

# PTAC Link

PROCUREMENT TECHNICAL ASSISTANCE CENTER - CONNECTING BUYERS & SUPPLIERS

Progress Through Regional Cooperation In The Alleghenies

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## HAPPY LABOR DAY

The PTAC staff would like to wish their clients a HAPPY & SAFE Labor Day. We look forward to working with you in the near future.

Thank you again for giving us the opportunity to work with you.

James, Brandon & Gloria

### Upcoming Events with SAP&DC's PTAC...

As part of our continuing efforts to bring Government Contracting knowledge to our region, the PTAC

## DoD To Scrub Out Burdensome, Costly Acquisition Regulations

The Defense Department is taking a scrub brush to its acquisition regulations and getting rid of any nasty growths that have been slowing down the process over the years.

The Pentagon already tested a handful of these changes and is finding success in taking out layers of bureaucracy.

One pilot looked at whether the concept of earned value management (EVM) is consistently applied across DoD, what benefits it brings and how could services use it better.

"At about a year in, it was very evident that our relationship with industry in doing this study had really matured," said Katrina McFarland, the assistant secretary of Defense for acquisition after her speech at the National Contract Management Association's World Congress on Sunday. "We were getting really good data in and really getting good exchange, very candid and very open, and with the different participants that work with industry - Defense Contract Management Agency, Defense Contract Audit Agency and the Defense Procurement Activity. And in the end, we are actually putting out a report that demonstrates reductions, not only in full-time equivalents of people on the government side that we will repurpose for other work, but also things that we will no longer ask for."

McFarland said DoD will issue that report by the end of the calendar year.

"We will go out with a change to the Defense Federal Acquisitions Regulations to adjust what we do to be more efficient and reduce costs," she said. "It will be cost avoidance for the most part, but the people will indeed be savings. Mr. [Frank] Kendall [the undersecretary of Defense for Acquisition, Technology and Logistics] has reviewed it, approved the results, briefed its senior integration group with all the service acquisition executives, and we've actually started on the second part to slowly carve away at next efforts."

The [pilots and ensuing report](#) is actually the second time DoD has looked at simplifying procurement regulations. In the 1990s, the Pentagon hired Coopers and Lybrand to do the analysis.

at SAP&DC is proud to announce the following events in the second half of 2015:

**PennDOT Small Business Enterprise (SBE) Program - September 29, 2015, 9 AM to 3 PM:**

This event will cover the ins and outs of doing business with PennDOT and marketing your company under this program. Hosted by the Southern Alleghenies PTAC, JARI PTAC, and the SEDA-COG PTAC, it will feature a presentation by Mark Corbin of Cheney University. and the PennDOT SBE Supportive Services Center. It will take place in State College, and the cost is free. Registration will be needed, because seating will be limited. [Please register here.](#)

**PA COSTARS - October 6, 2015, 1 PM to 3 PM:**

A reprise of a presentation done in 2014, a representative from the Pennsylvania Dept. of General Services COSTARS Program will speak and give a half-day class on the program and how it can benefit your company. It will take place in State College, and the cost is free. [Registration can be found here,](#) and seating will be limited.

**Fulton County Government Contracting 101, Part 2 - October 28, 2015, 5 PM to 8 PM:**

Due to popular demand, we'll be presenting our Government Contracting 101 in Fulton County in October. [Registration can be found here:](#)

We will make social media announcements, email blasts, and web site changes for these events. If you have any questions on these, or have suggestions for other outreaches, please contact James Gerraughty, PTAC Program Manager, at [jgerraughty@sapdc.org](mailto:jgerraughty@sapdc.org) or (814) 949-6528.



But since that initial study, the number of laws and regulations have increased dramatically.

McFarland said sometimes DoD and industry are spending tens of thousands of dollars to comply with these requirements on a contract that is worth half or quarter of that oversight spending.

"We have things that are valued at less than \$1,000 and we have things that are valued at billions, and we treat them the same way," she said. "There should be a materiality discussion to determine what and how much risk we want to apply because frankly time is money and some of this doesn't warrant the time we are spending."

In the EVM pilot, McFarland said her office worked with DCAA leaders to find areas where trading risk for efficiency was acceptable.

"We are looking at the organization as a whole instead of the sum of its pieces," she said. "We have been having very good success in reducing how many times we contract industry partners. For example, submissions during a negotiated contract that's protracted - how many times do we want for a resubmission of subcontractor costs? How many times do we need to audit that? There are a whole bunch of activities that we are looking at together that we are coming to consensus on how we can do those processes more efficiently."

Along with the EVM pilot, McFarland said DoD also tested contract close out services.

"We have a lot of backlog in that area, and we are looking at how can we literally through a process of that we call material nature, which looking at the substantive risk that is being taken and how can we address it through different methods to reduce the backlog with industry," she said. "There are things that you can do to alleviate the innate risk you are feeling. You can do sampling techniques. There's known statistical practices that will allow for people to retain a confidence. So if there is a contracting officer who has a concern about a particular proposal she or he can still call that audit in and they can do a sampling technique that if something comes out that shows there is a concern, they can reinstate all the processes that they've used historically to manage and ensure that the system is working to where it should be in terms of the risk associated with an audit."

The impetus for this effort is two-fold. McFarland said over time [regulations grew](#) as reactions to problems without enough thought into whether the issue was the process or the person.

Second, and maybe more importantly, the cost of these regulations is growing for both industry and government and [neither can afford](#) to have enough people to meet all of these requirements.

The workforce issue is directly related to the need to reduce acquisition bureaucracy.

DoD, like nearly every agency, can't hire enough acquisition workers. By reducing some of the burden, McFarland said DoD hopes it will help expand the workforce's impact on more critical procurement areas.

## Upcoming Changes to the FAR, effective 10/01/2015

Federal Acquisition Regulation (FAR) is like any other federal law, and will be periodically reviewed and updated to reflect the state of contracting. The FAR was recently reviewed, and some changes are going into effect on October 1, 2015. The full text of the changes can be found in the Federal Register [by clicking here](#).

Some of the key provisions are:

- The micro-purchase base threshold of \$3,000 (FAR 2.101) is increased to \$3,500.
- The simplified acquisition threshold (FAR 2.101) of \$150,000 is unchanged.
- The FedBizOpps pre-award and post-award notices (FAR part 5) remain at \$25,000 because of trade agreements.
- The threshold for use of simplified acquisition procedures for acquisition of commercial items (FAR 13.500) is raised from \$6.5 million to \$7 million.
- The cost or pricing data threshold (FAR 15.403-4) and the equivalent Cost Accounting Standard threshold are raised from \$700,000 to \$750,000.
- The prime contractor subcontracting plan (FAR 19.702) floor is raised from \$650,000 to \$700,000, and the construction threshold of \$1,500,000 stays the same.

At the same time, McFarland said DoD is placing a greater focus on talent management of its acquisition workers.

"We have attrition, but we have to understand how does that fit into how we mold our workforce and what are our tools to manager and understand where our needs are in terms of weaknesses?" she said. "When we have budget cuts, they involve people. How do I ensure that the people that are being looked at have their positions removed are the people that we can afford to lose?"

McFarland said her office is working with the services to build a talent management toolkit so employees can plan out their career advancements.

At the same time, McFarland said DoD is "dusting off" some tools and reminding the services that they exist, such as hiring retired annuitants or highly qualified experts, which lets DoD retain or hire a few thousand people at more competitive salaries, or the Intergovernmental Personnel Act, which lets agencies bring experts in on a temporary basis from other levels of government.

"We are providing a standardized method to go about utilizing them and making sure there is an actual education from our senior leadership down to our humblest employee at the entrance level that these tools are out there and how to use them," she said. "The goal is to source not only talent, but from their own career perspective if they want to retire, but want to give back to the organization, how do they do that? Where can we use that to fill in the gaps? There are a lot of opportunities that we really need to have clear visibility on. That's what's going on right now is a complete review of that. It's being done at the very senior undersecretary level and we expect within a year to have a book out for people to train to and all our human resources people trained up to use that."

Another tool that isn't getting a lot of attention throughout government is phased retirement.

McFarland said she recently asked for her employees to take a look at the tool and figure out how best to use it.

All of these efforts come on the heels of yet another attempt at DoD acquisition reform by Congress.

The National Defense Authorization bill includes a [host of provisions](#) to try to fix what some would call long-standing problems.

Defense Secretary Ash Carter wrote a letter to lawmakers in June outlining DoD's [concerns](#) with some of the provisions.

McFarland said for the most part the NDAA includes good proposals, but one in particular is giving DoD concern. The move to dismantle the reforms made under the Goldwater-Nichols Act.

"I understand fully why there needs to be an enterprise view," she said. "I think just exposure to the understanding of cross-service equities and making sure that in the terms of risk and optimism particularly in the budget decline, we have people who are able to look at products and proposals from each of the

- The threshold for reporting first-tier subcontract information including executive compensation will increase from \$25,000 to \$30,000 (FAR subpart 4.14 and section 52.204-10).

If you have any questions about this, please don't hesitate to call the Southern Alleghenies PTAC at (814) 949-6500 or [email us](#).

### Become a PTAC Client

To take advantage of the services and resources provided by The PTAC at SAP&DC, complete the [New Client Sign-Up form](#).

### Quick Links

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[Small Business Administration / Contracting](#)

agencies and the department writ large, have a good scrub so the department doesn't go awry in the future."

*Article posted courtesy of  
Jason Miller,  
Federal News Radio*

## Government's Engineers Couldn't Modify Contract, Says ASBCA

A construction contractor was unable to recover the costs of performing changed work allegedly ordered by the government's project engineers because the engineers did not have authority to modify the contract.

As demonstrated in a recent Armed Services Board of Contract Appeals decision, only a contracting officer or the contracting officer's designated representatives may modify a contract, and a contractor bears the risk of non-payment by performing changed work directed by an unauthorized government employee.

The ASBCA's decision in [Circle, LLC, ASBCA No. 58575 \(July 1, 2015\)](#) involved a contract between Circle, LLC and the U.S. Army Corps of Engineers, pursuant to which Circle was to construct a concrete flume on the Two Mile Canal in Jefferson Parish, Louisiana. As part of its scope of work, Circle was to erect a Temporary Retaining Structure to stabilize the site while the flume was constructed.

Circle was responsible for designing a TRS to meet the contract's requirements, including identifying the appropriate sheet piles for the project. While Circle was required to submit design calculations for the TRS, nowhere did the contract call for computer calculations. After performing hand calculations, Circle's engineering consultant concluded AZ 18x60 sheet piles would satisfy the contract's requirements.

During the Pre-Construction Conference, Circle representatives meet with both the CO and the Administrative Contracting Officer. At the meeting, Circle was informed that the CO and ACO were the only persons authorized to make changes to the contract.

A few weeks after the Pre-Construction Conference, Circle claims to have attended an "Expectations Meeting" with Corps representatives to discuss TRS submission procedures and expectations (notably, the government officials who were supposedly in attendance at this meeting had no recollection of the meeting ever occurring). Neither the CO nor the ACO were present at this meeting. According to Circle, at this meeting, Corps engineers informed Circle that it would need to submit new TRS calculations using the Corps' proprietary software, CWALSHT.

Following the Expectations Meeting, Circle had its engineering consultant recalculate the TRS specifications using the CWALSHT program. The results suggested that AZ 18x60 piles would be insufficient to meet the load demands required under the contract. As a result, Circle increased the size of the piles

from those in its proposal to AZ 26×66 piles. Since steel piles are sold by the pound, the size increase resulted in cost increases and time delays.

Circle submitted a request for equitable adjustment to compensate it for the increased costs. The contracting officer denied the claim and Circle appealed to the ASBCA. Circle's principal argument was that the Corps representatives present at the Expectations Meeting had implied authority to make contract changes. Circle contended that, because the Corps's engineers allegedly instructed Circle to use CWALSHT, the Corps had made a constructive change to the contract for which Circle was entitled to compensation.

The ASBCA wrote that "where a party contracts with the government, apparent authority of the government's agent to modify the contract is not sufficient; an agency must have actual authority to bind the government." Although authority can arise by implication, such an implication may be unreasonable where—as here—the contractor is on notice that specific agency officials are the only persons able to modify a contract. The ASBCA continued:

*"[T]here is no genuine issue of material fact that the Corps' engineers lacked the authority, express or implied, to modify Circle's contract. Circle has conceded that they lacked the express authority to do so and that it was notified that no one, other than the CO and ACO (up to a point) had the authority to change the contract. Circle's contentions that the engineers were cloaked with implied authority are conclusory and unsupported by material evidence."*

The ASBCA granted the Corps' motion for summary judgment.

Circle highlights an important point for government contractors: the Contracting Officer, and those with the Contracting Officer's delegated authority, are the only individuals who can make contract changes. Contractors who rely on changes made by unauthorized officials do so at their own risk.

*Ian Patterson, a summer law clerk with Koprince Law LLC, was the primary author of this post.*

**Article posted courtesy of  
Ian Patterson & Steven Koprince**

## About Us

The PTAC at SAP&DC is an economic development entity that bridges the gap between supplier and buyer in the government marketplace. The PTAC stands ready to support businesses in the Alleghenies region in their pursuit to secure contracts with local, state and/or federal government agencies nationwide by:

- Identifying niche government markets and specific contract opportunities
- Assisting with bid and proposal preparation
- Preparing the required vendor registrations

- Navigating your company through the requirements and procedures of government contracting
- Enhancing competition by obtaining applicable socio-economic certifications
- Providing guidance to ensure successful post-award contract performance

**Due to the generous support of our Commonwealth and Federal funding partners, services provided by the PTAC are free of charge.**

Whether you are an experienced contractor or new to the government marketplace, the PTAC will provide one-on-one counseling utilizing the following program resources to increase your share of contact awards.

#### **PTAC Resources**

- Electronic Bid Matching for products and services
- Military/Commercial specifications and standards
- Past procurement information and pricing histories
- State and Federal regulations guidance
- Professional training and outreach events
- Quality assurance and packaging guidance

Contact us today at [The PTAC at SAP&DC](#) to get started!



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