Categorization	Specific Regulatory Citation	Statuatory Citation (
Commercial preference & Constraints on Competition & Oversight	See DFARS Cases 2012-D055 and 2014-D005, and FAR Cases 2012-032 and 2013-002 for numerous regulations affected.	Section 818 of PL112 NDAA), as amended of PL112-239 (FY13 N 803 of PL113-66 (FY1
All	FAR 1.3; Executive Order 13563	
Commercial Preference	Better Buying Power Guidance – Procurement of Commercial Items based on FAR Part 12	

Commercial Preference	Commerciality • COs must determine commerciality of major systems, subsystems, and components thereof after concluding (1) item meets definition of FAR 2.101, and (2) CO has sufficient data to establish price reasonableness DFARS 212.102(a)© elevates an affirmative CID to a level above the CO when an item is "of-a-type" or " offered for sale or lease".	CITE
Commercial Preference	Rights in technical data and software • Section 815, FY12 NDAA • DoD Program Manager's Guide to Open System Architecture	10 U.S.C. 2320
Commercial PreferenceA7:W7Q7A7:Y7Q7A7:Y7A7:AA7Q7A7:Y7A7:AC7Q7A7:Y7A7:AE7Q7A7:Y7A7:AM7Q7A7:Y7AA7:BH7	DFARS 212.102 Acquisition of Commercial Items - General	Increase column length
Commercial preference & Constraints on Competition	FAR Part 12, DFARS Part 212, and related Part 52/252 clauses and flowdowns	10 USC 2533a/b, Pub 355 (FASA), et. al.

Commercial preference & Constraints on Competition & Oversight	FAR 46.2, .3, & .4 and related FAR 52.246-x clauses, including FAR 52.246-2 and FAR 52.246-11; also DFARS 209.270 and 252.209-7010	Among others: Sectio FY2004 NDAA (PL108- and Section 130 of the NDAA (PL109-364)
Commercial preference & Constraints on Competition & Oversight	DFARS 252.244-7000, Subcontracts for Commercial Items (June 2013 version)	This clause states that is not required to flow terms of any DFARS cl subcontracts for comr at any tier unless so sp particular clause. Belo thru 32) are listed clau flowed down in subco commercial items, cau impacts and undue bu costs. FASA provision
Commercial preference & Constraints on Competition & Oversight	DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals	10 USC2533b

Commercial preference & Constraints on Competition & Oversight	DFARS 252.225-7039, Contractors Performing Private Security Functions	Section 862 of P.L. 1 amended by section P.L. 110-417 and sec 832 of P.L. 111-383
Commercial preference & Constraints on Competition & Oversight	DFARS 252.236-7013, Requirement for Competition Opportunity for American Steel Producers and Manufacturers	P.L. 110-329, Div E, S
Commercial preference & Constraints on Competition & Oversight	DFARS 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel	Section 1038 of P.L.
Commercial preference & Constraints on Competition & Oversight	DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees	Section 1092 of P.L.
Commercial preference & Constraints on Competition & Oversight	DFARS 252.247-7023, Transportation of Supplies by Sea	10 USC 2631

Commercial preference & Constraints on Competition & Oversight	DFARS 252.247-7024, Notification of Transportation of Supplies by Sea	10 USC 2631
Commercial preference & Constraints on Competition & Oversight	DFARS 252.223-7008, Prohibition of Hexavalent Chromium	N/A
Commercial preference & Constraints on Competition & Oversight	DFARS 252.227-7015, Technical Data--Commercial Items	FASA ?
Commercial preference & Constraints on Competition & Oversight	DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data	10 USC 2321
Commercial preference & Constraints on Competition & Oversight	DFARS 252.246-7003, Notification of Potential Safety Issues	??? Question to Boei

Commercial Preference; Constraints on Competition	DFARS 212.270	Commercial Items Pu Law 103-355, 10 U.S.C. 2379 Codif of Sec. 815 of the FY NDAA
Commercial Preference; Constraints on Competition; Oversight	DFARS 227.74	Data Rights 10 USC 2
Constraints on Competition	DFARS 236.606-70 Statutory fee limitation.	(a) 10 U.S.C. 4540, 7 9540 limit the contra fee) for architect-eng for the preparation c plans, drawings, and to six percent of the estimated constructi
Constraints on Competition; Commercial Preference	FAR 52.203-13;52.209- 7; 52.209-8; 52.212-5; 52.213-4; 52.244-6	FAPIIS; SEC 872 FY09 110-417
Constraints on Competition; Miscellaneous	Contractor Business Systems DFARS 242.7000	

Constraints on Competition; Oversight	Performance Based Payments FAR Part 32	
Misc.	DFARS 252.225-7040 - Contractor Personnel Supporting a Force Deployed Outside the US	Commission on Wartin
Misc.; Maybe Outcome v. Process in the sense that the reg does not have a materiality (or even a de minimus) standard	17 CFR Parts 240 and 249b – Conflict Minerals	Dodd-Frank, P.L. 111-1502.
Misc.; Perhaps Outcome v. Process. Do we know why DoD is *not* supporting extension?	Comprehensive Subcontracting Plan (CSP) Program	The last extension of Comprehensive Subc Plan Program - P.L. extended the progran 2014.
Misc.?	Better Buying Power Guidance - Cash Flow Tool for Evaluating Alternative Financing Arrangements," dated April 27, 2011	

Miscellaneous; Outcome versus Process; Oversight	FAR 52.204-14	Contractor Manpow Clause Memorandur 8108(c) DoD and Full Continuing Appropri 2011, Public Law 112 40 U.S.C. 121(c); 10 U.S.C. 137; 51 U.S.C. 20113
Outcome v. Process	DFARS 225.7003 – Restrictions on Acquisition of Specialty Metals	17 CFR PARTS 240 ar Section 1502, Dodd F Conflict Minerals
Outcome v. process	Better Buying Power Guidance – Application of Earned Value Management	EVM Business System 252.234-7002
Outcome v. process	FAR 15.404-4/ 52.215-22 & 23 - Profit/Fee – Limitation on Pass Through	For DoD - Sec. 852 F NDAA; agencies other than D 866, FY 2009 NDAA
Outcome v. process; Oversight	FAR Part 15, Cost or Pricing Data DFARS Part 215 Cost or Pricing Data	Public Law 87-653, T Negotiations Act
Outcome v. process; Oversight; Maybe Competition	DFARS 252.215-7008 - Only One Offer	48CFR Part 205.203; P 405-70; Part 212.205,2 214.404-1, 408-1; Part 408; Part 216.505-70, 5 252.215-7007, 7008

OUTCOME versus PROCESS Materiality OVERSIGHT Audit Data Requirements Automation/Digitization	DFARS Clause 252.234-7001 (a), DFARS Clause 252.234-7002 (c), DFARS Subpart 234.201	DFARS Clause 252.2
Outcome versus Process; Constraints on Competition		Counterfeit Parts Sec NDAA
Outcome versus Process; Constraints on Competition		Specialty Metals 10 U
Outcome versus Process; Constraints on Competition		17 CFR PARTS 240 and Section 1502, Dodd Fr Conflict Minerals
Outcome versus Process; Oversight		FFATA Public Law 109-282
Outcome vs Process	Consolidated Small Business Plans	

Outcome vs. Process	Business systems clauses • DFARS 252.242-7005 • DFARS 252.215-7002 • DFARS 252.242-7004 • DFARS 252.242-7006 • DFARS 252.243-7002 • DFARS 252.244-7001 • DFARS 252.245-7003	
Outcome vs. Process	TINA	
Outcome vs. Process	Contractor Records Retention FAR 4.703.c.3 Requires retention of original records for a minimum of one year in order to validate imaging systems	
Outcome/Process	DFARS 212.301 and 226.104, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	P.L. 107-248, Sectior similar sections in su DoD appropriations a
Outcome/Process	DFARS 219.71, Pilot Mentor- Protégé Program	Section 831 of FY 19 (P.L 101-510)

Outcome/Process	DFARS 219.703, Qualified nonprofit agencies for the blind and other severely disabled	10 USC 2410d (P.L. 1
Outcome/Process & Constraints on Competition	DFARS PGI 216.403-1(1)(ii)(B); DFARS/PGI 215.403-1; FAR 15.403-4(b)(1)	10 U.S.C. 2306a and chapter 35
Outcome/Process & Constraints on Competition & Oversight & Standardization	DFARS 252.244-7001, Contractor Purchasing System Administration	DFARS: Sec 893 FY2C FAR: 40 USC 486 (c), 42 USC 2473(c)
Outcome/Process & Constraints on Competition & Oversight & Standardization	DFARS 252.242-7005, Contractor Business Systems	Sec 893 FY2011 NDA revised by Sec 816 o NDAA

OutCome/Process & Oversight & Standardization	DoD Memorandum (dated 28 Nov 2012) Contractor Manpower Reporting Clause	Memorandum: Secti c) of the DoD and Fu Continuing Appropri 2011, P.L. 112-10; FA (c), 10 USC 137, 51 U
Outcome/Process & Oversight & Standardization	DFARS 252.211-7003, Item Unique Identifier and Valuation	Unknown
Outcome/Process & Oversight & Standardization	DFARS 252.211-7008, Use of Government-assigned Serial Numbers	Unknown
Outcome/Process & Standardization & Commercial Preference	DFARS 252.225-7012, Preference for certain domestic commodities	10 USC 2533a, Berry Amendment
Oversight	DFARS 231.205-6 Compensation for personal services	
Oversight	DFARS 252.242-7005 – Contractor Business Systems	

Oversight	FAR 52.204-14 - Service Contract Reporting Requirements	
Oversight	Audits • FAR 52.215-2 • FAR 2.215-10 thru -13	
Oversight	Audits	
Oversight	Dual audit of Forward Pricing Rates by DCMA and DCAA. DCMA Instruction 130 and DCAA MRD 13-PSP-019(R) both provide for audit of contractor rates.	
Oversight & Standardization	DFARS subcontractor flowdown clauses and provisions other than for commercial items	N/A

Oversight (Audit)	None – Direct billing	
Oversight (Data Reqs)		50 USC App Section 2 Defense Production A Industrial base surve defense contractors
Oversight (data requirements) and Outcome v. Process	FAR 52.204-10 – Reporting executive compensation and first-tier subcontract awards	
Oversight and Outcome v. process	Better Buying Power Guidance – Truth in Negotiation Act Requirements	

OVERSIGHT Audit Data Requirements Automation/Digitization	DFARS 242.7000	
Oversight; Outcome v. process	DFARS 252.217-7028 - Over and Above Work	The app fou fre ove exc
Oversight; Outcome versus Process	IR&D Reporting DFARS 231.205-18(c)	Cor con for Adc
Oversight; Outcome vs. Process	EVMS	The DFA

Redundancy	FAR 52.219-9 - Small Business Subcontracting Plan	Par Sub con The in li infc infc ann
Redundancy		10 USC 2330a
Standardization & Outcome/Process	DFARS 217.170	10 USC 2306b
Standardization & Outcome/Process	FAR 15.403-4(a)(1)	10 USC 2306a
Standardization & Outcome/Process	DFARS 215.403-1(c)(4)(A)(1)	Section 817 of the FYC (Public Law (P.L.) 107-

Standardization & Outcome/Process & Oversight	See DFARS Case 2009-D038 for extensive list of affected DFARS sections.	Section 893 of the FY1 111-383) as subseque Section 816 of the FY1 112-81)
Standardization & Outcome/Process & Oversight	FAR 15.408 Table 15-2	10 USC 2306 and 41 U 254

Uniformity	FAR 52.222-41 – Service Contract Act of 1965
Uniformity	Certs & reps concerning contractor integrity • FAR 52.209-5 • FAR 52.209-6 • FAR 52.209-7 • DFARS 252.209-7993 • Numerous other agency- specific provisions
Uniformity (redundancy)	DFARS 252.227-7030 - Technical Data -- Withholding of Payment
Uniformity (Redundancy); Constraints on competition	FAR 15.403-1 Cost or Pricing Data – Adequate price competition

Uniformity, Standardization, Consistency	Earned Value FAR 52.234-4 DFARS 252.234-7002	
Uniformity, Standardization, Consistency; Outcome versus Process; Oversight	Small Business Plans FAR Part 19	
Uniformity, Standardization; Consistency		TINA 10 USC 2306(a)
Uniformity; Oversight	DFARS 252.215-7009 – Proposal Adequacy Checklist	Th re Th pr in
Uniformity; perhaps Outcome vs. Process	DFAR 217.7404-3 – Undefinitized Contract Actions	Th pa pe “q de an tre a l pr

Start LMI
Start Rockwell
Collins
Start ACEC
Start NDIA
Start Boeing
Start AIA

Start BAE

[if any)	Burden or Inefficiency
?-81 (FY12 by Section 833 NDAA); Section 14 NDAA)	Counterfeit Electronic Parts Avoidance (CEPA): While not yet implemented in regulation, there are two FAR Cases and two DFARS Cases in preparation to address the CEPA legislation. Nevertheless, various DoD offices have attempted to contractually impose pre-regulatory CEPA measures, such as customized Statement of Work (SOW) requirements, special clauses, or invocation of various related standards (e.g., SAE) that have not yet been fully endorsed by industry, which increases costs and may even conflict with imminent regulation designed to properly address CEPA concerns. In addition, the proposed rule for DFARS Case 2012-D055 anticipates linking the oversight of a contractor's CEPA plans and processes to its Purchasing System, despite no such requirement in the legislation. Effective incentives usually involve both "carrot and stick" attributes, yet the lack of any "safe harbor" provisions for contractors with customer- approved CEPA plans and processes significantly undermines contractor incentive for investing in robust CEPA meaures.
	Publication of Proposed and Interim Rules without discussion with the regulated public
	There have been frequent inconsistencies with the Government's application of regulations surrounding the acquisition of commercial items. These inconsistencies are occurring in two distinct areas. In the first instance, Contracting Officers are disregarding the existing sales data for a base commercial product and are interpreting the lack of sales data for a product which meets the "of a type" designation as used to define "commercial items" in FAR 2.101, as a negation of the commerciality of the subject product and thereby requiring the contractor to produce cost or pricing data. In the second instance there are inconsistencies in how the Government interprets what qualifies as reasonable supporting detail required to be provided to support a price reasonableness determination of a commercial item.

Suppliers of goods/services that meet the FAR definition of a commercial item are being required to either certify cost or pricing data & comply with cost accounting standards or are being required to disclose other than certified cost data
• Significantly delaying the acquisition process
• Shrinking pool of suppliers
• Otherwise reducing private investment in USG goods and services An item that meets the definition but is "of-a-type" or "offered for sale or lease" is singled out for stricter treatment and is more apt to be subject to greater cost scrutiny.

Privately funded IR&D allows the contractor to assert limited rights in the resulting item, process, or subpart thereof and the association data are increasingly at risk of use by competitors due to DoD data rights policies. The government is not acknowledging the doctrine of segregability and demands GPR at a minimum.
• Significant deterrent to commercial company participation in DoD market

ı in this row. This regulation requires commercial item determinations for acquisitions over $1 million and adds another bureaucratic hurdle to the contracting process. It adds time and processes to the acquisition process and evidences that DoD does not trust the judgment of its contracting officers.

ɔlic Law 102- Commercial Items:
Over the years since FAR Part 12 was initially revised to replace Part 11 for Acquisition of Commercial Items following the Federal Acquisition Streamlining Act of 1994 (FASA), there has been a steady accretion of USG/DoD-unique clauses and requirements that have been levied upon contracts and subcontracts for commercial items and services. As a result, the cost of commercial goods rises for those companies willing to accept such terms, or has progressively discouraged commercial firms from doing business with the USD/DoD. These additional unique clauses and requirements also impose adverse restrictions on intellectual property and/or data rights provisions. (See also Lines 21 - 32 that specify additional clauses that impose undue burdens in flowdowns for commercial subcontractors.)

n 802 of the ·136) e FY2007	Quality Oversight: MIL-Q-9858 was identified in the Coopers & Lybrand/TASC study of DoD premium costs as the number one driver of cost premium. While much was done to migrate from MIL-unique to industry standards such as ISO-9000-based contract requirements, various DCMA actions have seriously undermined the potential cost savings. These include: (a) partially duplicating the oversight of contractor quality management systems (QMS) conducted by ISO accredited third-party auditors, sometimes invoking the "Inspection" clause in a way that apparently overrides the "Higher Level Contract Quality Requirements" clause; (b) invoking the "Inspection" clause to impose increased Critical Safety Item (CSI) oversight on parts not identified in the contract clause listing under DFARS 252.209-7010; and/or (c) issuing various "internal" DCMA Instructions (DCMA-INST) and "Q- TIP" memos that affect contractor operations.	
: a Contractor /down the ause in nercial items pecified in a ow (lines 22 uses that are ntracts for using adverse urdens and - Cite.	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	
	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products. In addition, providers of commercial items and CDMA items that are not COTS have to estimate specialty metals content just for DoD and for no other purpose; and to flow down this requirement for similarly situated subcontractors, to ensure compliance. Making downstream users (at many tiers) of specialty metals, especially in commerical or commercial derivative items, responsible for compliance with this requirement is burdensome and inefficient.	

10-181, as 853 of tions 831 and	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products. Did this one also come from the Commission on Wartime Contracting Recommendation?
ection 108	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.
111-84	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.
108-375	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.
	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.

The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.

The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.

The clause listed requires subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products. This clause affords commercial items a slight improvement over limited rights and permits the government to negotiate with the commercial item seller to arrive at "special license rights."

The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.

ing See comments in line 21. In addition, this requires compliance with requirements already regulated for commercial aircraft by the FAA. Does FAA have an MOU with DoD re commercial aircraft flying on behalf of DoD? Why would DoD rely on FAA oversight of a modified version of a commercial aircraft?

ublic fication 2008	Streamlined methods for acquisition of commercial items established by FASA/Clinger Cohen Act have been significantly impeded by subsequent policy and rulemaking. Recent policies and rulemakings have restricted the ability for commercial companies to do business with the Government. The DoD is focused on obtaining cost data rather than performing price analysis. The access to the commercial marketplace is being constrained. This provision adds additional hoops and more time to incusion of potentially less expensive part, components and subsystems to non-commercial major weapon systems.
!321	Commercial items are no longer presumed to be developed at private expense. For commercial items, extensive validation of proprietary data restrictions is now required. In practice, the equivalent of "validation" is achieved through commercial item determinations at the front end of a procurement.
212, and act price (or gineer services of designs, specifications project's ion cost.	Creates an undue burden by virtue of limiting total cost and fee to 6% of the anticipated cost of construction. Given uncertainties surrounding cost of construction, etcetera, the cap is generally applied before certain facts are fully known/understood and serves to possibly cause firm profits/returns to fall below those deemed reasonable. Imposition of this fee limitation does not fully consider a firm's underlying cost of capital (or, stated another way, the opportunity lost in not directing its resources/assets in a different manner). It is noted that the firm must make the same investments in people and assets to perform any "covered" effort without necessarily yielding returns consistent with that investment. Often the costs for designing an infrastructure project, with extensive security, resilience, sustainability, and physical challenges, have no relationship to the construction costs of the project. Construction costs are sensitive to material and equipment costs that do not impact A/E services costs. Often the final construction costs are much higher than the estimated costs used to establish the limitation, due to unknowns, schedule delays, or even errors in the government estimates. Rarely is the A/E contract cost ceiling proportionally
) NDAA, P.L	Contractors are required to input performance and integrity information to a public database. This is a new burden imposed upon commercial companies doing business with the Government. Government must approve business systems and can withhold payments for disapproved systems. This rule has required considerable increase in compliance staff based upon new criteria the Government has called out. The 5% and 10% withholdings are excessive and punitive in nature and do not signify the teamed approach that the Government emphasizes.

Performance Based Payments now require identification of actual costs incurred relative to performance events. This is not feasible for many commercial firms. Contractor is now required to have a Government approved accounting system that will track cost to individual contracts.

ne Contracting? Current provision does not guarantee adequate safety and security for contractor personnel by either US or ISAF forces. As such if due to security concerns contractor's personnel are forced to withdraw, such withdrawal is considered a contractual breach of contractor's obligations.

203 Section As part of the Dodd-Frank Act, contractors are required to guarantee that the source of supply for certain metals and minerals is not the Democratic Republic of the Congo (DRC). The standard to "guarantee" through all levels of the supply chain is too far reaching a standard.
Contractors will not be able to achieve this standard without significant infrastructure expense, and even then may not be able to ensure at all levels. The SEC has estimated initial compliance costs of
$3B-$4B as end users of the four conflict minerals attempt to find out whether their raw materials originated at mines run by warlords in the DRC or its nine adjoining neighbors. While this is clearly a humanitarian effort to block those repressive regimes from financing their operations by way of this action, the standard is too high and cannot be met in a cost-efficient manner.

: the
:ontracting
112-81
n to Dec.31, The 23-year-old CSP has been extended multiple times but is due to expire at the end of 2014, and DoD is not supporting an extension or permanence. The CSP, which allows for a single subcontracting plan each fiscal year instead of individual plans for each contract, allows participating contractors to work more strategically with small businesses and to put more resources into training and mentoring them and finding opportunities for them across our company. CSP was originally created at DoD's request to eliminate unnecessary administrative activity, and a 2010 report estimated that the program saves DoD more than $45M annually. The cost to our company alone if it were to expire is estimated at $2M+ annually. Letting the CSP expire would go against the grain of reforming the contracting process and finding savings.

Although in general industry applauds the application of business financial techniques, there are a number of issues that remain with the implementation of this guidance that have a substantial cost impact to contractors.

er Reporting n: Section l Year ations Act 2-10;	Manpower reporting is required from contractors. Subcontractors must report directly to prime contractors. Prime Contractors must report data directly to a Government database. Requires additional compliance burdens on contractors.
ıd 249b – Frank Act,	Although both provisions are not completely within the purview of DPAP, the identified provisions add significant costs to the contractor's products and greatly increases the time it takes to deliver a product to meet the needs of the Government.
Clause	There remains room for improvement and cost reduction in the EVM process. By modification of DFAR EVM requirements overall program savings have been shown.
FY 2007 For DoD - Sec. A	The objective of the FAR was to set standards by which the gov't and the contractor can agree on a fair and reasonable profit/fee. The gov't shouldn't be charged excessively, but the contractor needs to be able to make enough profit to stay in business. However, while the FAR does not prohibit fee or profit on travel or material, we are increasingly encountering interpretations that say these are excessive pass through charges.
ruth In	Contractors have to provide detailed cost or pricing data (COPD) for all non-excepted proposed contract actions above the $700K threshold. This is also the threshold for COPD analysis of proposed subcontractors. Increases to the threshold have not kept pace with inflation, and we believe the threshold is now too low.
art 208.404, 09; Part 215.3, 403, 506; Part	After submitting a proposal as part of a competitive procurement where it turns out that only a single proposal is received, a contractor is forced to expend the time and effort to turn their bid into either a TINA compliant bid or at the minimum to substantiate that their pricing is fair and reasonable. Since at the time of bidding the contractor is acting under the belief that it is participating in a competitive procurement, there should be an automatic assumption that their bid is fair and reasonable and the exceptions provided under DFAR 215.403-1(c)(a) are met. This requirement puts an undue cost burden on the contractor and significantly delays the government's ability to make an award.

2234-7001	DFARS Clause 252.234-7001 (a) and subsections establish the requirement to present evidence of an approved EVMS or a plan to achieve approval of the contractor's EVMS during the proposal stage for contracts that exceed $50M. In addition, if the contract value is less than $50M, the contractor shall provide a matrix to demonstrate how program management practices comply with the EVMS requirements defined by the contract clauses. DFARS Clause 252.234- 7002 (c) reinforces the threshold of $50M identified in 252.234-7001. Contracts exceeding this threshold are required to use an EVMS determined acceptable by the Cognizant Federal Agency (CFA). Contracts less than $50M does not require a formal determination of compliance of the contractor's EVMS to the ANSI/EIA-748 EVMS Guidelines. DFARS Subpart 234.201 specifically identifies the $20M
c. 818 FY '12	Requires Contractor liability for any counterfeit parts that are identified in delivered products. Imposes additional compliance burdens on contractors and related cost risk.
SC 2533(b)	Delivered items shall include only specialty metals that are melted or produced in the U.S. or a qualifying country. Requires separate supply chain for Government contracts from commercial contracts.
d 249b – ank Act,	This provision adds significant costs to the contractor's products and greatly increases the time it takes to deliver a product to meet the needs of the Government.
	Contractors are required to report first-tier subcontract awards over $25,000. This is a significant burden on contractors and there does not appear to be any benefit derived by doing this.
	Continue and expand DOD Pilot program for Consolidated Small Business Plans

	Uneven application of vague substantive standards yield disproportionate, suspect determinations • Undue time & expense fixing sound, reliable systems • More process, controls, paperwork to ensure compliance
	Costly to invest time, resources (personnel and IT) to maintain compliance; delays negotiations throughout supply chain and contract award • Most offerors disclose current, accurate, and complete data without threat of defective pricing/FCA
	Government and Industry spend countless hours maintaining paper records.
ı 8021 and ıbsequent acts	Indian Incentive Funding is authorized on an annual basis which reulsts in claims above the annual funding level being deferred to subsequent years--this affects the number of new agreements that contractors will pursue on an annual basis.
91 NDAA	The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial practices. Some areas are not as beneficial as others but, overall, the program has a significant impact to small business utilization on a number of different levels (e.g., HBCU participation). Administration of the program is costly and prohibits significant industry participation due to lack of meaningful evidence demonstrating a positive return on investment.

.02-396)	If these agencies have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under 41 USC 85, they are eligible to participate in the program per 10 USC 2410d and Section 9077 of P.L. 102-396 and similar sections in subsequent DoD appropriations acts. Subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal. Current DFARS regulations, DoD policy on prime contractor use of AbilityOne entities, and the AbilityOne Committee criteria are inconsistent in terms of defining a "certified" and "approved" AbilityOne entity that is eligible to be counted as a small business subcontractor under the Small Business Subcontracting Program. This results in costly and unnecessary use of contractor limited resources to validate AbilityOne entities prior to subcontract award, and rework after subcontract award.
41 U.S.C.	Requests for Past Contracts Cost/Profit Data: Certain buying centers in the Services have recently begun levying a requirement in RFPs or during negotiations to provide several years of raw accounting records of past contracts (including Firm Fixed Price contracts excluded from FAR 52.215-2 "Audit and Records - Negotiation") at both prime and subcontract levels. In some cases these requirements include requests for ETC/EAC for incomplete contracts, and profit data, in apparent contravention of FAR 15.402(b)(2). In some cases such requests are characterized as "Data Other Than Certified Cost or Pricing Data" needed in addition to already-provided Certified COPD to establish price reasonableness, despite DFARS/PGI 215.403-1 prohibition of such practice. In some cases the request is characterized as required per "new OSD policy" or "Better Buying Power". In some cases the raw accounting data is characterized as COPD based on PGI 216.403-1(1)(ii)(B) despite the fact that it includes obsolete rates and factors, in contrast to current data already submitted for those cost elements.
)11 NDAA; , 10 USC 137,	DFARS Contractor Purchasing System Review (CPSR) criteria 252.244- 7001 and FAR Part 44.3 CPSR criteria include differences, overlap and/or redundancy (e.g., FAR "major weakness or sufficient informaiton" vs. DFARS "significant deficiency"), and generally, their joint application heighten the risk of inefficient and confusing Govt/industry reviews.
ıA, as f FY2012	The burden or inefficiency of DFARS 252.244-7001 is further complicated by this clause which provides for a monetary withhold upon a finding of a deficiency (vs. FAR CPSR, which does not).

on 8108(ll Year ations Act AR: 40 USC 121 JSC 20113	Contractor Manpower Reporting subcontract data requirements are "hidden" in clauses and/or Statements of Work in lieu of more visible CDRLs. Also, FAR 52.204-14 Service Contract Reporting is required for agencies other than DoD (confusing and questionable as to why they are different). The subcontractor reporting requirements significantly differ in these two controlling clauses. Also, Contractor Manpower subcontractors may enter required reporting data directly into a Govt database; Service Contract subcontractors are required to report data to the prime contractor and may not enter reporting data into a Govt database.
	Drives subcontractor cost in part marking and engineering drawings in some instances, beyond reason. Subcontractors find it dificult to understand and comply with this requirement.
	Drives cost into part making and engineering drawings; cannot comply as relates to commerical items as it is inconsistent with commercial practice.

In contracts over the SAT, this requires commercial items provided as either end products or components contain only textile with fibers manufactured in the US. Commercial manufacturers do not track this; and sources also change. The requirement is inconsistent with commercial practices.

This new regulations adds to the list of expressly unallowable costs. The type of fringe benefit cost is known to be unallowable, by making it ‘expressly’ unallowable industry must now unnecessarily add a new level of oversight and auditing procedures

As a result of this rule with just a single deficiency contractor’s cash flows can be upset by hundreds of millions of dollars. The withholding upsets competition by limiting contractor’s ability to stretch itself to participate on new opportunities. In order to ensure that a contractor’s systems do not fail, contractors will be forced to over-invest in their systems. Thus incurring significant costs which will ultimately be passed on to the Government through indirect rates. The 5% and 10% withholdings are excessive and punitive in nature and do not signify the teamed approach that the Government emphasizes.

A new clause issued in January 2014 creates an additional manpower reporting requirement for contractors, for broad data that is of questionable value add. The definition of reportable actions goes beyond “service” contracts and includes the “service” elements of supply contracts. Contractors do not always segregate costs in a manner that permits an easy identification of these different charges, so significant analysis may be required to create a valid answer. The cost of gathering the information is far greater than government estimates, if the data is to be accurate. (Question: Was this clause issued without the required publication and comment notices and period? It seemed to just appear suddenly.)

As carried out currently by DCAA, DCMA, Price Fighters, etc., routinely and unacceptably impedes proposal negotiation and contract awards

- Time & expense responding to extraordinary and at times conflicting auditor inquiries
- Unsupported Contractor Purchasing Systems Review findings and defective pricing allegations resulting from misapplication of TINA requirements on subcontractors.

Audits are inefficient and unnecessarily difficult when undertaken years after the fact when, for example, key personnel may be unavailable and records are difficult to locate. Also, some audits never get completed, for example, accounting systems, which results in repeated contract proposal audits because there is no systemic validation.
Contract closeout process is delayed for years because final indirect rates have not been negotiated going back 7-8 years. These create undue risks on funding sources for both contractor and government.

Duplicative, wasteful effort by both agencies and contractor. Also, audits may occur at different times and to different standards.

Subcontractor flowdown clauses and provisions for noncommercial items should be subject to systemic validation that flowdown is necessary and if so, are necessary and as least burdensome as possible. Current review on a case-by-case basis when new/revised clauses are considered is inadequate to address the overall cumulative effect of potential burdens or inefficiencies.

DCAA, in order to better utilize their auditor time resources and improve productivity, in the past allowed contractors with approved accounting and billing systems the ability to directly submit invoices for payment. This permission has been rescinded, but we are unaware of any issues DCAA had with companies directly billing vs. submitting to the DCAA auditor for review and approval prior to submission.

2155 - Act
ys of

Contractors can be required to gather a host of broad data and report back in a prescribed format, to specific questions. The government's estimate of the time to complete these surveys – 14 hours total – is extremely unrealistic, assuming valid and accurate information is to be provided. In our experience, completing certain surveys has required hundreds of man-hours. Information required is generally not present in one location, and the data needs to be gathered by site, which often is not a logical division of how the contractor is organized or performs work and means the contractor has to provide multiple responses to one survey request. Some information required
is technical, some is manufacturing related, some is financial. In a two- year period, one element of a company received about 13 such separate surveys; several needed to be completed by individual sites, and we estimate that we spent about 3000 man-hours completing them, at considerable expense. In addition, the questions are often vague and broad, the responses are of questionable value for the cost incurred to provide them, and by the time the information is gathered and analyzed it is already outdated. The data is a poor indicator of our industrial readiness posture.

All subcontract/purchase order awards greater than $25K under a federally funded contract have to be entered by the contractor into a government database (the FFATA Subaward Reporting System, or FSRS) for transparency. However, the $25K threshold is too low, and this requires a multitude of entries, all of which take time and cost money in labor resources, for a questionable value add. The requirement allows public transparency but does not enhance the quality of products provided to the warfighter, and it increases the expense of those products as contractors incur additional expense to comply with the reporting requirements.

Customers are frequently requesting proposals that included multiple variations of quantities/deliveries. This often requires Cost and Pricing Data (CoPD) from contractors and subcontractors for quantities that likely will not occur and situations that would realistically never be required. This results in added cost in terms of both labor and schedule at both supplier and contractor level.

Procedures relating to business system administration need to be reviewed and revised to state specific timeframes for actions on the government side in order to avoid imposing undue financial hardships on contractors. For example, while each contractor action/response under the clause at DFARS 252.242-7005 cites a specific number of days to reply or complete the action, timeframes for actions by the government (audit completion/Contracting Officer review/system approval decision) are unspecified. Delays can cause severe cash flow difficulties for some contractors.

e current provision requires that the Government "Verify that the proposed corrective action is ropriate". This step often requires a complete stop in all work while a Government inspector is nd and able to visit the site. When done in connection with an aircraft overhaul this obligation quently results in significant work stoppages as multiple issues can be uncovered during the rhaul process. This results in a significant delay in the contractor's ability to deliver and an essive cost incurrence by the Government.

ntractors are required to report IR&D projects over $50,000 to a DoD website. Requires ntractors to disclose proprietary information and there is no apparent cost savings to contractors doing this.
ds additional reporting requirements on the contractor.

ere remains room for improvement and cost reduction in the EVM process. By modification of AR EVM requirements overall program savings have been shown.

tially implements PL 95-507 and, along with the instructions of the eSRS (electronic
contracting Reporting System), require that large business contractors report to SBA and the
tracting agency utilization of small business subcontractors on contracts containing this clause.
report is due twice yearly. While we concur that the information needs to be reported, annual
eu of twice yearly reporting would reduce the administrative cost of collecting and reporting the
rmation (and would also reduce the time spent by government persons reviewing the
rmation). One company's estimate is a savings of $20,000 per year by eliminating the semi-
ual submission.

Requires an annual report to Congress reflecting an inventory of services contracting to include the direct labor hours expended by contractor services employees for the fiscal year and the associated cost. Similar to Small Business reporting, an eCMR (electronic Contractor Manpower Reporting system) has been developed to collect this information. The data reported is already available to DoD by way of contract report deliverables and invoices/cost vouchers required under those contracts. One company estimates savings of $13,000 per year.

Multiyear (MYP) Contracting:
Significant MYP contracting savings are often foregone due to perception that price must reflect some set % savings over annual procurement.

TINA Threshold:
The $700K TINA threshold drives significant administrative cost and time for often a relatively insignificant percentage of a transaction. How much does record-keeping, proposal prep, audit, factfinding and certfication sweep cost both the contractor and USG to conduct a TINA compliant transaction on a $700K procurement?

03 NDAA
314)

TINA Waivers:
DoD's authority to waive TINA is significantly curtailed compared to civilian agencies (FAR). With the added criterion that a waiver can only be granted when the product or service cannot otherwise be obtained without the waiver, essentially any contractor who can comply with TINA must do so, even when other available data at the PCO's disposal is sufficient to establish a reasonable price.

l1 NDAA (PL ntly revised by l2 NDAA (PL	Contractor Business Systems Rule: The heightened oversight associated with the Contractor Business Systems rule grew out of recommendations from the Commission on Wartime Contracting (CWC), in response to billions of dollars of lost/unaccounted funds in Iraq and Afghanistan. Yet Congress applied added oversight/compliance burdens to contractors and contracts where no indication of any similar problems exist, thus effectively driving up cost for all defense contractors in order to address the failings of a narrow subset of defense contractors examined by the CWC.
I.S.C.	Proposal Requirements: The strict adherence to FAR 15.408 Table 15-2 undermines the very foundation of the FAR pricing policy in 15.402(a)(3) which states contracting officers shall not obtain more data than is necessary. The impact of FAR 15.408 Table 15-2 spans from continual updates of prime and supplier proposals as requirements change, to the elimination of a parametric approach utilizing historical cost data as a basis for proposing future costs. The types of proposal efforts impacted range from follow-on production and spares to industrial participation offset. One example of this impact is the FAR requirement for a consolidated priced summary of all materials and services by item, source, quantity, and price at the prime and subcontractor level. This consolidation drives the requirement for obtaining additional compliant supplier proposals and preparing Cost/Price Analysis reports (CAR/PAR), which significantly increases proposal cycle time and cost.

This is not an objection to the Act per se but to how acquisition offices have been applying the Act. When appropriately applied, there is significant compliance requirements and infrastructure required but at a level that is acceptable. Increasingly often, however, DoD procurement agencies are invoking the SCA in inappropriate acquisition circumstances (i.e., product and manufacturing environments and efforts being performed predominantly by professional and administrative employees) and imposing an implementation compliance cost on contractors that is not appropriate. Numerous contracting agencies are invoking the requirements of the Act and a wage determination in acquisitions for supplies, products, and manufactured items that are not consistent with the "services" definition. The SCA is being applied to acquisitions that are clearly under the Walsh Healy Public Contracts purview and/or are being performed by non-services employees appropriate for an exception (professional/administrative), but the agencies are not willing to grant the exception. Numerous spares contracts where we as the OEM are "building product" are being classified as "services" by buying commands and being made subject to the SCA

Management … administrative time & expense
- Data-gathering necessary to ensure vigilance, accuracy
- Multiple requirements, sometimes duplicative
- Deterrence for small & non-traditional contractors, unaccustomed to such requirements

The withholding of ten percent (10%) of the contract value is overly excessive and punitive for what is or can be a minor oversight on the part of the contractor. The Government maintains sufficient avenues to ensure a contractor complies with its contractual obligations with respect to technical data including but not limited to: CPAR Reporting; FAR 52.233-1, Disputes; 52.249-8, Termination for Default; etc. The aforementioned provisions provide the Government with the ability to ensure the contractor's performance without negatively affecting the contractor's cash flow.

The whole objective of bidding competitively is that the gov't will obtain the lowest pricing the first time. When a contractor submits a competitive bid, it has already put its best foot forward because it does not know who else will bid. The requiring of cost or pricing data after the fact is a cost driver that seems unnecessary. The FAR does not require the submittal of cost or pricing data but allows for it.

Improper implementation of full blown EVMS requirements for subcontractors on FFP type contracts is costly, non-value added

Requires individual subcontracting plans for each contract over $650,000. Requires individual tracking and reporting.

Continuous updates of proposals are required. Waiver authority for price analysis versus cost analysis is rarely used. Requires excessive proposal preparation cost where pricing techniques could suffice. Disincentivizes cost reduction initiatives for follow on production.

ıe checklist itself is not the problem; the problem is that some DoD agencies and services are quiring their own versions of the checklist, adding or modifying requirements as they deem fit. ıis practice creates additional work for offerors who have already adjusted their proposal ocesses to comply with the DFARS requirement, thus impacting the turnaround times and creasing the

ıis regulation limits the time of a UCA to 180 days and provides a penalty (the stop of progress ıyments) if the contractor does not submit a timely qualified proposal, but it does not impose any enalty on the gov't for failing to negotiate the action in a timely manner. In addition, the term ualified proposal" is not defined, and the proposal can be rejected for any reason. The delay of finitization or rejection of a proposal delays the contractor's ability to obtaining funding to 75% ıd changes the risk/reward position. This can become costly to administer, the contract is eated as a cost-type regardless of the intended contract type, the contractor may have to accept lower fee than expected, and the gov't can be put in a position of needing to consider an overrun ior to definitization.

Recommendation/Solution

DoD should consider issuing cease and desist guidance with respect to attempts to impose CEPA requirements in advance of regulations that are still in the development/review phase. Further, since the legislation does not specifically require DOD to tie oversight of a contractor's CEPA processes to one of the six Contractor Business Systems, DoD's proposed rule to link what is fundamentally a quality requirement to a Contractor's Purchasing System should be reconsidered. Introducing the potential of partial interim payment withholds on top of remediation liability only adds potential harm to the industrial base while adding no effective incentive for compliance. Finally, to truly incentivize contractors to develop robust CEPA plans that are submitted for customer approval, DoD should urge Congress to reconsider the addition of a "safe harbor" provision for contractors holding customer-approved CEPA plans and processes.

Regulations that are designed to promote the public interest should be developed with involvement from stakeholders – public and private. Instill within the regulatory process clear opportunities for consultation and collaboration before proposed or interim rules are published. See E.O. 13563

• Redacted invoices should be sufficient documentation for supporting data
• There needs to be more specificity in what constitutes supporting data for modification of commercial items
• Update and utilize the DOD Commercial Item Handbook to ensure the consistent application of requirements.

• De-link the FAR definition of commercial item from the requirement for price reasonableness; Honor the definition of "commercial item."

• Strengthen statutory protection for technical data pertaining to privately funded development to clearly prohibit DoD from using competitive evaluation process as means to extract more than commercial or limited rights in data and software
• Lifecycle acquisition costs can be considered in evaluations, but the effect of a GPR or unlimited license to commercial IP should not be considered
• Reverse Sec 815 changes, deferred ordering ought to extend only to data developed under (vs. used in) the contract

We recommend the deletion of DFAR 212.102(a)(C) and the associated provision in the PGI.

Review all USG-unique and DoD-unique requirements applicable to commercial items, such as domestic sourcing requirements, intellectual property rights, Item Unique Identification (IUID), services manpower reporting, numerous FAR and DFARS clauses, etc., to determine whether the Govt's preference for use of commercial items is better served by eliminating such barriers to commercial firms doing business with DoD. Also consider the costs versus benefits of such requirements on other than commercial items, particularly in a constrained budget environment. Seek legislative relief, perhaps in tandem with measures such as BRAC requests, to enable a more cost- efficient military with improved access to commercial technology.

Longstanding FAR "Inspection" clauses should be reviewed to clarify their relationship to more recent legislative/regulatory measures such as Higher Level Contract Quality Requirements and Critical Safety Item requirements. Consider specifically amending FAR such that the HLCQR clause takes precedence over normal "Inspection" clause in matters pertaining to oversight of a contractor's QMS, or at least issuing OSD-level guidance to that effect, to avoid duplication/overlap of system audit functions. Similarly consider amending DFARS or issuing supplemental OSD-level guidance stipulating that DCMA may not invoke the "Inspection" clause to increase oversight for subsequently-designated CSI parts on a post-award basis without equitable adjustment. Also consider implementing a method for public review and comment on "internal" policy guidance changes prior to issuance.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements. Applicability is complex and costly. If the purpose is to assure the viability of US sources, the Government should subsidize them directly, if and when necessary.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements. **In addition, make it simple and clear that all commercial items are exempt.**

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.

See comments in line 21. Also, provide blanket exemption for any supplies already regulated by other agencies (e.g., commercial aircraft regulated by the FAA).

The DoD must establish procedures for acquiring commercial items that are consistent with congressional intent. This includes but is not limited to the definition of commercial items.

1) Restore the presumption of development at private expense for all commercial items.
2) Prohibit the flow down of technical data statutes and associated government unique requirements to subcontracts for commercial items.

The optimum solution would be to assess the factors impacting on the specific A/E services required and arrive at a fair and reasonable cost, independent of estimated construction cost. An alternative might be to have different limitation ranges based on factors impacting design. Another component would be to adjust the limitation as the costs of construction become clearer, with a final adjustment after the construction costs are known. At a minimum, I believe that we should seize this opportunity as a means to re-visit the basis upon which the 6% limitation was determined/calculated.

Add an exemption for commercial item contracts and subcontracts.

Establish a risk-based approach based upon the size and complexity of Government contracts and Contractor's record of successful past performance. The rule should be modified to limit the Contracting Officer's application of the withhold to only those contracts which are affected by the deficiencies.

Repeal recent FAR and DFARS change under Case 2011-D045.

We recommend the implementation of the guidance changes identified in the AIA letters to RDML Kalathas dated 1 March 2013 and
M. Murphy dated 23 December 2013 be initiated.

Ideally, repeal the requirement. Otherwise, change the standard to an honest “best efforts” with a prohibition on outright procurement from these sources.

Support permanence, or an extension of at least three years of the CSP program

We recommend the implementation of the guidance changes identified in the AIA letter to R. Ginman dated 1 September 2011 be initiated.

1) Add an exemption for commercial item contracts and subcontracts.
2) Make data reporting requirements the same for both subcontractors and prime contractors.

We recommend the deletion of these provisions.

- Streamline EVM compliance criteria and review procedures
- Implement tiered EVM capability with explicit incentives for improvement

Clarify that profit on travel and or material is allowable

Raise the TINA threshold to $1M or greater. This will save all parties time in analysis and enhance the speed to contract, facilitating a quicker placement of actions on contract without significantly impacting the govt's ability to get a fair and reasonable price.

We recommend that this provision be removed and DFAR 215.371-3 be clarified that in the case of a competitive procurement where a singled offer is received, such offer shall be considered as fair and reasonable.

OSD (AT&L) should ensure that EVMS requirements only be placed on contracts where the work scope is appropriate, and that significant additional requirements (i.e., very low levels of detail only be used when absolutely necessary). EVMS should not only be based on a pre stated dollar value and contract type, but based on risk and contract scope and that scope should be primarily development related.
Exclusion should be put in place for scope that is time and material, IDIQ, and effort that is primarily full rate production driven.
In addition, the dollar threshold for application should be re- evaluated. It is believed that the dollar threshold could be increased from the present $20M (EVMS required) and $50 million (approved system required) dollars so that limited government resources can focus on the true large development programs that are the largest

Establish a risk-based approach and safe harbors for contractors that establish anti-counterfeiting practices. See ARWG package dated March 31, 2014.

Repeal the statute in its entirety.

We recommend the deletion of these provisions.

Add an exemption for commercial item contracts and subcontracts.

DOD's Pilot program benefits small businesses and provides significant opportunities – ex mentoring, business opportunities By streamlining the administration of small business plans, thousands of hours managing and reporting are saved.

• Establish clear, reasonable materiality thresholds … ensure any “significant” deficiency points to issue that renders system as a whole unreliable
• Develop outcome-based criteria to assess system acceptability (e.g., test for actual defects vs. ambiguous, theoretical system defects)
• Require that a system may only be disapproved following a “system” audit (v. proposal audit)
• Tighten criteria against which systems are determined to be acceptable (e.g., not helpful that cost estimating system may be deemed significantly deficient if it does not merely “[r]equire use of appropriate analytical methods” without further clarification)

• Create new exemption where CO may rely on prior prices negotiated under TINA
• Alternatively, create new exemption for follow-on production proposals of the same or similar item
• Raise applicability threshold to $5M

Eliminate the requirement to hold records for the purpose of validating the imaging system.

Pursue a legislative proposal to authorize multi-year funding and increase the $15M annual funding cap.

(1) Ensure legislative relevance within the current environment (DoD budget cuts, etc.) to ensure progressive success of the program. (2) Pursue a legislative or regulatory proposal requiring reporting/administration or overall requirements outlining what constitutes a "return on investment." E.g., at the conclusion, mentor firm will demonstrate significant return on investment by partinering with small businesses on small business set-aside proposals for Govt customer for procurement equal to or greater than cost of agreement.

(1) Pursue regulatory change to conform DFARS regulation to 10 USC 2410d criteria for contractor utilization of AbilityOne entities on USG contracts. (2) Pursue legislative change to recognize AbilityOne entities as "small business concerns."

Extensive time and effort is expended discussing and/or meeting such 'over and above' data submission requirements in conjunction with definitization of individual transactions. This exacerbates already costly TINA/FAR compliance interpretations, such as cited above. The PGI fosters confusion regarding the definition of cost or pricing data. Despite the intent of the 30 Aug 2010 FAR rule (and subsequent conforming DFARS changes) to clarify the definition of cost or pricing data, some confusion obviously remains. DFARS/PGI and, to a lesser extent, FAR should be reviewed to ensure consistent, minimized requirements for certified cost or pricing data, and to clarify that when certified cost or pricing data are required, the lesser alternative of "other than certified cost or pricing data" is superfluous and should not be requested. PGI should also be reviewed for proper placement of guidance -- e.g., why is an unclear 'reminder' on what constitutes cost or pricing data appended to Part 216 on proper use of FPIF contract type?

Establish one comprehensive CPSR criteria and process.

Establish one comprehensive CPSR criteria and process.

FAR and DFARS data reporting requirements for subcontractors should be the same. Also, clearly state that commercial items and CI subcontractors are exempt from these requirements.

Review and make changes for subcontractor requirements to make it easier to understand and administer; exempt commercial items.

Serial numbers are currently provided at the end item/airplane level. Recommend limiting scope to end item/ airplane level, at least for commercial items. Limit scope

This should be limited to textile end items--clothing, carpet, etc. Imposing this on use of fibers in non-textile end items (cars, airplanes, tanks, etc.) does not serve the purpose of protecting US fabric makers efficiently (in terms of quantity of fibers incorporated in these items).

We recommend the deletion of DFAR 231.205-6(m)(1).

The rule should be modified to limit the Contracting Officer's application of the withhold to only those contracts which are affected by the deficiencies. In addition, in order to avoid the excessive/punitive nature of the withholds, the rates of withhold should be reduced to 1% per system with a 3% cap.

Recommend this provision and its reporting requirement either be eliminated, or be applicable only to true services contracts and not extend to supply contracts or the “services element” of supply contracts

• Eliminate or substantially reduce auditing for follow-on multi-year procurements
• Mandate risk-based auditing, sampling of material costs below TINA threshold
• Sensible materiality threshold, below which costs/price reasonableness will be assessed on a sampling basis
• Establish uniform, transparent practices for analysis of systems and data required by FAR.

DCAA make better use of risk assessment and process improvement to eliminate time spent on low-risk situations … streamline audit cycle.
DCMA/DCAA championing an audit/contract closeout process that is set to a specific timeline for completion otherwise constructive acceptance should be considered.

DoD to clarify responsibilities to eliminate redundant actions.

Identify subcontractor flowdown clauses and establish a validation process for periodic systematic review. Recommend an omnibus legiative proposal to review/eliminate burdensome or inefficient subcontractor flowdown clauses from the statutory requirements and review/eliminate burdensome or inefficient subcontractor flowdown clauses that are not based on statutory requirements.

DCAA should again grant the ability to direct bill.

Eliminate the practice of having contractors complete these detailed surveys. If the government needs the data, have government officials perform a more cost-reasonable market analysis in some other manner.

Either eliminate the requirement or significantly raise the reporting requirement above $25K.

We recommend a modification of the TINA reporting requirements for supplier thresholds from $700K to a percentage of the Bill of Material.

These sections should include binding timeframes for government action.

We recommend that the DFAR provision be re-written such that the contractor can proceed with the over and above work provided it has:
(i) Certified to the CO/ACO that the work is necessary;
(ii) Documented the nature of the work; and
(iii) The cumulative value of such over and above work does not exceed 75% of the original contract value.

Discontinue the requirement.

•Streamline EVM compliance criteria and review procedures
• Implement tiered EVM capability with explicit incentives for improvement

Reduce reporting requirement to annual versus twice annual.

Eliminate duplicate reporting requirement in favor of eCMR reporting.

Pursue amendment to 10 USC 2306b to define savings criteria as a set $ amount (subject to auto-adjust for inflation) or a percentage of the transaction amount, whichever is lower -- e.g., "$10M or 10%, whichever is lower".

Conduct a cost/benefit and/or pareto analysis on current TINA threshold and pursue one-time adjustment to reflect a new higher threshold (subject to periodic adjustment for inflation) that minimizes administrative effort while still protecting the Govt's interest.

Especially in view of the buildup of the DoD Acquisition Workforce, Congress should now restore the discretion and waiver authority that DoD HCA's held before the FY03 NDAA was enacted, and that their civilian agency counterparts retain.

Ask Congress to redefine "covered contract" to address only those transactions where a demonstrated need for such added oversight burden may be warranted, namely contracts for services in Iraq and Afghanistan, rather than all CAS-covered defense contracts.

Pursue a rewrite of FAR 15.408 Table 15-2 section to eliminate those specific requirements and provide language to allow contracting officers to accept historical data, projections from historical data, and other cost or pricing data as a compliant proposal format. The specific requirements of this FAR section are not a part of public law. Also review the DFARS Proposal Adequacy Checklist for conformance to any resultant changes and eliminate DCMA and DCAA proposal checklist variants.

The SCA should be applied only to true services contracts, to protect true service employees. The SCA is not appropriate in most (if any) production environments where the contractor is providing a product, regardless of how contracted or what stage of the product lifecycle. If the end deliverable is a product, it is not a service.

• Create simple, uniform set of certs & reps that all offerors – large or small – must complete
• Clarify that certs & reps required only for business unit and principals proposed to perform the work (vs. entire corporate enterprise)
• Limit certs & reps only as to conduct in connection with performing federal government contracts/subcontracts

We recommend the deletion of this provision particularly on efforts where there is a hardware deliverable.
Short of an overall deletion of the provision, our alternate recommendation would be to reduce the withholding to one percent (1%). This would maintain the nature of a withholding, but alleviate the punitive nature of the withholding.

Remove the allowance of providing cost or pricing data when a competition has been held, regardless of how many submittals were received.

Focus requests for Earned Value Management Systems data on only that level of data needed to effect decision making. Ensure EVMS flow down to subcontractors fully considers contract type, with sensitivities and approvals required to implement on FFP subcontracts. Guidance should focus on reporting thresholds, and formats truly needed to provide customers with value added cost and schedule information.

Allow all small business plans to be performed under a single comprehensive plan.

Perform a study to consider increasing the threshold for cost and pricing data or add an exemption for price analysis on follow-on production buys.

DoD must require its own agencies and services to comply with this DFARS provision without creating added or modified requirements.

There need to be time limits and penalties for both parties in order to be effective. There should also be a clear definition of a “qualified proposal.”

No.	Categorization	Specific Regulatory Citation	Statutory Citation (if any)	Burden or Inefficiency	Recommendation/Solution
1	Constraints on Competition; Outcome vs. Process	See DFARS Cases 2012-D055 and 2014-D005, and FAR Cases 2012-032 and 2013-002 for numerous regulations affected.	Section 818 of PL112-81 (FY12 NDAA), as amended by Section 833 of PL112-239 (FY13 NDAA); Section 803 of PL113-66 (FY14 NDAA)	Counterfeit Electronic Parts Avoidance (CEPA): While not yet implemented in regulation, there are two FAR Cases and two DFARS Cases in preparation to address the CEPA legislation. Nevertheless, various DoD offices have attempted to contractually impose pre-regulatory CEPA measures, such as customized Statement of Work (SOW) requirements, special clauses, or invocation of various related standards (e.g., SAE) that have not yet been fully endorsed by industry, which increases costs and may even conflict with imminent regulation designed to properly address CEPA concerns. In addition, the proposed rule for DFARS Case 2012-D055 anticipates linking the oversight of a contractor's CEPA plans and processes to its Purchasing System, despite no such requirement in the legislation. Effective incentives usually involve both "carrot and stick" attributes, yet the lack of any "safe harbor" provisions for contractors with customer- approved CEPA plans and processes significantly undermines contractor incentive for investing in robust CEPA measures.	DoD should consider issuing cease and desist guidance with respect to attempts to impose CEPA requirements in advance of regulations that are still in the development/review phase. Further, since the legislation does not specifically require DOD to tie oversight of a contractor's CEPA processes to one of the six Contractor Business Systems, DoD's proposed rule to link what is fundamentally a quality requirement to a Contractor's Purchasing System should be reconsidered. Introducing the potential of partial interim payment withholds on top of remediation liability only adds potential harm to the industrial base while adding no effective incentive for compliance. Finally, to truly incentivize contractors to develop robust CEPA plans that are submitted for customer approval, DoD should urge Congress to reconsider the addition of a "safe harbor" provision for contractors holding customer-approved CEPA plans and processes.
2	All	FAR 1.3; Executive Order 13563		Publication of Proposed and Interim Rules without discussion with the regulated public	Regulations that are designed to promote the public interest should be developed with involvement from stakeholders – public and private. Instill within the regulatory process clear opportunities for consultation and collaboration before proposed or interim rules are published. See E.O. 13563
3	Commercial Preference	Better Buying Power Guidance – Procurement of Commercial Items based on FAR Part 12		There have been frequent inconsistencies with the Government's application of regulations surrounding the acquisition of commercial items. These inconsistencies are occurring in two distinct areas. In the first instance, Contracting Officers are disregarding the existing sales data for a base commercial product and are interpreting the lack of sales data for a product which meets the "of a type" designation as used to define "commercial items" in FAR 2.101, as a negation of the commerciality of the subject product and thereby requiring the contractor to produce cost or pricing data. In the second instance there are inconsistencies in how the Government interprets what qualifies as reasonable supporting detail required to be provided to support a price reasonableness determination of a commercial item.	• Redacted invoices should be sufficient documentation for supporting data • There needs to be more specificity in what constitutes supporting data for modification of commercial items • Update and utilize the DOD Commercial Item Handbook to ensure the consistent application of requirements.

4	Commercial Preference	Commerciality COs must determine commerciality of major systems, subsystems, and components thereof after concluding (1) item meets definition of FAR 2.101, and (2) CO has sufficient data to establish price reasonableness DFARS 212.102(a)(c)	FASA 10 USC 2533a/b, Public Law 102-355 (FASA), et. al.	Suppliers of goods/services that meet the FAR definition of a commercial item are being required to either certify cost or pricing data & comply with cost accounting standards or are being required to disclose other than certified cost data • Significantly delaying the acquisition process • Shrinking pool of suppliers • Otherwise reducing private investment in USG goods and services. An item that meets the definition but is "of-a-type" or "offered for sale or lease" is singled out for stricter treatment and is more apt to be subject to greater cost scrutiny.	• De-link the FAR definition of commercial item from the requirement for price reasonableness; Honor the definition of "commercial item."
5	Commercial Preference	Rights in technical data and software • Section 815, FY12 NDAA • DoD Program Manager's Guide to Open System Architecture	10 U.S.C. 2320	Privately funded IR&D allows the contractor to assert limited rights in the resulting item, process, or subpart or parts thereof to which the investment pertains and the associated data are increasingly at risk of use by competitors due to DoD data rights policies. The government is not acknowledging the doctrine of segregability and demands GPR at a minimum. • Significant deterrent to commercial company participation in DoD market	• Strengthen statutory protection for technical data pertaining to privately funded development to clearly prohibit DoD from using competitive evaluation process as means to extract more than commercial or limited rights in data and software • Lifecycle acquisition costs can be considered in evaluations, but the effect of a GPR or unlimited license to commercial IP should not be considered • Reverse Sec 815 changes, deferred ordering ought to extend only to data developed under (vs. used in) the contract
6	Commercial Preference	DFARS 212.102 Acquisition of Commercial Items - General		This regulation requires commercial item determinations for acquisitions over $1 million and adds another bureaucratic hurdle to the contracting process. It adds time and processes to the acquisition process and evidences that DoD does not trust the judgment of its contracting officers.	We recommend the deletion of DFAR 212.102(a)(C) and the associated provision in the PGI.
7	Commercial preference Constraints on Competition	FAR Part 12, DFARS Part 212, and related Part 52/252 clauses and flowdowns	10 USC 2533a/b, Public Law 102-355 (FASA), et. al.	Commercial Items: Over the years since FAR Part 12 was initially revised to replace Part 11 for Acquisition of Commercial Items according to the Federal Acquisition Streamlining Act of 1994 (FASA), there have been a steady increase of USG/DoD-unique clauses and requirements that have been levied upon contracts and subcontracts for commercial items and services. As a result, the cost of commercial goods has risen for those companies willing to accept such terms, or has discouraged commercial firms from doing business with the USG/DoD. These additional clauses and requirements also infer adverse intellectual property and/or data rights provisions will be applied.	Review all USG-unique and DoD-unique requirements applicable to commercial items, such as domestic sourcing requirements, intellectual property rights, Item Unique Identification (IUID), services manpower reporting, numerous FAR and DFARS clauses, etc., to determine whether the Govt's preference for use of commercial items is better served by eliminating such barriers to commercial firms doing business with DoD. Also consider the costs versus benefits of such requirements on other than commercial items, particularly in a constrained budget environment. Seek legislative relief, perhaps in tandem with measures such as BRAC requests, to enable a more cost-efficient military with improved access to commercial technology.

8	Commercial preference Constraints on Competition Oversight	FAR 46.2, .3, & .4 and related FAR 52.246-x clauses, including FAR 52.246-2 and FAR 52.246-11; also DFARS 209.270 and 252.209-7010	Among others: Section 802 of the FY2004 NDAA (PL108-136) and Section 130 of the FY2007 NDAA (PL109-364)	Quality Oversight: MIL-Q-9858 was identified in the Coopers & Lybrand/TASC study of DoD premium costs as the number one driver of cost premium. While much was done to migrate from MIL-unique to industry standards such as ISO-9000-based contract requirements, various DCMA actions have seriously undermined the potential cost savings. These include: (a) partially duplicating the oversight of contractor quality management systems (QMS) conducted by ISO accredited third-party auditors, sometimes invoking the "Inspection" clause in a way that apparently overrides the "Higher Level Contract Quality Requirements" clause; (b) invoking the "Inspection" clause to impose increased Critical Safety Item (CSI) oversight on parts not identified in the contract clause listing under DFARS 252.209-7010; and/or (c) issuing various "internal" DCMA Instructions (DCMA-INST) and "Q- TIP" memos that affect contractor operations.	Longstanding FAR "Inspection" clauses should be reviewed to clarify their relationship to more recent legislative/regulatory measures such as Higher Level Contract Quality Requirements and Critical Safety Item requirements. Consider specifically amending FAR such that the HLCQR clause takes precedence over normal "Inspection" clause in matters pertaining to oversight of a contractor's QMS, or at least issuing OSD-level guidance to that effect, to avoid duplication/overlap of system audit functions. Similarly consider amending DFARS or issuing supplemental OSD-level guidance stipulating that DCMA may not invoke the "Inspection" clause to increase oversight for subsequently-designated CSI parts on a post-award basis without equitable adjustment. Also consider implementing a method for public review and comment on "internal" policy guidance changes prior to issuance.
9	Commercial preference & Flowdown	DFARS 252.244-7000, Subcontracts for Commercial Items (June 2013 version)	This clause states that a Contractor is not required to flowdown the terms of any DFARS clause in subcontracts for commercial items at any tier unless so specified in a particular clause. Below are listed clauses that are flowed down in subcontracts for commercial items, causing adverse impacts and undue burdens and costs.	The clauses listed require subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products. In addition, providers of commercial items and commercial derivative military aircraft (CDMA) items that are not COTS have to estimate specialty metals content just for DoD and for no other purpose; and to flow down this requirement for similarly situated subcontractors, to ensure compliance. Making downstream users (at many tiers) of specialty metals, especially in commercial or commercial derivative items, responsible for compliance with this requirement is burdensome and inefficient.	Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements.
10	Commercial preference Flowdown	DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals	10 USC 2533b	The clause(s) listed require(s) subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	See #9 above.

11	Flowdown Outcome vs Process	DFARS 252.225-7039, Contractors Performing Private Security FunctionsC22:F22	Section 862 of P.L. 110-181, as amended by section 853 of P.L. 110-417 and sections 831 and 832 of P.L. 111-383	See #10 Above	See #9 above
12	Commercial preference Flowdown Constraints on Competition	DFARS 252.236-7013, Requirement for Competition Opportunity for American Steel Producers and Manufacturers	P.L. 110-329, Div E, Section 108	See #10 above	See #9 above
13	Flowdown	DFARS 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel	Section 1038 of P.L. 111-84	See #10 above	See #9 above
14	Flowdown	DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees	Section 1092 of P.L. 108-375	See #10 above	See #9 above
15	Commercial preference Flowdown Oversight	DFARS 252.247-7023, Transportation of Supplies by Sea	10 USC 2631	See #10 above	Recommend an omnibus legislative proposal to review statutory requirements and where there is little, if any, current rational basis, eliminate burdensome or inefficient subcontractor commercial item flowdown clauses. Also recommend review and elimination of burdensome or inefficient subcontractor commercial item flowdown clauses that are not based on statutory requirements. **In addition, make it simple and clear that all commercial items are exempt.**

16	Commercial preference Oversight	DFARS 252.247-7024, Notification of Transportation of Supplies by Sea	10 USC 2631	See #10 above	See # 9 above
17	Flowdown Commercial preference Constraints on Competition	DFARS 252.223-7008, Prohibition of Hexavalent Chromium	N/A	See #10 above	See #9 above
18	Commercial preference Flowdown Constraints on Competition	DFARS 252.227-7015, Technical Data--Commercial Items	FASA & 10 USC 2321	The clause listed requires subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	See # 9 above
19	Commercial preference Flowdown Constraints on Competition	DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data	10 USC 2321	The clause listed requires subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.	See #9 above
20	Commercial Preference Flowdown Standardization for Efficiency	DFARS 252.246-7003, Notification of Potential Safety Issues		See comments in line #10 above. In addition, this requires compliance with requirements already regulated for commercial aircraft by the FAA.	See comments in line #9. Also, provide blanket exemption for any supplies already regulated by other agencies (e.g., commercial aircraft regulated by the FAA) and establish a means of taking advantage of relevant safety information collected and monitored by other government agencies.

21	Commercial Preference; Constraints on Competition	DFARS 212.270 Major Weapon Systems as Commercial Items	Commercial Items Public Law 103-355, 10 U.S.C. 2379 Codification of Sec. 815 of the FY 2008 NDAA	Streamlined methods for acquisition of commercial items established by FASA/Clinger Cohen Act have been significantly impeded by subsequent policy and rulemaking. Recent policies and rulemakings have restricted the ability for commercial companies to do business with the Government. The DoD is focused on obtaining cost data rather than performing price analysis. The access to the commercial marketplace is being constrained.	Recommend repeal of 10 USC 2379. In the alternative, the DoD must establish procedures for acquiring commercial items that are consistent with congressional intent. This includes but is not limited to the definition of commercial items.
22	Commercial Preference; Constraints on Competition;	DFARS 227.74 Validation of Rights in Technical Data	Data Rights 10 USC 2321	Commercial items are no longer presumed to be developed at private expense. For commercial items, extensive validation of proprietary data restrictions is now required for companies who, from 1995 to recently, believed themselves to be largely exempt from the process.	1) Restore the presumption of development at private expense for all commercial items. 2) Prohibit the flow down of technical data statutes and associated government unique requirements to subcontracts for commercial items.
23	Constraints on Competition Outcome vs. Process	DFARS 236.606-70 Statutory fee limitation.	(a) 10 U.S.C. 4540, 7212, and 9540 limit the contract price (or fee) for architect-engineer services for the preparation of designs, plans, drawings, and specifications to six percent of the project's estimated construction cost.	Creates an undue burden by virtue of limiting total cost and fee to 6% of the anticipated cost of construction. Given uncertainties surrounding cost of construction, etcetera, the cap is generally applied before certain facts are fully known/understood and serves to possibly cause firm profits/returns to fall below those deemed reasonable. Imposition of this fee limitation does not fully consider a firm's underlying cost of capital (or, stated another way, the opportunity lost in not directing its resources/assets in a different manner). It is noted that the firm must make the same investments in people and assets to perform any "covered" effort without necessarily yielding returns consistent with that investment. Often the costs for designing an infrastructure project, with extensive security, resilience, sustainability, and physical challenges, have no relationship to the construction costs of the project. Construction costs are sensitive to material and equipment costs that do not impact A/E services costs. Often the final construction costs are much higher than the estimated costs used to establish the limitation, due to unknowns, schedule delays, or even errors in the government estimates. Rarely is the A/E contract cost ceiling proportionally adjusted.	The optimum solution would be to assess the factors impacting on the specific A/E services required and arrive at a fair and reasonable cost, independent of estimated construction cost. An alternative might be to have different limitation ranges based on factors impacting design. Another component would be to adjust the limitation as the costs of construction become clearer, with a final adjustment after the construction costs are known. At a minimum, I believe that we should seize this opportunity as a means to re-visit the basis upon which the 6% limitation was determined/calculated.

24	Miscellaneous - Transparency	FAR 52.203-13;52.209- 7; 52.209-8; 52.212-5; 52.213-4; 52.244-6 Federal Awardee Performance and Integrity Situation	FAPIIS, SEC 872 FY09 NDAA, P.L 110-417	Contractors are required to input performance and integrity information to a public database. This is a new burden imposed upon commercial companies doing business with the Government.	Add an exemption for commercial item contracts and subcontracts.
25	Outcome vs. Process	DFARS 242.7000 Contractor Business Systems	Sec. 893 of the FY 2011 NDAA as amended by Sec. 816 of the FY 2012 NDAA Contractor Business Systems	Government must approve business systems and can withhold payments for disapproved systems. This rule has required considerable increase in compliance staff based upon new criteria the Government has called out. The 5% and 10% withholdings are excessive and punitive in nature and do not signify the teamed approach that the Government emphasizes.	Establish a risk-based approach based upon the size and complexity of Government contracts and Contractor's record of successful past performance. The rule should be modified to limit the Contracting Officer's application of the withhold to only those contracts which are affected by the deficiencies. Also see #60 and #67.
26	Constraints on Competition	FAR Part 32 Performance Based Payments		Performance Based Payments now require identification of actual costs incurred relative to performance events. This is not feasible for many commercial firms. Contractor is now required to have a Government approved accounting system that will track cost to individual contracts.	Repeal recent FAR and DFARS change under Case 2011-D045.
27	Misc. Outcome vs. Process	DFARS 252.225-7040 - Contractor Personnel Supporting a Force Deployed Outside the US		Current provision does not guarantee adequate safety and security for contractor personnel by either US or ISAF forces. As such if due to security concerns contractor's personnel are forced to withdraw, such withdrawal is considered a contractual breach of contractor's obligations.	We recommend the implementation of the guidance changes identified in the AIA letters to RDML Kalathas dated 1 March 2013 and M. Murphy dated 23 December 2013 be initiated.

28	Misc. - Outcome vs. Process	17 CFR Parts 240 and 249b Conflict Minerals	Dodd-Frank, P.L. 111-203 Section 1502.	As part of the Dodd-Frank Act, contractors are required to guarantee that the source of supply for certain metals and minerals is not the Democratic Republic of the Congo (DRC). The standard to "guarantee" through all levels of the supply chain is too far reaching a standard. Contractors will not be able to achieve this standard without significant infrastructure expense, and even then may not be able to ensure at all levels. The SEC has estimated initial compliance costs of $3B-$4B as end users of the four conflict minerals attempt to find out whether their raw materials originated at mines run by warlords in the DRC or its nine adjoining neighbors. While this is clearly a humanitarian effort to block those repressive regimes from financing their operations by way of this action, the standard is too high and cannot be met in a cost-efficient manner.	Ideally, repeal the requirement. Otherwise, change the standard to an honest "best efforts" with a prohibition on outright procurement from these sources.
29	Standardization for Efficiency	Comprehensive Subcontracting Plan (CSP) Program	The last extension of the Comprehensive Subcontracting Plan Program - P.L. 112-81 extended the program to Dec.31, 2014.	The 23-year-old CSP has been extended multiple times but is due to expire at the end of 2014, and DoD is not supporting an extension or permanence. The CSP, which allows for a single subcontracting plan each fiscal year instead of individual plans for each contract, allows participating contractors to work more strategically with small businesses and to put more resources into training and mentoring them and finding opportunities for them across our company. CSP was originally created at DoD's request to eliminate unnecessary administrative activity, and a 2010 report estimated that the program saves DoD more than $45M annually. The cost to our company alone if it were to expire is estimated at $2M+ annually. Letting the CSP expire would go against the grain of reforming the contracting process and finding savings.	Support permanence, or an extension of at least three years of the CSP program
30	Constraints on Competition	Better Buying Power Guidance - Cash Flow Tool for Evaluating Alternative Financing Arrangements," dated April 27, 2011		Although in general industry applauds the application of business financial techniques, there are a number of issues that remain with the implementation of this guidance that have a substantial cost impact to contractors.	We recommend the implementation of the guidance changes identified in the AIA letter to R. Ginman dated 1 September 2011 be initiated.

31	Miscellaneous; Outcome vs Process Oversight Commercial Item Preference	FAR 52.204-14 Contractor Manpower Reporting Clause Memorandum	Section 8108(c) DoD and Full Year Continuing Appropriations Act 2011, Public Law 112-10; 40 U.S.C. 121(c); 10 U.S.C. 137; 51 U.S.C. 20113	Manpower reporting is required from contractors. Subcontractors must report directly to prime contractors. Prime Contractors must report data directly to a Government database. Requires additional compliance burdens on contractors.	1) Add an exemption for commercial item contracts and subcontracts. 2) Make data reporting requirements the same for both subcontractors and prime contractors.
32	Outcome v. process	Better Buying Power Guidance – Earned Value Management Business System DFARS 252.234-7001, 7002		There remains room for improvement and cost reduction in the EVM process. By modification of DFAR EVM requirements overall program savings have been shown.	• Streamline EVM compliance criteria and review procedures • Implement tiered EVM capability with explicit incentives for improvement
33	Outcome v. process	FAR 15.404-4/ 52.215-22 & 23 - Profit/Fee – Limitation on Pass Through	For DoD - Sec. 852 FY 2007 NDAA; For agencies other than DoD - Sec. 866, FY 2009 NDAA	The objective of the FAR was to set standards by which the gov't and the contractor can agree on a fair and reasonable profit/fee. The gov't shouldn't be charged excessively, but the contractor needs to be able to make enough profit to stay in business. However, while the FAR does not prohibit fee or profit on travel or material, we are increasingly encountering interpretations that say these are excessive pass through charges.	Clarify that profit on travel and or material is allowable
34	Outcome v. process Oversight	FAR Part 15, Cost or Pricing Data DFARS Part 215 Cost or Pricing Data	Public Law 87-653, Truth In Negotiations Act	Contractors have to provide detailed cost or pricing data (COPD) for all non-excepted proposed contract actions above the $700K threshold. This is also the threshold for COPD analysis of proposed subcontractors. Increases to the threshold have not kept pace with inflation, and we believe the threshold is now too low. The original exceptions to required submission of COPD - timesavers - have been eroded.	Raise the TINA threshold substantially and reassess it annually. This will save all parties time in analysis and enhance the speed to contract, facilitating a quicker placement of actions on contract without significantly impacting the govt's ability to get a fair and reasonable price. Restore exemptions to be more equitable.

35	Outcome v. process Constraints on Competition	DFARS 252.215-7008 - Only One Offer Affects: 48CFR Part 205.203; Part 208.404, 405-70; Part 212.205,209; Part 214.404-1, 408-1; Part 215.3, 403, 408; Part 216.505-70, 506; Part 252.215-7007, 7008		After submitting a proposal as part of a competitive procurement where it turns out that only a single proposal is received, a contractor is forced to expend the time and effort to turn their bid into either a TINA compliant bid or at the minimum to substantiate that their pricing is fair and reasonable. Since at the time of bidding the contractor is acting under the belief that it is participating in a competitive procurement, there should be an automatic assumption that their bid is fair and reasonable and the exceptions provided under DFAR 215.403-1(c)(a) are met. This requirement puts an undue cost burden on the contractor and significantly delays the government's ability to make an award.	We recommend that this provision be removed and DFAR 215.371-3 be clarified that in the case of a competitive procurement where a singled offer is received, such offer shall be considered as fair and reasonable.
36	Outcome vs. Process Materiality Standardization	DFARS Clause 252.234-7001 (a), DFARS Clause 252.234-7002 (c), DFARS Subpart 234.201		DFARS Clause 252.234-7001 (a) and subsections establish the requirement to present evidence of an approved EVMS or a plan to achieve approval of the contractor's EVMS during the proposal stage for contracts that exceed $50M. In addition, if the contract value is less than $50M, the contractor shall provide a matrix to demonstrate how program management practices comply with the EVMS requirements defined by the contract clauses. DFARS Clause 252.234- 7002 (c) reinforces the threshold of $50M identified in 252.234-7001. Contracts exceeding this threshold are required to use an EVMS determined acceptable by the Cognizant Federal Agency (CFA). Contracts less than $50M does not require a formal determination of compliance of the contractor's EVMS to the ANSI/EIA-748 EVMS Guidelines. DFARS Subpart 234.201 specifically identifies the $20M.	OSD (AT&L) should ensure that EVMS requirements only be placed on contracts where the work scope is appropriate, and that significant additional requirements (i.e., very low levels of detail only be used when absolutely necessary). EVMS should not only be based on a pre stated dollar value and contract type, but based on risk and contract scope and that scope should be primarily development related. Exclusion should be put in place for scope that is time and material, IDIQ, and effort that is primarily full rate production driven. In addition, the dollar threshold for application should be re- evaluated. It is believed that the dollar threshold could be increased from the present $20M (EVMS required) and $50 million (approved system required) dollars so that limited government resources can focus on the true large development programs that are the largest share of the defense department budget. A possibility would be to contract for EVMS with "no criteria" where for effort under 50 million the government and the prime contractor would have flexibility to tailor the EVMS requirements so that only the management information necessary to run the program would be contracted for, not the current "one size fits all" mentality that is in place today. Significant savings could occur by reducing non value added surveillance, oversight, and reporting if this were adopted. OSD (AT&L) should not allow an integrated baseline review (IBR) to be delayed pending completion of an EVM compliance review. The purpose of the IBR is to assure the PM that the contractor has a plan in place that addresses the full scope of the contract.
37	Outcome versus Process; Constraints on Competition	DFARS 252.225.7008 - .7010 Specialty Metals	Specialty Metals 10 USC 2533(b)	Delivered items shall include only specialty metals that are melted or produced in the U.S. or a qualifying country. Requires separate supply chain for Government contracts from commercial contracts.	Repeal the statute in its entirety.

38	Miscellaneous - Transparency Outcome versus Process		FFATA Public Law 109-282 Federal Funding Accountability and Transparency Act	Contractors are required to report first-tier subcontract awards over $25,000. This is a significant burden on contractors and there does not appear to be any benefit derived by doing this.	Add an exemption for commercial item contracts and subcontracts. See #65.
39	Outcome vs. Process	Business systems clauses • DFARS 252.242-7005 • DFARS 252.215-7002 • DFARS 252.242-7004 • DFARS 252.242-7006 • DFARS 252.234-7002 • DFARS 252.244-7001 • DFARS 252.245-7003		Uneven application of vague substantive standards yield disproportionate, suspect determinations • Undue time & expense fixing sound, reliable systems • More process, controls, paperwork to ensure compliance	• Establish clear, reasonable materiality thresholds … ensure any “significant” deficiency points to issue that renders system as a whole unreliable • Develop outcome-based criteria to assess system acceptability (e.g., test for actual defects vs. ambiguous, theoretical system defects) • Require that a system may only be disapproved following a “system” audit (v. proposal audit) • Tighten criteria against which systems are determined to be acceptable (e.g., not helpful that cost estimating system may be deemed significantly deficient if it does not merely “[r]equire use of appropriate analytical methods” without further clarification)
40	Outcome vs. Process	FAR 4.703.c.3 Contractor Records Retention. Requires retention of original records for a minimum of one year in order to validate imaging systems		Government and Industry spend countless hours maintaining paper records.	Eliminate the requirement to hold records for the purpose of validating the imaging system.
41	Outcome vs.Process	DFARS 212.301 and 226.104, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	P.L. 107-248, Section 8021 and similar sections in subsequent DoD appropriations acts	Indian Incentive Funding is authorized on an annual basis which results in claims above the annual funding level being deferred to subsequent years--this affects the number of new agreements that contractors will pursue on an annual basis.	Pursue a legislative proposal to authorize multi-year funding and increase the $15M annual funding cap.

42	Outcome vs. Process	DFARS 219.71 Pilot Mentor- Protégé Program	Section 831 of FY 1991 NDAA (P.L 101-510)	The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial practices. Some areas are not as beneficial as others but, overall, the program has a significant impact to small business utilization on a number of different levels (e.g., HBCU participation). Administration of the program is costly and prohibits significant industry participation due to lack of meaningful evidence demonstrating a positive return on investment.	(1) Ensure legislative relevance within the current environment (DoD budget cuts, etc.) to ensure progressive success of the program. (2) Pursue a legislative or regulatory proposal requiring reporting/administration or overall requirements outlining what constitutes a "return on investment." E.g., at the conclusion, mentor firm will demonstrate significant return on investment by partnering with small businesses on small business set-aside proposals for Govt customer for procurement equal to or greater than cost of agreement.
43	Outcome vs Process	DFARS 219.703, Qualified nonprofit agencies for the blind and other severely disabled	10 USC 2410d (P.L. 102-396)	If these agencies have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under 41 USC 85, they are eligible to participate in the program per 10 USC 2410d and Section 9077 of P.L. 102-396 and similar sections in subsequent DoD appropriations acts. Subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal. Current DFARS regulations, DoD policy on prime contractor use of AbilityOne entities, and the AbilityOne Committee criteria are inconsistent in terms of defining a "certified" and "approved" AbilityOne entity that is eligible to be counted as a small business subcontractor under the Small Business Subcontracting Program. This results in costly and unnecessary use of contractor limited resources to validate AbilityOne entities prior to subcontract award, and rework after subcontract award.	(1) Pursue regulatory change to conform DFARS regulation to 10 USC 2410d criteria for contractor utilization of AbilityOne entities on USG contracts. (2) Pursue legislative change to recognize AbilityOne entities as "small business concerns."

44	Outcome vs. Process Constraints on Competition	DFARS PGI 216.403-1(1)(ii)(B); DFARS/PGI 215.403-1; FAR 15.403-4(b)(1) Cost or Pricing Data	10 U.S.C. 2306a and 41 U.S.C. chapter 35 Truth in Negotiations Act	Requests for Past Contracts Cost/Profit Data: Certain buying centers in the Services have recently begun levying a requirement in RFPs or during negotiations to provide several years of raw accounting records of past contracts (including Firm Fixed Price contracts excluded from FAR 52.215-2 "Audit and Records - Negotiation") at both prime and subcontract levels. In some cases these requirements include requests for ETC/EAC for incomplete contracts, and profit data, in apparent contravention of FAR 15.402(b)(2). In some cases such requests are characterized as "Data Other Than Certified Cost or Pricing Data" needed in addition to already-provided Certified COPD to establish price reasonableness, despite DFARS/PGI 215.403-1 prohibition of such practice. In some cases the request is characterized as required per "new OSD policy" or "Better Buying Power". In some cases the raw accounting data is characterized as COPD based on PGI 216.403-1(1)(ii)(B) despite the fact that it includes obsolete rates and factors, in contrast to current data already submitted for those cost elements.	Extensive time and effort is expended discussing and/or meeting such 'over and above' data submission requirements in conjunction with definitization of individual transactions. This exacerbates already costly TINA/FAR compliance interpretations, such as cited above. The PGI fosters confusion regarding the definition of cost or pricing data. Despite the intent of the 30 Aug 2010 FAR rule (and subsequent conforming DFARS changes) to clarify the definition of cost or pricing data, some confusion obviously remains. DFARS/PGI and, to a lesser extent, FAR should be reviewed to ensure consistent, minimized requirements for certified cost or pricing data, and to clarify that when certified cost or pricing data are required, the lesser alternative of "other than certified cost or pricing data" is superfluous and should not be requested. PGI should also be reviewed for proper placement of guidance -- e.g., why is an unclear 'reminder' on what constitutes cost or pricing data appended to Part 216 on proper use of FPIF contract type?
45	Outcome vs Process Constraints on Competition Oversight Standardization	DFARS 252.244-7001, Contractor Purchasing System Administration DFARS 252.242.7005 FAR 44.3	Sec 893 FY2011 NDAA	DFARS Contractor Purchasing System Review (CPSR) criteria 252.244- 7001 and FAR Part 44.3 CPSR criteria include differences, overlap and/or redundancy (e.g., FAR "major weakness or sufficient information" vs. DFARS "significant deficiency"), and generally, their joint application heighten the risk of inefficient and confusing Govt/industry reviews.	Establish one comprehensive CPSR criteria and process.
46	Outcome vs Process Constraints on Competition Oversight Standardization	DFARS 252.242-7005, Contractor Business Systems	Sec 893 FY2011 NDAA, as revised by Sec 816 of FY2012 NDAA	The burden or inefficiency of DFARS 252.244-7001 is further complicated by this clause which provides for a monetary withhold upon a finding of a deficiency (vs. FAR CPSR, which does not).	Establish one comprehensive CPSR criteria and process.

47	Outcome vs. Process Oversight Standardization	DoD Memorandum (dated 28 Nov 2012) Contractor Manpower Reporting Clause FAR 52.204-14	Memorandum: Section 8108(c) Continuing Appropriations Act 2011, P.L. 112-10; FAR: 40 USC 121(c), 10 USC 137, 51 USC 20113	Contractor Manpower Reporting subcontract data requirements are "hidden" in clauses and/or Statements of Work in lieu of more visible CDRLs. Also, FAR 52.204-14 Service Contract Reporting is required for agencies other than DoD (confusing and questionable as to why they are different). The subcontractor reporting requirements significantly differ in these two controlling clauses. Also, Contractor Manpower subcontractors may enter required reporting data directly into a Govt database; Service Contract subcontractors are required to report data to the prime contractor and may not enter reporting data into a Govt database.	FAR and DFARS data reporting requirements for subcontractors should be the same. Also, clearly state that commercial items and CI subcontractors are exempt from these requirements as are architect and engineering services.
48	Outcome vs. Process	DFARS 252.211-7003, Item Unique Identifier and Valuation		Drives subcontractor cost in part marking and engineering drawings in some instances, beyond reason. Subcontractors find it difficult to understand and comply with this requirement.	Review and make changes for subcontractor requirements to make it easier to understand and administer; exempt commercial items.
49	Outcome vs. Process	DFARS 252.211-7008 Use of Government-assigned Serial Numbers		Drives cost into part making and engineering drawings; cannot comply as relates to commercial items as it is inconsistent with commercial practice.	Serial numbers are currently provided at the end item/airplane level. Recommend limiting scope to end item/ airplane level, at least for commercial items. Limit scope
50	Outcome vs. Process Standardization Commercial Preference	DFARS 252.225-7012, Preference for certain domestic commodities	10 USC 2533a, Berry Amendment	In contracts over the SAT, this requires commercial items provided as either end products or components contain only textile with fibers manufactured in the US. Commercial manufacturers do not track this; and sources also change. The requirement is inconsistent with commercial practices.	This should be limited to textile end items--clothing, carpet, etc. Imposing this on use of fibers in non-textile end items (cars, airplanes, tanks, etc.) does not serve the purpose of protecting US fabric makers efficiently (in terms of quantity of fibers incorporated in these items).
51	Outcome vs. Process	DFARS 231.205-6 Compensation for personal services		This new regulations adds to the list of expressly unallowable costs. The type of fringe benefit cost is known to be unallowable, by making it 'expressly' unallowable industry must now unnecessarily add a new level of oversight and auditing procedures	We recommend the deletion of DFAR 231.205-6(m)(1).

52	Oversight - Transparency Outcome vs. Process	FAR 52.204-14 Service Contract Reporting Requirements	A new clause issued in January 2014 creates an additional manpower reporting requirement for contractors, for broad data that is of questionable value add. The definition of reportable actions goes beyond "service" contracts and includes the "service" elements of supply contracts. Contractors do not always segregate costs in a manner that permits an easy identification of these different charges, so significant analysis may be required to create a valid answer. The cost of gathering the information is far greater than government estimates, if the data is to be accurate.	Recommend this provision and its reporting requirement either be eliminated, or be applicable only to true services contracts and not extend to supply contracts or the "services element" of supply contracts. See #88, #89
53	Oversight Outcome vs. Process	Audits • FAR 52.215-2 • FAR 2.215-10 thru -13	As carried out currently by DCAA, DCMA, Price Fighters, etc., routinely and unacceptably impedes proposal negotiation and contract awards • Time & expense responding to extraordinary and at times conflicting auditor inquiries • Unsupported Contractor Purchasing Systems Review findings and defective pricing allegations resulting from misapplication of TINA requirements on subcontractors.	• Eliminate or substantially reduce auditing for follow-on multi-year procurements • Mandate risk-based auditing, sampling of material costs below TINA threshold • Sensible materiality threshold, below which costs/price reasonableness will be assessed on a sampling basis • Establish uniform, transparent practices for analysis of systems and data required by FAR.
54	Oversight Outcome vs. Process	Audits	Audits are inefficient and unnecessarily difficult when undertaken years after the fact when, for example, key personnel may be unavailable and records are difficult to locate. Also, some audits never get completed, for example, accounting systems, which results in repeated contract proposal audits because there is no systemic validation. Contract closeout process is delayed for years because final indirect rates have not been negotiated going back 7-8 years. These create undue risks on funding sources for both contractor and government.	DCAA make better use of risk assessment and process improvement to eliminate time spent on low-risk situations … streamline audit cycle. DCMA/DCAA championing an audit/contract closeout process that is set to a specific timeline for completion otherwise constructive acceptance should be considered.

55	Oversight Outcome vs. Process	Dual audit of Forward Pricing Rates by DCMA and DCAA. DCMA Instruction 130 and DCAA MRD 13-PSP-019(R) both provide for audit of contractor rates.		Duplicative effort by both agencies and contractor. Also, audits may occur at different times and to different standards.	DoD to clarify responsibilities to eliminate redundant actions.
56	Oversight Standardization	DFARS subcontractor flowdown clauses and provisions **other** than for commercial items	N/A	Subcontractor flowdown clauses and provisions for noncommercial items should be subject to systemic validation that flowdown is necessary and if so, are necessary and as least burdensome as possible. Current review on a case-by-case basis when new/revised clauses are considered is inadequate to address the overall cumulative effect of potential burdens or inefficiencies.	Identify subcontractor flowdown clauses and establish a validation process for periodic systematic review. Recommend an omnibus legislative proposal to review/eliminate burdensome or inefficient subcontractor flowdown clauses from the statutory requirements and review/eliminate burdensome or inefficient subcontractor flowdown clauses that are not based on statutory requirements.
57	Oversight (Audit)	None Direct billing		DCAA, in order to better utilize their auditor time resources and improve productivity, in the past allowed contractors with approved accounting and billing systems the ability to directly submit invoices for payment. This permission has been rescinded, but we are unaware of any issues DCAA had with companies directly billing vs. submitting to the DCAA auditor for review and approval prior to submission.	DCAA should again grant the ability to direct bill.

58	Oversight (Data Reqs)		50 USC App Section 2155 - Defense Production Act Industrial base surveys of defense contractors	Contractors can be required to gather a host of broad data and report back in a prescribed format, to specific questions. The government's estimate of the time to complete these surveys – 14 hours total – is extremely unrealistic, assuming valid and accurate information is to be provided. In our experience, completing certain surveys has required hundreds of man-hours. Information required is generally not present in one location, and the data needs to be gathered by site, which often is not a logical division of how the contractor is organized or performs work and means the contractor has to provide multiple responses to one survey request. Some information required is technical, some is manufacturing related, some is financial. In a two- year period, one element of a company received about 13 such separate surveys; several needed to be completed by individual sites, and we estimate that we spent about 3000 man-hours completing them, at considerable expense. In addition, the questions are often vague and broad, the responses are of questionable value for the cost incurred to provide them, and by the time the information is gathered and analyzed it is already outdated. The data is a poor indicator of our industrial readiness posture.	Eliminate the practice of having contractors complete these detailed surveys. If the government needs the data, have government officials perform a more cost-reasonable market analysis in some other manner.
59	Oversight (data requirements) Outcome vs Process	FAR 52.204-10 – Reporting executive compensation and first-tier subcontract awards	FFATA	All subcontract/purchase order awards greater than $25K under a federally funded contract have to be entered by the contractor into a government database (the FFATA Subaward Reporting System, or FSRS) for transparency. However, the $25K threshold is too low, and this requires a multitude of entries, all of which take time and cost money in labor resources, for a questionable value add. The requirement allows public transparency but does not enhance the quality of products provided to the warfighter, and it increases the expense of those products as contractors incur additional expense to comply with the reporting requirements.	Either eliminate the requirement or significantly raise the reporting requirement above $25K. Se #41.

60	Outcome vs. Process	DFARS 242.7000 and related clauses. Contractor Business Systems.	Section 893 FY 2011 NDAA as amended by Section 816 of FY 2012 NDAA Contractor Business Systems	Procedures relating to business system administration need to be reviewed and revised to state specific timeframes for actions on the government side in order to avoid imposing undue financial hardships on contractors. For example, while each contractor action/response under the clause at DFARS 252.242-7005 cites a specific number of days to reply or complete the action, timeframes for actions by the government (audit completion/Contracting Officer review/system approval decision) are unspecified. Delays can cause severe cash flow difficulties for some contractors.	These sections should include binding timeframes for government action. See #25, #67.
61	Outcome v. process	DFARS 252.217-7028 - Over and Above Work		The current provision requires that the Government "Verify that the proposed corrective action is appropriate". This step often requires a complete stop in all work while a Government inspector is found and able to visit the site. When done in connection with an aircraft overhaul this obligation frequently results in significant work stoppages as multiple issues can be uncovered during the overhaul process. This results in a significant delay in the contractor's ability to deliver and an excessive cost incurrence by the Government.	We recommend that the DFAR provision be re-written such that the contractor can proceed with the over and above work provided it has: (i) Certified to the CO/ACO that the work is necessary; (ii) Documented the nature of the work; and (iii) The cumulative value of such over and above work does not exceed 75% of the original contract value.
62	Oversight Outcome vs Process	DFARS 231.205-18 IR&D Reporting		Contractors are required to report IR&D projects over $50,000 to a DoD website. Requires contractors to disclose proprietary information and there is no apparent benefit to contractors for doing this. Despite changes made to the reporting requirements at the request of industry, concerns about the use and distribution of the information remain.	Discontinue the requirement.

63	Outcome vs. Process	FAR 52.219-9 Comprehensive Small Business Subcontracting Plan	Public Law 95-507	Partially implements PL 95-507 and, along with the instructions of the eSRS (electronic Subcontracting Reporting System), require that large business contractors report to SBA and the contracting agency utilization of small business subcontractors on contracts containing this clause. The report is due twice yearly. While we concur that the information needs to be reported, annual in lieu of twice yearly reporting would reduce the administrative cost of collecting and reporting the information (and would also reduce the time spent by government persons reviewing the information). One company's estimate is a savings of $20,000 per year by eliminating the semi- annual submission.	Reduce reporting requirement to annual versus twice annual.
64	Redundancy	Contractor Manpower Reporting	10 USC 2330a	Requires an annual report to Congress reflecting an inventory of services contracting to include the direct labor hours expended by contractor services employees for the fiscal year and the associated cost. Similar to Small Business reporting, an eCMR (electronic Contractor Manpower Reporting system) has been developed to collect this information. The data reported is already available to DoD by way of contract report deliverables and invoices/cost vouchers required under those contracts. One company estimates savings of $13,000 per year. Another company estimates the cost to comply as being between $10,000 and $20,000 per year.	Eliminate duplicate reporting requirement in favor of eCMR reporting.
65	Outcome vs Process	DFARS 217.170 Multiyear Contracting	10 USC 2306b	Multiyear (MYP) Contracting: Significant MYP contracting savings are often foregone due to perception that price must reflect some set % savings over annual procurement.	Pursue amendment to 10 USC 2306b to define savings criteria as a set $ amount (subject to auto-adjust for inflation) or a percentage of the transaction amount, whichever is lower -- e.g., "$10M or 10%, whichever is lower".
66	Outcome vs Process Constraints on Competition	DFARS 215.403-1(c)(4)(A)(1) TINA Waivers	Section 817 of the FY03 NDAA (Public Law (P.L.) 107-314)	TINA Waivers: DoD's authority to waive TINA is significantly curtailed compared to civilian agencies (FAR). With the added criterion that a waiver can only be granted when the product or service cannot otherwise be obtained without the waiver, essentially any contractor who can comply with TINA must do so, even when other available data at the PCO's disposal is sufficient to establish a reasonable price.	Especially in view of the buildup of the DoD Acquisition Workforce, Congress should now restore the discretion and waiver authority that DoD HCA's held before the FY03 NDAA was enacted, and that their civilian agency counterparts retain.

67	Outcome vs Process	See DFARS Case 2009-D038 for extensive list of affected DFARS sections.	Section 893 of the FY11 NDAA (PL 111-383) as subsequently revised by Section 816 of the FY12 NDAA (PL 112-81)	Contractor Business Systems Rule: The heightened oversight associated with the Contractor Business Systems rule grew out of recommendations from the Commission on Wartime Contracting (CWC), in response to billions of dollars of lost/unaccounted funds in Iraq and Afghanistan. Yet Congress applied added oversight/compliance burdens to contractors and contracts where no indication of any similar problems exist, thus effectively driving up cost for all defense contractors in order to address the failings of a narrow subset of defense contractors examined by the CWC.	Ask Congress to redefine "covered contract" to address only those transactions where a demonstrated need for such added oversight burden may be warranted, namely contracts for services in Iraq and Afghanistan, rather than all CAS-covered defense contracts. See #25, #60
68	Outcome vs. Process Constraints on Competition	FAR 15.408 Table 15-2 Cost or Pricing Data	10 USC 2306 and 41 U.S.C. 254	Proposal Requirements: The strict adherence to FAR 15.408 Table 15-2 undermines the very foundation of the FAR pricing policy in 15.402(a)(3) which states contracting officers shall not obtain more data than is necessary. The impact of FAR 15.408 Table 15-2 spans from continual updates of prime and supplier proposals as requirements change, to the elimination of a parametric approach utilizing historical cost data as a basis for proposing future costs. The types of proposal efforts impacted range from follow-on production and spares to industrial participation offset. One example of this impact is the FAR requirement for a consolidated priced summary of all materials and services by item, source, quantity, and price at the prime and subcontractor level. This consolidation drives the requirement for obtaining additional compliant supplier proposals and preparing Cost/Price Analysis reports (CAR/PAR), which significantly increases proposal cycle time and cost.	Pursue a rewrite of FAR 15.408 Table 15-2 section to eliminate those specific requirements and provide language to allow contracting officers to accept historical data, projections from historical data, and other cost or pricing data as a compliant proposal format. The specific requirements of this FAR section are not a part of public law. Also review the DFARS Proposal Adequacy Checklist for conformance to any resultant changes and eliminate DCMA and DCAA proposal checklist variants.

69	Uniformity	FAR 52.222-41 – Service Contract Act of 1965	This is not an objection to the Act per se but to how acquisition offices have been applying the Act. When appropriately applied, there is significant compliance requirements and infrastructure required but at a level that is acceptable. Increasingly often, however, DoD procurement agencies are invoking the SCA in inappropriate acquisition circumstances (i.e., product and manufacturing environments and efforts being performed predominantly by professional and administrative employees) and imposing an implementation compliance cost on contractors that is not appropriate. Numerous contracting agencies are invoking the requirements of the Act and a wage determination in acquisitions for supplies, products, and manufactured items that are not consistent with the "services" definition. The SCA is being applied to acquisitions that are clearly under the Walsh Healy Public Contracts purview and/or are being performed by non-services employees appropriate for an exception (professional/administrative), but the agencies are not willing to grant the exception. Numerous spares contracts where we as the OEM are "building product" are being classified as "services" by buying commands and being made subject to the SCA.	The SCA should be applied only to true services contracts, to protect true service employees. The SCA is not appropriate in most (if any) production environments where the contractor is providing a product, regardless of how contracted or what stage of the product lifecycle. If the end deliverable is a product, it is not a service.
70	Uniformity	Certs & reps concerning contractor integrity • FAR 52.209-5 • FAR 52.209-6 • FAR 52.209-7 • DFARS 252.209-7993 • Numerous other agency-specific provisions	Management … administrative time & expense • Data-gathering necessary to ensure vigilance, accuracy • Multiple requirements, sometimes duplicative • Deterrence for small & non-traditional contractors, unaccustomed to such requirements	• Create simple, uniform set of certs & reps that all offerors – large or small – must complete • Clarify that certs & reps required only for business unit and principals proposed to perform the work (vs. entire corporate enterprise) • Limit certs & reps only as to conduct in connection with performing federal government contracts/subcontracts

71	Outcome vs. Process Redundancy	DFARS 252.227-7030 - Technical Data -- Withholding of Payment	10 USC 2320 (the amount of withhold not included in statute.)	The withholding of ten percent (10%) of the contract value is overly excessive and punitive for what is or can be a minor oversight on the part of the contractor. The Government maintains sufficient avenues to ensure a contractor complies with its contractual obligations with respect to technical data including but not limited to: CPAR Reporting; FAR 52.233-1, Disputes; 52.249-8, Termination for Default; etc. The aforementioned provisions provide the Government with the ability to ensure the contractor's performance without negatively affecting the contractor's cash flow.	We recommend the deletion of this provision particularly on efforts where there is a hardware deliverable. Short of an overall deletion of the provision, our alternate recommendation would be to reduce the withholding to one percent (1%). This would maintain the nature of a withholding, but alleviate the punitive nature of the withholding.
72	Constraints on competition	FAR 15.403-1 Cost or Pricing Data – Adequate price competition Only 1 Offer		The whole objective of bidding competitively is that the gov't will obtain the lowest pricing the first time. When a contractor submits a competitive bid, it has already put its best foot forward because it does not know who else will bid. The requiring of cost or pricing data after the fact is a cost driver that seems unnecessary. The FAR does not require the submittal of cost or pricing data but allows for it.	Remove the allowance of providing cost or pricing data when a competition has been held, regardless of how many submittals were received.
73	Uniformity; Oversight	DFARS 252.215-7009 – Proposal Adequacy Checklist		The checklist itself is not the problem; the problem is that some DoD agencies and services are requiring their own versions of the checklist, adding or modifying requirements as they deem fit. This practice creates additional work for offerors who have already adjusted their proposal processes to comply with the DFARS requirement.	DoD must require its own agencies and services to comply with this DFARS provision without creating added or modified requirements.

74	Outcome vs. Process	DFAR 217.7404-3 – Undefinitized Contract Actions		This regulation limits the time of a UCA to 180 days and provides a penalty (the stop of progress payments) if the contractor does not submit a timely qualified proposal, but it does not impose any penalty on the gov't for failing to negotiate the action in a timely manner. In addition, the term "qualified proposal" is not defined, and the proposal can be rejected for any reason. The delay of definitization or rejection of a proposal delays the contractor's ability to obtaining funding to 75% and changes the risk/reward position. This can become costly to administer, the contract is treated as a cost-type regardless of the intended contract type, the contractor may have to accept a lower fee than expected, and the gov't can be put in a position of needing to consider an overrun prior to definitization.	There need to be time limits and penalties for both parties in order to be effective. There should also be a clear definition of a "qualified proposal."
75	Miscellaneous Transparency	FAR 52.204-10	Public Law 109-282 Federal Funding Accountability and Transparency Act	FFATA requires primes to input subcontractor data. The time required to obtain the information and enter it for every subcontractor is significant. One company estimates the annual cost to administer this a $25,000 for the prime alone.	Recommend that the subcontract reporting requirements, be deleted in their entirety.
76	Miscellaneous Transparency	FAR 52.204-4006	Section 8108(c) of P.L. 112-10 Contractor Manpower Reporting Requirements:	This clause requires primes and subcontractors to report direct labor hours and total costs by performance location in the cmR database at the end of each government fiscal year. The effort to comply is time consuming because of the information collection requirements.	Delete the provisions in their entirety. In the alternative, exempt architect and engineering services.
77	Miscellaneous Transparency	FAR Subpart 4.17 Service Contract Inventories	Service Contract Inventories: P.L. 111-117	The information collection burden associated with this requirement for a small company could average between $10,000 and $20,000. In aggregate the costs saved both industry and the government when that cost is multiplied across the community of defense contractors could be significant.	This information is available to the government through other mechanisms. If that is not an acceptable path, it is recommended that architect and engineering services be exempt. Also See #72