We were happy to recently **report** that Palantir, along with new ally Raytheon, had been awarded a $876 million contract to replace the troubled DCGS-A intelligence data-management system. That article concluded on a hopeful note, since we thought the DoD might finally be learning to accept innovative products from non-traditional defense contractors.

Yet this week's news indicates that Palantir's path is not a rosy as we first thought. It's problems with the entrenched "triangle" (generally thought to be comprised of bureaucrats, lobbyists, and Congress) persist. We are seeing reports, without detail, that General Dynamics Missions Systems, a disappointed bidder in the DCGS-A competition, has filed a bid protest. And so it goes …

Meanwhile, at the WIFCON site, Don ("Acquisition") Mansfield just posted a blog article regarding recent DFARS regulatory changes that, potentially, offer reduced barriers to entry for small businesses and other non-traditional defense contractors. We wrote about those rule changes in **this article** . We didn't dwell on the same aspect that Don noted in his article. Don noted that a "non-traditional defense contractor" has a very specific definition ("an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards … for at least the 1-year period preceding the solicitation of sources by DoD for the procurement …."). Don noted that, as all small business are exempt from CAS, *that definition makes every small business a non-traditional defense contractor* , and thus eligible under DFARS 212.102(a)(iii) for Part 12 commercial item procurement procedures, regardless of whether the small business' goods/services have been formally determined to be commercial items.

We further note that same DFARS final rule added a new solicitation provision (252.215-7013) that clearly states that supplies and/or services from non-traditional defense contractors "may be treated as commercial items" but "the decision to apply commercial item procedures to the procurement … does not mean the supplies or services are commercial."

But that's all dependent on contracting officer discretion, isn't it? The rules are expressly intended to be permissive and to provide flexibility, but the rule is not prescriptive. There's nothing that requires an individual contracting officer to use them, even if doing so would speed up acquisitions and (perhaps) entice more innovative companies to enter the defense marketplace.

And what about traditional defense contractors? What about the companies that have figured out how to overcome the barriers to entry and how to win defense contract award competitions? How are they reacting to the regulatory changes?

Let's look at Boeing for one example of a reaction. First, in 2015 Boeing created a new, centralized, business unit to focus solely on developmental programs—i.e., contracts that had been awarded to the company to develop weapon systems and to get them ready for future production. At the time, Boeing's Defense Unit President said, "We expect our customers to see step-function improvements in affordability and schedule performance as we more effectively apply engineering expertise, development program best practices, and program management and integration from across Boeing to our most important development activities."

At the time, **reports** stated that six programs were going to be part of the new unit's portfolio, including the KC-46A aerial tanker, the new Air Force One, the CST-100 spacecraft, the NASA Space Launch System rocket, Boeing's 502 small satellite effort, and defense-related work on Boeing's 777X commercial jetliner.

That same report put the Boeing move into a broader context, writing—

Boeing's reorganization is part of a growing trend within defense companies to operate their businesses more commercially. With fewer defense dollars on the horizon, the Pentagon has pressured companies to cut production and development costs. To remain competitive, firms have been looking at a myriad of ways to lower the cost of all types weapons ranging from fighter jets to warships. This has included everything from consolidating facilities, automating production and shrinking the workforce.

Yet a mere three years later, Boeing decided to kill that centralized development program business unit and, instead, create two new Defense divisions—"Commercial Derivatives" and "Missile and Weapons Systems." The Commercial Derivatives until will focus on the KC-46 tanker, the new Air Force One, and the P-8 submarine hunter—all programs built on modifications to Boeing's commercial airliners.

What happened in the intervening three years? Not sure. But one thing that didn't happen was the KC-46A program. Reports indicate that the program continues to struggle. Deliveries once scheduled for 2017 are now being pushed out to late 2018, which some consider to be an overly optimistic date. The business unit created to focus on development program management evidently failed to turn-around one of its largest programs. And the USAF is **not pleased**

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Meanwhile, smaller companies – perhaps more agile and responsive – continue to look for opportunities to break into the defense marketplace. Congress continues to push the Pentagon to contract with those smaller companies. The rules change, albeit reluctantly, to help contracting offices do just that.

But the decision regarding whether to do so—and how best to do so—rests with the individual contracting officer. Historically, contracting officers who take risks tend to receive criticism from their legal teams, their contracting chiefs, the IG and the GAO. If the new rules are going to work as intended, then the contracting culture needs to change.

Time will tell whether the DoD (and DCMA) culture will support its contracting officers when they decide to exercise the discretion permitted by the Congressionally driven rules.