



You know, because you are a regular reader, that we've had our finger on the pulse of the DOD/contractor relationship for quite some time. We've told our readers that the number of DOD suppliers has fallen by 14 percent even as the Obama Administration has tried to increase competition. We've told our readers that the DOD Leadership has stated publicly that it does not consider itself to be in a partnership with its suppliers—a 180 degree turn from the DOD's expressed position in the mid-1990's.

In [this article](#), we reported that the Armed Services Committee of the U.S. House of Representatives made several recommendations to their fellow Legislators, with the goal of improving oversight and improve the oversight agencies' "relationship with the industrial base." In [another article](#), we opined (with tongue only somewhat in cheek)—

If the DOD and its industrial base were in a marriage, we think it would be fair to say that we are long past the honeymoon phase. We think the current relationship might be fairly characterized as a 'separation.'

The funny thing is, as DOD shops around for a new partner with whom to commit, calling it a renewed emphasis on competition, it is seemingly learning that it has built up quite a bit of baggage over the past decade or so—baggage, in the form of onerous rules and regulations, that make it hard to attract a new mate.

Maybe the Pentagon's current relationship is not as bad as it thinks? Maybe DOD needs to recommit to its existing contractor/partners?

If only there was a therapist with the power to get the parties together in one room, for some heart-to-heart sharing....

So yes, as the relationship between the Pentagon and its contractors grows more adversarial by the day, we have been watching and reading the "He said, She said" back-and-forth

He Said, She Said, and Other Relationship Problems

Written by Nick Sanders

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fingerpointing with mixed feelings. After all, this is *our* primary industry here at Apogee Consulting, Inc. No defense dollars, no funding for consultants—no matter how much value they might add. And yet all the chaos does drive the need for some level-headed, dispassionate, knowledgeable mediators, who can assist the parties in negotiating win/win solutions. (This last plug brought to you by our sponsors, Apogee Consulting, Inc.)

But we are not the only ones watching the military-industrial base unravel at its seams.

For example, let's look at [this editorial](#) by Daniel Green at The Lexington Institute, entitled, "Who is Really Responsible for the Deteriorating Relationship Between The Pentagon and Industry?" (Hat tip to Defense Industrial Daily for bringing the article to our attention.) In his piece, Mr. Green called the current relationship "something akin to a Cold War," and asserted, "What began as an effort by the Obama Administration to rationalize DoD's modernization program, rein in the costs of major weapons systems and reform the acquisition system so as to achieve better buying power for each defense dollar has morphed into something quite different, sometimes ugly and certainly not good for national security."

He described recent examples of the parties lashing-out at each other as follows—

So bad has the relationship become that neither side tries any longer to pretend that the breach doesn't exist. ... In a speech at last year's Air Force Association's annual conference, then-Air Force Chief of Staff, General Norton Schwartz described the deteriorating government-industry relationship thusly: 'The gravity of this situation reminds me of the old allegory of the scorpion and the frog that meet on the bank of a stream.' At this year's AFA conference, Air Force Major General Christopher Bogdan, nominated to be the head of the F-35 Joint Strike Fighter Program Office, declared the relationship between his organization and Lockheed Martin, the company leading the effort to build the three-in-one airplane to be 'the worst he has ever seen.' Late last year, Major General Wendy M. Masiello, Air Force Deputy Assistant Secretary for Contracting, spoke to an industry group about a 'culture of excess' in which some companies were earning excessive profits and spending money on plush carpeting and leather sofas.

Mr. Green recites a litany of Pentagon misdeeds that, in his view, have contributed to the deteriorating relationship. The problematic Pentagon policies include—

... changes to acquisition laws, regulations and policies that, inter alia: 1) increased the role of the government-owned defense facilities in weapons systems maintenance; 2) asserted the Pentagon's right to cost and pricing data for and the intellectual property associated with commercial items used in or modified for military systems; 3) demanded that private

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companies assume an unprecedented level of financial risk for major weapons systems development programs, and most recently; 4) directed acquisition officials to negotiate labor and overhead rates for future contracts based on the levels that existed in 2010. Finally, DoD has imposed on industry additional layers of oversight, new reporting requirements and legal constraints that slow the rate of progress and increase the costs of programs.

Mr. Green quoted one “senior defense industry executive” as saying—

‘We’re encountering a slew of new regulations, rulings and procedures government-wide that were intended to save costs but are, in fact, increasing complexity, increasing reporting requirements, increasing costs for contractors and the department, and that appear, taken as a whole, to reflect a deliberate effort to shift risk to and reduce profits for contractors.’

So how is industry reacting to the alleged problems caused by the new Pentagon policies? Well, for one thing, we believe that a tsunami of litigation is in the works. We based that impression not on any inside information, but simply on what we’ve heard around the watercooler. We think the Top 10 defense contractors are girding their loins for some slingshot work, aimed at the giant Federal government—and we expect to have a lot to write about when the stones start flying.

As we have [publicly predicted](#), we continue to believe that the Pentagon’s ill-conceived and poorly handled “Contractor Recovery Initiative” is going to be at the forefront of the litigation. And as we’ve explored in depth, the Contracts Disputes Act’s Statute of Limitations, coupled with the ginormous backlog of uncompleted audits at DCAA, is going to follow. Boeing’s [EELV suit](#) is the tip of the iceberg, we think.

We are not necessarily thinking too hard about the DFARS Business System administration regime at this point, because DCMA is (seemingly) taking care to make sure its Contracting Officer Decisions are supported with lots of facts. But that may change and, if it does, we expect contractors to dial-up their lawyers and get busy with court briefs.

Here’s the bottom-line, in our view. If you threaten a contractor with negative impacts to its current programs, you have leverage and it will likely try very hard to resolve the issue. If you threaten a contractor with nickel-and-dime cost disallowances, it will likely settle—because doing so is cheaper than litigating. But if you threaten a contractor with multi-million dollar cost disallowances related to ancient issues that have lain unresolved for years (or perhaps even decades)—issues that have nothing to do with its current operations—then it will likely lawyer-up and drag your government ass into court. Because you have left it no other

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alternative.

So, yes. The marriage between DOD and its contractors is, seemingly, headed for a divorce. And like every divorce we've ever heard about, at the end of the day, the only winners are going to be the lawyers.