

## ACQUISITION ADVISORY PANEL

Meeting Minutes

May 18, 2006

Small Business Administration – Eisenhower Conference Room  
Washington, D.C.

The Acquisition Advisory Panel (AAP) convened its twenty-first public meeting on May 18, 2006 in the Eisenhower Conference Room of the Small Business Administration, Washington, D.C. Ms. Marcia Madsen, Chair of the AAP, opened the meeting at approximately 9:12 AM. She thanked Ms. Denise Benjamin for her assistance in scheduling the site, since the White House Conference Center was unavailable due to renovations.

The guest speakers and their affiliations were as follows:

Mr. Stephen Epstein	Director, Standards of Conduct Office, Office of the General Counsel - DoD	Attachment 3
Mr. John P. MacMonagle	Manager, Corporate Initiatives Group, Corporate Sourcing – General Electric Co.	Attachment 4
The Honorable Stephen D. Potts	Chairman of the Board, Ethics Resource Center	No Attachment

The Working Group updates were presented as follows:

Mr. David Drabkin	Commercial Practices	Attachment 2
Dr. Allan Burman	Performance-Based Acquisitions	No Attachment
Mr. Jonathan Etherton	Interagency Contracting	Attachment 1

Ms. Marcia Madsen announced the resignation of Panel Member David Javdan, effective immediately. She explained that he had left the Small Business Administration, but remained on the Panel; however, travel demands for his current position had increased and he decided, in the interests of the AAP, to resign. Ms. Madsen acknowledged his efforts, with the assistance of Ms. Benjamin and others, at stepping in and moving the Small Business Working Group Recommendations forward upon the departure of Melanie Sabelhaus.

Ms. Madsen reviewed the currently scheduled meeting dates of May 31, June 14, July 07, and July 21 and suggested that it may take at least two more public meetings to complete the actions of the Panel. The Designated Federal Officer, Laura Auletta, then called the roll. The following Panel members were present:

Mr. Louis M. Addeo  
Dr. Allan V. Burman  
Mr. Marshall J. Doke, Jr.  
Mr. David Drabkin  
Mr. Jonathan Lewis Etherton

Ms. Deidre A. Lee  
Mr. Thomas Luedtke  
Ms. Marcia G. Madsen  
Mr. Joshua I. Schwartz

The following Panel members were not in attendance:

Mr. Frank J. Anderson, Jr.  
Mr. Carl DeMaio  
Mr. James A. (Ty) Hughes, Jr.  
Mr. David A. Javdan (resigned)  
Mr. Roger D. Waldron

Dr. Allan Burman, Co-Chair of the Performance Based Acquisition (PBA) Working Group, provided a brief outline of the changes captured to date, which ultimately resulted in Panel adoption of the recommendations during public meetings held March 17 and 29, 2006. These changes, therefore, do not require additional voting as they are the resulting changes from the discussions. Recommendation One - the word "targets" was changed to "goals." Recommendation Two - "more explicit guidance" was changed to "more explicit implementation guidance" and included the notions in the recommendation of doing a transformational and transactional change, and also noted where in the FAR that should be covered. Recommendation Three was withdrawn so all other recommendations were renumbered. No change to Recommendation Four. Recommendation Five provided more explicit terms in identifying requirements to define a baseline performance case, also citing where in the FAR the language should be included. Recommendation Six clarified the requirement to establish a contract specific performance improvement plan. Recommendation Seven remains the same. Recommendation Eight remains essentially the same, with the only change being the word "focus" in lieu of "narrowcast." Recommendation Nine provided clarification of the role a Contracting Officer Performance Representative (COPR) would assume, in addition to the training requirement. Recommendation Ten remains unchanged. Recommendation Eleven added "As such, the Panel recommendation should not be interpreted as offering a long term endorsement of PBA." Dr. Burman expressed his expectation that these changes would satisfy the concerns previously raised by the Panel.

Co-Chair of the Interagency Contracting Working Group (ICWG), Jonathan Etherton, also provided, as information only, a synopsis of changes to the narrative language supporting the recommendations previously adopted by the Panel Members. He explained that several comments from the public had been received and were under review. No changes were being made to the actual recommendations at this time, he clarified. Based on a suggestion from the Multi-Association Group, paragraph two in the narrative of Recommendation Two has been changed to clarify the purpose of collecting data, and the fees paid to use interagency vehicles versus the internal cost to procure.

Under Recommendation Four, Mr. Etherton reaffirmed David Drabkin's suggestion to also include a longer review and reauthorization period for Government-wide Acquisition Contracts (GWACs). The following text was added: "...With respect to the GWACs, the Working Group

further recommends that the Office of Management and Budget (OMB) reconsider the current requirement for annual review and reauthorization of these vehicles. The Working Group believes this period is too short given the complex and long-term nature of the work being undertaken under the GWACs.”

Mr. Etherton advised that the Multi-Association Group also strongly suggested that OMB publish a timeline for agencies to perform an analysis as recommended in Recommendation Nine. The Working Group was not prepared to recommend six months as proposed, but has included a statement which reads: “In order to achieve the greatest impact in performing its analysis, OMB should publish a timeline for carrying out the analysis, including an identification of agencies’ responsibilities, as soon as practicable.” Full text is included in Attachment 1.

Mr. Etherton addressed additional public comments received from GovWorks expressing concerns with the treatment of assisting entities in the draft written report. He stated that the WG will take more time to review the statements, but believes that the issues can be addressed in the editing process and report.

Ms. Madsen added that there is a pending request to the Department of Interior, for an opinion on the legal authority for a franchise fund, due to testimony received which suggests that more than one authority supports that fund.

Since no other comments or questions were raised, Ms. Madsen turned the discussion over to Mr. David Drabkin, Co-Chair of the Commercial Practices Working Group (CPWG).

Mr. Drabkin informed the Panel that the CPWG was still working through several issues, among them, the definition and application of commercial services, and the appropriate use of time and materials contracts (T&M). The following Findings were discussed:

**Finding 1:** *Commercial best practices include a clear definition of requirements, reliance on competition for pricing and innovative solutions, definite preference for fixed-price contracts (as opposed to time and materials and cost-based contracts), and use of short-term contracts.* The discussions within the Working Group, as relayed by Mr. Drabkin, have centered on what constitutes a short-term contract and whether services/items purchased by the private sector are different from those procured by the Government, particularly through outsourcing.

**Finding 2:** *Commercial buyers rely extensively on competition when acquiring goods and services. Commercial buyers further facilitate competition by defining their requirements in a manner that allows services to be acquired fixed-price in most instances.* Discussions ensued within the Panel regarding competition. Ms. Deidre Lee discussed the private industry practice of generally not advertising to the world, thereby limiting the playing field, and still considering the transaction to be competitive. Mr. Marshall Doke added that the private sector was quick to narrow the number of competitors to two or three, saving time and resources in review and negotiations. Mr. Drabkin offered that the Government also has schedules and Indefinite Delivery/Indefinite Quantity (IDIQ) contracts, with different “rules” for competition. Mr. Etherton suggested that the taxonomy of the various varieties of competition within the Government be included in the written discussion, and Dr. Burman further suggested the CPWG

add concrete examples to illustrate the differences. Professor Schwartz stated that beyond different degrees of competition were differences in the purpose of competition within the Government and commercial worlds. He suggested that the Government had multiple objectives to include fairness and integrity and value, and industry focused more on value. Mr. Tom Luedtke commented that the type of item or service purchased also affected the definition/degree of competition.

**Finding 3:** *Commercial buyers generally require sellers to use buyers' standard terms and conditions. This allows all offerors to compete from a common baseline. The use of standard terms and conditions streamlines the acquisition process, making it easier to compare competing offers, eliminating the need to negotiate individual contract terms, and facilitating contract management.* Mr. Drabkin explained that the commercial sector has more terms and conditions that focus on the deal. Mr. Luedtke offered that it appeared that, in the commercial world, the acquisition process is a business process, whereas in the Government, it is a legal process. Mr. Drabkin agreed with that assessment and added that it was the difference between being bound by the Federal Acquisition Regulation (FAR) and the Uniform Commercial Code (UCC).

**Finding 4:** *Commercial buyers rely extensively on competition for pricing of goods and services. They avoid non-competitive acquisitions whenever possible. Some commercial buyers consider competition so important that they develop new strategic sources for the sole purpose of creating future competition. Most contracts for services are competed on a fixed-price basis (i.e., fixed-price or fixed rate).* The Working Group continued to discuss this finding.

**Finding 5:** *The Government has adopted various competitive procedures in buying commercial items and commercial services in an attempt to mirror the commercial marketplace. These procedures facilitate procurements with a constrained acquisition workforce but do not always achieve the same benefits that commercial buyers achieve in the commercial marketplace.* The concept has reached general consensus, but as Mr. Doke explained, the Government has not “mirrored” the commercial marketplace, and it would be undesirable to do so, due to socioeconomic provisions, apparent authority of agents, personal liability of representatives, and non-disclosure agreements; the language may be adjusted accordingly.

**Finding 6:** *The Government market for commercial goods and services does not always reflect the commercial marketplace. In non-competitive awards, the Government does not always benefit from commercial market forces.* As previously mentioned in Findings 2 and 4, the term “non-competitive” is being discussed further. Additionally, the Panel Chair asked for any examples. Mr. Doke provided a general explanation of the concept whereby some services procured by the Government are not in fact equal to, or similar to those provided in industry. The specific example used was maintenance of a fire control (ordinance) system. There is no similar industry requirement, and the only customer is the Government, thereby having no commercial marketplace in which to benchmark competitive prices. Another way of evaluating, he suggested, was by the types of functions procured, i.e., systems engineers, etc., but discussions were on-going.

**Finding 7:** *Commercial buyers avoid use of time and material contracts, if possible. The Federal Government makes extensive [to be quantified] use of time and material contracts.* Mr. Drabkin briefed that much of the discussions within the Working Group on this issue focused on whether the type of services procured were different; “butts in seats” versus other outsourcing. Additionally, the term “extensive” requires further data collection and will be quantified, he explained.

Ms. Madsen invited Laura Auletta to comment on the data requests with Federal Procurement Data System – Next Generation (FPDS-NG). Ms. Auletta offered that requests for data had been submitted to determine the dollars associated with commercial, non-commercial, competitive, non-competitive, and other information. She explained that it appeared that the extent competed could not be determined in all cases. Mr. Drabkin interjected that the inability to determine what was bought also aided in the inability to test whether market forces were present to set the prices.

Ms. Madsen redirected the discussion to requirements definition and development in relation to competition. Ms. Lee explained that, often, large dollar contracts are also large in scope, and the magnitude of the project and/or the geography, and the time frames involved limit those who compete, and hinders the specificity of the requirements, also impacting competition. If the Government could specifically define a requirement at a moment’s notice, she said, there would be a different level of competition, which would also result in a different criticism about the time to respond. By moving the point of competition and issuing multiple award or IDIQ contracts, essentially creating two rounds of competition, she explained, the Government has to balance fairness in competition with society’s demand for instant response. Mr. Drabkin agreed, and added that this, combined with reductions in the workforce, was the basis for IDIQ contracts and schedules, whereby the requirements are stated as a general description of potential needs. If the requirements are not specifically defined in the task orders, he continued, the result is to buy the effort, not the outcome. He also added that the term “competition” is used differently for different vehicles. For example, the term “fair opportunity” appears in FAR Part 16 and is used for IDIQ contracts, exclusive of schedules, once the basic contract is awarded, Mr. Drabkin explained. He asked that the Panel understand that one word is used to describe different “competitive” processes, distinguish practice from rules, and conduct a Government-to-industry, side-by-side comparison in the use of the word “competition.” Mr. Drabkin also stated that advanced planning was extremely important and would improve requirements development and the procurement overall.

Tom Luedtke added his observation that as the Government “chases” commercial business practices, in the context of competition, the idea of relationships is different. He explained that one benefit gained by building and maintaining a relationship was a willingness by vendors to make long-term investments and allocations of resources. He also discussed how NASA has reduced the time to make awards by informing bidders up front that the competitive range will be a small number, and that no discussions will be held, therefore the quality of proposals received improved, he added.

Ms. Madsen resumed the meeting after a short recess and introduced Mr. Steve Epstein, the Director of Standards of Conduct for the Office of the General Counsel at the Department of Defense.

Mr. Epstein expressed his pleasure at being invited to address the Panel. He also informed the Panel that the views he would present were not necessarily those of the Department of Defense. He voiced his concern with the growing issue of a blended workforce, otherwise known as contractors in the federal workplace. He advised that the general role of his office was to implement the various statutes, regulations and policies throughout the Executive Branch of the Government for the purpose of ensuring the integrity of Government decision-making. Mr. Epstein advised that he observes a 'big hole' in the practice, in that the rules, regulations and statutes apply only to federal employees. As the Government increases the integration of non-federal employees into the actual governing and administration of our agencies, the larger the gap and the more difficult it becomes to ensure the integrity of decision-making, he stated.

Mr. Epstein pointed out that he avoided the term "inherently governmental" and explained that he was unsure whether anyone understood the term or agreed with its use. He further informed the Panel that the purpose of the measures was to ensure honesty, no preferential treatment, no self-interest, no hidden agenda and a level playing field. With the exception of 18 U.S.C. 201, Prohibition on Bribery, and portions of 41 U.S.C. 423, the Procurement Integrity Act, all other statutes and regulations apply only to federal employees, he reported. Mr. Epstein briefly named other regulations and prohibitions in the areas of conflicts of interest and ethics, and protecting privileged information (Attachment 4), reiterating the fact that they applied only to federal employees for the purpose of ensuring integrity in Government decision-making. He told the Panel that the Hatch Act, generally recognized for limiting political activity, also has a main purpose of preventing decision-making based on political consideration by federal employees, and again, does not apply to non-federal workers.

Mr. Epstein also questioned what was meant by "decision-making," and advised the Panel that he discovered several definitions, none of which were the same. In some literature, he said, it was described as roles traditionally carried out by civil servants, or critical functions, or "inherently governmental" functions. In 18 U.S.C. 208, the Federal criminal statute on conflicts of interest, he reported, decision-making is described as participation through decision approval, disapproval, recommendation, rendering advice, investigation or otherwise. He pointed out that the applicability of protections to decision-making addressed in the statute go well beyond "inherently governmental" functions. Decision-making is a process, he explained, but the restrictions apply to the status of people performing the process, and that could be a problem.

One solution, he offered, was to exclude contractor personnel from making decisions; however, input for making a decision often comes from contracted personnel and may not be subject to the same restrictions. An alternative is contractor self-enforcement, which Mr. Epstein advised, was in a formative stage. He also suggested another option of creating a temporary status for contractor personnel similar to the Intergovernmental Personnel Act (IPA) or the Information Technology Exchange Program (ITEP).

Mr. Epstein concluded by commenting that the public expected honest Government officials and he challenged whether agencies could stand up to Congress and the public and confidently state that measures were in place to ensure the integrity of the [blended] workforce.

Panel Member David Drabkin asked Mr. Epstein if he had any anecdotal evidence of improper activity by contractor personnel, or if his intent was to address only the potential threat. Mr. Drabkin argued that, even with the many statutes, Government officials have broken the rules and he did not agree that adding contractors under the umbrella would be effective. Mr. Epstein replied that there were no statistics collected for contractor personnel, except for criminal cases, but even with the currently large number of Government officials, there have been only about 17 cases involving Government officials. He attributes that relatively low number to the fact that there are restrictions in place for the federal workforce. Panel member Tom Luedtke cautioned that all restrictions placed on federal employees would be inappropriate for contractor personnel. He cited nepotism, indicating that any family-run business would be precluded from contracting with the Government if those restrictions applied to the contractor. Mr. Epstein responded that the main point was deterrence and prophylactic measures. Regardless of the number of prosecutions, he said, his office fields thousands of requests for opinions of disqualification and conflicts of interest, so issues are resolved before they occur.

Mr. Drabkin offered that, in reviewing the potential risk, consideration should be given to the fact that contractor employees supporting the Government were actually serving two masters, the Government agency and their private sector company superiors, and suggested that a review of current rules imposed by companies be conducted and used as examples of best practices.

Ms. Madsen thanked Mr. Epstein for addressing the Panel and accommodating its schedule, and recessed the Panel for lunch.

The afternoon session began at 1:35 PM, and Ms. Madsen recused herself for the next presentation, delegating the Chair to Deidre Lee. Ms. Lee introduced the Manager of Corporate Sourcing at General Electric's (GE) Corporate Initiatives Group, Mr. Pat MacMonagle.

Mr. MacMonagle provided an outline of his presentation and a brief overview of the six businesses that constitute GE: Infrastructure, which includes energy, aviation, rail, and water process technologies; Healthcare, including biosciences and diagnostic imaging; Industrial, which includes circuit breakers, appliances and the new security business; Consumer Finance; NBC Universal; and Commercial Finance, which offers loans to companies and countries.

Mr. MacMonagle explained that the Chairman drives the company to be one of innovation and process excellence, intent on sharing best practices, where employees are measured on collaboration with colleagues and peers, called inclusiveness. Employees are also measured on taking an external view of marketplaces, because GE believes the best solutions are obtained when sourced, he stated.

Further supporting the strategic sourcing philosophy, Mr. MacMonagle presented the percentages of spend for GE as 65 percent in direct material and services, mostly consumed in the end product, and 35 percent in indirect materials and services. Sixty percent of that 35 percent, he continued, was services. This is the area where GE continually measures and seeks to reduce costs.

GE strives to maintain one indirect platform, Mr. MacMonagle stated. This currently excludes travel and freight services, healthcare, and real estate services, which are being consolidated. GE also digitizes where possible, he added, as “paper costs money.”

Mr. MacMonagle explained that GE drives to have common suppliers, a standard master service agreement, standard contracts, a common global contract with master terms that will differ only with country specific statements of work and/or regulatory and business attributes. GE takes a broad market view, and will look for ways to develop competition where the market is served by a sole source, he stated. He further explained that the company conducts a lot of market analysis using rigorous processes which drive toward fixed price contracts.

GE continuously conducts ‘make or buy’ analyses because improved earnings per share are measured, he advised. He added that speed to market and speed of customer service are critical to remaining competitive with global players. Outsourcing also allows GE to maximize its resources, fund higher priority business objectives, and manage risks, Mr. MacMonagle explained. In some cases, GE has looked to out-tasking by unbundling a package service, thus protecting intellectual property. Through six-sigma methodologies and quality function deployment (QFD) techniques, the company considers areas based on an idea or observation and conducts a financial analysis to determine whether to engage. Often the QFD process will result in a hard requirement, which is measurable and becomes part of a solicitation and development of the scorecard. Mr. MacMonagle indicated, in response to a question, that GE does not use consultants for direct sourcing. Each of the businesses has a sourcing leader, with additional sourcing professionals at the sub-business level.

Mr. MacMonagle illustrated various techniques of source selection in his presentation, citing competition as critical. He also said that GE strives for short-term contracts. GE requires suppliers to be proactive with innovative ideas, provides incentives for technology refreshments, and sets the bar high for relationship management, he stated. Mr. MacMonagle described the best contract as one where the synopsis of the contract requirements becomes the guide for the supplier relationship manager and is reflective of the service performance matrix obtained from the Request for Proposals (RFP).

Several questions were interjected throughout Mr. MacMonagle’s briefing. The Panel expressed interest in the types of credentials and training GE sought when hiring. Mr. MacMonagle informed them that the company had recently begun a refresh analysis and was conducting training. He believed that an ideal sourcing employee would possess an eclectic mix of skills to include negotiating, analytical skills, financial skills, an understanding of the technology and its application to the processes, as well as some contract terms knowledge. GE took a profile across the business and compared it to the core skill sets required, he explained. One-on-one and advanced training will be provided. Mr. MacMonagle reported that for the advanced training, an outside company was hired. Additionally, employees have been rotated through the businesses, bringing a cross-fertilization of perspectives, he said, identifying those as pass-through opportunities. GE has also identified pillar positions, where the long-term institutional knowledge of a product line and supplier base is very important.

Another topic of interest from the Panel was cost data. Mr. MacMonagle advised the Panel that various levels of cost build-up information, to include cost drivers and fees, were generally obtained. Where there are few competitors, Mr. MacMonagle added, a more collaborative approach for information is used. GE also includes process and compliance reviews in their audit rights, he explained; GE holds its vendors and employees to very high standards of ethics and compliance to laws.

Mr. MacMonagle responded to a benchmarking question by explaining that GE has established benchmarks with the assistance of an outside vendor, in the areas of finance, marketing, human resources, and sourcing. Although GE has significant procurement capabilities and an established infrastructure different from the Government, he thought there were some principles that could be adapted by the Government.

Ms. Madsen stepped back in as Chair, resumed the meeting after a short recess, and introduced the Honorable Stephen D. Potts, Chairman of the Board of the Ethics Resource Center (ERC).

Mr. Potts provided a synopsis of his background as a partner in a law firm for 25 years, and his nomination, confirmation and subsequent (2) five-year terms as the Director of the Office of Government Ethics (OGE) beginning in 1990. At that point, he explained, President Bush issued an Executive Order mandating the development of an Executive Branch-wide code of conduct, the first time there would be a single, unified set of standards. After 2 years of drafting, commenting and reviewing, the standards were adopted and have stood the test of time with little tinkering, he stated. Providing education on the standards was also a requirement imposed upon his office, Mr. Potts reported, and materials were developed and delegated to the agencies to manage. In 2000, Mr. Potts said, he joined the ERC as the Chair of their Fellows Program and then became the Chairman of the Board of Directors in 2004.

While at OGE, outsourcing of information technology (IT) functions had begun, Mr. Potts stated. He said that the office was oblivious to the potential risk for ethical issues at the time, but, luckily no incidents occurred to change the focus; however, since then there have been 15 years of increases in the blended workforce.

He focused his presentation on two activities at ERC. Since 1994, the Center has implemented the National Business Ethics Survey, and the 2005 report marks the fourth implementation of the research, which asks employees about their perceptions of ethics and compliance in the workplace, across the spectrum of profit, non-profit, and the Government sector organizations. The ERC analysis, he further explained, is based upon the framework provided by the Federal Sentencing Guidelines, defining elements of formal programs of ethical culture. Although there were several findings in the report, he reported on two for consideration: 1. On a national level, formal ethics programs are on the rise, but positive outcomes expected of those programs are not; and 2. The leaders have to set the example in word and deed. He clarified the first point by adding that the formal ethics and compliance programs do have an impact, but it is the organizational culture which is more influential in the outcomes of those programs. He rephrased the point to say, "The richness and effectiveness of an organization's culture depends on the tone at the top." He stated that blended workforce issues cannot be solved by rules alone; collaboration, input, and commitment from the top of both sides of the organizations would be

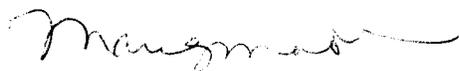
necessary to make the expectation to do the right thing clear to the employees. He also emphasized training, adding that many conflict of interest issues are not clear cut and often involve competing values, both of which are valid. A trained employee can work through those situations and evaluate the accommodations that can be made.

The other activity at ERC, he continued, is the Fellows Program, which brings together the leading ethics officers from prestigious U.S. companies, universities, the Government, and the non-profit sector. Mr. Potts explained that the Program is in its 10<sup>th</sup> year of discussing cutting edge issues, which then are subject to vote for additional research and review. One of the topics recently covered was on the components of ethical behavior, and Mr. Potts invited all to refer to the ERC's website at [ethics.org](http://ethics.org) to review the information.

Mr. Potts summarized that, in his opinion, rules without top-level enforcement, and reinforced with ethical leadership training from both sides of the equation would be ineffective in maintaining an ethical culture. He recommended that contracts contemplating a blended workforce situation address the issue squarely, include a clearance process and an on-site visit, and be audited through the life of the contract.

Chairperson Madsen thanked Mr. Potts for sharing his insights, and she adjourned the twenty-first Acquisition Advisory Panel meeting.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



AUG 15 2006

Ms. Marcia Madsen  
Chair  
Acquisition Advisory Panel

## **Interagency Contracting Recommendations**

- 1. Increased transparency through identification of vehicles (e.g. GWACs, MACs, enterprisewide) and Assisting Entities. OMB conduct a survey of existing vehicles and Assisting Entities to establish a baseline. The draft OFPP survey, developed during the Working Group's deliberations includes the appropriate vehicles and data elements.**

The Working Group believes that the most important near-term task in the interagency contracting creation and continuation area is establishing a database identifying existing vehicles and assisting entities as well as their characteristics. It is the view of the Working Group the most expeditious means of assembling such information is in the form of a survey as currently drafted by the Office of Federal Procurement Policy (OFPP) in support of the Office of Management and Budget task force examining Interagency and Agency-Wide Contracting.

The OFPP draft survey is intended to gain a clearer understanding of the following:

- The number of interagency contracts that are currently in operation; the scope of these vehicles; the primary users; and the main rationale for their establishment;
- The level of acquisition activity conducted by Intragovernmental Revolving Funds (including the Franchise Funds) on behalf of other agencies;
- The number of enterprisewide contracts currently in operation to address common needs that could be (or have been) satisfied through an existing interagency contract; the scope of these vehicles; and the main rationale for their establishment.

The Working Group recognizes that such a survey provides no more than a snapshot of agency activities associated with interagency contracting. Such a survey will provide an immensely greater degree of transparency for the stakeholders. The results of such a survey should serve as a bridge to the more institutionalized database recommended in #3 below. In order to better serve that end, the Working Group also recommends that the OFPP and the interagency task force consider expanding the requirements of the draft survey to include vehicles currently in the planning stages.

- 2. Make available the vehicle and assisting entity data for three distinct purposes.**
  - a. Identification of vehicles and the features they offer to agencies in meeting their acquisition requirements (yellow pages).**
  - b. Use by public and oversight organizations to monitor trends in use.**

- i. Improved granularity in fee calculations**
- ii. Standard FPDS-NG reports**
- c. Use by agencies in business case justification analysis for creation and continuation/reauthorization of vehicles.**

The Working Group believes that the data gathered in the initial baseline survey should be structured in such a way as to allow for agency and public use. As noted above, the information should be viewed as a bridge to an institutionalized collection process. The Working Group believes that three major purposes should guide the structuring of information consistent with the findings.

First, the data should provide a detailed overview of vehicles and services available from assisting entities to allow agency procurement officials and managers to weigh the best acquisition strategy for meeting agency mission needs. The information should be structured in such a manner to allow “apples to apples” comparisons among the benefits of using different vehicles and entities as well as the fees associated with their use. The data should allow agency officials to make better decisions regarding the cost to the agency of the fees involved with using another agency vehicle, the internal costs of replicating the capability within the agency, or other options, including elimination of the effort.

Second, the data should be organized to allow oversight organizations, such as the Government Accountability Office and the agencies’ inspectors general greater visibility into the existing and planned vehicles and entities, trends in their use, and the degree and nature of any overlap among them. In particular, the initial survey should provide the groundwork for a meaningful comparison of the manner in which fees are calculated among different vehicles and entities to indicate whether a more systematic approach to fee establishment would be feasible or desirable.

Third, consideration of the information from the survey should be standard practice for any agency considering creating a new interagency or enterprisewide vehicle or continuing an existing one. The Working Group believes that a major component of a proper business case justification must be a reasonable and detailed understanding of other alternative acquisition approaches that are available in the Federal government or to specific requirement holders in a prospective customer agency.

**3. OMB institutionalize collection and public accessibility of the information, for example through a stand alone database or module within transactions-based FPDS-NG.**

As noted above, the Working Group believes that the initial OFPP survey should serve as the foundation for an institutional base of data and information on vehicles and entities. An institutional database with timely updates will be critical for the agencies’ success in managing the vehicles and entities under their jurisdiction. Such a database

will also be critical for agency managers to develop sound acquisition strategies involving interagency contracting capabilities to meet their agency's mission needs. The Working Group believes that such benefits will offset the costs of collecting and maintaining this information.

OMB should explore various approaches to establishing such a database, whether as an additional module in the transactions-based FPDS-NG or as a stand-alone system. The Working Group believes that the different approaches have merits and costs, and careful analysis of the alternatives must be conducted before deciding on a single approach.

- 4. OMB direct a review and revision, as appropriate, of the current procedures for the creation and continuation/reauthorization of GWACs and Franchise Funds to require greater emphasis on meeting specific agency needs and furthering the overall effectiveness of governmentwide contracting. GSA should conduct a similar review of the Federal Supply Schedules. Any such revised procedures should include a requirement to consider the entire landscape of existing vehicles and entities to avoid unproductive duplication.**

The Working Group recognizes there is statutorily mandated process for the creation and continuation of GWACs, Franchise Funds, and Federal Supply Schedules. The Working Group believes and recommends that these statutory authorities regarding the process for creation or continuation of these vehicles need not be altered. With respect to the GWACS, the Working group further recommends that the Office of Management and Budget reconsider the current requirement for annual review and reauthorization of these vehicles. The working group believes that this period is too short given the complex nature and long-term nature of the work being undertaken under the GWACs.

The Working Group does believe that the cognizant agency should review the procedures under which these vehicles and entities are created and continued and revise them in ways they deem appropriate to ensure that emphasis is placed on meeting specific agency needs and the overall effectiveness of governmentwide contracting. The availability of more comprehensive data on other existing vehicles and entities should allow for more effective procedures for avoiding duplication that does not serve such overarching goals.

- 5. For other than the vehicles and entities described in #4 above, institute a requirement that each agency, under guidance issued by OMB, formally authorize the creation or expansion of the following vehicles under its jurisdiction:**
  - a. Multi-agency contracts**
  - b. Enterprisewide vehicles**
  - c. Assisting entities**

PRELIMINARY WORKING GROUP DRAFT

For Discussion Purposes Only

Not Reviewed or Approved by the Acquisition Advisory Panel

Draft 5/18/06

Although the Working Group recommends review and revision of the current procedures for the creation and continuation/reauthorization of GWACs, Franchise Funds, and Federal Supply Schedules, it believes these procedures are fundamentally sound. However, there are no comparable common procedures for other interagency vehicles and assisting entities. The Working Group considered different approaches to address the problems associated with the proliferation of these interagency vehicles and entities. One approach that was considered would be to allow agencies full discretion to establish vehicles or assisting entities involved in interagency contracting. This “market approach” would rely on the extent of agency utilization over time to determine the viability of a given vehicle or assisting entity. Unfortunately, the market approach does not appear to be a criterion in agency creation and continuation decisions and it does not appear that this approach would be effective in addressing the negative impacts caused by the uncontrolled proliferation of vehicles.

The approach at the other end of the spectrum that the Working Group considered would be to establish a process whereby the Office of Management and Budget would formally authorize or reauthorize these vehicles and assisting entities. Based on previous experience with centralized approval processes (e.g. Brooks Act authorizations for automated data processing equipment and services), the Working Group believes this approach risks being too cumbersome and would be beyond the scope of existing or likely OMB resources. The Working Group also believes that this approach may inhibit the establishment or creation of a diverse set of interagency vehicles.

The Working Group believes that rather than serving as a central approval authority, the proper role for OMB is to issue guidance and procedures to structure the agency decisions with respect to the creation and continuation of individual vehicles or entities. The individual agencies should retain the responsibility for making decisions regarding the creation and continuation of these vehicles and assisting entities. The agencies have the personnel, resources, and requirements to establish or expand vehicles or assisting entities within the context of the agency mission. While recognizing this agency responsibility, the Working Group believes that achieving improvements in interagency contracting is best assured through the establishment of a more formal process within these agencies for the creation and reauthorization of these vehicles and entities. This heads of agencies should be accountable for the implementation of this process. All these vehicles and entities, along with those currently authorized by OMB and GSA, form the landscape of interagency contracting and should be covered by more formal procedures where they do not currently exist.

The Working Group notes that defining “expansion” precisely for the purposes of these recommendations is challenging. The term is intended to apply not only to cases where an existing vehicle or an assisting entity is opening up a new business line but also to cases where there is a significant increase in scope or size of contracts under an interagency or enterprisewide vehicle.

- 6. Institute a requirement that the cognizant agency, under guidance issued by OMB, formally authorize the continuation/reauthorization of the vehicles and entities addressed in #5 on an appropriate recurring basis consistent with the nature or type of the vehicle or entity. The criteria and timeframes included in the OMB guidance should be distinct from those used in making individual contract renewal or option decisions.**

As noted above, certain of the interagency vehicles and assisting entities, such as the GWACs, Federal Supply Schedules, and Franchise Funds, are subject to periodic review and continuation/reauthorization. The Working Group believes that the other interagency vehicles and assisting entities should be subject at the agency level to periodic review and disestablishment if they do not continue to meet specific agency needs and support the effectiveness of governmentwide contracting. The result of such periodic reviews should be the elimination of vehicles and assisting entities that represent unproductive duplication or for which there is no longer a valid business case.

The Working Group believes that this process must have teeth rather than be a pro forma review. The standard for the review should be the degree to which the vehicle or assisting entity is tracking to (or meeting) the performance measurements established at its inception. The OMB guidance on continuation should provide sufficient clarity to allow agency decisions on continuation/reauthorization to be subject to meaningful review and audit by oversight organizations.

With respect to the appropriate review timeframes, the Working Group believes that there is no “one size fits all” approach. The Working Group recognizes that each type of vehicle or class of assisting entity will justify OMB establishing different continuation/reauthorization review periods. A major consideration in establishing such review periods should be the nature and length of contracts and options under the vehicles or being managed by the assisting entities. A continuation/reauthorization review period for a given vehicle that is significantly shorter than the contract periods under the vehicle could present an agency with a serious obstacle to appropriate action if a continuation/reauthorization review indicates that the vehicle should be terminated rather than continued.

- 7. Have the OMB interagency task force define the process and the mechanisms anticipated by recommendations #5 and #6.**

The Working Group believes that OMB should be the responsible agency for preparing and issuing the guidance to implement recommendations #5 and #6. The process should be the result of collaboration with the chief acquisition officers and senior procurement executives of the individual agencies having jurisdiction over interagency, enterprisewide, or assisting entities. The current OMB Task Force on Interagency Contracting, formed to address the management concerns raised by the Government

Accountability Office, has the breadth of participation to allow a balance between the need for explicit guidance with clear performance measures and the need for a reasonable degree of flexibility in implementation. The Working Group believes that the OMB Task Force should remain in existence until the task of promulgating procedures and mechanisms for these vehicles and entities has been completed.

- 8. OMB promulgation of detailed policies, procedures, and requirements should include:**
- a. Business case justification analysis (GWACs as model).**
  - b. Projected scope of use (products and services, customers, and dollar value).**
  - c. Explicit coordination with other vehicles/entities.**
  - d. Ability of agency to apply resources to manage vehicle.**
  - e. Projected life of vehicle including the establishment of a sunset, unless use of a sunset would be inappropriate given the acquisitions made under the vehicle.**
  - f. Structuring the contract to accommodate market changes associated with the offered supplies and services (e.g. market research, technology refreshment, and other innovations).**
  - g. Ground rules for use of support contractors in the creation and administration of the vehicle.**
  - h. Criteria for upfront requirements planning by ordering agencies before access to vehicles is granted.**
  - i. Defining post-award responsibilities of the vehicle holders and ordering activities before use of the vehicle is granted. These criteria should distinguish between the different sets of issues for direct order type vehicles versus vehicles used for assisted buys, including data input responsibilities.**
  - j. Guidelines for calculating reasonable fees including the type and nature of agency expenses that the fees are expected to recover. Also establish a requirement for visibility into the calculation.**
  - k. Procedures to preserve the integrity of the appropriation process, including guidelines for establishing bona fide need and obligating funds within the authorized period.**
  - l. Require training for ordering agencies' personnel before access to the vehicle is granted.**
  - m. Use of interagency vehicles for contracting during emergency response situations (e.g. natural disasters).**
  - n. Competition process and requirements.**
  - o. Agency performance standards and metrics.**
  - p. Performance monitoring system.**
  - q. Process for ensuring transparency of vehicle features and use.**
    - i. Defined point of contact for public – Ombudsman.**

- r. Guidance on the relationship between agency mission requirements/core functions and the establishment of interagency vehicles (e.g. distinction between agency expansion of internal mission-related vehicles to other agencies vs. creation of vehicles from the ground up as interagency vehicles)**
  
- 9. OMB conduct a comprehensive, detailed analysis of the effectiveness of Panel recommendations and agency actions in addressing the findings and deficiencies identified in the Acquisition Advisory Panel report. This analysis should occur no later than three years after initial implementation with a continuing requirement to conduct a new analysis every three years.**

In order to achieve the greatest impact in performing its analysis, OMB should publish a timeline for carrying out the analysis, including an identification of agencies' responsibilities, as soon as practicable. In conducting its analysis, OMB should evaluate the degree of compliance of a representative sample of vehicles with business case guidance stipulated by OMB as well as an analysis of the degree to which the vehicles in the sample represent unwarranted duplication or overlap with other interagency and enterprisewide vehicles. The evaluation should incorporate recommendations for consolidating or terminating vehicles where unwarranted duplication or overlap has been identified. The analysis should also include identification of any cost savings associated with the implementation of the recommendations and proposed measures to address the unintended negative consequences of such recommendations. Finally, OMB should include in each analysis formal consideration of whether to require OMB-level approval on a case-by-case basis of agency decisions to create or continue vehicles or assisting entities that are not otherwise covered under a statutorily mandated process.

# Commercial Practices Working Group Acquisition Advisory Panel

## Draft Findings

*These slides contain preliminary working group findings for discussion purposes only. They have not been approved by the Acquisition Advisory Panel.*

# Commercial “Best Practices”

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## *Finding 1:*

Commercial “best practices” include a clear definition of requirements, reliance on competition for pricing and innovative solutions, definite preference for fixed-price contracts (as opposed to time and materials, and cost-based contracts), and use of short-term contracts.

# Commercial Market Competition

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## *Finding 2:*

Commercial buyers rely extensively on competition when acquiring goods and services. Commercial buyers further facilitate competition by defining their requirements in a manner that allow services to be acquired fixed-price in most instances.

# Commercial Contract Terms

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## *Finding 3:*

Commercial buyers generally require sellers to use the buyers' standard terms and conditions. This allows all offerors to compete from a common baseline. The use of standard terms and conditions streamlines the acquisition process, making it easier to compare competing offers, eliminating the need to negotiate individual contract terms, and facilitating contract management.

# Pricing of Commercial Contracts

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## *Finding 4:*

Commercial buyers rely extensively on competition for the pricing of goods and services. They avoid noncompetitive acquisitions whenever possible. Some commercial buyers consider competition so important that they develop new strategic sources for the sole purpose of creating future competition. Most contracts for services are competed on fixed-price basis (*i.e.*, fixed-price or fixed-rate).

# Government's "Commercial" Practices

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## *Finding 5:*

The government has adopted various competitive procedures in buying commercial items and commercial services in an attempt to mirror the commercial marketplace. These procedures facilitate procurements with a constrained acquisition workforce but do not always achieve the same benefits that commercial buyers achieve in the commercial marketplace.

# Government Commercial Market

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## *Finding 6:*

The government market for commercial goods and services does not always reflect the commercial marketplace. In noncompetitive awards, the government does not always benefit from commercial market forces.

# Time and Materials Contracts

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## *Finding 7:*

Commercial buyers avoid the use of time and materials contracts if possible. The federal government makes extensive [*to be quantified*] use of time and materials contracts.

**DRAFT FINDINGS  
COMMERCIAL PRACTICES WORKING GROUP**

**Wednesday, May 17, 2006**

**Part I Commercial Practices by Commercial Buyers**

- Commercial “Best Practices”
- Competition in the Commercial Marketplace
- Contract Terms and Conditions Used in Commercial Contracts
- Pricing of Commercial Contracts by Commercial Buyers

**Part II Commercial Practices by Government Buyers**

- The Government’s “Commercial” Practices
- Nature of the Government Commercial Market

**Part III Other Findings**

- Time and Materials Contracts

## Part I A – Findings Related to Commercial Practices by Commercial Buyers

### Commercial “Best Practices”

*What are the best commercial practices, particularly for services acquisition, used by commercial buyers in the commercial market place?*

**Finding:** Commercial “best practices” include a clear definition of requirements, reliance on competition for pricing and innovative solutions, definite preference for fixed-price contracts (as opposed to time and materials, and cost-based contracts), and use of short-term contracts.

#### **Discussion:**

The panel found a number of common “best practices” among commercial buyers in the commercial market place. Commercial buyers spend the time and apply the resources necessary up front to clearly define their requirement. They use multidisciplinary teams to plan their procurements, conduct competitions, and monitor contract performance. They rely on well-defined requirements and effective competition to reduce prices and obtain innovative and high quality goods and services. Commercial buyers establish objective measures of performance and continuously monitor contract performance. They rely on carefully crafted standardized terms and conditions, developed with vendor input, to manage risk and ensure quality performance.

Commercial buyers also told the panel that they preferred fixed-priced contracts. Well-defined performance-based requirements facilitated the use of fixed-price contracts. These same buyers avoided the use cost-based contracts whenever possible. They felt that cost-based contracts were too expensive and placed too much of a burden on the company to manage.

### Competition in the Commercial Marketplace

*To what extent do commercial buyers rely on competition?*

**Finding:** Commercial buyers rely extensively on competition when acquiring goods and services. Commercial buyers further facilitate competition by defining their requirements in a manner that allow services to be acquired fixed-price in most instances.

### Contract Terms and Conditions Used in Commercial Contracts

**Finding:** Commercial buyers generally require sellers to use the buyers’ standard terms and conditions. This allows all offerors to compete from a common baseline. The use of standard terms and conditions streamlines the acquisition process,

**making it easier to compare competing offers, eliminating the need to negotiate individual contract terms, and facilitating contract management.**

Discussion:

The commercial buyers who addressed the panel said that they have developed and use their own standard contracts. These standard contracts have several important advantages to the seller. They provide consistency and predictability. Sellers know what to expect. Also standard contract terms create a common baseline for evaluating offers in a competitive acquisition. Standard contracts also benefit the buyer. They streamline the acquisition process by simplifying the comparison of competing offers and by eliminating the need for negotiation of individual terms and conditions. Commercial buyers seldom grant deviations to their standard contract terms. Rather than tailoring terms for individual offerors, they instruct sellers to adjust their price to account for any risks associated with standard contract terms.

A number of the companies that addressed the panel provided sample agreements provided to panel. They typical term for a commercial contract was three to five years with some contracts as long seven years. Most commercial contracts address the following areas:

- Contract term and renewal
- Limitations on the seller's right to stop work
- Change process
- Acceptance
- Audit of invoices and charges
- Extraordinary circumstances (mergers, acquisitions, reorganizations)
- Cure notices and termination for breach
- Intellectual property (ownership of works created during performance and license rights in such works)
- Warranties
- Remedies for breach
- Limitation of liability (direct damages, indirect damages, maximum liability)
- Indemnification
- Insurance
- Disputes
- Choice of law

In addition, buyers also have developed terms and conditions specific to each seller's industry. For example, commercial contracts for information technology services frequently contain provisions specific to that industry that pin down both price and performance risk. The buyer attempts to motivate the seller by using financial incentives or penalties linked to a combination of objective and subjective factors. Information technology service contracts often contain benchmarking provisions that provide for a downward adjustment to price if prices for a particular service declined in the industry.

There is a frequent misconception mostly in government that industry standard contracts or terms exist that can be used in agreements with the government. While contracts typically address many of the items listed above, the treatment of those items varies from contract to contract. The relative bargaining position of the parties ultimately determines what terms will be incorporated into a contract. Large commercial buyers use their relative market strength to protect their interests contractually. At the same time, if they desire competition they are careful not to mandate onerous terms that limit competition.

### ***Pricing of Commercial Contracts by Commercial Buyers***

**Findings: Commercial buyers generally require sellers to use the buyers' standard terms and conditions. This allows all offerors to compete from a common baseline. The use of standard terms and conditions streamlines the acquisition process, making it easier to compare competing offers, eliminating the need to negotiate individual contract terms, and facilitating contract management.**

## **Part I B – Discussion of Commercial Practices by Commercial Buyers**

### **I. How Do Commercial Buyers Plan For and State Their Requirements?**

Commercial organizations use dedicated teams of highly skilled, highly trained employees and outside consultants to manage services acquisition. These employees and consultants often hold Masters of Business Administration (“MBA”) degrees from top business schools, or maintain deep experience facilitating services transactions.<sup>1</sup>

#### **A. Defining Requirements**

*The success of [a services acquisition] arrangement depends on work done before the contract, and hardly ever what's in the contract.*<sup>2</sup>

1. Effective services competition in the private sector rests upon a robust requirements-building process.<sup>3</sup>

Requirements' gathering is a fundamental first step in commercial organizations' services acquisition strategy.<sup>4</sup> Companies with deep experience in services acquisition rate acquisition process governance as highly as selecting the provider with the best

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<sup>1</sup> Testimony of N. Hassett, United Technology Corporation, March 30, 2005, p. 109.

<sup>2</sup> Testimony of R. Zahler, Shaw Pittman, April 19, 2005, p. 14.

<sup>3</sup> Testimony of J. Menker, Concurrent Technology Corporation, May 17, 2005, p. 32 (culture change to focus on requirements definition is difficult, but the best written contract cannot fix poor requirements definition).

<sup>4</sup> Testimony of M. Stelzner, EquaTerra, August 18, 2005, p. 360.

functional expertise.<sup>5</sup> For buyers, comprehensive Statements of Work communicating contract requirements and expected levels of service quality are essential to a successful relationship with vendors.<sup>6</sup>

Private sector companies spend significant time and resources developing business cases for services acquisition.<sup>7</sup> Cost reduction is just one component of the business cases. Research has shown that too much focus on cost reduction led many commercial organizations to miss opportunities and, in some cases, caused eroded service quality in other areas of the organization.<sup>8</sup> Stated differently, total cost of service acquisition does not equal total value captured through sourcing.<sup>9</sup> Companies that conducted successful sourcing transactions focused on total value when planning requirements, and created statements of work with well-defined scopes of desired services.<sup>10</sup>

## 2. Requirements Building Tools

### a. Requests for Information (RFIs)

Commercial organizations use RFIs to gather information about the marketplace and vendor capabilities.<sup>11</sup> One company, for example, testified that it issues RFIs widely to learn about potential bidders. That company sends full requests for proposals (“RFPs”) to four vendors chosen from RFI respondents.<sup>12</sup> Similarly, commercial organizations use focus groups as part of the requirements-setting process. RFIs and focus groups are useful tools to learn about potential vendors, as well as to decide whether to conduct an acquisition at all.<sup>13</sup>

### b. Dedicated Internal Teams Define Deliverables and Performance Measures

Internal teams of MBAs, CPAs, or other experienced professionals manage services acquisition at a number of leading commercial organizations.<sup>14</sup> Dedicated teams allow continuity along the acquisition process. Communication and clear management of service providers is essential to a successful service acquisition transaction.<sup>15</sup> As such, commercial organizations derive significant benefit from using the same individuals for all issues, and working from the same standard documents across the services acquisition

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<sup>5</sup> *Id.*

<sup>6</sup> Testimony of R. Miller, Proctor & Gamble, March 30, 2005, p. 80.

<sup>7</sup> Testimony of T. Furniss, Everest Group, March 30, 2005, p. 122.

<sup>8</sup> *Id.* at 121; Testimony of T. Scott, The Walt Disney Company, April 21, 2006, p. 11.

<sup>9</sup> Furniss, p. 116.

<sup>10</sup> Testimony of R. Casbon, Bayer, August 18, 2005, p. 218; Zahler, p. 16.

<sup>11</sup> Hassett, p. 108.

<sup>12</sup> *Id.*

<sup>13</sup> Stelzner, p. 353.

<sup>14</sup> See Hassett, p. 109, 136.

<sup>15</sup> See notes 3 – 10, *supra*, and accompanying text concerning the important of setting, and communicating, requirements.

process.<sup>16</sup> Best practice research shows that dedicated teams are more likely to focus on important issues such as aligning the vendor's interests with the purchaser's, and avoid communicating fragmented messages to vendors.<sup>17</sup>

c. Firm Internal Agreement By All Stakeholders on Business Requirements and Service Levels

When selecting contracting parties, commercial organizations conduct extensive internal due diligence. For example, some commercial entities endeavor to understand current costs of services, then determine how to improve upon cost while maintaining quality or making improvements in other desired areas.<sup>18</sup> Other commercial entities secure internal consensus by putting the objectives of service acquisitions in writing and circulating the page internally. The document serves as the basis for discussions about the requirements.<sup>19</sup>

B. Planning Process

*A product you can specify in detail. A service you should specify at a higher level of abstraction and get technical solutions back from the suppliers . . . .*<sup>20</sup>

1. Commercial Requirements Building Process Is Usually Completed In Four To Six Months, Or Less

Commercial entities that succeeded with large-scale services acquisition invested substantial time in defining service requirements and expected outcomes. Companies welcomed vendor input during the requirements definition process. Consultants recommend working closely with contractors to define needs and align interests and objectives.<sup>21</sup> Best practice research indicates communication with vendors should not all be in writing. Face-to-face meetings are most successful to align objectives and allow contractors the chance to absorb all aspects of the proposed relationship.<sup>22</sup> In person communication is essential because that type of information is “not going to ever find its way into a document.”<sup>23</sup>

2. (Commercial Buyers Use Multidisciplinary Staff To Monitor Performance and Manage Contract)

3. Consultants With Deep Credentials And Experience Frequently Used By Commercial Firms in Building Requirements

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<sup>16</sup> Zahler, p. 31.

<sup>17</sup> See Zahler, p. 75 (discussing consequences of not aligning message at all levels of purchaser's organization).

<sup>18</sup> Miller, p. 78.

<sup>19</sup> Zahler, p. 35.

<sup>20</sup> Zahler, p. 25.

<sup>21</sup> Furniss, p. 127.

<sup>22</sup> *Id.* at 127.

<sup>23</sup> *Id.* at 135.

Buyers in the commercial environment frequently hire experienced consultants and attorneys to assist sourcing transactions.<sup>24</sup>

4. Consultants Prohibited From Bidding Or Participating In Any Way In The Acquisition

C. Defining Contract Requirements

1. Commercial Buyers Define Content Of Requirements By The Outcome Of the Work

While commercial buyers often provide vendors with detailed Statements of Work explaining requirements, expected levels of quality, and other metrics, the Statements of Work do not specify how to perform the work.<sup>25</sup> Commercial buyers use RFPs to define desired outcomes, and ask vendors to propose processes for achieving the outcomes.<sup>26</sup> The process allows suppliers to separate based on their individual capabilities.<sup>27</sup> Commercial buyers have found that providing detailed RFPs spelling out all services and processes for performance does not allow vendors to propose optimal solutions. “All that produces is the lowest common denominator of a solution.”<sup>28</sup> According to one sourcing consultant, the standard government model of writing detailed RFPs results in a transaction, not a relationship, and can hinder long-term success of a services acquisition effort.<sup>29</sup> By focusing the RFP on outcomes, contractors are more likely to focus their proposal efforts on finding more efficient ways to get the job done.<sup>30</sup>

2. Successful Commercial Organizations Do Not Procure Services Unless They Understand Their Requirements, Goals, and Rationale

Consultants and attorneys advising commercial entities have found vendor relationships more likely to fail when companies do not fully understand the requirements and reasons for the transaction.<sup>31</sup> Acquisitions designed solely to decrease price typically fail to deliver expected quality levels. Stated differently, price is a necessary component of a transaction, but is not a sufficient reason to conduct the transaction.<sup>32</sup>

3. Vendors Are Responsible For Proposing How To Accomplish Objectives

Commercial organizations issue RFPs designed to focus vendors on their capabilities and commitments to unique solutions, separating quickly the most promising

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<sup>24</sup> See testimony of Furniss, Zahler, Bajaj.

<sup>25</sup> Miller, p. 80.

<sup>26</sup> Furniss, p. 137; Zahler, p. 28.

<sup>27</sup> Zahler, p. 24.

<sup>28</sup> Zahler, p. 51.

<sup>29</sup> Testimony of P. Allen, Technology Partners International, April 9, 2005, p. 160.

<sup>30</sup> Testimony of R. Ayers, SAIC, July 27, 2005, p. 275.

<sup>31</sup> See Furniss, p. 124 (advises clients to explore desired feature, function, and benefit-level improvements); Zahler, p. 16 (value to the company is the most important issue to discuss, and value is more than just price).

<sup>32</sup> Zahler, p. 38; Scott, p. 11 (discussion of relative importance of speed, value, and price).

vendors for further discussion.<sup>33</sup> Companies invite suppliers' suggestions based on experience or proprietary solutions, facilitating selection among several customized solutions.<sup>34</sup>

## II. How Do Commercial Buyers Use Competition?

### A. Head-To-Head Competition Preferred

Successful commercial organizations do not make frequent use of sole-source, or other contract forms that restrict competition. A company that addressed the panel, for example, sends RFPs to four leading vendors and holds discussions with at least two of the four.<sup>35</sup> Consultants and attorneys recommend maintaining competition throughout the procurement process.<sup>36</sup>

### B. Use of Fixed Price Contracts

Larger commercial organizations use fixed price contracts in preference to time and materials contracts. Consultants indicate the most effective contract type is firm fixed prices.<sup>37</sup> A large automotive company, for example, uses only firm fixed price contracts for information technology services acquisition.<sup>38</sup> The rationale is, if the company defines its requirements upfront, then asks vendors to price the requirements, then vendors bear this risk of price variances.<sup>39</sup>

### C. Always Have Two or Three Vendors Competing

While commercial organizations down select from multiple potential offerors very quickly, negotiating with more than one vendor at a time produces more favorable outcomes than sole-sourcing. For example, a major aerospace company down selects to two vendors early on, then conducts full negotiations with the two.<sup>40</sup> Competition is essential to successful outcomes:

Long-term cost of the service is a function of many factors other than day-one price – almost all of which will be adverse to the customer, if there's no competition.<sup>41</sup>

By down selecting to two or three vendors early, commercial organizations are able to conduct detailed discussions and negotiations with each. As vendors learn more about the customer, vendors are able to tailor services more specifically to the customer's

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<sup>33</sup> See Zahler, p. 69;

<sup>34</sup> See notes 28 - 28, *supra*, and accompanying text.

<sup>35</sup> Miller, p. 79.

<sup>36</sup> See Furniss, p. 142; Zahler, p. 55.

<sup>37</sup> Testimony of B. Bajaj, TPI, August 18, 2005, p. 131.

<sup>38</sup> Testimony of M. Bridges, General Motors, August 18, 2005, p. 136.

<sup>39</sup> *Id.* at 137.

<sup>40</sup> Hassett, p. 110.

<sup>41</sup> Zahler, p. 48.

needs.<sup>42</sup> The discussions process is time-intensive, and takes significantly longer with each additional bidder. Leading commercial companies, therefore, limit full negotiations to two or three vendors.

D. Retain Right In Contract Terms to Compete New Requirements Or Take Them In-House

In addition to maintaining the right to terminate for convenience and default in services contracts, a one company that markets consumer products world-wide retains the right to use another vendor for new technology requirements, or to bring the work in-house.<sup>43</sup> Other companies also retain rights to terminate, in-source, and re-source.<sup>44</sup> Commercial companies view the right to re-source to other vendors, or bring the work in-house, as essential to maintain vendor quality as well as allow enough flexibility to effectively manage change.<sup>45</sup>

E. Recompete “Technology Heavy” Contracts Every Three to Five Years

III. How Do Commercial Buyers Conduct Competition?

A. Precompetition

1. Detailed Market Research Performed Regarding Vendor Capabilities

Commercial organizations need to be comfortable the vendors under consideration are capable of providing desired services.<sup>46</sup> To that end, companies regularly use sourcing consultants with ready access to vendor pricing and capability information.<sup>47</sup>

2. Provide Extensive Opportunities for Buyer/Supplier Interchange Of Information About the Buyer’s Needs and Operations Before Submission of Proposals

Consultants state that, if buyers and suppliers are able to align their business objectives and expectations for sourcing relationships, the rate of litigation or termination is less than one percent.<sup>48</sup> Every interaction between buyer and supplier represents an opportunity to exchange information. Successful commercial companies use these opportunities to their advantage.<sup>49</sup> For example, a major entertainment company conducts extensive pre-competition communication with its base of vendors.<sup>50</sup> After determining a high correlation existed between success of service acquisition initiatives

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<sup>42</sup> Zahler, p. 55.

<sup>43</sup> Miller, p. 82.

<sup>44</sup> Hassett, p. 123.

<sup>45</sup> See Allen, p. 153 (every outsourcing contract has at least one material change over the course of the contract; organizations must be ready to manage the dynamic nature of services acquisition.)

<sup>46</sup> Miller, p. 78.

<sup>47</sup> See testimony of Bajaj; Allen.

<sup>48</sup> Allen, p. 148.

<sup>49</sup> Zahler, p. 75.

<sup>50</sup> See Scott, pp. 8-15.

and the vendor's knowledge of that company's business, senior executives began presenting the company's goals and objectives to vendors at large luncheons every six months.<sup>51</sup> At these luncheons, existing vendors also receive report cards grading their existing efforts and providing feedback on successful and unsuccessful practices.<sup>52</sup> The report cards offer vendors the chance to improve their performance before the next competition occurs. The result was a significant increase in quality.<sup>53</sup>

## B. Solicitation

### 1. Standard Commercial Contract Terms For Buyer

Companies found that negotiating anything other than standard commercial terms rarely drove additional benefit to the corporation and took time and resources that could have been deployed elsewhere.<sup>54</sup> Standard commercial contract terms allow purchasers to save procurement time, especially when vendors must pre-agree to the terms before competing for contracts.<sup>55</sup>

### 2. Balanced Contract Terms Developed Through Interaction With Vendors

Buyer/Vendor relations are more likely to fail if the supplier and the purchaser are not aligned around the same business objectives.<sup>56</sup> Consultants recommend suppliers understand vendor pricing and profit. The vendor should earn a reasonable profit for work performed. Earning less is more likely to result in negative outcomes.<sup>57</sup> Commercial organizations ask about vendors' critical assumptions driving profits.<sup>58</sup> The information allows purchasers to perform a reality check of the assumptions and avoid surprises during contract performance.<sup>59</sup>

### 3. No Variance In Contract Terms Except In Extraordinary Cases For Limited Reasons

Best practice research indicates using detailed terms sheets describing all aspects of deals in plain, simple, business-person's language prevents misunderstandings about performance requirements and obligations.<sup>60</sup> Aggressive schedules with achievable dates are also important factors of successful sourcing transactions.<sup>61</sup> The requirements and schedule exist for a reason. Commercial organizations rarely permit adjusting contract terms. Stated differently, "you should die before you slip the schedule."<sup>62</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Scott, p. 18.

<sup>55</sup> *Id.*

<sup>56</sup> Allen, p. 155.

<sup>57</sup> *Id.* at p. 155, 165.

<sup>58</sup> *Id.* at 165.

<sup>59</sup> *Id.*

<sup>60</sup> Zahler, p. 49.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 74.

4. If Vendor Perceives Risk, Vendor Must “Price It”

Commercial companies value predictability in service delivery. There should be no surprises.<sup>63</sup> Companies expect to pay for everything, but only once.<sup>64</sup> Contractors have the task of adequately pricing risk.<sup>65</sup>

C. During Competition

1. Commercial Practice Involves Extensive Negotiations With Vendors In The Competition Regarding Vendor-Specific Solutions

Commercial companies frequently allow apples-to-oranges service comparisons.<sup>66</sup> Vendors are permitted to capitalize on their respective strengths, experience, and proprietary solutions to offer the best possible solution.

2. Early Narrowing Of The Competitive Range

Streamlined RFPs focusing on objectives, specifications and requirements provide commercial companies enough information to permit early downselection.<sup>67</sup> Negotiations with each surviving vendor takes significant time and resources, with each additional vendor making the process exponentially longer.<sup>68</sup> Commercial companies regularly downselect to two or three vendors and then conduct full negotiations.

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<sup>63</sup> Allen, p. 165.

<sup>64</sup> *Id.*, p. 182.

<sup>65</sup> Bridges, p. 137.

<sup>66</sup> See notes 25 - 30, *supra* and accompanying text.

<sup>67</sup> *Id.*

<sup>68</sup> Zahler, p. 70.

## Part II A – Findings Related to Commercial Practices by the Government

### ***The Government’s “Commercial” Practices***

**Finding:** The government has adopted various competitive procedures in buying commercial items and commercial services in an attempt to mirror the commercial marketplace. These procedures facilitate procurements with a constrained acquisition workforce but do not always achieve the same benefits that commercial buyers achieve in the commercial marketplace.

**Discussion:**

*[To be provided]*

### ***Nature of the Government Commercial Market***

**Finding:** The government market for commercial goods and services does not always reflect the commercial marketplace. In noncompetitive awards, the government does not always benefit from commercial market forces.

**Discussion:**

*[To be provided]*

## Part II B – Discussion of Commercial Practices by the Government

**Discussion:**

*[To be provided]*

**Part III A – Other Findings**

***Time and Materials Contracts***

**Finding:** Commercial buyers avoid the use of time and materials contracts if possible. The federal government makes extensive [*to be quantified*] use of time and materials contracts.

**Discussion:**

[*To be provided*]

•

**Part III B – Discussion of Other Findings**

**Discussion:**

[*To be provided*]

*Ensuring Integrity in Governmental  
Decision-Making  
With a Blended Workforce*

Steve Epstein

Standards of Conduct Office  
Office of the General Counsel  
Department of Defense

# Disclaimer

- These are my views.
- They do not necessarily reflect the views of the Department of Defense.
- I'm happy to discuss further:
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# Thesis

- We have many measures to ensure integrity of governmental decision-making.
- Most measures apply only to Federal employees.
- Contractors are increasingly involved in governmental decision-making.
- How can we ensure integrity in light of contractor involvement?

# Integrity of Governmental Decision-making

- Honesty
- No preferential treatment
- No self-interest
- No hidden agenda
- Level playing field

# Measures to Promote Integrity in Decision-Making

- Avoidance of financial conflicts of interest
  - Prohibition on bribery. (18 U.S.C. 201)
  - Prohibition on conflicts of Interest.
    - 18 U.S.C. 208
    - 5 CFR Subpart D
    - 5 CFR 2635.502
  - Requirement to disclose financial interests.
    - 5 U.S.C. App. 4 (Ethics in Government Act)
    - 5 CFR 2634

# Measures to Promote Integrity in Decision-Making (2)

- Avoidance of financial conflicts of interest
  - Prohibition on accepting compensation for performance of duties. (18 U.S.C. 209)
  - Prohibition on acceptance of illegal gratuities.
    - 5 U.S.C. 7353
    - 5 CFR 2635 subpart B

# Measures to Promote Integrity in Decision-Making (3)

- Avoidance of employment conflicts of interest
  - Prohibition on post-employment activities
    - 18 U.S.C. 207
    - 41 U.S.C. 423 (Procurement Integrity Act)

# Measures to Promote Integrity in Decision-Making (4)

- Avoidance of political conflicts of interest
  - Prohibition on political activities.
    - 5 U.S.C. Chapter 73 (Hatch Act)
  - Prohibition on using official authority or influence to affect results of election.
    - 5 U.S.C. 7323
  - Prohibition on soliciting or discouraging political activity by another person.
    - 5 U.S.C. 7323

# Measures to Promote Integrity in Decision-Making (5)

- Avoidance of misuse of position
  - Misuse of position. (5 CFR 2635 subpart G)
  - Prohibition on representing others to Federal agencies or courts. (5 U.S.C. 205)

# Measures to Protect Privileged Information

- Procurement Integrity Act (41 U.S.C. 423)
- Trade Secrets Act (18 U.S.C. 1905)
- Privacy Act (5 U.S.C. 552a)
- Freedom of Information Act (5 U.S.C. 552)
- Nonpublic information (5 CFR 2635.703(e))

# Measures to Ensure Efficiency in the Federal Workplace

- Limitations on fundraising.
  - 5 CFR Part 950
- Prohibition on striking. (5 U.S.C. 7311)
- Prohibition on gifts to superiors.
  - 5 U.S.C. 7351
  - 5 CFR 2635 subpart C
- Prohibition on habitual and excessive drinking. (5 U.S.C. 7352)
- Many more such as EEO, sexual harassment, whistleblower protection, nepotism, etc.

# What is “decision-making?”

- No common concept:
  - “roles traditionally carried out by civil servants”
  - “critical functions”
  - “inherently governmental functions”
  - “participation...through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise...”

# What is “decision-making?”

- Possible answer:
  - Any action which is protected by statute or regulation.

# What is “decision-making?”

- Process protections are broader than “inherently governmental functions” as defined in FAR 7.5
  - Contractors participating as technical advisors to source selection board or participating as members of source evaluation board are not performing inherently governmental functions.
  - Same action is prohibited by 18 U.S.C. 208 if employee has a conflicting financial interest.

# Most Measures Apply Only to Federal Employees

## ■ Exceptions:

- Bribery prohibition (18 U.S.C. 201)
- Procurement Integrity Act (portions)
  - 41 U.S.C. 423

# Source of Problem

- Measures taken to ensure the integrity of the process, are applied to personnel based upon their status (Federal employees).
  - This worked when only Federal employees were involved in the process.
  - Requires change to accommodate contractor personnel involvement in the process.

# Possible Solutions

- Exclude contractor personnel from decision-making process
  - Premise of inherently governmental function analysis.
  - Problem: protected decision-making process is broader than inherently governmental functions.
    - Example: Contractor, who evaluated products for agency, convicted of receiving kickbacks from manufacturer of product.

# Possible Solutions (2)

- Apply protective measures to all personnel, Federal and contractor, involved in the process.
  - Apply valid measures by legislation or regulation.
  - Apply measures through contract.
  - Require contractor enforcement.
  - Create temporary status such as IPA or ITEP (Information Technology Exchange Program).

# Conclusion

- “In America, our unique commitment to the rule of law allows ordinary citizens to rely on and expect...honesty of government officials...” -- Attorney General Gonzales

# Sourcing Processes

## Federal Acquisition Advisory Council

Pat MacMonagle, GE

May 18, 2006



imagination at work

# Topics

- GE Overview
- Spend Profile, Drivers, Enablers
- Starting Point for Meeting a Need
  - > Outsource? Make vs. buy pre-work
  - > Source?
- Engagement Structure
- Applying Sourcing Process Rigor
  - > Compliance
  - > Benefits
- Contract Terms - Highlights
- Post Contract: Supplier Relationship Management

# One Company

*A family of businesses, aligned with our customers' needs*



Commercial Finance



Infrastructure



Industrial

*100+ countries --- 300,000 employees worldwide ---  
manufacturing facilities in 40+ countries*

Healthcare



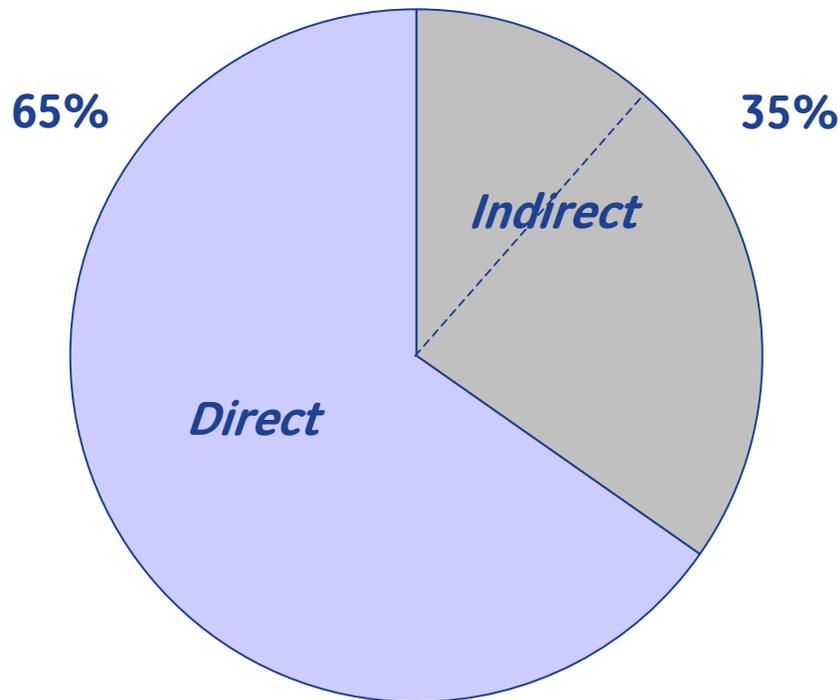
Consumer Finance



NBC Universal



# Profile and Drivers



## Savings Goals

- Cost Out**
  - Price**
    - Volume aggregation
    - Product standardization
    - Supplier consolidation
    - Bidding
    - Leakage control
  - Usage Mix**
- Productivity**
  - Infrastructure**
    - Standard process
    - Standard platforms
    - Digital tools
    - Consolidation

## Indirect Cost Reduction Enablers

Standardize



- Indirect Procurement System
- Common Policies & Practices
- Managing Compliance

Consolidate



- Cross-cutting commodities

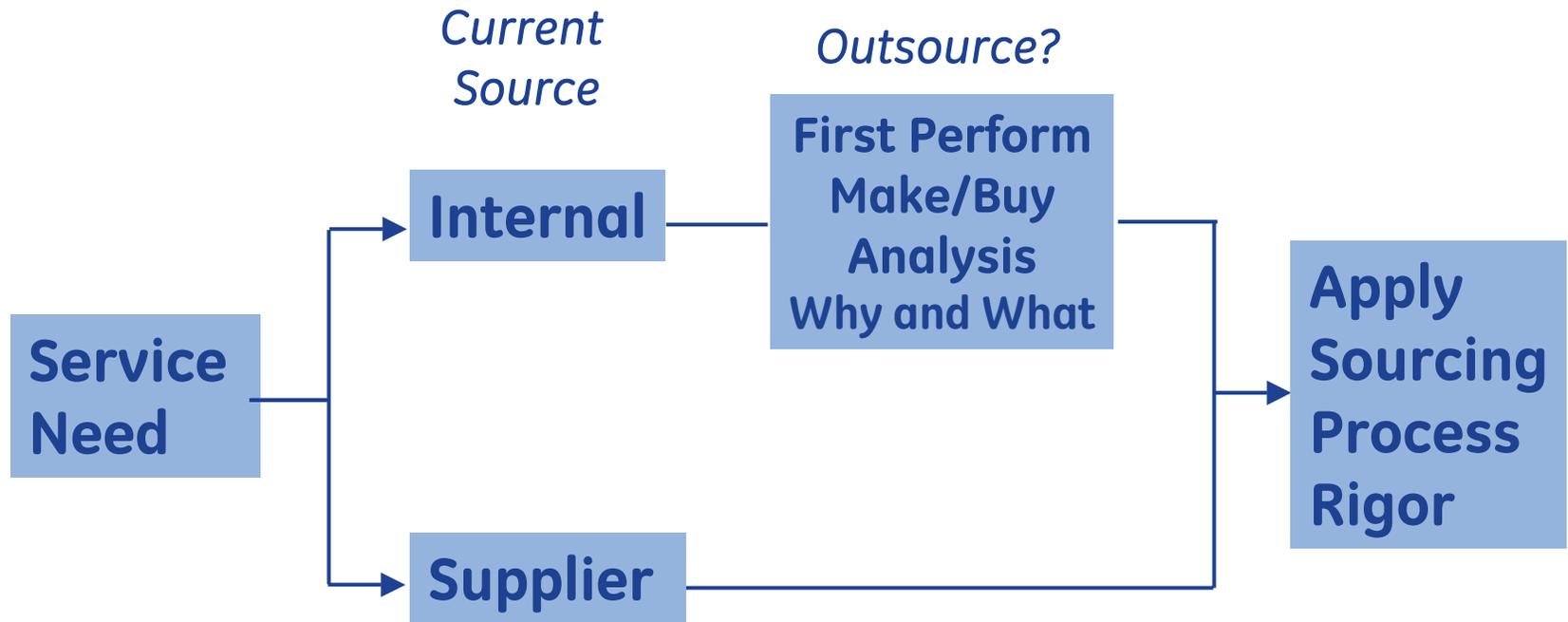
# Opportunity $\Rightarrow$ Policy

## Consolidate Indirect

- Common suppliers
- Standard contracts, country specific SOWs
- Standard Platform
  - > Standard Buy to Pay processes and IT platform
  - > Supplier database
  - > Requisition and buy tools
  - > AP platforms
  - > Data mining capabilities
- Take Broad Market View
- Market Analysis, RFPs, Rigorous Analysis, SLAs
  - $\Rightarrow$  Drive for SOW based "Fixed Price" type Contracts

***Cross-Business Teams, Shared Metrics***

# Frame Need vs. Current State



# Make vs. Buy - Why

## Focus Limited Resources

- Focus on improving internal capabilities for producing strategic, value added, customer facing services

## Improve Shareholder Value

- World-class capabilities of others facilitate achievement of business goals

## Capitalize on Supplier Comparative And Competitive Advantage

- Rely on suppliers who have core competency or comparative advantage (scale, investment, technology)

## Speed

- Outsourcing can increase speed:
  - Speed of new services to market
  - Speed of customer service
  - Speed of service delivery

## Maximize Resources

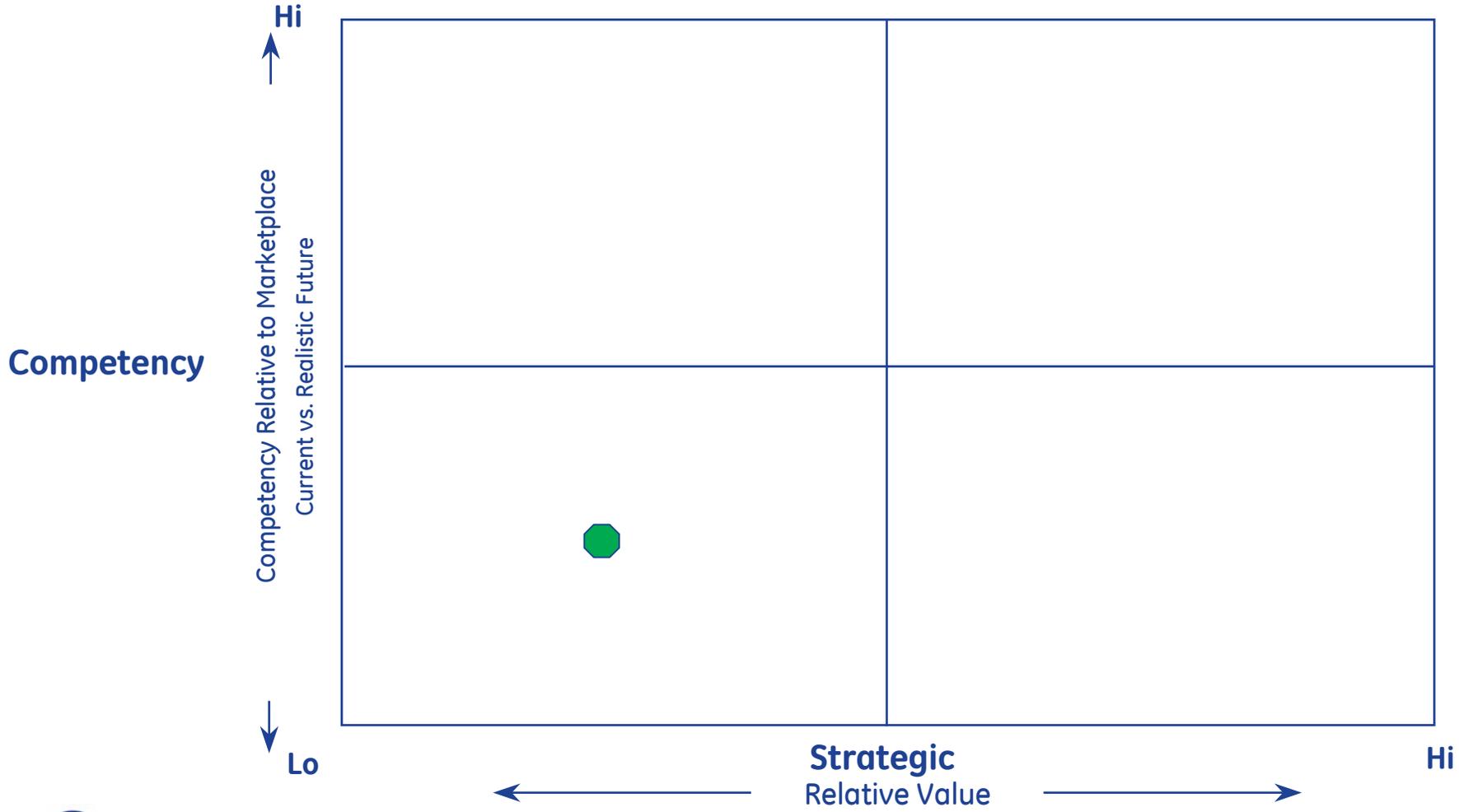
- Fund high-priority business objectives

## Controllorship/Compliance

- Reduce risk

# Make vs. Buy - What

*Simple Starting Point for Classifying Services/Processes*



# Engagement Structure

## When Outsourcing . . .

### Resources are transferred

- Assets
  - Hardware, equipment, real estate
  - Software
- Personnel
- Third party contracts

## When Out-tasking . . .

- Narrower band of what is transferred, broader band of what is retained.

## When Sourcing . . .

### Customer is relying on supplier's expertise, processes, assets, personnel, 3<sup>rd</sup> party contracts . . .

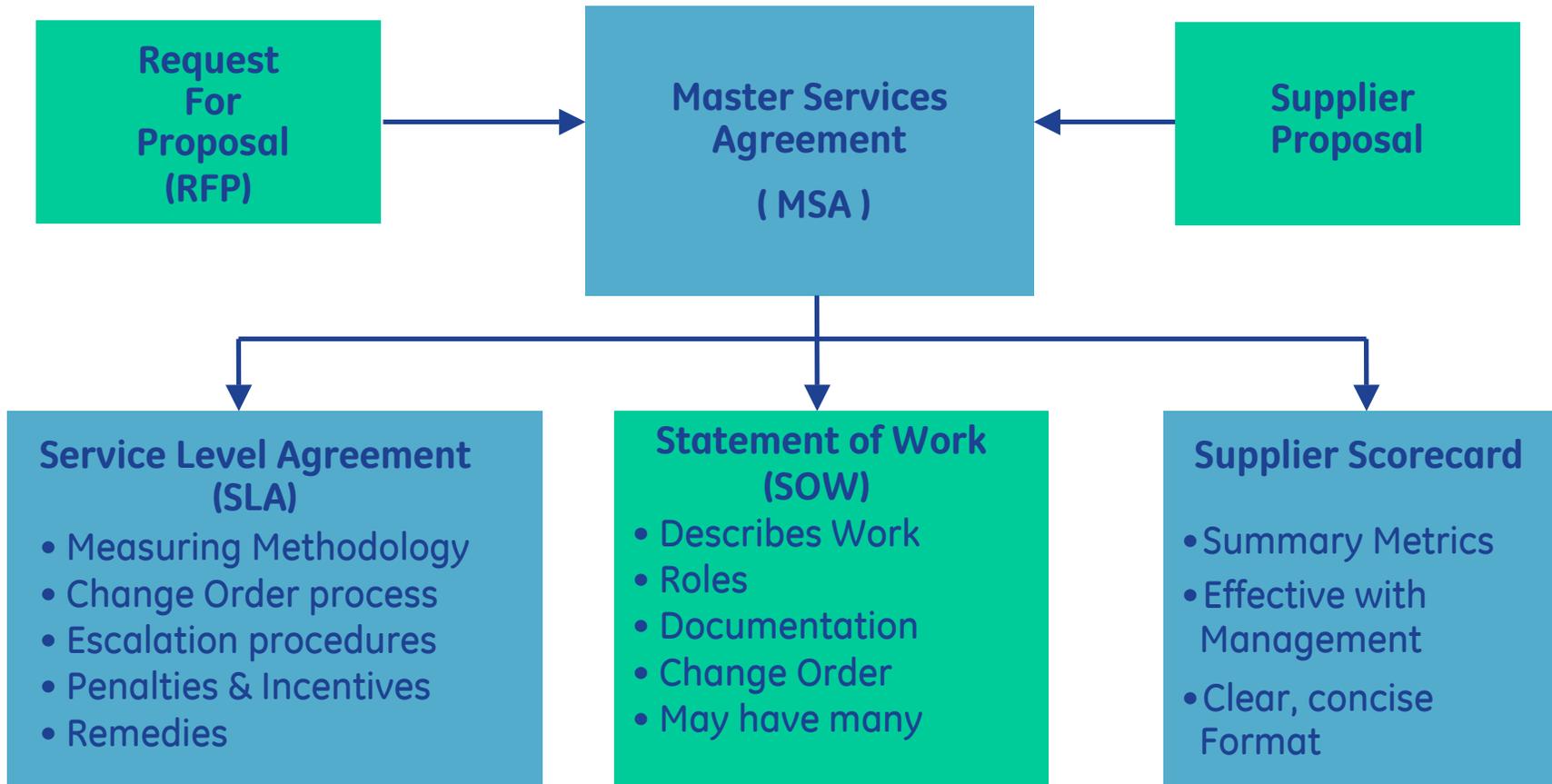
- Medium to longer term
- Anticipate uncertainties
- Coming home strategy
- Retain intellectual Capital

## Key requirements that apply to any of the above scenarios

- Should not assume arrangements are permanent
- Master contract. statement of work, service level agreement, scorecard

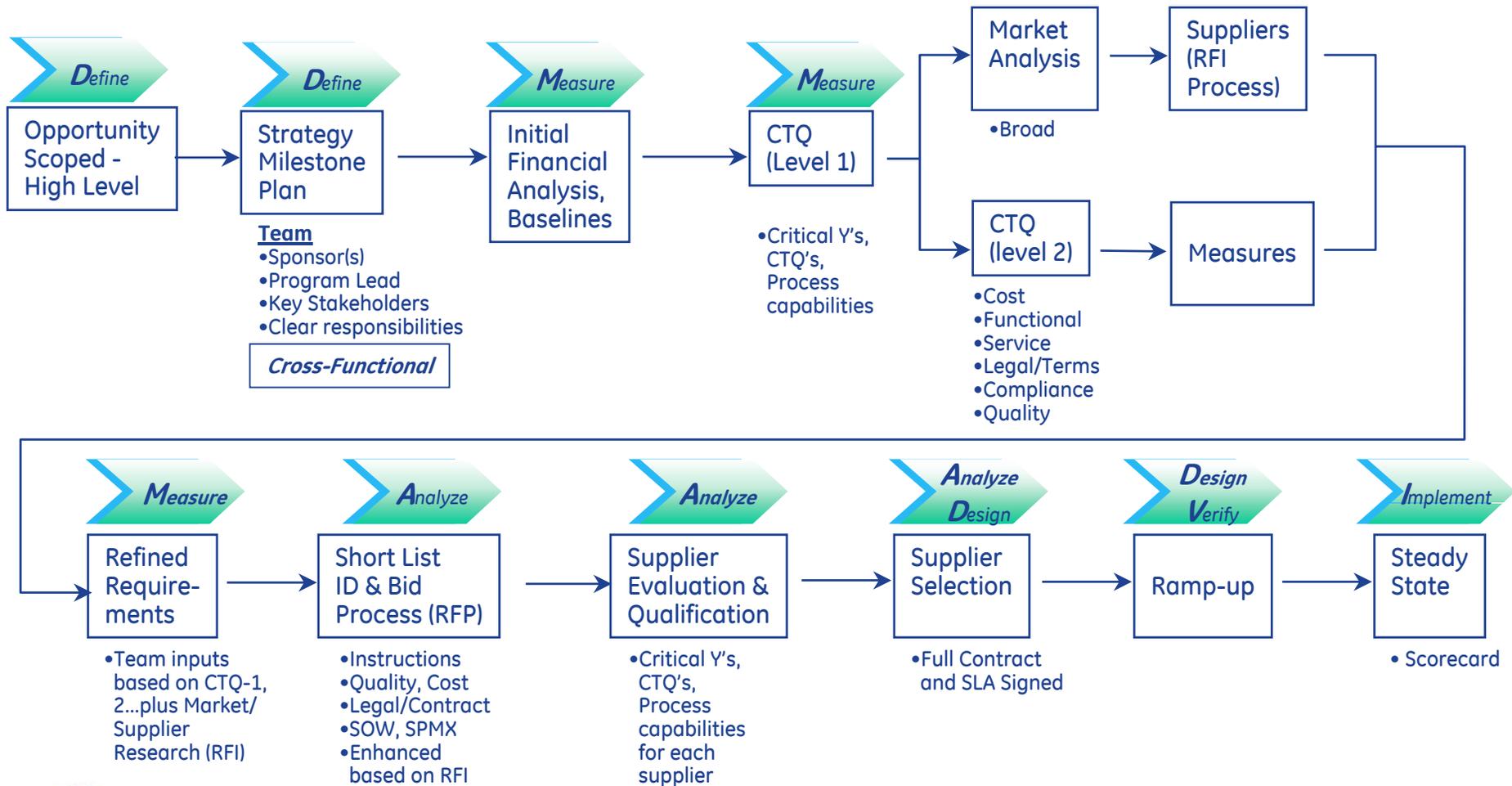
- *Sourcing Services Means Ensuring an Agreement with a Qualified supplier*
- *Requires Rigorous Process, Carefully Negotiated Contract and Retention of Key Competencies & Resources*

# Engagement Structure

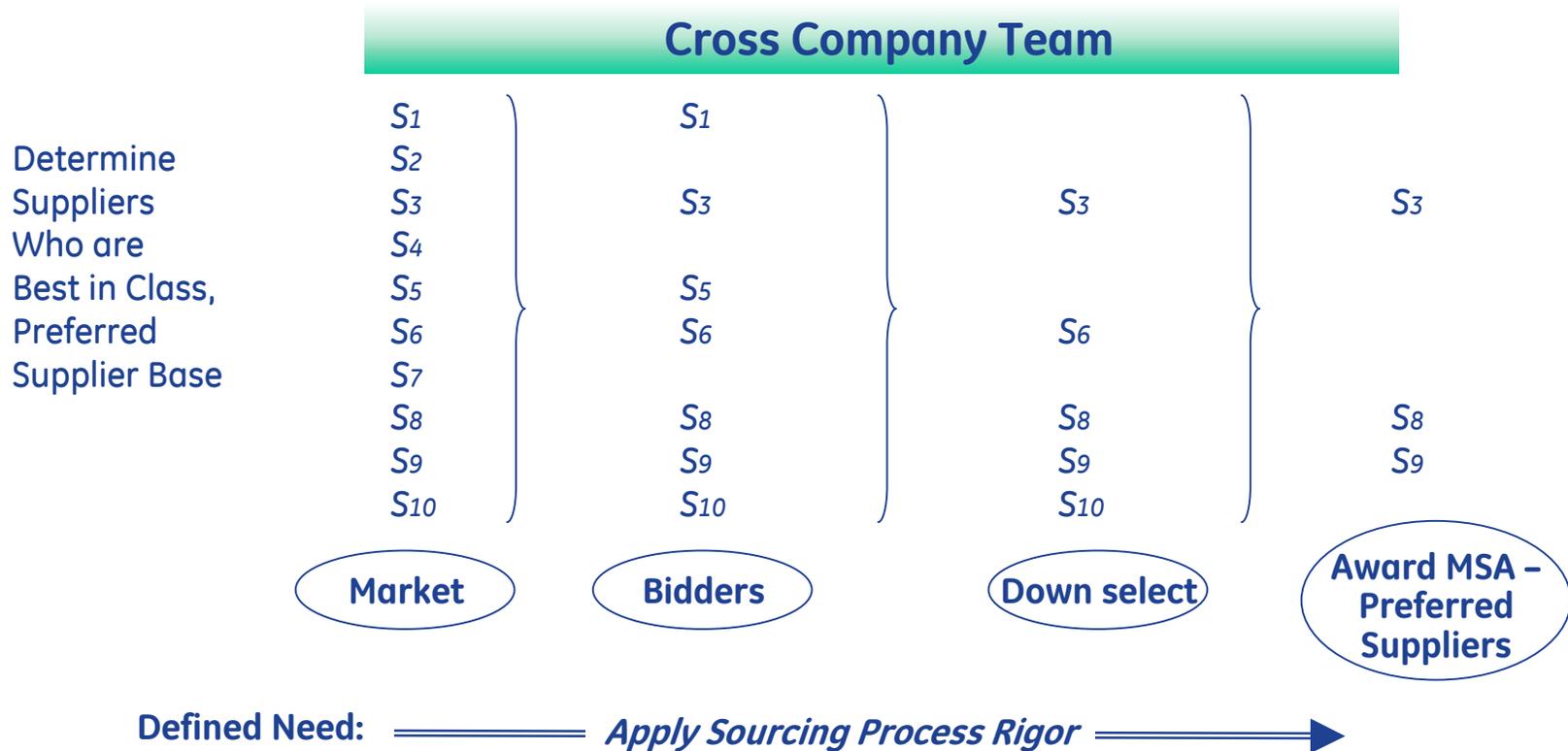


# Sourcing Process Rigor

## Applying 6 Sigma and Sourcing Methodologies



# Applying Competition – Single Tier Approach



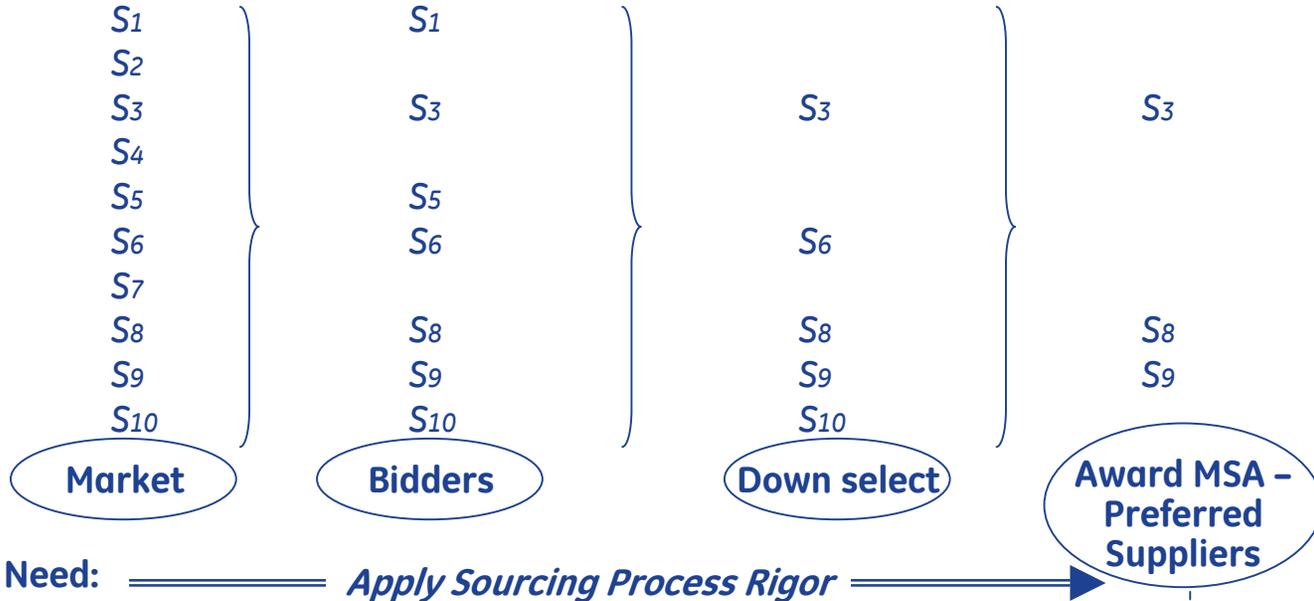
- *Pricing negotiated is best available*
- *If better pricing identified, MSA revised to reflect*

# Applying Competition – Two Tier Approach

## Cross Company Team

### Tier 1

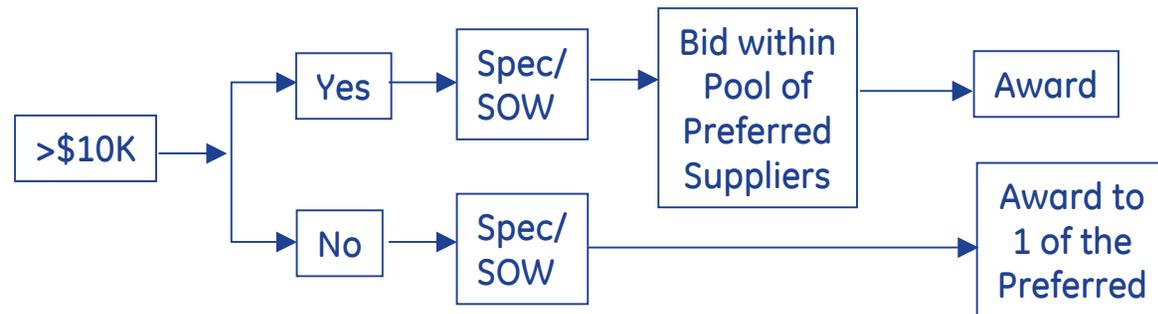
Determine Suppliers Who are Best in Class, Preferred Supplier Base



## How Businesses Apply (example)

### Tier 2

Business Specific - SOW's



# Compliance

## IT Example

### *Standard*

- > A mandatory, non-negotiable product or service selected because of a compelling company-wide need driven by interoperability and/or economic factors
- > No business option
- > Example: e Mail.

### *Recommended*

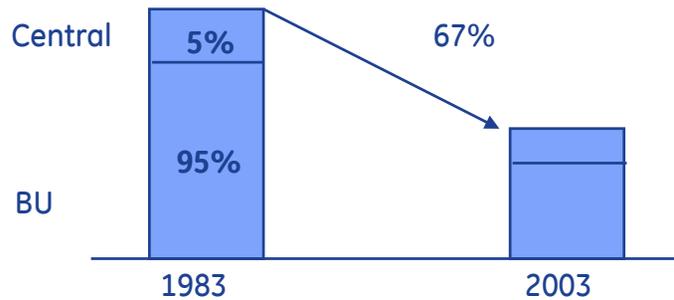
- > A product or service that must be used unless there is an overriding business case (price, availability, migration...). Use of a product or service other than strongly recommended is subject to review
  - Senior level approval required
- > Businesses may have options for more than one (1) preferred supplier to select from
- > Example: helpdesk(s).

### *Best Practice*

- > Product or service has been used successfully by one or more GE business(es)
- > Businesses have option to source from multiple suppliers
- > Example: wireless devices

# Benefits - Example

## FTE

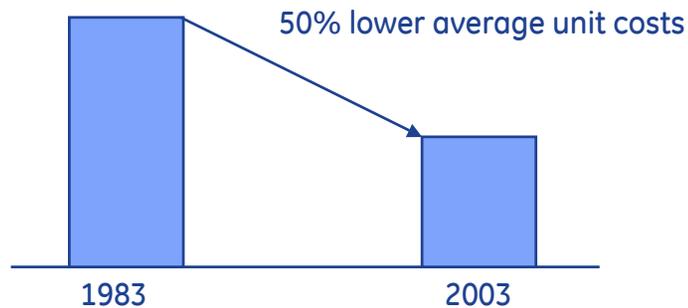


## Suppliers

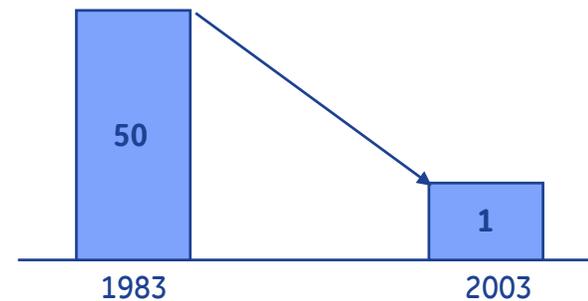
1983: No concentration of the Buy, 600+ suppliers

2003: 70% of buy with global strategic suppliers

## Price (Indexed to 100)



## Support Systems



1983: 50+ Freight invoice payment systems

2003: Single Freight payment database

# Contracting Terms Highlights

- Scope and Contracting Parties
  - > Objectives, Competitive market dynamics, Meeting user needs
- Contract “owner”/manager
  - > Program management lead/supplier management lead
  - > The “steward” ensures strategic focus, operational rigor
- Warranty
- Change order process
  - > Defined and managed, clear roles
- Books and Records
  - > Audit rights – financial, quality, processes/operations
  - > Cost/fee verification
  - > Record retention
- Insurance Levels
  - > Minimum required
- Indemnification
  - > General and specific
- Compliance with Laws

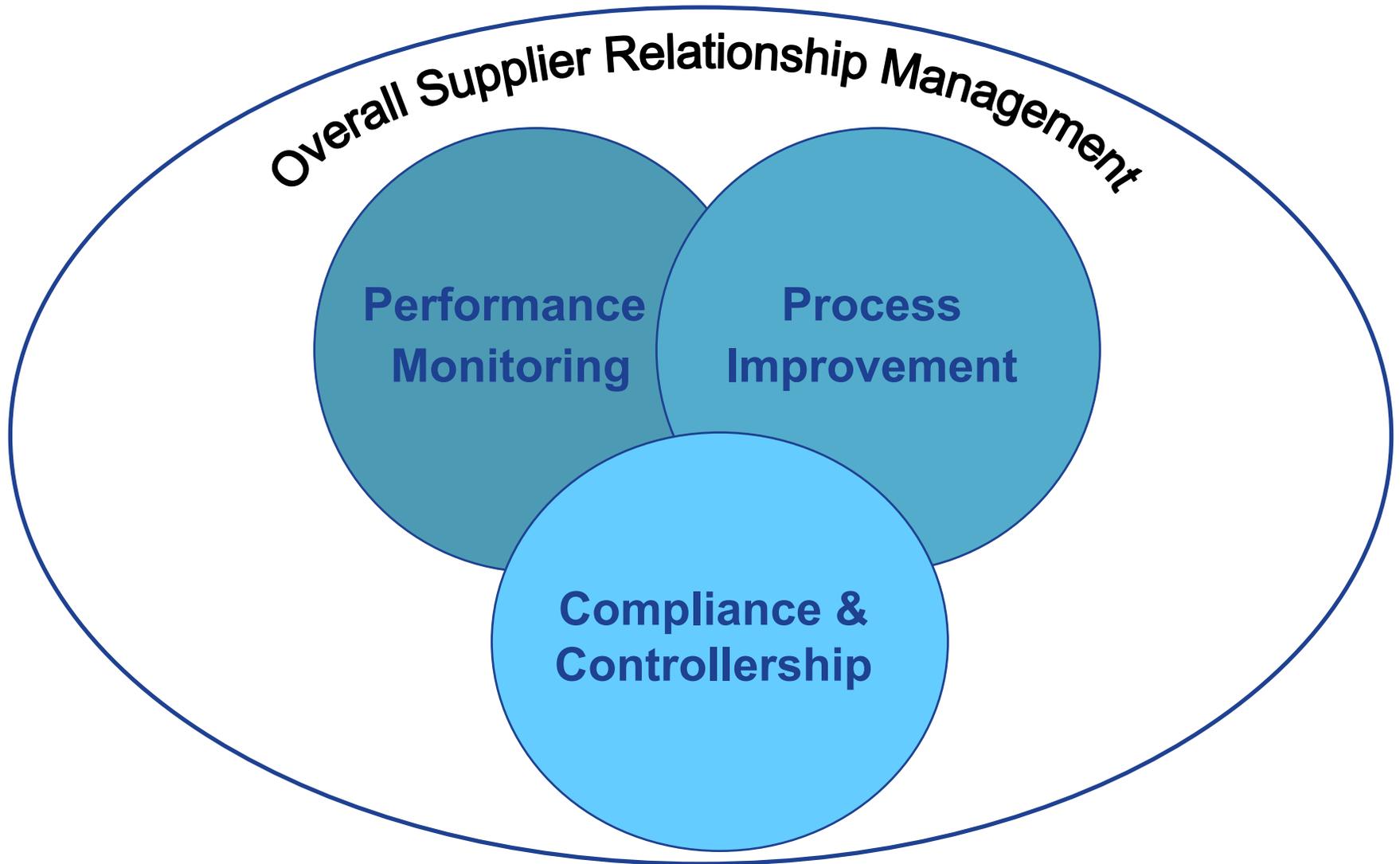
# Contracting Terms Highlights

- Integrity and Privacy Guidelines
- Supplier Relationships
  - > Compliance warranties, right to audit, annual certification
- Dispute resolution
  - > Cooperation, arbitration
- Ownership rights
- Use of 3<sup>rd</sup> parties and subcontracting
  - > Savings opportunities
- Extraordinary events
  - > Acquisitions, divestitures
- Cost and pricing for services
  - > Detailed Statement of Work, with pricing
  - > Maximize application of fixed price
  - > Fixed price, with cost details

# Contracting Terms Highlights

- Term, termination/default
  - > Terminate for cause
  - > Terminate for convenience
  - > Rights upon termination – assistance, return of materials
  - > Termination for default/adverse financial condition
- Benchmarking and competitiveness
  - > Customer option
  - > Fee/charge comparisons
  - > Can be independent third party
- Standards of performance
  - > Qualitative and quantitative
  - > SOW driven
    - Cost reduction, rebate
    - Best efforts to achieve cost reductions with agreed measures
  - > SLA/metrics reporting
    - On customer identified medium
    - Delivery, cycle time measures . . .
  - > Failure to perform
    - Investigate, advise, severity level
  - > User satisfaction
  - > Measuring and monitoring tools

# Supplier Management

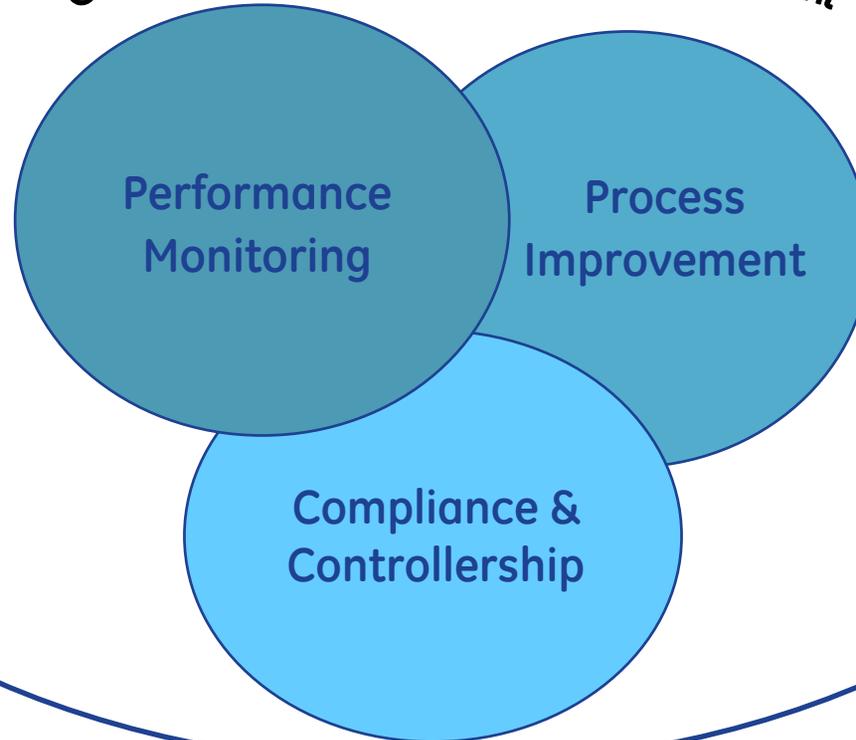


# Managing Suppliers

## Performance Monitoring

- Service Performance Measurement Matrix
  - Expectation of measurement needed
- Service Level Agreements (SLA)
  - Agreed
  - Documented
- Supplier Scorecards
  - Ongoing monitoring – thermometer
- Quality and Operational Audits
- Customer Satisfaction

## Overall Supplier Relationship Management



# Sample Scorecard

## Cost & Account Management

17/25

Communicates viable ideas to maximize use of resources and minimize costs  
*Exceed expectations-7 Meet expectations-5 Below expectations-0* 5/7  
 Continuous process improvement and progress resulting in additional value and cost savings  
*Exceed expectations-4 Meet expectations-2 Below expectations-0* 0/4  
 Maximized employee use of enrollment web site (to the extent of their ability)  
*Exceed expectations-4 Meet expectations-2 Below expectations-0* 4/4  
 Meets commitments and deadlines for on-time delivery  
*Exceed expectations-4 Meet expectations-2 Below expectations-0* 2/4  
 Reporting; Measure; % On Time; Scheduled and Ad-Hoc Reports  
 100% - 4 99-85% - 2 <85% - 0 4/4  
 Demonstrates knowledge and resourcefulness in problem-solving and in implementation of new projects  
*Exceed expectations-2 Meet expectations-1 Below expectations-0* 2/2  
 Bonus: Proactive Savings ideas and proposals proposed by Supplier  
*Points awarded at customer discretion* 0/5

## Customer Satisfaction

33/40

Satisfaction with "XX" Manager  
 18 -90% or higher/15 -89 to 85%/12 -84 to 80%/10 -79 to 75% /0 - <75% 15/18  
 Satisfaction with overall Customer Service  
 14 -88% or higher/12 -87 to 85%/10 -84 to 80%/8 -79 to 75% /0 - <75% 10/14  
 Satisfaction with on-line tools  
 8 -90% or higher/6 -89 to 85%/4 -84 to 80%/2 -79 to 75% /0 - <75% 8/8

## Six Sigma/Quality

15/15

Supplier Staff/% Awareness Trained  
 2 = 95% or higher / 1 = 94 to 90% / 0 = <90% 2/2  
 % Quality Trained (targeted population)  
 2 = 100% / 1 = 99 to 75% / 0 = <75% 2/2  
 Supplier works with Customer to proactively identify and explore potential quality and lean projects  
*Exceed expectations = 4 Meet expectations = 2 Below expectations = 0* 4/4  
 % of Targeted Projects Completed and Verified (to the extent Customer resources are available)  
 7 = 100% / 5 = 99 to 75% / 3 = 89 to 80% / 2 = 79 to 75% / 0 = <75% 7/7

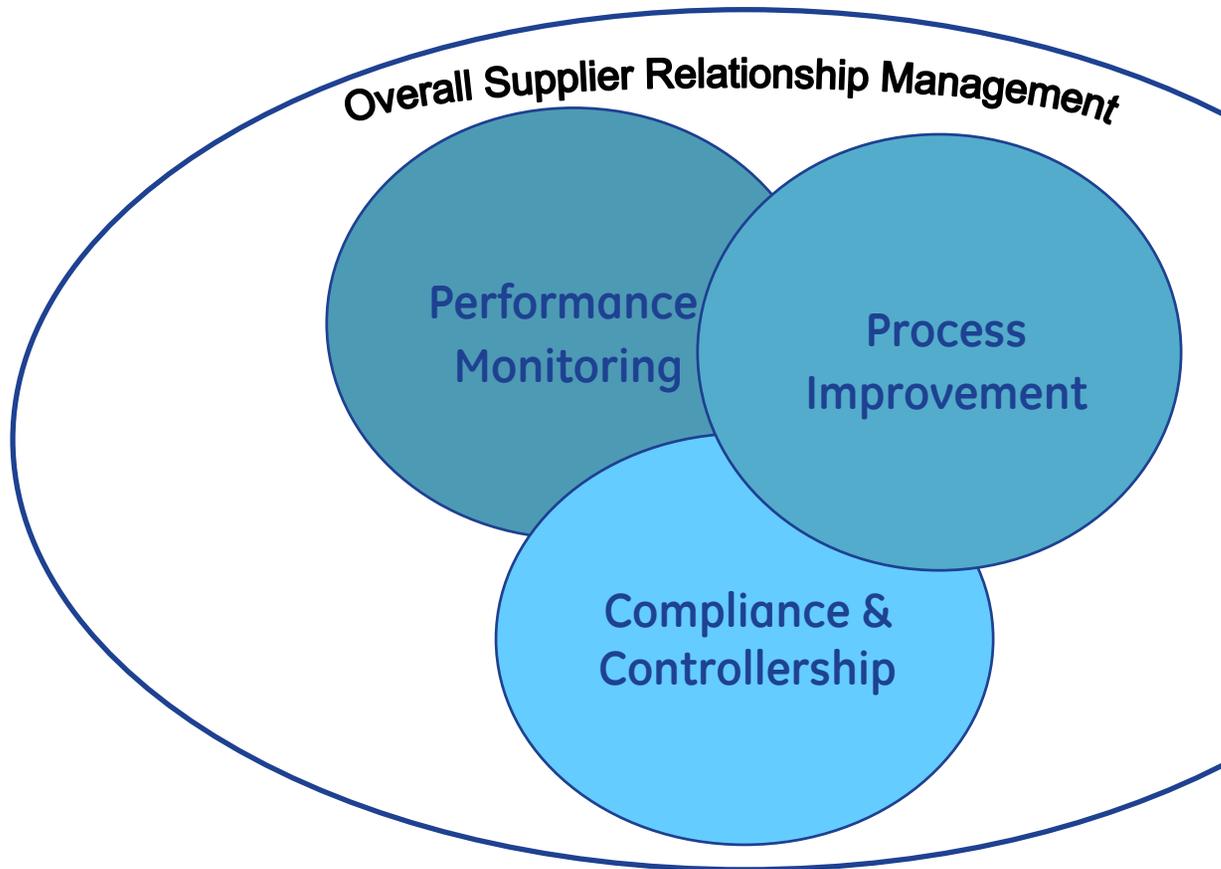
## Process Management

18/20

Compliance: Timeliness, Accuracy, Completeness and Imaging of "XX" Materials  
*Exceed expectations = 3; Meet expectations = 2; Below expectations = 0* 2/3  
 Transaction Accuracy: "YY" Materials  
*Exceed expectations = 3; Meet expectations = 2; Below expectations = 0* 3/3  
 Transaction Accuracy: "ZZ" Materials  
*Exceed expectations = 3; Meet expectations = 2; Below expectations = 0* 3/3  
 Transaction Timeliness: "ZZ" Materials  
 3 = 99% or higher / 2 = 98 to 94% / 1 = 93 to 89% / 0 = <89% 3/3  
 Transaction Timeliness: "AA" Materials  
 2 = 95% or higher / 0 = <95% 2/2  
 Transaction Timeliness: "BB" Materials  
 3 = 99% or higher / 0 = <99% 3/3  
 Call Monitoring: Randomly selected taped "XX" Manager calls  
*Exceed expectations = 3 Meet expectations = 2 Below expectations = 0* 2/3

**Overall Score: 83/100 (sample)**

# Managing Suppliers



## Process Improvement

- Six Sigma Projects/Lean
- Innovation (Process/Product)
- Technology Refreshment
- Savings, Incentives, Penalties
- Knowledge Transfer/Learning
- Understand 'end-to-end' impact

# Managing Suppliers

## Overall Supplier Relationship Management

### Compliance & Controllershship

- Contract Terms, Administration
- Contract Deliverables
- Change Order Management and Process Documentation
- Risk Assessment & Mitigation
- Quality Financial and Operational Audits

Performance Monitoring

Process Improvement

Compliance & Controllershship

# Managing Suppliers

## Overall Supplier Relationship Management

Performance  
Monitoring

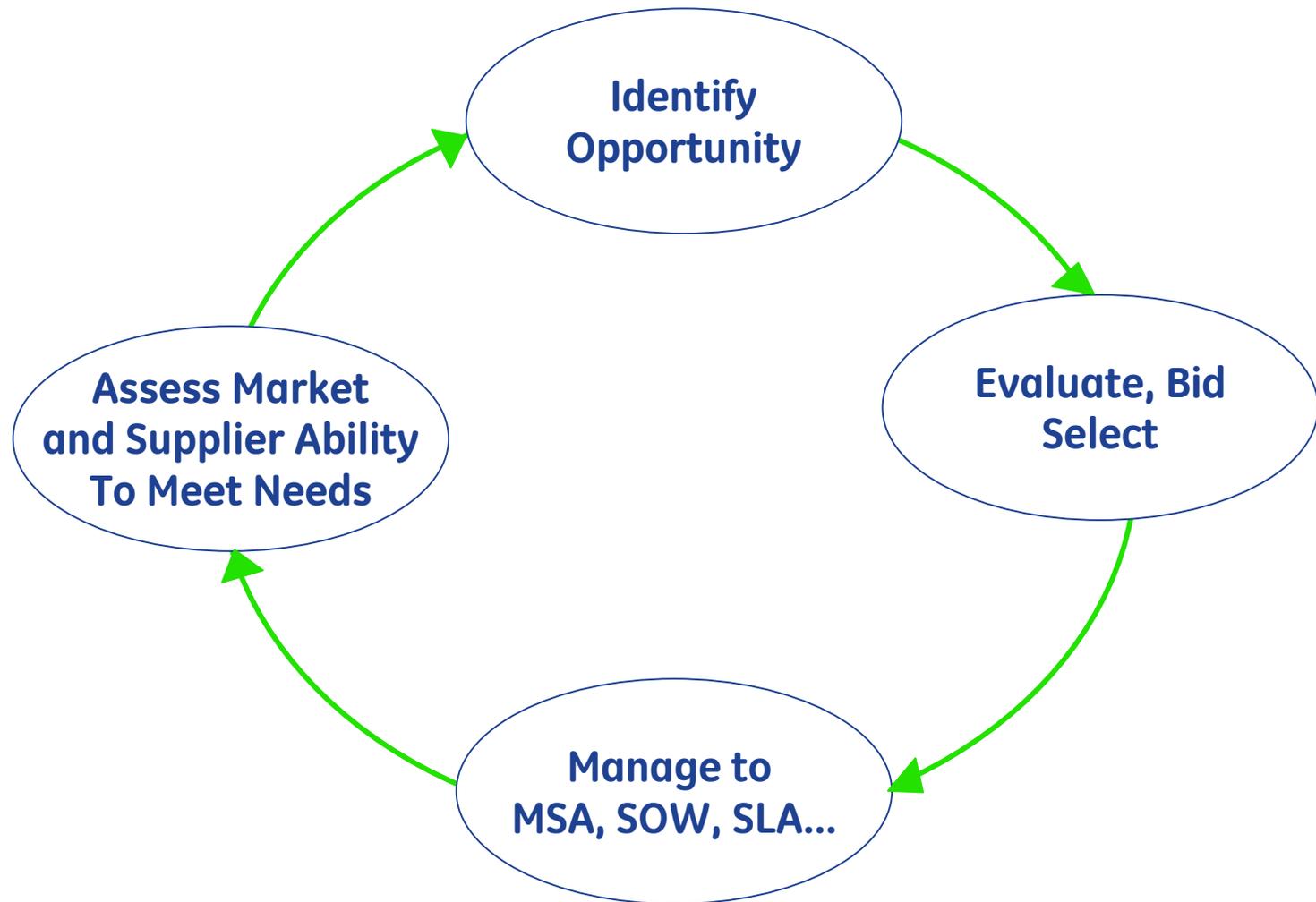
Process  
Improvement

Compliance &  
Controllorship

### Relationship Management

- Balanced approach
- Establish ground rules
- Set performance stds
- Establish an ongoing communications “rhythm”
- Monitor supplier staffing and development processes

# Continuous Improvement



# Appendix

# Glossary

**Six Sigma** – highly disciplined process that helps focus on developing and delivering best products and services.

**Critical Y's and CTQs** - primary customer requirements for a product or service. Ability to meet customer requirements is dependent on process outputs. Essentially, these are attributes most important to the customer.

**QFD** – Quality Function Deployment is a method to translate detailed needs into measurable features.

**SLA** – Service Level Agreement

**SOW** – Statement of Work

**SPMX** – Service Performance Measurement Matrix. Reflects details on performance needs, how to measure, data sources -- used to support specifications and scorecards.