organic industrial bases, are those a good way to bring in the very small businesses and get them used to doing work with the DOD?

Mr. JOHNSON. I mean, anything that gets their feet wet, as long as it doesn't discourage them in the process. I mean, I was also thinking about everything from—most States have economic development offices, if you want to reach out to those. A number of States, like Florida, I am trying to think of—you usually see at least seven States trying to attract aerospace at the Paris Air Show and at the Farm Bureau Air Show. Those are States that obviously are interested in the subject. They must have outreach. Could the military or DOD work with some of these State organizations that are economic development operations or, more specifically, aerospace because that is where an awful lot of the technology is.

But the little guys don't necessarily, you know, read the daily Federal Register or they don't read the—they don't know what they don't know. So I think you need to find some intermediaries that do know how to touch these folk, not just from Washington but from—again, probably the States are the best instruments, although some big cities have these kind of things also, where they do know who is out there and who is looking for money and who is looking for expansion. Some of the—another place you might want to look to again are some of the university communities.

Obviously, universities know this stuff. But, again, they are terrified of O5 P (?) and they are terrified of ITAR. What, 40, 50 percent of all engineering graduate students are foreign born. So what they don't want to do is if the touch of the military touches them, suddenly half their students are inaccessible for this work. So, I mean, again, one needs to be a little careful as to when do you militarize and when do you—or what kind of arm's length can you have so you can stir up the animals that you want to stir up and pick the right time to intervene as this style becomes an interesting defense issue. Going back to my Army analogy, how do you get this stuff going that you know you want going without crossing the line to when now you are doing mil specs or you are doing a specific military contract, getting a little distance between you before you close the door?

Mr. SCHILLING. Very good. Thank you for that.

You mentioned in your statement that the DOD should be able to interact with the private sector in a way the private sector is used to doing business, a more open and interactive forum. How do we restructure—you kind of answered a little bit of that there with maybe talking with the universities, so on and so forth, but how do we restructure DOD acquisitions and procurement offices to address this, or do we need to focus more on changing the culture within the DOD?

Mr. JOHNSON. Allan is smarter on this than I am, but I will just come back to the point he talked about, you know, whether it be in acquisition or in export controls, the incentives are all, never make a mistake. The incentives aren't, do really great, find the



golden chalice. The incentives are never make a mistake so I don't get in trouble, and I don't know how you turn that around. I mean, procurement guys in the private companies do get rewarded when they find good technology at good prices. They also may get cashiered if they screw up, but there is a rewards incentive, and there is not much of that within the Government community.

Similar, the export controllers have really no, there is no incentive to make the thing go out, which is why those of us in industry are terrified at the idea of a standalone export control agency because their only incentive is to make sure nothing goes out that shouldn't go out. There is no incentive to say we have to do cooperative programs with our allies or we have to do cooperative research with our allies. They are saying, if I never let anything out, I will never be in trouble. How do you incentivize people to go the other way around? But Allan knows.

Dr. BURMAN. And I think you are right, it is a cultural issue, and there are consequences. If you are a procurement person and somehow it looks like you are giving special treatment to somebody, you can get in a lot of trouble; the company can get in a lot of trouble. So the more that you can get information from the leadership of all of these organizations that deal with this to demonstrate that it is in the Government's interests and it is in their interests to have this kind of communication, and clearly you have to put in enough constraints so that somebody's not providing sensitive information or proprietary information to someone, but that can be easily worked out, but people have to understand that this is the way the Government wants to go because this is the way that you are going to bring more people into the Government marketplace, more companies into the marketplace.

Mr. SCHILLING. Very good. Thank you, gentlemen.

Mr. SHUSTER. Ms. Sutton.

Ms. SUTTON. Thank you, Mr. Chairman.

What are your thoughts on the other transactions authority as a means to increase opportunities for small businesses?

Dr. BURMAN. Well, I think it provides an innovative way to allow companies to be able to participate where there is a lot of flexibility in exactly how do you structure things. So I would say this authority, it was actually something that I understood was put in place many years ago with NASA [National Aeronautics and Space Administration] with Paul Dembling, who was a member of the Procurement Round Table, trying to come up with a way to figure out how to invite some issues where you don't really know what the answer is or the approach should be, and offer an opportunity and some flexibility to do that. Anything that offers openness, flexibility, another approach to be able to encourage businesses to come into the Government I think is a good thing.

Ms. SUTTON. Okay. What can be done, and certainly you have talked about this some, what can be done to reduce the risk-averse culture in DOD so that contracting officers are more inclined to contract with small businesses?

Dr. BURMAN. Yeah, that is the—yeah, no, that would be great to have that solution.

Ms. SUTTON. I am counting on you.

Dr. BURMAN. I have been plugging away at trying to do that for a long time to, again, make it clear that the approach is something that is in the best interests of the Government and something you are not going to be held accountable for, but the community itself tends to be very risk averse.

Frankly, when I was doing that, I needed congressional action to get people to feel they could do something, or many people said you can do it anyway; the rules allow you to do it. So I don't know if you need more emphasis from this body to try to make that point. Clearly, my successor at OFPP [Office of Federal Procurement Policy], Dan Gordon, who just left to go over to GW, had a major effort to try to get that kind of word out, encourage people to have conversations, better communications, and I think that is clearly a benefit to the Government and to the industry because if both sides know what the other wants, you are going to get a better deal ultimately. But the more, at least, the leadership of the organization will back you up on doing these kind of things, then I think the better chance you have of people being willing to stick their necks out a bit. But it is a community that doesn't like to do that.

Ms. SUTTON. Mr. Johnson.

Mr. JOHNSON. Again, you know, maybe you need some appropriate threshold under which you don't have to—I have had these experiences as a consultant personally where DOD said yeah, I would like to do this study, but, gee, I would have to competitive bid it for \$100,000. I am not going to do that. It is too much trouble, so go find somebody that has a task order that you can attach yourself to. And we will funnel the money through. And of course, 10 percent goes off the top. Somebody writes 12 checks, and they are happy, and I have seen this happen, but maybe there ought to be some authority at some level to say you have the authority to do this.

And similarly, on the private sector side, I mean, back at AIA days, when somebody, one of our guys screwed up, you would say, just, please God, don't write another reg, put them in jail. White collar workers hate jail, you know. The word gets around, but don't write another reg. I mean, that is when you get FARs and DARs [Defense Acquisition Regulation] like this. I remember a friend of mine, board of administrations, would say, only bottle common sense, you know. We would solve a lot of our problems. But I think you can't ring every possible thing with a regulation. You have got to have some ability for human beings to make some decisions, and occasionally they will make a wrong one, but as long as they are not doing it because they are lining their own pocket, in which case they should go to jail, there ought to be some flexibility for people, at least at the small level, to do things that aren't necessarily competitive bid. The guy has a really bright idea, and yeah, that is worth 100,000 bucks for me to figure out whether it is really a good idea. How do we do that?

Dr. BURMAN. Just another example in that whole area was the use of purchase cards. I mean, purchase cards were a tremendous advantage in terms of reducing some of the burden on contracting people, giving program people more authority, but then all of a sudden, people are, you know, buying Christmas gifts and Jeeps and other kinds of things, and pretty soon, where did the purchase

cards go? Well, there's a tremendous savings by getting people to use that as opposed to paper and pencil and having the acquisition community doing that job. So here is a case where you need the balance, you know. You recognize somebody is going to do bad things, you want to do something about those people doing bad things, be able to monitor it, know it, but don't take away the ability for 95, 99 percent of the people to use a device that we are all very familiar with and that most people are going to use successfully.

Ms. SUTTON. Thank you.

Mr. SHUSTER. Mr. Runyan.

Mr. RUNYAN. Thank you, Chairman.

And I always love the word common sense because we lack a lot of it around here.

But just talking about, and really to both of you, how changes in procurement acquisition regulations and that, and we see this happen throughout our economy, our tax structure. What are the rules of the game? How much of that are we creating ourselves on a yearly basis?

Mr. JOHNSON. I mean, again, every time one adds another regulation, one, you are almost guaranteeing somebody is going to foul up because nobody can possibly know all the regulations, and again there needs to be some way to just have a little bit of human discretion with a little penalty. If you do wrong, wrong is not the same as making a mistake. If you take a lot of your exploring technologies, you often learn the most from when something blows up in my world or it falls down. That is not necessarily somebody doing evil, it is somebody exploring the boundaries of science.

If somebody does wrong, then they should be punished, but, again, no more—not another batch of regs. Maybe we need more recognition for people in the procurement world when they do do something innovative so that there are some positive upsides. I don't know how much. I know there is a few—

Dr. BURMAN. That generally doesn't hit the *Washington Post*. It is kind of the other side that you read about in the newspapers unfortunately. So you are not seeing a lot of gold stars for folks. But I agree with Joel, if you can try to do that, that would be a great way to at least try to deal with the cultural issues that Mr. Schilling talked about.

Mr. RUNYAN. And that is obviously rewarding people for that and also taking chances I think a lot of times. You admit that that is where your cutting-edge stuff is going to come from, and we can't be afraid to go out and ask people to take those risks sometimes. I think not only there, I think dealing on the small business aspect of it. You know, they are not either fiscally or just even in their heart of hearts, they don't want to go out and take those risks, and I think, you know, not only from a regulatory aspect of it to, obviously, I use the term all the time, why are we always changing the rules of the game when we are in the middle of the game, and I think that weighs on the small guy a tremendous lot.

Dr. BURMAN. And there are a lot of rules.

Mr. RUNYAN. Yes, and I thank you guys for your insight.

Chairman, I will yield back.

Mr. SHUSTER. Thank you.

With that, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chairman.

Dr. Burman, in reading your testimony, I am curious about this Procurement Round Table that you are chair of that was chartered in 1984. What does the Procurement Round Table do?

Dr. BURMAN. Yes, I am glad you asked that question. Elmer Staats actually was the first chairman of the Procurement Round Table and chairman for many years and one of the founders of the organization. We are a group that is limited to 50 people. Virtually all of us have had senior level positions in the Federal Government. We are now serving *pro bono*. We are all in the private sector at this point, and our goal is to try to help improve the acquisition process. We have meetings and talk to senior leadership in agencies and try to provide help and expertise to them. We provide an award to a young acquisition professional to recognize them and recognize their work and to try to promote good acquisition processes.

Ms. HANABUSA. In the ending part of your testimony, you give a kind of a frightening percentage, and this is when then-Defense Secretary William Perry actually did this major study, and he said DOD paid a cost premium of 18 percent as a result of the regulatory constraints, and I assumed that was sometime in 1994.

Dr. BURMAN. It was. This is the—

Ms. HANABUSA. So today—

Dr. BURMAN. This is the heavy document.

Ms. HANABUSA. So today 17-plus years later, I mean, what do you think that cost premium is that DOD—and I assume that is 18 percent above.

Dr. BURMAN. It is.

Ms. HANABUSA. So what is the cost premium?

Dr. BURMAN. And, again, nobody has really done that kind of a detailed analysis. There has been lots of reviews about regulations and the impact of regulations, but a lot of the issues are the kinds of things that you have been hearing from the committee, anecdotal concerns about how it makes it more difficult for somebody to do something. This was an effort to try to put a rigorous evaluation scheme together. They had 10 companies that were looked at in depth. There was something like a thousand people interviewed, and they looked at cost drivers and what were the differences. And frequently the companies, they had companies that were doing both Government work and private sector work, like Motorola, at the time, and you could then see what was the cost differential, and that was the value-added cost, excluding materials.

You know, I would bet, even given all of the kinds of concerns that we have had to try to improve things, just given Joel's comments about the growth of regulation and how people continually see ways to address these problems through more regulations, I wouldn't be surprised if we are seeing a similar number, even when that was put in place back then, and we had the Federal Acquisition Streamlining Act or FASA to try to address many of these kinds of issues.

Ms. HANABUSA. So, Dr. Burman, you sit on a special roundtable of 50 people with exemplary experience, and you have been offering free advice to Government basically, and we are not doing any bet-

ter than what we know we were doing in 1994, and I think Mr. Johnson made a point about, you know, I think what he was trying to say is that maybe there is just a percentage of people who are going to do bad things, and maybe we should calculate that in instead of overregulating and instead of overpolicing and overregulating. Maybe we should just have it like a loss leader in inventory that some companies do and say, we lose that much, it is within the margin. I mean, nobody wants to accept that, but is that something that all of you experts, 50 of you, have you ever thought of that, the cost of monitoring, the cost of doing this? You know, we have DCAA, we have all these people who do pre-, almost pre-application processing. Is that a consideration, that maybe we should just, you know, pack it up?

Dr. BURMAN. I think one of our views are to see if for particularly lower-cost items, of which there are many, and if you look under a simplified acquisition threshold of \$150,000, there are ways which you could try to make the process work more smoothly and simply. The issue becomes, even if it is only a couple of things, you know, we have all seen what happens when somebody does something that is a bad thing or a silly thing, the muffin business, all of a sudden that tars everybody who is doing the job with that kind of a complaint, and so it is awfully hard to do that and be willing to sit back and accept that because it then becomes a reflection of how the Government does its business, and none of us like to be accused of doing bad things.

Ms. HANABUSA. Whatever happened to debarment? I mean, don't we have any kind of teeth with that? I mean, what happened to the good old days—

Dr. BURMAN. I think that there is—

Ms. HANABUSA [continuing]. That people were afraid of being debarred and the shame that went with it? It has no value today?

Dr. BURMAN. And there has been a serious effort to do that, and I think many of the companies have, in fact, been suspended over time because of these kinds of issues, but debarment was meant to be a tool to protect the Government from bad actors, and agencies use that, some more than others. I think in many respects Defense probably is more effective in using this tool than many of the civilian agencies, so it is certainly not ignored and agencies have been focusing on it, but you still are faced with the issue of if somebody does something bad, that is the *Washington Post* story.

Ms. HANABUSA. Thank you.

Mr. JOHNSON. And it is hard. I mean, debarment, the problem with debarment is you are dealing with somebody that is too big to fail, just as it is too big—you can't debar Lockheed Martin because some guy makes a mistake somewhere in one of the subsidiaries. You have to be able to reach down and nail that particular—I remember Norm Augustine once in one of our very many scandals maybe 20 years ago saying, you know, I have 120,000 employees, show me a town in the United States of 120,000 that doesn't have a jail. He said, somewhere out there, someone is doing something wrong at any given time, but, you know, we do our best to make that not happen, but you have got to find a way to reach out and debar or do whatever you are going to do that is of appropriate scale.

When you have huge companies, you can't—you simply can't debar any of these large companies. You have got to find measures that sort of fit the crime, and I think that is one of the problems on some of these cases; the Government doesn't know what to do because it doesn't know what the mechanism is to get at that guy over there.

Ms. HANABUSA. Mr. Chairman, my time is up.

But I did want to say too big to fail is not really a nice word around here anymore. Thank you.

Thank you, Mr. Chair.

Mr. JOHNSON. I chose it specifically.

Mr. SHUSTER. Again, we have talked about a lot of things that we have heard before, about the Government not talking to business. How much of that is driven by the regulations, and how much of that is driven by the culture of I am not talking to them because I don't want to get in trouble? I mean, I am sure that because of the regulations, they are doing that, but I mean how much of it is perceived and how much of it is reality that is going to be, can you quantify that at all?

Dr. BURMAN. It is hard to say. Clearly, when you have got an actual procurement on the street, when a procurement is out, then that changes the picture because there you do have to be particularly careful about not giving somebody an unfair advantage. So that changes the equation. But prior to that procurement coming out on the street, there should be many opportunities to have these kinds of conversations. Sometimes it is workload; you don't have the time. Sometimes it is perhaps people aren't really seeing down in the long run what the benefits are of doing it so it becomes a burden. Again, it becomes a cultural issue more than a regulatory issue when you are dealing with those kinds of problems, Mr. Chairman.

Mr. SHUSTER. Right. That is occurring with the large primes as well as the small guys?

Mr. JOHNSON. Well, what I mean, again—

Mr. SHUSTER. Or significantly.

Mr. JOHNSON [continuing]. This is your one-size-fits-all problem in that it is one thing when you are dealing with a large procurement, you have got three or four big guys competing for it; yeah, there's all kinds of rules and regs that should be there, that no one should be given an advantage. And they have the overhead to deal with what a procurement requires, and DOD has the overhead to deal with what procurement requires. It is when you get down to the small guys, where you are talking \$100,000 or half a million dollars, then trying to run it the way you would run a large procurement may simply not be in the cards.

Mr. SHUSTER. Right.

Mr. JOHNSON. I mean, particularly if you are dealing with someone that has got a unique something, that is the whole reason you are wanting to reach out to him is we think he has got a unique innovation, then how do you deal with that, you know, that entity in a way that doesn't get you all caught up in acquisition regulations because there isn't another one out there right now? And all I want is a little bit of seed money to go do something and see what happens.

Mr. SHUSTER. Right. And we talked, you mentioned about Congress, and I think we have done some of this to try to go in and change the regs, but it seems every time we change regs, we just pile more on top and make it more and more difficult, and so trying over the past 6 months to listen and hearing these things, you are trying to think how do you go and change the culture over there, how do you—you mentioned that small businesses don't have contracting or even the accounting department to be able to deal with DOD. Nobody is really doing a lot of cost-benefit analysis on some of this technology, and you talked about intermediaries, being able to reach out to the small guys to help them. So as I am thinking through this, how do you—and Ms. Hanabusa talked about being debarred, and that brings up, I think to myself, we have got different segments of different professions out there, different industries that self-regulate. Lawyers debar themselves. Accountants throw themselves, I mean, they debar them, whatever they call debaring an accountant, we have got an agency, a self-funding agency, FINRA [Financial Industry Regulatory Authority], that regulates the, a lot of the securities and exchange industry. So is it possible to change the culture over there, or do we have to do something dramatic and maybe pull it out and let the industry self-regulate itself, especially when you are dealing with these smaller and medium-sized companies. Is that something that even in your mind, is it in the realm of possibility, or am I out of my mind?

Dr. BURMAN. No, but I think one of the things that is done in the acquisition world is one company can complain about the other company when the other company has done something that they perceive to be incorrect or improper or the Government has done something through the protest process. So, in some respects, there is a way to redress these kinds of problems by protesting to the GAO and/or the Court of Claims or going back to the agency to complain that the process hasn't worked right or they have been unfairly treated. So you do have a mechanism that the industry more or less works itself that then still comes back to the Government. But, again, then, you have got a regulatory process with the Government to try to deal with that.

Mr. SHUSTER. You say there is a regulatory? Because that didn't happen on our tanker program.

Dr. BURMAN. Yeah, I mean—

Mr. SHUSTER. Where does that occur out there?

Dr. BURMAN. I mean, it can become a very complicated process, but I mean, one of the reasons for having a protest system in place is to try to allow firms an opportunity to go to somebody to complain.

Mr. SHUSTER. But does that happen? You say that happens out there?

Dr. BURMAN. And it does happen out there.

Mr. SHUSTER. Within the DOD or outside?

Dr. BURMAN. I think the Government-wide numbers, I mean, they are not huge, I think the Government-wide numbers in terms of protest for the GAO is around 4,000 something. There is about 70 cases before the Court of Claims. A significant number of those, though, get turned around one way or another. The suspension rate isn't that high, but the agencies do make some changes. So it is one

means to try to offer a way other than the regulations themselves to try to make sure the process works fairly.

Mr. SHUSTER. Mr. Johnson.

Mr. JOHNSON. Again, it is one thing to have—you mentioned the tanker program, one of the all-time largest acquisitions in history as opposed to some little guy that you want to do 100,000 bucks worth of business or 500,000.

Mr. SHUSTER. Right.

Mr. JOHNSON. And there to pick up on Congresswoman Hanabusa's comment, I mean, the price of perfection is very high. It is a lot cheaper to have 99 percent perfection, and it is even cheaper to have 95 percent perfection. One of the questions is sort of, what is the pain tolerance level or the political tolerance level that one can put up with? I remember—and this town is pretty awful for that. I remember in Desert Storm when, with all due deference to someone from GAO who may be in here, if the only thing you had ever read about Army equipment was in GAO reports and some other press reports, you would have been astonished to know that the M1A1s ran, that Bradleys ran, that A-10s ran, all this stuff worked, amazing, in really miserable, rotten conditions, but, you know, during the time you are fielding this stuff, bad things happen. Until you put something in the hands of 21-year-olds, you really don't know what you have got—

Mr. SHUSTER. Right, right.

Mr. JOHNSON [continuing]. No matter what you do at Aberdeen, and so you have to have some risk tolerance, and it seems to me the risk tolerance should go up the smaller the program is, and somebody is always going to find out that somebody's Uncle Todd got the \$100,000 program from somebody who was in DOD. Well, okay, fine, it is going to happen. But 99 percent of the time the guys are going to try to do the best job they can, and they may find some little nuggets out there if they have the flexibility to take a little risk. Some of them aren't going to pan out. Some of the—but, again, how do you—what we are talking about, if you are looking for innovation in the small guys, how do you take risks, how do you—

Mr. SHUSTER. Well, that is the idea, you want it taken out of DOD, again, not the large contracts, but the smaller guys. Let it, like FINRA, for 70 years, they have self-regulated, and the industry pays in. They go to these people at FINRA. They do protests. They regulate them. They tell them things that they can do, can't do, and it just seems to me, I can't imagine we are ever going to change the culture over there unless we do something dramatic because there is some reporter sitting down at the *Washington Post* looking to get somebody so they can write a story on, you know, Uncle Todd getting that contract.

So, again, back to my original question, am I completely out of my mind even to think that there is something out there that exists today, a model for how we can—again, maybe it is just DCAA or maybe it is, you know, regulating small contracts.

Dr. BURMAN. Again, Mr. Chairman, there is a—there is something called the Defense Industry Initiative. I don't know if the committee is familiar with that operation, but it is something that one of the former procurement administrators, Angela Styles, is



now the chief person working with, but this was an effort by the industry, and this is largely large businesses in the industry. It has a very robust system for identifying what you can and can't do and trying to get the word out and providing training and that sort of thing as a way, again, to try to ensure that their staff are doing things appropriately, and this is not something that is done or forced by the Government. It is something that is, again, a self-regulated effort.

Mr. SHUSTER. What is it called, the defense industry—

Dr. BURMAN. The Defense Industry Initiative.

Dr. BURMAN. And that may be something that the committee might want to look at. Again, the problem is when you have small businesses, I mean, small businesses, sometimes they don't—they don't even know who to talk to in the Government. I mean, just the basic question of, you know, you don't talk to a contracting officer. They are not going to know what the program is that you are going to try to deal with. You need to talk to the program official. Well, that is very elementary information, but if you are not doing business with the Government, how do you know this? So you need somebody to help you to know these kinds of things.

Mr. SHUSTER. I am way over my time, but I wanted to ask you another question about—before you decide that you are going to do something with DOT [Department of Transportation], maybe you decide you want to commercialize it. Some things I know are going to be simple. In your experience, how difficult is that to look at something and say—is it pretty straightforward, you can look at something and say, we need thousands of this, so we need to have them produced by the millions to be able to drive down the cost? In most cases is it going to be smaller projects, or the things that are going to be larger?

Mr. JOHNSON. I guess it will depend.

Mr. SHUSTER. Yeah.

Mr. JOHNSON. I mean, it certainly—if you can commercialize something, you are bound to drive the price way down.

Mr. SHUSTER. Right.

Mr. JOHNSON. I mean, if you can produce—you know, if you go back 30 years, if I remember correctly, you know, the military was 85, 90 percent of all microchips, and today they are about 1 percent, 2 percent. I mean, the commercial world drives electronics. So if it is something that has commercial applicability, that is what you want. You know, you have to weigh the probability that, okay, this is commercialized, then all the bad guys can go buy it off the shelf, too. They all have cell phones, and they use garage door openers for IEDs [Improvised Explosive Devices], and you are stuck with that, and you have to make that call. But by and large, if you can commercialize—because the other thing is going to be very unique stuff that only DOD would be interested in, and that is going to be high unit cost.

Mr. SHUSTER. So do a cost/benefit analysis on that, and say, is it worth commercializing and letting bad guys—

Mr. JOHNSON. The trouble is you don't know until you—you know, Steve Jobs invents things that nobody knew they needed. And so, that is one of the hard parts in electronics is—

Mr. SHUSTER. Right?

Mr. JOHNSON. You don't know what you don't know.

But getting back to your point, you know, maybe—and I will probably have some of the audience that is going to tell me this is already the case, and what can I say? You may need particular offices in the Army or the Air Force or the Navy, but you have some guys that just do this. That is their thing is going and looking.

Mr. SHUSTER. Right.

Mr. JOHNSON. And they are familiar with the top technologies you guys are interested in, and they are empowered to make some decisions, and they are told, go take some risks. And if you pan out 1 out of 10 times, you are going to make colonel.

Dr. BURMAN. And I think the system does, in fact, react at times to meeting needs and helping agencies meet needs. There was a major transformation in the late 1980s, early 1990s to shift to a best-value procurement process, evaluation process. And essentially, one of the reasons for going down that path was you had all of these IT [Information Technology] companies who weren't interested in doing business with the Government. And, you know, they weren't interested in somebody saying the requirements, and this is how you are going to do the job. So the only way that the Government could get them to come in was to say, okay, we will evaluate you. This is a solution we want. You show us how to get there, and we will have to measure apples and oranges and come up with the best result for the Government.

So, I mean, the system does adapt, it seems to me, when you have these kinds of major needs. And again, you have to have somebody say, yeah, this is what we want to do, and we will take the risk of going to best value, and we will take the risk of actually paying more for somebody than the low-price offer because it is good for the Government to do that. So, I mean, there are certain things that are of benefit in how the Government does its business as well.

Mr. SHUSTER. Let me mention, a skunk works for procurement in the development. Let us go out there, and—

Mr. JOHNSON. Or three or four of them, wherever you want to put them.

Dr. BURMAN. Yes, and DOD has used that kind of technique.

Mr. JOHNSON. So think small.

Mr. SHUSTER. Right.

Mr. JOHNSON. And think radical and be unleashed a bit.

Mr. SHUSTER. Right. Does anyone else have—yes, Mr. Larsen.

Mr. LARSEN. Mr. Johnson, back to ITAR. Do you have any specific examples that you can think of, maybe give us a couple of examples for the panel to consider about the impact ITAR has had on the U.S. companies maybe with regard to Europe, losing business to European companies?

Mr. JOHNSON. I mean, when you read in the paper that—I mean, you can read in Defense News this week Northrop Grumman is developing an ITAR-free DIRCM [Directional Infrared Counter Measures] in Europe. Northrop Grumman. So even U.S. companies are inventing ITAR-free products overseas to avoid our system. This doesn't help our industrial base any. It helps large companies, and more power to them.

I mean, Lockheed Martin is doing an ITAR-free—if I remember correctly, it is a fire-control system for a Canadian frigate, and they are going to do all of the development offshore so that they are not constrained. They don't have to go through what they have to go through.

As you all know, I mean, you know, Alenia advertises ITAR-free satellites, I mean, a U.S. satellite, and it is the component guys that really get nailed on this. It is not the end item. I mean, in the satellite issue, you know, Lockheed or Boeing can get a license to sell a satellite to pretty much anybody as long as they don't launch it on a Chinese launcher. But when you are in Europe and you are buying in bulk so that you are going to make a standard satellite, and you are going to have a minimum of 10 buses—

Mr. LARSEN. Right.

Mr. JOHNSON. The basic satellite. I want to be able to buy the same thing for all 10 for economies of scale. Now, one of those may turn out to have a Chinese buyer, or one of them may turn out to be launched on a Chinese rocket. I can't pull an American—one American component out and have to—have to requalify my satellite, so the best thing I can do is not have any American content in my satellite, because they are all ITAR-controlled, as you know, thanks to the law that was passed about 10 years ago.

And so it is the component makers, it is the guys that make thrusters, it is the guys that make actuators, it is the guys who make stuff that goes on a satellite bus. They have now lost that entire market, and, of course, the Europeans can sell back to Boeing and Lockheed Martin because they don't have any constraints on selling into our market.

So it is those kinds of things that, you know, that is part of what the Administration is trying to deal with by moving stuff over to the export control is where you at least have de minimis. If it only has less than 10 percent American content, we don't try to control it. There is no de minimis when you are an ITAR product. If there is one American-made screw on an end item made in the U.K. or in France, they have to come back and say, "Mother, may I," to State Department to sell it to anybody, including, you know, Belgium, or the Netherlands. They still have to come back and say, "Mother, may I?" So you have a major disincentive to include the American components. And as I say, primary in that works against are the component makers.

Mr. LARSEN. They tend to be smaller businesses, suppliers.

Mr. JOHNSON. Yeah, and item makers; the airframers, the tank makers. Okay, they are going to have to get a license to sell a tank to anybody, but it is the little guys who are selling to people who don't at the time know who they are going to sell to, what we would call in the aerospace industry "white tails"; that is, you are building on spec. In the case of satellites, you do build on spec, or you buy on spec in terms of, I am going to buy 10 ship sets of this, and I know who the first 5 are going to. I don't know who the last 5 are going to.

Mr. LARSEN. Yes.

Mr. JOHNSON. I would just say in passing—more than you ever wanted to know—I mean, there is a couple of bills kicking around now that in order to get cosponsors, not only do they keep the

China exclusion, they have added an exclusion for terrorist-supporting nations. Well, that is all well, it sounds good, but that means you couldn't sell a satellite to ArabSat, or to IntelSat or to AsiaSat because they all have—Syria or Iran have little bits and pieces. They never see these satellites. They are up there. They are delivered on orbit, but, you know, if you spread that tentacle around without being really sure what you are doing, now you are suddenly knocking our guys off of even more things that you really didn't intend to, but it looked good. And again, that is part of the problem on export control. Things that look good aren't necessarily very good when you start to see the unintended consequences of what you have accomplished.

Mr. LARSEN. Yeah. Dr. Burman, on Federal workforce, in your testimony, page 3, you mention in your oral about the amount of dollars, that we have seen an increase in contract obligations of 122 percent, but staffing is about 20 percent. I don't think you are making an argument that staffing should be 122 percent. It shouldn't be one-for-one.

Dr. BURMAN. No, I am definitely not.

Mr. LARSEN. And I am not sure you are arguing for a formula. However, can you enlighten us a little bit more about what you mean for the Federal acquisition workforce?

Dr. BURMAN. Well, one of the issues that results from that is—and we—I was a member of this SARA [Services Acquisition Reform Act] panel that was set up by Congress as well, and my report was produced in 2007, to look at services contracting. And we were looking at how do you do services contracting more effectively. And it turns out that there is the—I am sorry, the workforce was spending all of its time trying to get to award, doing proposals, getting solicitations out, and so you end up with an issue where there is no time to do the monitoring, the contract management, the contract administration. So you end up with a system where because people want to get those solicitations out, but you don't have enough people looking at the back side of the process to see how you are getting what you need, are they doing it well, and that kind of thing.

I think it is those sorts of issues that come to play here when you put so much pressure on people to do the front end of the process. You don't think as much, or worry as much, or pay as much attention to the back end of the process. And that is a common complaint I find across the Government, and so having more resources to be able to do that, I think, would be a real benefit.

Mr. LARSEN. Okay. I see. Thanks.

Mr. JOHNSON. Or needing less resources up front. I mean—

Dr. BURMAN. Either way, maybe easier to do it on the front end, less complicated—

Mr. JOHNSON. Or spending less time on the back.

Mr. LARSEN. Thank you.

Mr. SHUSTER. Anybody else have any questions?

Okay. Well, thank you very much for being here today, and I appreciate your testimony. It was excellent, and hopefully if we have further questions, we can ask you in writing. Again, thank you all very much, and the hearing is adjourned.

[Whereupon, at 4:09 p.m., the panel was adjourned.]

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**A P P E N D I X**

FEBRUARY 6, 2012

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

FEBRUARY 6, 2012

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**Statement of Hon. Bill Shuster**  
**Chairman, House Panel on Business Challenges within the**  
**Defense Industry**  
**Hearing on**  
**Doing Business with DOD:**  
**Contracting and Regulatory Issues**  
**February 6, 2012**

Good afternoon. As most of you know, this panel has traveled around the country over the past few months to hold roundtable discussions with companies that are trying to do business with the Department of Defense. No matter where we went, or what sector of the industrial base we met with, we heard time and again that red tape and bureaucracy are getting in the way of innovation, efficiency and jobs.

In Rock Island, Illinois, we heard complaints that export controls are overly restrictive. Many of the businesses we spoke to highlighted that we currently take a “one-size-fits-all” approach to determining what is placed on the U.S. Munitions List; there is no mechanism for items to smartly be moved off the list as technology advances and specific items become readily available on the global market.

In Santa Clarita, California, we heard from a gentleman who owned a company that was last audited by the Defense Contract Audit Agency in 2005 and the audit was still open due failures on the part of DCAA. He estimated that having this open audit on the books had cost his company \$3 to \$4 million in lost business over the last 6 years.

In Akron, Ohio, we heard that although programs like the Small Business Innovative Research Program aid in technology development, the technology rarely goes anywhere because there is no mechanism to assist in completing the stringent military test requirements, nor is there resourcing to get the technology into production.

In Honolulu, Hawaii, we met with a small business owner who commented that small businesses are simply not equipped to deal with the bureaucracy of the DOD acquisition system. In San Diego, California, we heard from a businessman who felt that the large primes don’t want small businesses to innovate and another who commented that anyone that wants to partner with a small business simply wants your technology. Both of these gentlemen agreed that more needs to be done to protect the intellectual property of small businesses.

Here’s the thing: It wasn’t just one guy in Ohio, or a CEO in California or a small business owner in Illinois. These issues were

consistently raised everywhere we went—from the shipyard workers in Hawaii to the nanotechnology developers in Ohio.

We invited three witnesses to be with us today to explore these issues and provide us with recommendations to eliminate some of this red tape. Unfortunately, one of our witnesses, Mr. Raj Sharma, President of the FAIR Institute, needed a few more days to recover from a surgery he had last week and he will not be able to join us today. He did provide us with a written statement and is standing by to respond to any questions we may have for him following the hearing. We wish him a speedy recovery and I ask that his written statement be entered in the record. With us today are:

- Dr. Allan V. Burman, President of Jefferson Solutions
- Mr. Joel L. Johnson, Former Vice President of the Aerospace Industries Association of America

Gentlemen, each of you brings a unique set of experience and expertise to the table. I hope that we will have a fruitful exchange today and that you will be able to assist this panel in formulating recommendations to improve the business environment out there.

**Statement of Hon. Rick Larsen**  
**Ranking Member, House Panel on Business Challenges**  
**within the Defense Industry**  
**Hearing on**  
**Doing Business with DOD:**  
**Contracting and Regulatory Issues**  
**February 6, 2012**

Mr. Chairman, I'm pleased to be joining you and the other panel members here today on what is the last hearing of the panel's first 6 months to look at challenges of doing business with the Department of Defense.

Since this panel kicked off, we have heard from countless large and small defense contractors, DOD officials, noted academics, and non-profit and think tanks about doing business with the Department of Defense. While each individual had their own take on doing business with DOD, many common themes emerged:

- The Federal acquisition process consists of many onerous rules and regulations;
- There is not enough communication between industry and the Government buyer;
- The technology "Valley of Death" continues to grow;
- The accounting and auditing standards used by DOD agencies are antiquated and don't differentiate between large and small companies;
- There is a lack of skilled acquisition professionals; and
- Government export control policies hinder the sale of U.S. goods and services to foreign buyers.

Today's hearing focuses on some of the most complex issues that negatively impact small business' ability to become and remain viable partners to the Department: contracting and procurement processes as well as regulatory policies.

While U.S. goods and services, and the process in which DOD buys goods and services, has repeatedly proven to be world-class, it is not without limitations. For many companies doing business with DOD, either the cost to enter the defense market, or the cost to comply with defense regulations, is prohibitive. This panel would benefit from hearing recommendations from our witnesses that might lead to DOD's contracting system becoming more flexible, allowing more entrants into the defense market. We would also like to hear your recommendations for ideas to bolster the existing defense industrial base, while taking steps towards creating a 21st-century defense industrial base that is more diverse, more agile, and more able to respond to an array of potential threats.

Shifting to a more agile 21st-century defense industrial base will mean making hard choices about what we want our defense industrial base to look like, and what goods and services we want them to provide.

I would like to thank each of our witnesses for appearing before the panel this afternoon and ask that they offer the panel their ex-

pert viewpoints on what they feel are some necessary steps needed to create a more flexible acquisition process. I am also interested in hearing about what steps DOD and industry can take to increase communication and transparency—not just at top leadership levels, but trickling down to the buying commands and program officers.

Statement of

Allan V. Burman, Ph.D.  
President, Jefferson Solutions  
Jefferson Consulting Group, LLC

Before the  
**House Armed Services Committee**  
**Panel on Defense Business Challenges**

On the Subject:  
**Doing Business with DoD: Contracting and Regulatory Issues**

Dear Chairman Shuster, Ranking Member Larsen and Members of the Committee:

Thank you very much for the opportunity to testify before you on the topic of the contracting and regulatory environment facing companies doing business with the Department of Defense (DoD). My name is Allan Burman and I am President of Jefferson Solutions, the government division of the Jefferson Consulting Group, a woman-owned small business. I also serve as Chairman of the Procurement Round Table, a non-profit organization chartered in 1984 by former federal acquisition officials concerned about the economy, efficiency, and effectiveness of the federal acquisition system. Since its founding in 1996, Jefferson Solutions has provided acquisition support and management consulting services to some 50 different federal agencies, including the Department of Defense. These assessments provide agencies with best practices and benchmarking analyses to help optimize both operational and organizational performance.

Shortly after our establishment, Jefferson Solutions assisted the Office of the Secretary of Defense in better defining what constitutes the Defense acquisition workforce, largely in response to concerns raised by this Committee. Then-Secretary of Defense William Cohen sent our report to Congress and noted that Defense would follow our suggested model to offer a uniform and consistent approach for identifying the Department's acquisition workforce members and assessing their training needs.

I had a lengthy career in the Federal government, serving as Special Assistant to the Director of Defense Education in the Office of the Secretary of Defense, Chief of the Air Force Branch of the National Security Division of the Office of Management and Budget (OMB) and then as Administrator for Federal Procurement Policy in OMB. I was acting in that post under President Reagan, confirmed by the Senate under President Bush, and retained under President Clinton.

As Administrator, I initiated numerous procurement reforms. These included authoring the Office of Federal Procurement Policy letter encouraging the use of

performance-based services acquisition, as well as putting in place policies that favored assessment of a firm's past performance in determining its acceptability for future awards. I also served on both the Section 800 panel, whose recommendations formed the basis for the Federal Acquisition Streamlining Act of 1994 (FASA), and the Acquisition Advisory Panel, created by the 2003 Services Acquisition Reform Act (SARA) to address needs for improving services procurement across the government.

Today, the Committee has asked me to address the following topics for this hearing:

- DoD contracting and procurement processes and performance,
- Business challenges in defense contracting, and,
- Recommendations for improving DoD procurement business practices and performance.

Let me preface my review of DoD procurement with the comment that there are a few elements that are fundamental to any sound acquisition system:

- Operations should be sufficiently transparent, and the bidding process understandable and regularized,
- The selection process should be fair and free from bias and conflicts of interest, and
- Competition should be the norm.

To achieve these goals, the following conditions are also important:

- Open, clear communications should exist between government and industry, and
- Regulations and mandatory processes should be streamlined to avoid process delays, minimize barriers to businesses, and allow agencies sufficient flexibility to meet business objectives and remain compliant.

These are not necessarily complicated requirements. They are the same basic elements I recommended when Jefferson Solutions worked with the Organization for Economic Cooperation and Development to help the emerging democracies of central and eastern Europe move from "state orders" to a market system. I also recommended these requirements to the office of the President of Nigeria, seeking to help establish effective and sound procurement policies and practices for the government to follow. These requirements are also, of course, the essence of the multi-thousand page Federal Acquisition Regulation of our own government. These elements should be the tenets of any sound contracting operation.

Despite the critical nature of these acquisition basics, however, many agencies still struggle to fully execute and/or comply with these requirements. In Jefferson Solutions' organizational reviews and workforce assessments of agency contracting shops, the same challenges and issues crop up again and again. Many of these issues

can be attributed to the mismatched growth of federal contracting dollars and federal contracting staff. In recent years there has been huge growth in federal contracting dollars but not the growth in the federal acquisition staff to match. For example, for the Department of Defense, contract obligations grew from \$165 billion in FY 1999 to \$366 billion in FY 2010 (with an even higher peak of \$414 billion in FY 2008), an increase of 122 percent. However, over this same time period, contracting office staff (designated under Office of Personnel Management job series' 1102 and 1105) grew from 20,425 in FY 1999 to 24,570 in FY 2010, for only a 20 percent increase.

As a result, contracting shops are often overworked and underequipped to meet agency procurement goals. This shortage causes critical pieces like training, acquisition planning, documentation, and customer service to suffer. Jefferson Solutions has seen these symptoms plague procurement offices across agencies.

- Acquisition personnel are overburdened. Workload does not leave time for the crucial training and competency building their jobs necessitate.
- Contract file documentation is often sparse due to large contract workloads. Staff often take short cuts in documentation and create workarounds, working outside of agency procurement systems.
- Poor collaboration between program and contract staff and inadequate planning results in rushed requirements development.
- Consistent and clear dialogue between the government and industry is lacking. Members of both industry and the program office are unclear about their roles in the procurement process, or how much engagement they are allowed with one another. This, in turn, hinders effective competition and all but eliminates opportunities for effective acquisition planning.

The “fix” provided by the Administration and federal agencies to address these acquisition issues is often additional layers of policy and regulation. In an effort to protect the procurement process, however, these agencies end up adding complexity, burden, and cost, particularly for small businesses looking to enter this marketplace. Ever increasing regulation and oversight increases the same procurement costs and process delays that the government is trying to remedy, and often results in a focus on process rather than results.

Ultimately, a balance must be struck between workload and staffing, efficiency and risk, regulation and cost. This is a balance that Jefferson Solutions has attempted to help contracting organizations strike within a number of agencies and one that DoD must find to improve the effective management and performance of its procurement processes. To ignore these deficiencies and areas of concern has real consequences. A January 18, 2012 *Washington Business Journal* article by Ray Bjorklund, Chief Knowledge Officer of Deltek, Inc cites the loss of \$5.9 billion in Defense’s fiscal year 2012 budget as resulting from instability and failures in acquisition management and planning.

Today, I will address four major topics of concern and challenges within DoD procurement:

- 1) Communication between government and industry
- 2) The imbalance between federal contracting workload and staffing
- 3) The risks involved with improper use of Lowest Price Technically Acceptable (LPTA) contracting techniques, and
- 4) The costs of increasing use of regulation.

### ***Communication Between Government and Industry***

There is a great deal of confusion and misinformation throughout the federal government regarding the level and timing of communication allowed between government and industry. Our firm has seen it in organizational assessments of acquisition shops across agencies. Staff interviewed continue to perpetuate myths about forbidden or frowned upon communication with industry and there is a general hesitance throughout to engage with industry in the acquisition process. In an effort to tear down some of these deeply ingrained barriers in government-industry communications, OMB's Office of Federal Procurement Policy focused on this issue and the ACT-IAC association hosted an online, moderated dialogue with the government Information Technology community on the topic. My firm participated in the effort. Ultimately the discussions contributed to a "Mythbusters" Top Ten list, a document that Dan Gordon, who recently left his Procurement Administrator post, developed to dispel confusion and encourage regular, effective interaction between government and industry. (Dan is a newly elected member of the Procurement Round Table.)

Some of the common misconceptions and/or barriers to communication raised by OFPP are:

- *"There is no need for transparent or follow-on communication when publishing a Sources Sought Notice or Request for Information (RFI)."*  
In actuality, a Sources Sought notice or RFI is an optimum time for discussions with industry to occur. Agencies say that they cannot talk with industry and often close the door on communication. This refusal to connect, however, does not benefit the government. Industry utilizes Sources Sought and RFIs as opportunities to form relationships with the government and convey their specific and relevant expertise. Government should not only be receptive to these industry motivations but should capitalize on the opportunity to perform market research.
- *"There is no need to conduct one-on-one meetings with interested vendors after a draft solicitation is released."*  
The government generally holds an Industry Day and then assumes that no further communication is necessary. Government is also hesitant to conduct one-on-one meetings with industry because staff incorrectly fear that such a



meeting will be perceived as favoritism. In absence of these discussions, however, customer requirements are poorly defined. The more the government talks with industry, the more likely the government will get the services it wants.

- *“Debriefs must only provide the minimum amount of information possible to meet FAR requirements.”*  
The government has an obligation to create an environment of openness and transparency. This means that contracting officers should provide open, transparent, and honest assessments so that industry may know why it lost. The government should provide as much information as possible in a debrief. This leaves the offeror with a more clear understanding of what it means to be competitive in the future and protects the government from potential protests. This particularly helps small businesses be better able to compete. These debriefings were invaluable to Jefferson Solutions when we were just getting started.
- *“There is no need for government to learn how industry operates and interacts with the government, as industry does not have the same mission.”*  
Effective collaboration and communication depends on mutual appreciation and understanding of one another’s roles. Increased understanding on both the industry and government side makes the acquisition process easier and the delivery of services less confrontational.

Ultimately, increased communication between government and industry benefits both parties and allows the acquisition process in any agency to operate more smoothly and effectively. In Jefferson Solutions’ “Acquisition Essentials” course, we continue to dispel these myths and encourage contracting staff to engage with industry. Staff at all agencies Jefferson has visited have found this specific information enlightening and useful.

#### ***Federal Acquisition Staff v. Increasing Federal Acquisition Workload***

In the past several years, federal contracting has grown astronomically in both size and complexity. In 2010, there were \$536.7 billion in government contracts awarded to approximately 303,000 contractors. As federal contracting dollars continue to increase and the number of large, complex procurements continues to grow, federal contracting staffing has struggled to keep up. In Jefferson Solutions’ assessments and workforce analyses across the government and the analysis conducted by the Acquisition Advisory Panel, we find overworked and understaffed acquisition personnel. Staff are coming in on the weekends in an effort to keep up with crippling workloads; new employees are forced to hit the ground running with little to no training or mentorship; existing staff do not have the time to take away from their work to get the training, development, and refreshers they need to perform effectively; and office morale is low, causing high turnover as staff look for less stressful work at other agencies.

Requests for more staffing and better training and mentorship opportunities are some of the most common pleas we hear from federal contracting staff. And the staffing issue is manifesting itself in agency federal acquisition performance. Contract documentation is often poor or missing; customer service suffers in the face of expanding workloads; procurements are delayed and backlogged; and staff are not developing the competencies they need to perform optimally on the job. As a result, some agencies are inappropriately using less complicated evaluation schemes, such as lowest price technically acceptable (LPTA) contracting approaches, as a way to sidestep their staff's inability to perform a best value analysis effectively.

Unfortunately, staffing shortfalls are not projected to get any better with increased budget cuts and funding shortages. If the government expects to continue to perform at higher and higher dollar values in procurement spend, however, it must invest in the necessary support, training, and staffing of its workforce.

#### ***Lowest Price Technically Acceptable (LPTA) and the Risks***

In light of an increasingly austere federal budget environment, agencies are feeling the crunch. The tendency to use LPTA is an appealing one as agencies try to drive down the cost of federal spending and stretch their federal dollars on low risk services and even more complex procurements. The increased and sole focus on price, however, does result in risk for the government.

LPTA drives innovation off the table, forcing competitors to only show enough qualification to be considered technically competent. The requirements are usually poorly written and risk is not accounted for. The evaluation criteria consist of pass or fail, focusing on little more than whether or not a firm has done the work before and how they did. Evaluations start with reviewing pricing, where the lowest price vendor's technical proposal is reviewed. If they meet the basic requirements, they win. Other bidders' technical proposals are often not even read. Incumbents who have done excellent work and/or small businesses that cannot afford to offer incredibly low bids are effectively forced out of the competition.

This issue has been already raised before the Committee by small businesses at a previous session. Using this LPTA contracting technique can work well for buying commodities. However, when buying sophisticated services procurements, it leaves the government with unrealistically low bids and firms that cannot effectively perform the work they proposed. In an attempt to hit these low prices, competing firms work with fewer and less skilled people, cut salaries, and cut corners, doing the bare minimum to get by. As a result, the highly skilled knowledge base that the government envisioned goes out the door and contractor performance erodes.

Jacques Gansler, a former Under Secretary of Defense for Acquisition, Technology and Logistics and a Director of the Procurement Round Table, in a June 12, 2011

*Federal Times* piece cautioned that the National Reconnaissance Office's use of this LPTA contracting technique for buying important security services is a "failure waiting to happen." The Navy is now going down this same path for its highly sophisticated, multi-billion dollar Next Generation Enterprise Network (NGEN) contract.

As budgets continue to shrink, the government will be forced to save money but LPTA is not an effective way by which to achieve savings. LPTA garners the government mediocre contract performance and sends the message that quality does not matter. It bars the innovative, knowledgeable, and experienced firms from government contracts and rewards unrealistic, un-executable bids from less desirable candidates. By essentially denying the best products, services, and ideas, LPTA sends the message that sub-par work is "good enough for government."

From a small business standpoint Secretary Panetta recently noted that the Department is struggling and behind on its small business goals. In 2010, DoD missed its prime contracting goals for small business, woman-owned small business, and service-disabled veteran-owned small business. Concerns about the government's favoritism of large, familiar firms and its subsequent negative perception of small business have been raised by many small businesses speaking before this Committee.

These complaints are not new. As Procurement Administrator I had to arbitrate between the Small Business Administration and the Department of Defense to get the Department to raise its goals. For a Department with large sophisticated procurements, it becomes difficult to achieve these numbers and certain categories of activities that lend themselves to small business participation, as for example, construction and base repair work, tend to bear the brunt of these requirements. Larger businesses in these fields then see themselves as being treated unfairly. In light of these issues and concerns, the bottom line is that these goals will not be met without the strongest possible leadership from the Department.

#### ***Increasing Tendency Towards Regulation***

Under pressure to address acquisition deficiencies, both the Administration and federal agencies continue to try to fix these issues with increased policy and regulation. Ever increasing regulation and layers of oversight, however, create the same types of procurement costs and process delays that the government is trying to remedy.

Some of these regulations, though intended to protect agencies and the taxpayer, in practice disempower agencies by creating unnecessary barriers to receiving best value and achieving their business objectives. One example of this is the Department of Labor's Final Rule on Non-displacement of Qualified Workers Under Service Contracts, which creates new hurdles for getting rid of poor performing incumbent contractors, even after the company employing them loses the work.

The most comprehensive quantitative assessment of these regulatory constraints is a study that was conducted in 1994 by Coopers and Lybrand under then-Secretary of Defense William Perry. This study focused exclusively on DoD and entailed 25 person-months of effort, with visits to ten different company sites and 1000 interviews. A rigorous value-added cost methodology was followed to determine cost drivers and to determine the cost impact of each of the constraints highlighted. The study determined that, on average, DoD paid a cost premium of 18 percent as a result of regulatory constraints unique to the federal market. Perhaps given the concerns raised before this Committee, it might be useful to conduct a new assessment, focusing in particular on those issues raised in this previous effort.

I am sure that there are many other issues that might be raised with regard to constraints on business resulting from the types of concerns I have identified in this statement. I hope that the points I have raised will be helpful to the Committee as it continues its efforts to improve the opportunities for all interested firms and especially small businesses to help support the critical missions of the Department of Defense. We all recognize that small businesses serve as major forces for innovation and can offer much more to the government than to meet staff augmentation needs.

Mr. Chairman and Ranking Member Larsen, this concludes my prepared remarks. Again, thank you for the opportunity to testify. I strongly support the work of this Committee in attempting to identify and address the issues that make it difficult for firms to do business with DoD and to provide cost efficient, meaningful support to the Department. I would be pleased to answer any questions that you and any other Committee member might have.

## ALLAN V. BURMAN

Dr. Allan V. Burman is President of Jefferson Solutions (Solutions), the government consulting practice of the Jefferson Consulting Group, a woman owned small business. Under his leadership, Solutions provides analysis, evaluation, program management and acquisition assistance and assessment services to many government departments and agencies. He has testified before Congress over forty times on a variety of management issues during his career. Prior to joining the firm, Dr. Burman had a lengthy career in the Federal government, serving in policy positions in the Office of the Secretary of Defense and in the White House's Office of Management and Budget (OMB) under Presidents Reagan, Bush and Clinton.

As Administrator for Federal Procurement Policy in OMB, a Senate-confirmed position, Dr. Burman authored the 1991 policy letter that established "performance-based contracting" as the favored approach for contract reform. He also authored the 1992 policy letter that encouraged agencies to make greater use of past performance. Both of these documents reinforce the shift in federal management practices from an emphasis on procedure to a focus on outcomes. Dr. Burman earlier served in the Senior Executive Service as Chief of the Air Force Branch in OMB's National Security Division and in the mid -1970's served as Special Assistant to the Director of Defense Education in the Office of the Secretary of Defense. He was a Federal Executive Fellow in the Brookings Institution in 1980-1981.

Dr. Burman is Chairman of the Procurement Round Table, a Fellow of the National Academy of Public Administration (NAPA), a Fellow and Member of the Executive Advisory Council of the National Contract Management Association, a member of the Partnership for Public Service and an Honorary Member of the National Defense Industrial Association (NDIA). He is also an adjunct professor at George Mason University and at the International Law Institute where he is also a member of its Procurement Advisory Board. He served on the White House Acquisition Advisory Panel established by the Services Acquisition Reform Act and co-chaired the performance-based acquisition subcommittee of the panel. In 2009 he received a Federal 100 award in recognition of his contributions to the Federal information technology community. He has served on numerous National Research Council and National Academy of Public Administration panels addressing Federal management issues.

Dr. Burman holds a PhD from The George Washington University, a master's degree from Harvard University, was a Fulbright Scholar at the Institute of Political Studies, University of Bordeaux, Bordeaux, France, and graduated Summa Cum Laude, Phi Beta Kappa from Wesleyan University.

**DISCLOSURE FORM FOR WITNESSES  
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

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**Witness name:** Alan V. Burman

**Capacity in which appearing:** (check one)

Individual

Representative

**If appearing in a representative capacity, name of the company, association or other entity being represented:** Jefferson Consulting Group

**FISCAL YEAR 2011**

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
Contract	DHS	\$102,841.44	Legislative Monitoring
Contract	Library of Congress	\$87,428.65	Evaluation Services
Contract	NASA	\$458,461.20	Business Plan Development
Contract	GSA	\$400,000	State and Local Study
Contract	DOI	\$77,537	Performance-Based Acquisition Support
Contract	DoD, US Army	\$192,900	Assessing audit compliance
Contract	VA	\$853,694.77	Acquisition Assessment Services
Contract	USDA, Forest Service	\$136,000	Acquisition Savings Plan
Contract	FAI	\$107,500	Acquisition Workforce Development, Outreach
Contract	GSA PBS	\$75,000	Acquisition Support
Contract	OPM	\$245,000	Workforce Analysis
Contract	DoD	\$415,988	Business Development
Contract	DHS	\$297,728	Study of Acquisition Professionals Career

			Program
Contract	DHS	\$35,370	Performance based Acquisition Training

**FISCAL YEAR 2010**

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
Contract	FDIC	\$63,891.70	Acquisition policy & procedures
Contract	NASA	\$434,476	Business development services
Contract	VA	\$445,325	Acquisition assessment services
Contract	HUD	\$110,259.45	Acquisition assessment services
Contract	FBI	\$38,163.77	Acquisition assessment services
Contract	USDA, Forest Service	\$128,000	Acquisition Support, Savings Plan
Contract	GSA	\$602,218	Marketing to state and local
Contract	DHS	\$98,886	Legislative Monitoring
Contract	HHS, NIH	\$275,900.71	Acquisition workforce assessment
Contract	FAI	\$121,000	Acquisition workforce development outreach
Contract	Library of Congress	\$35,668.00	Acquisition & Procurement Support

**FISCAL YEAR 2009**

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
Contract	USDA, Forest Service	\$30,356.70	Acquisition support
Contract	DOS	\$11,840.38	Performance-Based acquisition assistance
Contract	NGI Postal	\$27,669.99	Audit Review
Contract	DoEd	\$5,985	Acquisition Support
Contract	GSA	\$541,754	Marketing to state and local
Contract	FBI	\$186,950	Acquisition assessment
Contract	DOE	\$279,204.90	Acquisition assessment
Contract	US Nuclear Infrastructure	\$5,000	Acquisition support
Contract	FAI	\$166,139	Acquisition Workforce

			Development Outreach
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**Federal Contract Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2011): \_\_\_\_\_ 14 \_\_\_\_\_;  
 Fiscal year 2010: \_\_\_\_\_ 11 \_\_\_\_\_;  
 Fiscal year 2009: \_\_\_\_\_ 9 \_\_\_\_\_.

Federal agencies with which federal contracts are held:

Current fiscal year (2011): DHS, DoD, GSA, USDA, NASA, DOI, VA, OPM,  
 FAI, Library of Congress;  
 Fiscal year 2010: FDIC, DHS, NASA, GSA, NIH, USDA, FBI, HUD, VA,  
 Library of Congress, FAI;  
 Fiscal year 2009: USDA, DOS, NGI Postal, DoEd, GSA, DOE, FAI, US Nuclear,  
 FBI.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2011): Acquisition Support, Business Development;  
 Fiscal year 2010: Acquisition Support, Business Development;  
 Fiscal year 2009: Acquisition Support, Business Development.

Aggregate dollar value of federal contracts held:

Current fiscal year (2011): \_\_\_\_\_ \$3,485,449.06 \_\_\_\_\_;  
 Fiscal year 2010: \_\_\_\_\_ \$2,383,808.63 \_\_\_\_\_;  
 Fiscal year 2009: \_\_\_\_\_ \$1,254,899.97 \_\_\_\_\_.

**Federal Grant Information:** If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2011): \_\_\_\_\_ 0 \_\_\_\_\_;  
 Fiscal year 2010: \_\_\_\_\_ 0 \_\_\_\_\_;  
 Fiscal year 2009: \_\_\_\_\_ 0 \_\_\_\_\_.

Federal agencies with which federal grants are held: N/A



Current fiscal year (2011): \_\_\_\_\_;  
Fiscal year 2010: \_\_\_\_\_;  
Fiscal year 2009: \_\_\_\_\_.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.): N/A

Current fiscal year (2011): \_\_\_\_\_;  
Fiscal year 2010: \_\_\_\_\_;  
Fiscal year 2009: \_\_\_\_\_.

Aggregate dollar value of federal grants held: N/A

Current fiscal year (2011): \_\_\_\_\_;  
Fiscal year 2010: \_\_\_\_\_;  
Fiscal year 2009: \_\_\_\_\_.

## Doing Business with DOD: Contracting and Regulatory Issues

Joel L. Johnson, February 6, 2012

The next few years are likely to be extremely challenging for DoD and the companies that are its traditional suppliers. This will be particularly true for the smaller companies in the defense industry food chain. As procurement and R&D budgets shrink, primes will almost certainly pull some work in-house that is currently subcontracted out, so as to reduce the numbers of their own employees that must be terminated. This means smaller companies currently doing defense business are likely to be squeezed even more than the large suppliers. Not only will they see direct contracting with DoD shrink, but the same will be true of business with defense prime contractors.

What's more, for the smaller the companies, it is harder to accept the same percentage reduction than it is for the large companies. If a company has several thousand or hundred employees, a small percentage reduction in work forces still allows it to maintain the variety of overhead employees needed to meet the various DoD accounting and procurement requirements. If you have a few dozen employees, similar percentage reductions can be more problematic. To paraphrase Secretary Panetta with respect to the sequestration formula, you cannot employ 80% of an accountant.

This environment will make it difficult for small firms currently doing business directly or indirectly with DoD to continue to do so. Even more to the point, smaller companies currently not doing defense work will be skeptical that this is an area to pursue, particularly if the civil economy is beginning to show signs of life. This makes it all the more important that the government is not seen by potential innovators in the private sector as being an unattractive customer, partner, or investor.

In an ideal world doing business with DoD would be comparable to doing business with the private sector. DoD and service procurement officials would know what kind of technology or hardware would be useful to their respective institutions, and would be empowered to bargain with companies that possessed such technology or hardware to negotiate a contract that was acceptable to both parties. In some circumstances DoD or the service might even play the role of venture capitalist, providing seed money to help develop a promising technology, in exchange for some consideration (presumably not part ownership, but rather return of the investment plus some amount, and/or certain rights to technology) if the project were successful.

Alas, this is not an ideal world, so it is necessary to find ways to reduce impediments and improve inducements within the constraints of the Federal Acquisition Regulation (FAR),

Defense Federal Acquisition Regulation Supplement (DFARS), and as will be noted later, the International Traffic in Arms Regulations (ITAR). First and foremost in dealing with small companies is to remember that small means small. Thus such companies do not have the personnel to understand or comply with the plethora of federal and DoD regulations, and cannot wait for months for decisions or audits to be completed.

Conversely, because they are small, DoD and Service procurement officials find the unit cost for dealing with the small companies is an uneconomic use of their time. They may be unfamiliar with the bona fides of the company, uncertain as to the merits of the proposed technology, and unwilling to make the investment in assisting the company to understand the contracting complexities of the DoD. As a result, such officials will often urge a small business to work with a prime, or even to find a prime with enough task orders from DoD that the DoD can funnel money through a current prime contract, with, of course, the prime taking a percentage, and perhaps making demands for certain data rights. FFRDCs can also serve as such conduits between DoD and small companies. The bottom line is there should be means to facilitate direct DoD and service relationships with small business without intermediaries.

There are several ways to accomplish this objective. Where possible contracting should reflect FAR Part 12 commercial contracting and require submission of "other than cost or pricing data" for commercially based technology and products. The Truth in Negotiations Act (TINA) threshold of \$700,000 might be raised to \$1 million or \$2 million. Reauthorizing the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs for six years will also help. Now it is important that these programs should be appropriately funded and administered.

Small business has several other concerns with doing business with DoD. They may feel the deck is so stacked against them that there is no use trying. They know the large companies have extensive marketing operations that constantly "work" the services, DoD, and indeed, the Congress. They have large advertising budgets that blanket the trade publications, trade and professional society shows, and even the Metro entrances to the Pentagon. They have the personnel to understand the arcane contracting and auditing requirements of federal procurement. Thus it is important that DoD find ways to reach out to such companies to assure them that DoD is truly interested in their innovations and technology. This means DoD may have to develop appropriate outreach programs, perhaps through state and local business associations, to convince small business that it is worth the effort to explore potential business with DoD.

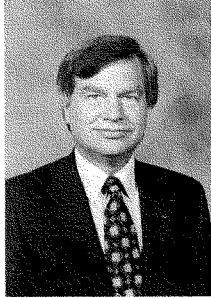
Small companies also worry about maintaining a hold on their intellectual property if they become involved with the defense world. DoD may demand full data disclosure in its contracts, which then may be made available to competitors in future competitions. They may face the

same risk indirectly, if they work through primes or large subs, who may also demand access to intellectual property in exchange for facilitating access to DoD contracts through their auspices.

Finally, as was consistently pointed out by participants in the Panel's Industry Roundtables, small companies are afraid of being swept up into the world of the ITAR. First, it should be remembered that if you produce a defense product (whether or not you export), you are required to register with the Department of State (\$2,250 the first year, at least \$2,750 per year thereafter) and meet all ITAR standards in your own facility. Among other things, this means if you have any non-US citizen in your company, provision must be made to deny that person access to ITAR-controlled data, or a license must be obtained from the State Department. It may be worth noting that over the past decade, while roughly a third of all start-up companies in computers, communications and semiconductors have been founded by immigrants, only 8% of aerospace and defense companies have had such founders. ITAR restraints no doubt contribute to this disparity.

Perhaps more critically, small companies worry that if their technology becomes involved in a defense product, not only the specific product but the underlying technology may be declared to be under ITAR control, which may make their product unavailable or unattractive for export. While export controls and the ITAR are the jurisdiction of the House Foreign Affairs Committee, in recent years significant changes in export control law have been made in defense authorizations bill. Also, under the current administration's export control reform initiative, it is the DoD that has chaired all but one of the interagency task forces reviewing the US Munitions List (USML) categories to see what hardware and technologies might remain under ITAR control, and what might be moved to control under the Export Administration Act administered by the Department of Commerce. The Congress might wish to explore the advantages of allowing DoD, at the outset of a DoD funded program such as an SBIR contract, to determine under what control system, if any, the technology or hardware produced by a contract would fall. This would provide greater certainty to the small business as to the implications of undertaking a DoD sponsored program.

The notion that there may be technology gold in the small business hills should not be seen as a new phenomenon. While most Americans are aware of the iconic founding of Apple by Steve Jobs and Steve Wozniak in a garage in 1976, they may be less familiar with Bill Hewlett and Dave Packard founding Hewlett-Packard in a garage in 1939. Clearly little companies can do big things, and DoD needs to have access to such companies. Hopefully the report of the Panel will assist in assuring that access.



**JOEL L. JOHNSON**

Executive Associate  
U.S. - Crest

In addition to working with U.S.-Crest, Mr. Johnson is also Executive Director – International, The Teal Group, an aerospace analytical firm, and consults with various corporations and the Institute for Defense Analyses.

Mr. Johnson retired in July of 2005 from the Aerospace Industries Association of America, Inc. (AIA), where he served for 16 years as Vice President, International. AIA is the trade association representing 100 of the major manufacturers of commercial, military and business aircraft, engines, missiles, space craft, and related components and equipment. Mr. Johnson coordinated the efforts of AIA to obtain government policies which support exports, avoid protectionism and pursue fair principles of international trade.

Prior to joining AIA in April of 1989, Mr. Johnson was Executive Vice President for the American League for Exports and Security Assistance (ALESA), an organization of approximately 25 corporations and five unions. ALESA supports government policies, which encourage or facilitate the export of defense-related goods and services, where such exports are consistent with the security interests of the United States.

From 1981-1983, Mr. Johnson served as a Professional Staff Member on the Senate Foreign Relations Committee, where he was responsible for international economic policy issues--particularly economic relations with the Third World, including the U.S. foreign assistance program. He also worked on the Committee from September 1977 to August 1978, as Chief Economist for the Foreign Assistance Subcommittee, when he focused on major revisions in foreign assistance legislation.

From July 1978 to March 1981, Mr. Johnson served as a member of the Secretary of State's Policy Planning Staff, where he handled trade, energy, commodities and foreign assistance matters. Mr. Johnson also served as Deputy Director of the Office of Trade Policy and Negotiations at the Treasury Department. In that capacity, he represented the Department on several negotiating teams and helped develop the U.S. Generalized System of Preferences for developing countries. He has held various other positions in the field of international economic affairs.

Mr. Johnson received his undergraduate degree from Wesleyan University and his Masters of Public Affairs from The Woodrow Wilson School at Princeton University. His work experience and education include extensive travel abroad.

**U.S. Crest**

1400 Key Boulevard  
Suite 420  
Arlington, VA 22209  
Phone:: 703 243-6908  
Joel.Johnson@uscrest.org

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Witness name: Joel L. Johnson

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: \_\_\_\_\_

**FISCAL YEAR 2011**

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
0			

**FISCAL YEAR 2010**

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
0			

**FISCAL YEAR 2009**

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
0			

**Federal Contract Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2011): 0 ;  
 Fiscal year 2010: 0 ;  
 Fiscal year 2009: 0 .

Federal agencies with which federal contracts are held:

Current fiscal year (2011): 0 ;  
 Fiscal year 2010: 0 ;  
 Fiscal year 2009: 0 .

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2011): - ;  
 Fiscal year 2010: - ;  
 Fiscal year 2009: - .

Aggregate dollar value of federal contracts held:

Current fiscal year (2011): - ;  
 Fiscal year 2010: - ;  
 Fiscal year 2009: - .

**Federal Grant Information:** If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2011): 0;  
Fiscal year 2010: 0;  
Fiscal year 2009: 0;

Federal agencies with which federal grants are held:

Current fiscal year (2011): 0;  
Fiscal year 2010: 0;  
Fiscal year 2009: 0;

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2011): -;  
Fiscal year 2010: -;  
Fiscal year 2009: -;

Aggregate dollar value of federal grants held:

Current fiscal year (2011): 0;  
Fiscal year 2010: 0;  
Fiscal year 2009: 0;



**Remarks of Raj Sharma, President and Co-Chair  
Federal Acquisition and Reform Institute (FAIR Institute)**

**House Armed Services Committee  
Panel on Business Challenges Within the Defense Industry  
'Doing Business With the DOD: Contracting and Regulatory Issues'  
February 6, 2012**

Good afternoon Chairman McKeon, Ranking Member Smith, Members of the Committee and panelists. Thank you for the opportunity to testify today on behalf of the FAIR Institute. FAIR is a nonpartisan, nonprofit organization that works with key constituencies to promote an innovative, world-class federal acquisition system that meets government policy objectives and ensures the prudent use of taxpayer dollars.

Today's subject – issues of doing business with the DOD – sits at the intersection of two well-recognized problems, or opportunities. The first is the opportunity to save about \$400 billion across the government over ten years, applying practices already proven to work in both the private and public sector. You have probably seen analyses from groups ranging from the Center for American Progress (in a report I authored) to similar analyses from McKinsey & Co. and the Tech CEO Council supporting this general estimate and approach. Underlying these analyses is the recognition both inside and outside government that the Federal acquisition system is inefficient and often ineffective.

The second opportunity is the need to increase the participation of small business suppliers in government contracts. Despite the goal of 23% participation, results are far below hopes and expectations. In your field roundtables held over the past few months, you heard vivid testimony about the frustrations and obstacles that small businesses face in getting information on requirements, seeing innovations through to the field, working with prime contractors, dealing with audits and myriad instances of unhelpful bureaucracy.

My focus today is not on detailing the problems, but on proposing solutions. Let's begin by looking at the private sector. I start there because the private sector, above all, has more incentive than even the government to capture the best deal. However, private sector companies approach acquisition much differently than the government and DOD.

How?

- Let's start with the role of acquisition. In leading private sector organizations, the acquisition function is seen as a valuable contributor for adding value to a business. By bringing advanced capabilities such as cost management, supplier innovation and risk management, the procurement function has a seat at the leadership table. In government, acquisition is often seen as a back-office function that plays a narrow role limited to executing contracts and negotiating price. Indeed, the Federal Acquisition Regulation (FAR) defines the role of acquisition as "to deliver on a timely basis the best value product or service."
- The second difference is focusing on cost vs. price. Private sector procurement organizations are focused on driving down the total cost of ownership and the

entire cost of a supply chain. Companies like Honda not only understand their own costs but those of their suppliers and they use this knowledge to work together to drive out waste and reduce total cost. Meanwhile, in the government, strategies like “lowest price technically acceptable” basically come down to considering price as the only determining factor, leaving innovative companies frustrated and in search of business elsewhere. Most acquisition organizations do not understand the need or have the skills to understand cost structures.

- Third is Culture. Leading private sector organizations foster a collaborative culture around procurement that is built on relationships – with internal customers and with suppliers. The private sector understands that more information sharing and collaboration leads to better outcomes. As your roundtable participants so eloquently expressed, government acquisition staff seem adversarial and negative, seeking fault and reasons not to proceed rather than assisting toward a win-win outcome.

To their credit, many government agencies and dedicated acquisition professionals have undertaken reforms. Often, however, these reforms have not worked because they lack a clear goal or vision. Other times, reforms may lead to incremental immediate benefit but underlying processes and organizations are not changed, allowing inefficiencies to creep back in.

Going forward, I have framed a number of recommendations, due out soon in a book on national competitiveness, to drive broader change that will fundamentally transform government acquisition and lead to realized savings. They should also address many concerns highlighted by small business. These recommendations are:

- Re-envision the role of acquisition in government
- Build capabilities to realize the new role
  - Change workforce alignment and culture
  - Streamline processes
  - Improve supplier performance and relationship management
  - Institutionalize strategic sourcing
- Enable small business to compete successfully

At this point you may well be thinking, “All this sounds good but how can it be implemented?” The essential pieces are leadership and workforce. Changing any organization in fundamental ways takes a committed, demanding, charismatic leader who can communicate and sell the new vision, create coalitions to carry it out, and lay out an action plan to fulfill the vision. Think of IBM changing from a hardware manufacturer to a services company under Lou Gerstner, or Admiral Hyman Rickover and the creation of the “Nuclear Navy.” Additionally, it will require a world-class workforce, one that brings exceptional problem solving, communication and business analysis skills.

#### **Re-envision the Role of Acquisition**

The Office of Management and Budget (OMB) should propose a new vision for acquisition that involves a fundamental shift from managing purchases and price to managing supply chains and total cost. The new definition can be “helping government agencies achieve their policy priorities by aligning and managing supply chains to deliver capabilities at lowest

total cost.” As a world-class organization, the new government acquisition group would develop an understanding of total internal and supply chain costs for any purchased item, including labor, materials and transportation among other elements. Yes, this is more work and a different kind of work. But if McDonald’s Corp. can do it to optimize the cost of chicken, the government should be able to do it to optimize the cost of bombers.

**Build Capabilities to Realize the New Role**

**Change Workforce Alignment and Culture.** In today’s acquisition workforce there is enormous redundancy and inefficiency that could be eliminated through a well-structured realignment, leading to greater productivity and effectiveness. The current workforce is primarily focused on tactical execution of hundreds of transactions following FAR’s complex regulations. Most personnel are aligned by process instead of by category or supply chain, leaving them little time to become experts in a particular area. Moving forward, agencies should realign the workforce to strategically manage critical supply chains, efficiently manage transactions and centrally deploy critical capabilities.

The current skill sets also need upgrading for future success. Among world-class purchasing organization skills are problem-solving, strategic thinking, financial analysis and relationship management. Both training and a new approach to hiring will be required to embed these skills.

From a traditionally risk-averse and insular culture, the re-envisioned workforce needs to become innovative and collaborative with both customers and suppliers. This is a tall order. Government purchasing leadership needs to model this culture from the very top and do so consistently and visibly.

**Streamline processes.** While FAR’s intent is to ensure good stewardship of taxpayer dollars and a level playing field for suppliers, the reality works against it. Purchasing processes have become so complex that only those in the know can compete. Following the 1996 Federal Acquisition Reform Act which streamlined the federal purchasing process, we recommend another review and reform. Its goals should be to:

- Simplify and streamline regulations including the FAR.
- Rationalize the legislation and policy-making apparatus that results in conflicting rules issued by different parts of government.
- Standardize and streamline common processes, tools and forms to reduce costly and time-consuming paperwork.
- Gain complete visibility into each government supply chain through an integrated data model.
- Define the role of technology in streamlining and standardizing processes.

**Improve supplier performance and relationship management.** Though it is the world’s largest purchaser, the federal government lags far behind world class organizations in viewing and managing suppliers. Most departments have no enterprise-wide view of supplier performance. Building on recent initiatives such as the Past Performance Information Retrieval System (PPIRS), the federal government should establish formal supplier performance and relationship management programs to:

- Gain full visibility and transparency into supplier performance via performance scorecards
- Develop improvement roadmaps, identifying specific initiatives that lead to improvement in quality and supply chain costs

**Institutionalize strategic sourcing.** Strategic sourcing has had notable successes in the federal government though it is still in its infancy. The Department of Commerce, for example, has rapidly scaled up strategic sourcing as it builds capabilities for the long term. Yet most initiatives are run with limited resources, separate from business processes. The emphasis is still often on contracts rather than inclusive value drivers, and compliance is low in a decentralized environment. To move forward, we recommend:

- Establishing strategic sourcing in permanent organizations, led by an experienced executive and supported by people with the right skills and expertise to engage stakeholders and suppliers
- Centralize management and sourcing of non-critical common categories. This will take support from senior leadership including the cabinet secretary and chief financial officer to make the necessary decisions and get buy-in and actual compliance from all stakeholders. These organizations should coordinate with the Federal Strategic Sourcing Initiative (FSSI) where possible
- Establish category managers for the largest and most critical categories. People in this key position should have significant experience in their category and take full lifecycle responsibility for managing spend across the category from strategy development to performance management and delivery

**Enable Small Business to Compete Successfully.**

The field roundtable stories are eloquent witness to the travails of small business hoping to supply the government. These stories draw attention to a long-standing problem. The FAIR Institute studied competition in government contracts and in October 2009 held a roundtable, “The State of Competition: Enhancing Competition and Increasing Innovation Across the Federal Government Supply Chain.”

The study identified three groups of issues and their impact. First is a lack of knowledge of the industry and suppliers. In my estimation, government lacks the critical capability to analyze supplier capabilities and understand the basics of how businesses are run. Without that knowledge, acquisition and negotiation strategies often make little sense to industry and they are either left responding to Requests for Proposal (RFPs) that they know will not deliver any real benefit or choose not to respond at all.

Another issue is the complex acquisition process with unique requirements. To cite only one of many examples, requirements can be written such that the only possible supplier is the incumbent. The net effect of mysterious process plus overly specific requirements creates barriers to entry that prevent capable suppliers from competing.

Finally, the government often pursues acquisition strategies that inadvertently reduce competition. Take bundling. Due to the lack of market knowledge and to reduce the number of

acquisition transactions, the assumed answer is to bundle. Often times, requirements that comprise multiple industry segments are combined, leading to what I call “artificial suppliers and industries.” The cost for the government is not only reduced competition but extra overhead, loss of transparency, and most importantly loss of innovative capabilities.

Given these and other issues, the best suppliers, like the best hiring candidates, walk away as they have many more attractive opportunities to choose from.

Four recommendations came out of the FAIR study. As with the overall acquisition recommendations, they require a step back to look at the problem in a holistic way and attack it from the beginning – the definitions.

**Develop a common set of definitions and metrics to measure ‘quality’ of competition.** While every industry and market is different, we can create common metrics to help standardize our treatment of small business.

- Distinguish between competition types such as “full and open” versus competition within federal supply schedules
- Define what we mean by quality of competition and how to measure it

**Pursue strategies to attract new suppliers and reduce barriers to entry for the federal marketplace.** If the government continues to talk about increasing small business participation but creates an unfriendly marketplace, we lose opportunities to grow and benefit from innovative companies – and we lose credibility. People remember bad experiences for a long time.

- Analyze industries, products and services where the government lags the overall economy in small business participation
- When requirements are bundled across multiple market sectors or industries, require an analysis of alternative acquisition strategies
- Develop and conduct recruiting, education and outreach to attract new suppliers, especially in areas where those gaps exist
- As mentioned above, streamline and simplify the acquisition process, including the FAR

**Strengthen capabilities in industry analysis and cost modeling.** A fact base is essential for good decision-making.

- Train staff to do strategic industry analysis and detailed cost modeling or hire people with those capabilities
- Include broader economics and business principles in market analysis training courses and professional development

**Revise acquisition practices and require rigorous analysis for large contracts to increase competition.** Sole sourcing for large contracts should be justified through formal and rigorous analysis, not because of habit. For acquisitions over a certain size:

- Require programs to assess the impact on competition of various acquisition strategies, including analysis of tradeoffs

- Require programs to conduct formal industry and cost modeling to understand industry cost structure, capabilities, and other key trends, especially those critical in sole source scenarios
- Develop multiple award contracts that have options for opening the market to new suppliers

**Conclusion**

In conclusion, having worked with some of the world's leading procurement practitioners and companies, I firmly believe that the government acquisition system needs a large-scale transformation. It should begin with a fundamental rethinking of the role of acquisition in government. Instead of applying patchwork fixes around the edges, let us re-envision the role of procurement and adopt a bold plan to become a world-class acquisition organization. We can transcend our current tactical view of acquisition to take a broader strategic view of supply chain lifecycle management. To put this new vision in place, we need to realign the workforce and upgrade their capabilities, transform the culture, and focus on managing and reducing total cost, not price. As our recommendations demonstrate, there are also a number of immediate steps that can be taken to improve the quality of competition and attract innovative small and medium sized businesses to the federal marketplace. Thank you and I look forward to working with the Committee in the future.

**RAJ (Rajesh) SHARMA**

2316 Plyers Mill Road, Silver Spring, MD 20902 | rsharmadc@gmail.com | (240) 601-1317

**APPLICABLE EXPERIENCE****President and Co-Chair - Federal Acquisition Innovation and Reform Institute (FAIR)**

- FAIR's mission is to transform the federal acquisition system in order to better support government policies and programs
- FAIR's Board includes former Clinton Administration appointee Dr. Allan Burman (former Administrator of the Office of Federal Procurement Policy), David Litman (former Chair of the Federal Chief Acquisition Officers Workgroup on Workforce) and other industry leaders such as Dave Nelson, former head of Honda of America's Supply Chain, and Joe Sandor, head of Michigan State University's Supply Chain Program

**Former Visiting Fellow- Center for American Progress**

- Part of the Doing What Work's program
- Focused on highlight opportunities to create efficiencies and improve effectiveness in the federal acquisition environment
- Authored reports including "A \$400 Billion Opportunity" that highlights strategies for saving the government over \$400 billion in 10 years

**Founder, President and CEO - Censeo Consulting Group, Inc.**

- Censeo Consulting Group is a leading management consulting firm advising management on complex business issues related to operations and supply chain. Censeo has been recognized as a leading firm by the *Wall Street Journal* and *Consulting* magazine, among others.

**SUMMARY OF QUALIFICATIONS**

- Recognized thought leader in procurement and acquisition transformation, especially within the Federal Government
  - Collaborate with stakeholders across government, including OMB, Congress, agencies and think-tanks to improve overall operational effectiveness of government, especially in the area of acquisition and supply chain management
  - Advise senior management across the federal government (Department of Defense, General Services Administration, Veterans Affairs and others) on applying best practices
  - Regularly author thought pieces in many publications and speak at events related to Supply Chain and Procurement (see publications below)
- Practical experience facilitating cross-governmental initiatives to drive change in a complex, federal environment; over the years, have promoted a "Learn by Doing" approach to drive both short-term and long-term transformational change
  - Continuously engaging stakeholders across the federal government, including key congressional staff and committees, OMB, oversight

- agencies (GAO, IGs, etc.), federal agency leadership, and industry groups to promote understanding of core issues and disseminate best practices, as applicable
- Developed framework for strategic sourcing now being utilized across the government – integrated commercial best practices into a federal environment; this framework has already yielded enormous savings for the federal government, having been applied across various domains
- Authored and developed frameworks for driving change including key articles such as *Six Principles of Stakeholder Engagement* in *Supply Chain Management Review*
- Recognized as a leader and entrepreneur
  - Founded Censeo Consulting Group, focusing on building an innovative business model that transcends traditional consulting models
    - Censeo has been recognized for its management practices by the *Wall Street Journal*, *Consulting Magazine*, *Vault* and other leading organizations; the common theme across each of these awards are Censeo's innovative business model, ethics, and people management practices
  - Attracted globally and nationally recognized leaders such as David Nelson (former VP of Supply Chain at Honda of America), Dr. Tim Laseter (Author of *Balanced Sourcing* and Professor at University of Virginia) and Patrick Graham (Co-Founder of Bain and Company) to Censeo as Senior Advisors

#### RECENT PUBLICATIONS AND PRESENTATIONS

- "Building an IT Acquisition Manager Community" – FAIR Institute, June 2011 (co-authored with David Litman of the FAIR Institute)
- "A \$400 Billion Opportunity: 10 Strategies to Cut the Fat Out of Federal Procurement" - Center for American Progress, November 2010
- "Analysis: New Guidance Creates Contracting Conundrum" - Center for American Progress, September 2010
- "The State of Competition" – FAIR Institute, October 2009
- "Harnessing the Power of Collaboration," Presentation, *Supply Management Forum for Federal Acquisition Executives*, May 2009
- "Competition in Procurement" – *Inside Supply Management*, March 2009 (co-authored with Dr. Tim Laseter of University of Virginia's Darden Graduate Business School)
- "The Six Principles of Stakeholder Engagement," Feature Article, *Supply Chain Management Review*, October 2008
- "Driving Value Through Supplier Diversity," Cover Article, *Contract Management Magazine*, November 2008
- "Executive Panel on Strategic Sourcing Best Practices," Moderator in General Session, *NCMA Government Contracting Conference for Federal Acquisition Managers/Executives*, November 2007



- "Lessons Applying Private Sector Sourcing Best Practices to the Public Sector," Panel Member, *Defense Acquisition University Conference*, March 2007
- "Reporting Quality Improvements from Strategic Initiatives," Presentation, *Performance Institute / American Strategic Management Institute*, August 2007
- "Complex Services Sourcing," *Contract Management Magazine*, May 2007

**EDUCATION**

Masters of Business Administration, Carnegie Mellon University, 2000  
B.S., International Business and Finance, University of Maryland, 1994

**DISCLOSURE FORM FOR WITNESSES  
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

**INSTRUCTION TO WITNESSES:** Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 112<sup>th</sup> Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: Raj Sharma

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: Federal Acquisition Innovation & Reform (FAIR Institute)

**FISCAL YEAR 2011**

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
		\$0.00	

**FISCAL YEAR 2010**

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
		\$0.00	

**FISCAL YEAR 2009**

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
		\$0.00	

**Federal Contract Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2011): \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2010: \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2009: \_\_\_\_\_ \$0.00 \_\_\_\_\_ .

Federal agencies with which federal contracts are held:

Current fiscal year (2011): \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2010: \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2009: \_\_\_\_\_ \$0.00 \_\_\_\_\_ .

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2011): \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2010: \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2009: \_\_\_\_\_ \$0.00 \_\_\_\_\_ .

Aggregate dollar value of federal contracts held:

Current fiscal year (2011): \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2010: \_\_\_\_\_ \$0.00 \_\_\_\_\_ ;  
 Fiscal year 2009: \_\_\_\_\_ \$0.00 \_\_\_\_\_ .

**Federal Grant Information:** If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2011):                     \$0.00                     ;  
Fiscal year 2010:                     \$0.00                     ;  
Fiscal year 2009:                     \$0.00                     .

Federal agencies with which federal grants are held:

Current fiscal year (2011):                     \$0.00                     ;  
Fiscal year 2010:                     \$0.00                     ;  
Fiscal year 2009:                     \$0.00                     .

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2011):                     \$0.00                     ;  
Fiscal year 2010:                     \$0.00                     ;  
Fiscal year 2009:                     \$0.00                     .

Aggregate dollar value of federal grants held:

Current fiscal year (2011):                     \$0.00                     ;  
Fiscal year 2010:                     \$0.00                     ;  
Fiscal year 2009:                     \$0.00                     .

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**QUESTIONS SUBMITTED BY MEMBERS POST HEARING**

FEBRUARY 6, 2012

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### QUESTIONS SUBMITTED BY MR. LARSEN

Mr. LARSEN. What is/should be DOD's strategy for transitioning innovations developed at small businesses to the battlefield when such companies and the PM offices often lack the proper funding to pay for the qualification effort which can cost many times the development costs?

Dr. BURMAN. [The information was not available at the time of printing.]

Mr. LARSEN. How can the DOD better facilitate communication between PM offices where the technology needs are vetted and small businesses which often lack access to PM offices which tend to be dominated by big Primes?

Dr. BURMAN. [The information was not available at the time of printing.]

Mr. LARSEN. U.S. allies typically bar use of ITAR restricted items for space and military applications, marketing these capabilities as "ITAR-Free." I understand that State is investigating these "ITAR-Free" claims. Nonetheless, manufacturers in those same countries, however, do not face similar restrictions when selling their product to the U.S. primes working on USG programs. And those same companies leverage the experience they have gained in their home country where U.S. companies were not allowed to "compete" to outcompete U.S. companies on U.S. programs, touting their qualification and field experience gained in their home country. How does the DOD plan to "level the playing field" in this environment? Can the DOD impose a "domestic preference" or would it require some sort of legislation to allow it to do so?

Dr. BURMAN. [The information was not available at the time of printing.]

Mr. LARSEN. What is/should be DOD's strategy for transitioning innovations developed at small businesses to the battlefield when such companies and the PM offices often lack the proper funding to pay for the qualification effort which can cost many times the development costs?

Mr. JOHNSON. There are at least two major impediments to DOD supporting efforts to test and qualify innovations for use on the battlefield—a dependable and flexible fund that can be used for such purposes, and the ability to act and think small and hence affordable. There are examples of such programs that might be examined for both positive and negative experiences. The Foreign Comparative Testing (FCT) program, run by AT&L, provides a structure and funds for DOD to test existing foreign developed hardware for applicability to U.S. requirements. The Joint Improvised Explosive Device Defeat Organization (JIEDDO) was created to identify and test equipment to defeat IEDs. Congress might examine the strengths and weaknesses of such programs to see whether an additional fund to transition successful Phase II Small Business Innovation Research (SBIR) projects might be possible. Such a fund and its administration should be kept "lean and mean", avoiding the excesses of the JIEDDO program in terms of staffing and testing. It should be possible for the services to test design mock-ups in existing testing and training facilities to see if basic concepts show promise before making a decision to package and "ruggedize" a technology, thus keeping costs down. Such testing should allow for feedback and interchange between service testing personnel and the small company engineers to allow for improvements and modifications. If such a testing program indicated an innovative technology showed real promise, at that point additional funds might be made available for assisting a small company to move into a manufacturing stage for the technology. Such assistance might include funding that could be reimbursable if the program moved forward, or involve an advance purchase contract that would allow the company to obtain financing from the private sector to gear up for manufacturing. Another option might be to have DARPA and/or the services institute an office where smaller companies could outline their ideas and provide funds for testing technologies in the field, while they are still in the experimental stage.

Mr. LARSEN. How can the DOD better facilitate communication between PM offices where the technology needs are vetted and small businesses which often lack access to PM offices which tend to be dominated by big Primes?

Mr. JOHNSON. My understanding is that communications between PMs and defense companies, both large and small, seem to have declined in recent years. There appears to be a fear of perceived conflicts of interest and any perception of favoring

any one company that might draw a protest down the road. With small companies this problem is compounded by not having the personnel that can interact with PM offices on a constant basis. Re-invigorating the competition advocate and giving them this function, or establishing a technology advocate that could serve as a point of access for companies to call attention to potentially useful technologies might help resolve the issue. Such points of contact should encourage companies, large and small, to present technology that may resolve, or to use the current buzz-word, resolve 80% of a problem at a much lower cost.

Mr. LARSEN. U.S. allies typically bar use of ITAR restricted items for space and military applications, marketing these capabilities as "ITAR-Free." I understand that State is investigating these "ITAR-Free" claims. Nonetheless, manufacturers in those same countries, however, do not face similar restrictions when selling their product to the U.S. primes working on USG programs. And those same companies leverage the experience they have gained in their home country where U.S. companies were not allowed to "compete" to outcompete U.S. companies on U.S. programs, touting their qualification and field experience gained in their home country. How does the DOD plan to "level the playing field" in this environment? Can the DOD impose a "domestic preference" or would it require some sort of legislation to allow it to do so?

Mr. JOHNSON. The ITAR-Free problem is based on the fact that under the current ITAR, if a part or component that is considered to be on the U.S. Munitions List (USML) is exported from the U.S. and incorporated into an end-item produced by a foreign country, that country must obtain permission to export the end item to any other country. This is true if the part or component is no more than a trivial item such as a bolt, hydraulic hose, or shock absorber. In complex systems, such as the Swedish Grippen jet or the European A-400M or Eurofighter, there are large amounts of American content and the Europeans simply live with the ITAR rules. For end-items where U.S. content is not necessary, it is easier for bookkeeping and for foreign policy flexibility to simply keep out any U.S. content. Much of this problem would be eliminated, especially for many small business, if items that were not of major security interest were removed from the USML and either transferred to the Commerce Control List (CCL), or uncontrolled altogether. This is essentially the approach taken by the administration's proposed Export Control Reform initiative. It is also true that if the U.S. has confidence in our allies export control policies with respect to what end items they sell to what countries; the U.S. should in turn be able to reduce concern as to the components we sell to our allies. That is the position most countries take with respect to the U.S. In general, countries selling components to U.S. companies for military products do not impose third-country transfer controls, as they assume the U.S. will not allow exports to countries they would refuse to export to themselves. Space, and particularly satellites, is a more complicated problem, as without a change in the law, the executive branch cannot move components from the munitions list to the CCL. The law not only requires essentially all satellite parts and components to be treated as USML items, it also bans any USML item from being sold to China or launched on a Chinese launcher. European satellite makers prefer to purchase components for satellite buses and payloads in quantity as a way to drive down prices. At the time of contracting for such components, it is not necessarily known if one of the satellite purchasers may include Chinese companies or shareholders, or if a satellite might be launched on a Chinese rocket. European satellite manufacturers therefore have tried to eliminate U.S. components altogether—hence ITAR-free satellites. Of course European countries do not attempt to impose such restrictions on U.S. exports of satellites with European components, and hence there is no incentive for companies such as Boeing or Lockheed Martin to European components. Again, European countries are generally comfortable that the U.S. will protect their technology when exporting U.S. satellites. The way to avoid the ITAR-free satellite problem would be to change the law to allow the executive branch to determine, with Congressional review, what components are so sensitive they should remain on the USML, and which might be transferred to the CCL (without a Chinese exception) so that foreign satellite makers could incorporate U.S. content without fear of losing satellite sales or having to strip out U.S. components and re-qualify a satellite. As for "domestic preferences", the U.S. has reciprocal procurement memorandum of understandings (MOUs) with most NATO countries and other close allies that guarantees the U.S. will not discriminate against their producers in DoD acquisition policy. Furthermore, as the U.S. still exports far more defense items and components than it imports, the U.S. and its companies have more to lose than to gain from any policies that encourage "buy-national" policies. It makes far more sense to harmonize export policies with



respect to end-items with our allies, while reducing barriers to exports of parts and components to each other.

