Statement of

Allan V. Burman, Ph.D.
President, Jefferson Solutions
Jefferson Consulting Group, LLC

Before the
House Armed Services Committee
Panel on Defense Business Challenges

On the Subject:
Doing Business with DoD: Contracting and Regulatory Issues

Dear Chairman Shuster, Ranking Member Larsen and Members of the Committee:

Thank you very much for the opportunity to testify before you on the topic of the contracting and regulatory environment facing companies doing business with the Department of Defense (DoD). My name is Allan Burman and I am President of Jefferson Solutions, the government division of the Jefferson Consulting Group, a woman-owned small business. I also serve as Chairman of the Procurement Round Table, a non-profit organization chartered in 1984 by former federal acquisition officials concerned about the economy, efficiency, and effectiveness of the federal acquisition system. Since its founding in 1996, Jefferson Solutions has provided acquisition support and management consulting services to some 50 different federal agencies, including the Department of Defense. These assessments provide agencies with best practices and benchmarking analyses to help optimize both operational and organizational performance.

Shortly after our establishment, Jefferson Solutions assisted the Office of the Secretary of Defense in better defining what constitutes the Defense acquisition workforce, largely in response to concerns raised by this Committee. Then-Secretary of Defense William Cohen sent our report to Congress and noted that Defense would follow our suggested model to offer a uniform and consistent approach for identifying the Department's acquisition workforce members and assessing their training needs.

I had a lengthy career in the Federal government, serving as Special Assistant to the Director of Defense Education in the Office of the Secretary of Defense, Chief of the Air Force Branch of the National Security Division of the Office of Management and Budget (OMB) and then as Administrator for Federal Procurement Policy in OMB. I was acting in that post under President Reagan, confirmed by the Senate under President Bush, and retained under President Clinton.

As Administrator, I initiated numerous procurement reforms. These included authoring the Office of Federal Procurement Policy letter encouraging the use of

performance-based services acquisition, as well as putting in place policies that favored assessment of a firm's past performance in determining its acceptability for future awards. I also served on both the Section 800 panel, whose recommendations formed the basis for the Federal Acquisition Streamlining Act of 1994 (FASA), and the Acquisition Advisory Panel, created by the 2003 Services Acquisition Reform Act (SARA) to address needs for improving services procurement across the government.

Today, the Committee has asked me to address the following topics for this hearing:

- DoD contracting and procurement processes and performance,
- Business challenges in defense contracting, and,
- Recommendations for improving DoD procurement business practices and performance.

Let me preface my review of DoD procurement with the comment that there are a few elements that are fundamental to any sound acquisition system:

- Operations should be sufficiently transparent, and the bidding process understandable and regularized,
- The selection process should be fair and free from bias and conflicts of interest, and
- Competition should be the norm.

To achieve these goals, the following conditions are also important:

- Open, clear communications should exist between government and industry, and
- Regulations and mandatory processes should be streamlined to avoid process delays, minimize barriers to businesses, and allow agencies sufficient flexibility to meet business objectives and remain compliant.

These are not necessarily complicated requirements. They are the same basic elements I recommended when Jefferson Solutions worked with the Organization for Economic Cooperation and Development to help the emerging democracies of central and eastern Europe move from "state orders" to a market system. I also recommended these requirements to the office of the President of Nigeria, seeking to help establish effective and sound procurement policies and practices for the government to follow. These requirements are also, of course, the essence of the multi-thousand page Federal Acquisition Regulation of our own government. These elements should be the tenets of any sound contracting operation.

Despite the critical nature of these acquisition basics, however, many agencies still struggle to fully execute and/or comply with these requirements. In Jefferson Solutions' organizational reviews and workforce assessments of agency contracting shops, the same challenges and issues crop up again and again. Many of these issues

can be attributed to the mismatched growth of federal contracting dollars and federal contracting staff. In recent years there has been huge growth in federal contracting dollars but not the growth in the federal acquisition staff to match. For example, for the Department of Defense, contract obligations grew from $165 billion in FY 1999 to $366 billion in FY 2010 (with an even higher peak of $414 billion in FY 2008), an increase of 122 percent. However, over this same time period, contracting office staff (designated under Office of Personnel Management job series' 1102 and 1105) grew from 20,425 in FY 1999 to 24,570 in FY 2010, for only a 20 percent increase.

As a result, contracting shops are often overworked and underequipped to meet agency procurement goals. This shortage causes critical pieces like training, acquisition planning, documentation, and customer service to suffer. Jefferson Solutions has seen these symptoms plague procurement offices across agencies.

- Acquisition personnel are overburdened. Workload does not leave time for the crucial training and competency building their jobs necessitate.
- Contract file documentation is often sparse due to large contract workloads. Staff often take short cuts in documentation and create workarounds, working outside of agency procurement systems.
- Poor collaboration between program and contract staff and inadequate planning results in rushed requirements development.
- Consistent and clear dialogue between the government and industry is lacking. Members of both industry and the program office are unclear about their roles in the procurement process, or how much engagement they are allowed with one another. This, in turn, hinders effective competition and all but eliminates opportunities for effective acquisition planning.

The "fix" provided by the Administration and federal agencies to address these acquisition issues is often additional layers of policy and regulation. In an effort to protect the procurement process, however, these agencies end up adding complexity, burden, and cost, particularly for small businesses looking to enter this marketplace. Ever increasing regulation and oversight increases the same procurement costs and process delays that the government is trying to remedy, and often results in a focus on process rather than results.

Ultimately, a balance must be struck between workload and staffing, efficiency and risk, regulation and cost. This is a balance that Jefferson Solutions has attempted to help contracting organizations strike within a number of agencies and one that DoD must find to improve the effective management and performance of its procurement processes. To ignore these deficiencies and areas of concern has real consequences. A January 18, 2012 *Washington Business Journal* article by Ray Bjorklund, Chief Knowledge Officer of Deltek, Inc cites the loss of $5.9 billion in Defense's fiscal year 2012 budget as resulting from instability and failures in acquisition management and planning.

Today, I will address four major topics of concern and challenges within DoD procurement:

1) Communication between government and industry
2) The imbalance between federal contracting workload and staffing
3) The risks involved with improper use of Lowest Price Technically Acceptable (LPTA) contracting techniques, and
4) The costs of increasing use of regulation.

Communication Between Government and Industry

There is a great deal of confusion and misinformation throughout the federal government regarding the level and timing of communication allowed between government and industry. Our firm has seen it in organizational assessments of acquisition shops across agencies. Staff interviewed continue to perpetuate myths about forbidden or frowned upon communication with industry and there is a general hesitance throughout to engage with industry in the acquisition process. In an effort to tear down some of these deeply ingrained barriers in government-industry communications, OMB's Office of Federal Procurement Policy focused on this issue and the ACT-IAC association hosted an online, moderated dialogue with the government Information Technology community on the topic. My firm participated in the effort. Ultimately the discussions contributed to a "Mythbusters" Top Ten list, a document that Dan Gordon, who recently left his Procurement Administrator post, developed to dispel confusion and encourage regular, effective interaction between government and industry. (Dan is a newly elected member of the Procurement Round Table.)

Some of the common misconceptions and/or barriers to communication raised by OFPP are:

- "*There is no need for transparent or follow-on communication when publishing a Sources Sought Notice or Request for Information (RFI).*"
  In actuality, a Sources Sought notice or RFI is an optimum time for discussions with industry to occur. Agencies say that they cannot talk with industry and often close the door on communication. This refusal to connect, however, does not benefit the government. Industry utilizes Sources Sought and RFIs as opportunities to form relationships with the government and convey their specific and relevant expertise. Government should not only be receptive to these industry motivations but should capitalize on the opportunity to perform market research.

- "*There is no need to conduct one-on-one meetings with interested vendors after a draft solicitation is released.*"
  The government generally holds an Industry Day and then assumes that no further communication is necessary. Government is also hesitant to conduct one-on-one meetings with industry because staff incorrectly fear that such a

meeting will be perceived as favoritism. In absence of these discussions, however, customer requirements are poorly defined. The more the government talks with industry, the more likely the government will get the services it wants.

- "*Debriefs must only provide the minimum amount of information possible to meet FAR requirements.*"
  The government has an obligation to create an environment of openness and transparency. This means that contracting officers should provide open, transparent, and honest assessments so that industry may know why it lost. The government should provide as much information as possible in a debrief. This leaves the offeror with a more clear understanding of what it means to be competitive in the future and protects the government from potential protests. This particularly helps small businesses be better able to compete. These debriefings were invaluable to Jefferson Solutions when we were just getting started.

- "*There is no need for government to learn how industry operates and interacts with the government, as industry does not have the same mission.*"
  Effective collaboration and communication depends on mutual appreciation and understanding of one another's roles. Increased understanding on both the industry and government side makes the acquisition process easier and the delivery of services less confrontational.

Ultimately, increased communication between government and industry benefits both parties and allows the acquisition process in any agency to operate more smoothly and effectively. In Jefferson Solutions' "Acquisition Essentials" course, we continue to dispel these myths and encourage contracting staff to engage with industry. Staff at all agencies Jefferson has visited have found this specific information enlightening and useful.

Federal Acquisition Staff v. Increasing Federal Acquisition Workload

In the past several years, federal contracting has grown astronomically in both size and complexity. In 2010, there were $536.7 billion in government contracts awarded to approximately 303,000 contractors. As federal contracting dollars continue to increase and the number of large, complex procurements continues to grow, federal contracting staffing has struggled to keep up. In Jefferson Solutions' assessments and workforce analyses across the government and the analysis conducted by the Acquisition Advisory Panel, we find overworked and understaffed acquisition personnel. Staff are coming in on the weekends in an effort to keep up with crippling workloads; new employees are forced to hit the ground running with little to no training or mentorship; existing staff do not have the time to take away from their work to get the training, development, and refreshers they need to perform effectively; and office morale is low, causing high turnover as staff look for less stressful work at other agencies.

Requests for more staffing and better training and mentorship opportunities are some of the most common pleas we hear from federal contracting staff. And the staffing issue is manifesting itself in agency federal acquisition performance. Contract documentation is often poor or missing; customer service suffers in the face of expanding workloads; procurements are delayed and backlogged; and staff are not developing the competencies they need to perform optimally on the job. As a result, some agencies are inappropriately using less complicated evaluation schemes, such as lowest price technically acceptable (LPTA) contracting approaches, as a way to sidestep their staff's inability to perform a best value analysis effectively.

Unfortunately, staffing shortfalls are not projected to get any better with increased budget cuts and funding shortages. If the government expects to continue to perform at higher and higher dollar values in procurement spend, however, it must invest in the necessary support, training, and staffing of its workforce.

Lowest Price Technically Acceptable (LPTA) and the Risks

In light of an increasingly austere federal budget environment, agencies are feeling the crunch. The tendency to use LPTA is an appealing one as agencies try to drive down the cost of federal spending and stretch their federal dollars on low risk services and even more complex procurements. The increased and sole focus on price, however, does result in risk for the government.

LPTA drives innovation off the table, forcing competitors to only show enough qualification to be considered technically competent. The requirements are usually poorly written and risk is not accounted for. The evaluation criteria consist of pass or fail, focusing on little more than whether or not a firm has done the work before and how they did. Evaluations start with reviewing pricing, where the lowest price vendor's technical proposal is reviewed. If they meet the basic requirements, they win. Other bidders' technical proposals are often not even read. Incumbents who have done excellent work and/or small businesses that cannot afford to offer incredibly low bids are effectively forced out of the competition.

This issue has been already raised before the Committee by small businesses at a previous session. Using this LPTA contracting technique can work well for buying commodities. However, when buying sophisticated services procurements, it leaves the government with unrealistically low bids and firms that cannot effectively perform the work they proposed. In an attempt to hit these low prices, competing firms work with fewer and less skilled people, cut salaries, and cut corners, doing the bare minimum to get by. As a result, the highly skilled knowledge base that the government envisioned goes out the door and contractor performance erodes.

Jacques Gansler, a former Under Secretary of Defense for Acquisition, Technology and Logistics and a Director of the Procurement Round Table, in a June 12, 2011

Federal Times piece cautioned that the National Reconnaissance Office's use of this LPTA contracting technique for buying important security services is a "failure waiting to happen." The Navy is now going down this same path for its highly sophisticated, multi-billion dollar Next Generation Enterprise Network (NGEN) contract.

As budgets continue to shrink, the government will be forced to save money but LPTA is not an effective way by which to achieve savings. LPTA garners the government mediocre contract performance and sends the message that quality does not matter. It bars the innovative, knowledgeable, and experienced firms from government contracts and rewards unrealistic, un-executable bids from less desirable candidates. By essentially denying the best products, services, and ideas, LPTA sends the message that sub-par work is "good enough for government."

From a small business standpoint Secretary Panetta recently noted that the Department is struggling and behind on its small business goals. In 2010, DoD missed its prime contracting goals for small business, woman-owned small business, and service-disabled veteran-owned small business. Concerns about the government's favoritism of large, familiar firms and its subsequent negative perception of small business have been raised by many small businesses speaking before this Committee.

These complaints are not new. As Procurement Administrator I had to arbitrate between the Small Business Administration and the Department of Defense to get the Department to raise its goals. For a Department with large sophisticated procurements, it becomes difficult to achieve these numbers and certain categories of activities that lend themselves to small business participation, as for example, construction and base repair work, tend to bear the brunt of these requirements. Larger businesses in these fields then see themselves as being treated unfairly. In light of these issues and concerns, the bottom line is that these goals will not be met without the strongest possible leadership from the Department.

Increasing Tendency Towards Regulation

Under pressure to address acquisition deficiencies, both the Administration and federal agencies continue to try to fix these issues with increased policy and regulation. Ever increasing regulation and layers of oversight, however, create the same types of procurement costs and process delays that the government is trying to remedy.

Some of these regulations, though intended to protect agencies and the taxpayer, in practice disempower agencies by creating unnecessary barriers to receiving best value and achieving their business objectives. One example of this is the Department of Labor's Final Rule on Non-displacement of Qualified Workers Under Service Contracts, which creates new hurdles for getting rid of poor performing incumbent contractors, even after the company employing them loses the work.

The most comprehensive quantitative assessment of these regulatory constraints is a study that was conducted in 1994 by Coopers and Lybrand under then-Secretary of Defense William Perry. This study focused exclusively on DoD and entailed 25 person-months of effort, with visits to ten different company sites and 1000 interviews. A rigorous value-added cost methodology was followed to determine cost drivers and to determine the cost impact of each of the constraints highlighted. The study determined that, on average, DoD paid a cost premium of 18 percent as a result of regulatory constraints unique to the federal market. Perhaps given the concerns raised before this Committee, it might be useful to conduct a new assessment, focusing in particular on those issues raised in this previous effort.

I am sure that there are many other issues that might be raised with regard to constraints on business resulting from the types of concerns I have identified in this statement. I hope that the points I have raised will be helpful to the Committee as it continues its efforts to improve the opportunities for all interested firms and especially small businesses to help support the critical missions of the Department of Defense. We all recognize that small businesses serve as major forces for innovation and can offer much more to the government than to meet staff augmentation needs.

Mr. Chairman and Ranking Member Larsen, this concludes my prepared remarks. Again, thank you for the opportunity to testify. I strongly support the work of this Committee in attempting to identify and address the issues that make it difficult for firms to do business with DoD and to provide cost efficient, meaningful support to the Department. I would be pleased to answer any questions that you and any other Committee member might have.