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General T. Michael Moseley (retired) and Renee Richardson sat down with NCMA CEO Kraig Conrad to share lessons learned on how to form a team ready to drive mission success.

## A Strong Team With the Right Players



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# How Not to Alienate Business Partners

In Part Two of this two-part series, we explore what contracting professionals can do to strengthen the defense industrial base.

Moshe Schwartz and  
Michelle V. J. Johnson



In the February 2024 issue of Contract Management, we published an article examining the decline in the number of companies choosing to work with the federal government in general, and the Department of Defense (DoD) in particular. We discussed the reasons companies may choose to leave the National Security Innovation and Industrial Base (NSIB) – or not enter it in the first place – noting that defense acquisition, budget, and business processes are continuing to grow more complex, more heavily regulated, and more out of sync with the private sector.

In this follow-on article, we continue the conversation by suggesting steps contracting professionals and DoD leadership can take to build stronger relationships with current and potential industry partners.

Against the backdrop of the complicated regulatory landscape depicted in Part One of this article, a growing number of new companies have chosen to work with DoD through nontraditional means – namely, as part of consortia that follow a more relational, and less regulatory, business model.

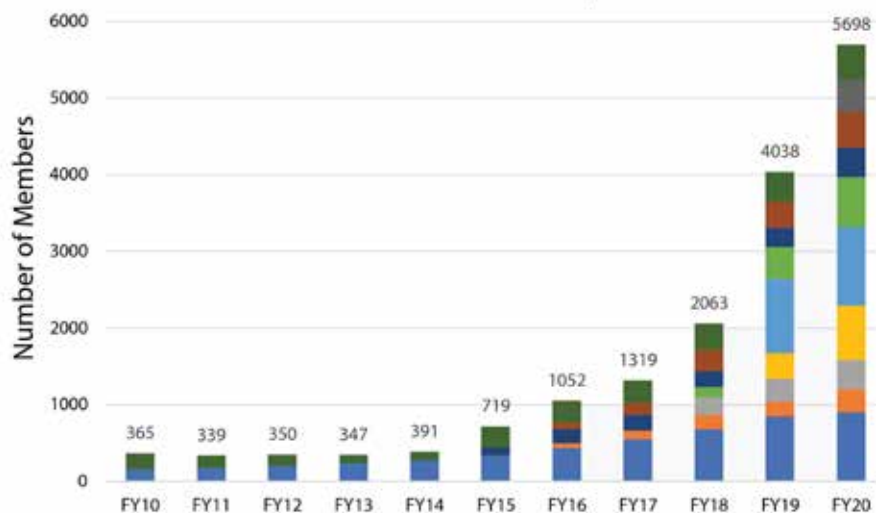
From FY 2010 to FY 2020, total membership in 12 consortia focusing on government contracting increased more than tenfold, from 365 to over 5,600. One consortium’s membership increased from 161 members in 2010 to 900 members in 2020. Another consortium attracted over 900 members in its inaugural year in 2019.<sup>1</sup> The trend is illustrated in Figure 1.<sup>2</sup>

Companies are attracted by consortia for two primary reasons.

First, business relationships are governed by an expedited and simplified contracting method, since other transactions are not bound by the *Federal Acquisition Regulation (FAR)* or many other regulatory and legislative requirements.<sup>3</sup>

Second, members of consortia enjoy more communication and collaboration both between government and industry, and within industry.

**FIGURE 1.** Consortia Membership FY 2010 – FY 2020



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The benefits of working within consortia are similar to the steps and recommendations being made by DoD's outreach organization, the Defense Innovation Unit (DIU). DIU Director of Acquisitions Cherissa Tamayori attributes some of DIU's success to its use of simplified acquisition processes, notably Other Transaction Authority and Commercial Solutions Openings.

Tamayori also suggests that to continue this trajectory, "We must ensure that government needs align with best commercial practices and do not require a company to create government-specific processes, develop costly proposals, or spend a year waiting to learn if it won a contract award."<sup>4</sup>

### **Humanize the Process**

At its heart, acquisition is a human endeavor of building and sustaining relationships. Regulation may standardize the process, but it does not improve outcomes. Excessive regulation artificially constrains the potential of business relationships by reducing them to mechanistic processes focused on checklists and fear of legal action for compliance failures. A win-win relationship for both government and industry can emerge from an acquisition system governed by fewer regulations that are more consistently enforced and executed by acquisition professionals who are empowered to think.

The first step to this relational contracting is for DoD to develop a better understanding of how industry operates: what motivates companies, what drives business decisions, and, most importantly, what prompts companies to leave – or not enter – the NSIB. Our survey identified three

places to start for defense contracting professionals looking to better understand industry's perspective: government-unique requirements, intellectual property (IP) rights, and cash flow.

### **Talk to Industry Partners**

The Office of Management and Budget (OMB) Myth-Busting Memo #4 reminds acquisition professionals of all the channels of communication available to them and asks each agency to appoint an industry liaison.<sup>5</sup> One-on-one conversations with industry, for example, can "foster business partnerships while capturing industry feedback to improve acquisition planning and requirements definition." It is not only legal to talk to industry partners – it is desirable.

In an effort to spur more communication, on December 1, 2022, a new FAR final rule was published, *Effective Communication between Government and Industry*, to make clear "that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms."

More frequent and ongoing communication between industry and DoD will help DoD better understand industry, foster a more collaborative environment, and help create solutions that can most effectively achieve the shared mission of ensuring national security priorities while maximizing benefits to all parties involved.

### **Minimize Requirements**

DoD should undertake a comprehensive analysis of what statutes, regulations,

and policies are driving industry to leave the NSIB. Armed with such information, DoD could then submit legislative proposals to Congress and initiate regulatory changes to the FAR and the *Defense Federal Acquisition Regulation Supplement (DFARS)* that are aimed at rebuilding industry participation in the government marketplace, while still maintaining the necessary oversight.

Many of these requirements are codified in Title 10 of the U.S. Code, which is a cluttered mess. The recent move to reorganize these provisions is an important first step in creating clarity, but the notes must be harmonized, and outdated or conflicting laws and regulations must be repealed or modernized to complete the project.<sup>6</sup>

Contracting professionals looking to reduce the compliance burden in their office can follow the lead of Danielle Moyer, who reduced local acquisition policy by 60 pages and cut three months of review when she took over as Executive Director of Army Contracting Command (ACC) at Aberdeen Proving Ground. Moyer created an Integrated Product Team that included contracting officers, lawyers, and ACC leaders to review local policies and determine which could be eliminated.

This common-sense approach identified numerous policies or requirements that were created "just because something went wrong one time." The team weighed the risk of that circumstance reoccurring against the need to award contracts faster.<sup>7</sup> As more individual organizations complete such assessments, it paves the way for Armed Services, DoD, and Congress to take a similar approach to streamlining.

## Understand Intellectual Property and Data Rights

The interests of the United States in proprietary and technical data are straightforward – the more DoD owns and has access to such data, the easier it is for DoD to ensure technology can be sustained over its lifecycle, either in-house or by a contractor who competes for and gains access to these rights from DoD. What is less recognized is that it is in the long-term interest of DoD to protect industry's rights in proprietary and technical data.

IP rights represent the crown jewels of industry, and the lifeblood of a company's competitive advantages. DoD demands for broad IP and technical data rights without paying for such rights will dissuade companies from working with DoD. As one company told us, when DoD seeks to mandate delivery of data rights without providing compensation, it is easier to sell the IP rights to another company – like TransDigm – even when we know that the company will jack up the price and charge DoD more.

As a recent NDIA report on the health of the industrial base stated, “Intellectual Property rights are essential to the health of the defense industrial base (DIB). The perception of risks to IP rights shapes investor's willingness to invest in research and development and commercialization activities.”<sup>8</sup>

Efforts are underway both in DoD and industry to find a balance between government and industry perspectives. The IP Cadre established in the FY 2020 National Defense Authorization Act is working to institute processes and policies for evaluating IP rights. Discussions with

industry began in earnest in 2022, and a handful of case studies are underway to identify best practices.<sup>9</sup>

The first-ever DoD IP Forum was held December 6-8, 2023, and shows potential to refine this understanding. Notably, the key step to success will be training the acquisition workforce to understand these best practices and to apply core principles to sophisticated situations.

## Conclusion

In 2022, DoD issued the report, *State of Competition within the Defense Industrial Base*. We believe DoD got it backwards in that report. The question is not, “What is the state of competition within the defense industrial base to win DoD's business?” It is, “What is DoD (and Congress) doing to compete with commercial market buyers to induce industry to work with DoD?”

Until the federal government looks inward and matches policies to the realization that it cannot dictate to industry the terms of contracts, DoD will often get what it pays for: goods and services that are more focused on meeting compliance requirements and driving to the lowest cost than they are on innovation, capability, and speed. Those results will not position the United States military to deter, defend against, or dominate adversaries.

In this decisive decade, acquisition regulations and policy must be streamlined to deliver outcomes and informed by data gathered through continued analysis of the shrinking defense industrial base from multiple

perspectives – and most importantly, through difficult conversations with industry partners. **CM**

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## ENDNOTES

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