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DOD'S ACQUISITION REFORM RECOMMENDATIONS TO 800 PANEL REPORT

Secretary of Defense Aspin announced today the Department of Defense's recommendations to the 800 Panel Report. These recommendations, which include increasing the Simplified Acquisition Threshold from $25,000 to $100,000 for small purchases and establishing seven pilot programs to take advantage of a market based system, are key to maintaining the best equipped defense forces and a strong industrial base through acquisition reform.

Secretary Aspin is committed to maintaining a lean, high-tech, ready-to-fight military force in a time when the threats are changing and defense spending is slowing down. It is imperative that the system of defense acquisition achieve greater efficiencies and take full advantage of technological advances to support our fighting forces and preserve the defense industrial base.

In the Bottom-Up Review, Secretary Aspin unveiled his vision for the nation's future defense needs based on the post-Cold War dangers. This is the first step in a broad plan to remake the defense acquisition system to meet these new dangers. Acquisition reform will build on leading edge technologies that have been spawned over the years to meet the nation's defense needs. It will allow DoD to run itself more like a business: buying products in the most competitive and sensible way, reducing massive paperwork requirements and whenever possible making purchases off the shelf.

Two years ago, Congress directed the establishment of an advisory panel for the purpose of reviewing acquisition laws with a view toward streamlining the acquisition process. The 800 Panel Report was forwarded to Congress on January 14, 1993. A Senior DoD Steering Group, chaired by the Deputy Under Secretary of Defense (Acquisition Reform), was convened in June 1993 to make this administration's recommendations on the proposed acquisition reform goals and objectives. The Steering Group met to identify areas for change, assist in establishing priorities, and ensure implementation of final plans of action within DoD.

The recommendations of the 800 Panel Report cover areas such as eliminating unnecessary and obsolete specifications and standards and using commercial-type specifications to the greatest extent practicable; enhancing the use of the electronic bulletin boards, electronic commerce and electronic data interchange (EC/EDI); and finally simplying contract administration and laws.

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These changes are imperative if the Department of Defense is to quickly meet the changing nature of the security threat in the post-Cold War era. Acquisition reform will enable the Department to shift from single service programs to programs that will be interoperable among the military services and U.S. allies and will offer greater efficiencies.

The DoD comments on the Section 800 Panel Report have been finalized and a legislative proposal has been transmitted to the Office of Management and Budget and will be factored into the administration's position on acquisition reform legislative provisions. Process Action Teams are already working to develop plans of action to improve the current acquisition process. Other teams will be chartered in the future to address specific shortcomings in the present system.

The Defense Department is committed to maintaining the best equipped, best trained and most effective fighting force in the world. Acquisition Reform will allow us to continue to procure the state-of-the-art technology and maintain the strong industrial base that is necessary to preserve our edge over our opponents in terms of quality of people, training, readiness, and technology.

A detailed list of DoD's recommendations to the 800 Panel Report is available for the media from Beverly Baker in the Directorate for Defense Information office.

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ACQUISITION REFORM RECOMMENDATIONS

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EXECUTIVE SUMMARY

The new, post Cold War-era demands new thinking about defense acquisition. The Clinton administration believes the system at the Department of Defense must be fundamentally changed to meet the challenges of the 1990s.

The 1990s pose a new set of security challenges for the United States. The Cold War is over, but the United States faces new threats: regional conflicts; proliferation of nuclear weapons and other weapons of mass destruction; risk to our economic well-being; and the possible failure of democratic reform in the former Soviet Bloc and elsewhere..

The President and the Secretary of Defense are committed to maintaining a lean, high-tech, ready-to-fight military force in a time when the threats are changing and defense spending is slowing down It is imperative that the system of defense acquisition achieve greater efficiencies and take full advantage of technological advances to support our fighting forces and preserve the defense industrial base.

In the Bottom-Up Review, concluded last September, Secretary of Defense Les Aspin unveiled his vision for the nation's future defense needs. While the risk of global war is gone, the United States still faces many risks around the world. The Bottom-Up Review was a blueprint for dealing with these dangers no matter where they might emerge.

The Clinton administration is proposing the first steps in a broad plan to remake the defense acquisition system to meet these dangers. This plan will build on the leading edge technologies that have been spawned over the years to meet the nation's defense needs. It will allow DoD to run itself more like a business: buying products in the most competitive and sensible way, reducing massive paperwork requirements and whenever possible making purchases off the shelf.

These changes are imperative if the Department of Defense is to quickly meet the changing nature of the security threat in the post-Cold War era. They will enable the Department to shift from single-service programs to programs that will be interoperable among the military services and U.S. allies and will offer greater efficiencies.

The administration is committed to maintaining the best equipped, best trained and most effective fighting force in the world. We won't be able to do it unless we change the way we do business.

The Problem

The DoD acquisition system is a web of laws and regulations adopted for laudable reasons. The aim is to prevent waste, fraud and abuse, and to ensure that competition is fair and the taxpayer is well-served. But the rules have led to an overloaded system that is often paralyzed and ineffectual. Thanks to the ability and dedication of the people in the system, it produced systems that helped win the Cold War---but at a significant price.

The combined effect of the thousands of pages of acquisition regulation is a confusing and often needlessly expensive system that the nation can no longer afford. It turns away the innovative small business and makes it nearly impossible to save tax dollars because the Department cannot easily buy off-the-shelf commercial products. It denies or slows DoD access to state-of-the art technologies readily available to commercial enterprises. It limits access to what must continue to be a thriving industrial base poised to meet DoD's future needs.

DoD's acquisition process must become more flexible and agile to respond to the rapidly changing international climate of the 1990s.

Because of its complexity, a major overhaul of the acquisition system cannot happen overnight. But it must begin. It is not difficult to see why change is imperative. Stories illustrating the need for change abound. For example:

- A solicitation from DoD for ant bait was 29 pages and took 227 days to buy. If existing simplified procedures for small contracts had been used, the ant bait would have been delivered in 27 days.

- A military hospital wanted to buy aspirin. The low bid was $3.98. But DoD ended up buying from the next lowest bidder who was paid $4.40 per unit. The winning bidder was willing to follow DoD requirements to submit a small business plan. The low bidder was not, fearing that DoD might force it to drop some of its subcontractors because they were not sufficiently disadvantaged or small. The cost to DoD was $107,000 more over the life of the contract.

- A large company was planning to introduce a radio with special encryption features sought by DoD and law enforcement agencies. The item had not yet been sold in substantial qualities to the public. DoD was hesitant to buy without obtaining information from the company

about how it had set its price. The company did not have to supply this to its commercial customers. DoD's reluctance meant it was stuck with buying old technology while commercial customers were free to buy the new.

- The Defense Personnel Support Center buys uniforms for the military and wanted to contract for a redesign of military trousers to make them the same as an already available commercial product. This would enable the manufacturer to pass on cost savings to DoD. But DoD demanded information about how the company set its price and also wanted to audit the information. These requests for information turned the company off, and DoD was unable to buy the off-the-shelf, cheaper product.

- Rockwell International made identical semiconductors for DoD and commercial customers. Rockwell moved its military operations into the same factory where the commercial work was done. But because of DoD contracting and paperwork requirements, Rockwell was unable to pass onto DoD savings that resulted from high volume production. Eventually Rockwell stopped selling semiconductors to DoD.

The Solution

The post Cold War era and the defense downsizing of the 1990s mean that the DoD acquisition system must undergo a fundamental top-to-bottom transformation. It is not enough to finetune the existing system. Instead, it fundamentally must be redesigned to enable the Department of Defense to respond to the diverse demands of the decade. Such changes will take time and must be based on a thorough, top-to-bottom review of existing practices.

DoD's new approach has two guiding principles:

1)Use the best commercial practices wherever possible

2)Use unique DoD specifications only when necessary.

The administration is taking the first steps towards acquisition reform by outlining a preliminary set of proposals that will begin to simplify and streamline the process.

• Action: Raise the threshold for small contracts for the purchase of readily available items to $100,000. This will cut paperwork, reduce delay, account for inflation and offer an incentive for small companies to do business with the Department of Defense.

• Explanation: Currently, the solicitation for any contract greater than $25,000 requires that bidders fill out a set of forms unique to DoD that require information about the source of materials and the means of transportation, among other data. DoD must publish an announcement of the proposed contract; wait 15 days before it can solicit bids, and then wait an additional 30 days before it can make an award. All of these requirements slow down the process and cause delay in obtaining many readily available items. The lead time for awards less than $25,000 is 26 days. The lead time for awards above $25,000 is 90 days for simple sealed competitive bids and 210 days for negotiated competitive bids.

•Action: Establish pilot programs using simple commercial contracting methods. Eliminate unique DoD specifications for readily available items. End separate requirements for each military service whenever possible.

• Explanation: Using unique DoD specifications for everything from white gloves for dress uniforms to helicopter engines slows down purchases and denies DoD access to already available high technology systems. As a result, DoD often pays more for commercially available items or gets the early, less sophisticated versions of rapidly developing technologies. The present system deters industry from achieving efficiencies that could save DoD money, particularly if a company can sell in bulk to more than one DoD customer.

• Action: Establish an electronic bid system.

• Explanation: Contracts are solicited through a cumbersome system relying on a slow process of paper notification. This wastes time and money. Many industries already are relying on electronic communication. To compete for DoD contracts, they have to retool their bidding systems. This deters many industries from competing, limits the pool of potential contractors and denies DoD access to products of

advanced, high-tech companies who don't want to bother to compete for a 1990s item with 1950s procedures.

The Department of Defense cannot act alone to accomplish the goals of acquisition reform. Revamping the acquisition system to make it more efficient and give the taxpayer the greatest return will take a bipartisan effort in Congress and broad cooperation from industry.

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1. Socio-economic and Small Business and Simplified Acquisition Thresholds

A. Description of Current Program

A solicitation for commercial ant bait, using large purchase procedures, was 29 pages. The estimated price of the purchase was above the simplified purchase procedure of $25,000. It took 227-days to make this buy. The actual award price, however, was $16,500. If small purchase procedures had been used, almost 200-days would have been saved.

A military hospital's supply officer requested a re-supply of aspirin for his pharmacy. Several offers were received. Supplier A's (a well-known brand name producer) unit price was $3.98, the low offer. DoD asked for the required small business subcontracting plan. Supplier A refused to prepare it even though it had many small business subcontractors because it did not want to disturb established long-term relationships with its many suppliers and would never be asked for this in a commercial transaction. Supplier A withdrew its offer; the contract was awarded to the next low offeror ($4.40 unit price), costing DoD approximately 10.3 percent more--an additional $107,000 over the life of the contract.

B. Better Way:

Promote a balance between an efficient acquisition process and national social policy by increasing the statutory threshold for Small Purchases (Simplified Acquisition Threshold) from $25,000 to $100,000. Remove the burden of most government unique clauses from purchases below the threshold. Small and Small and Disadvantaged Businesses will see increased opportunities to do business with DoD because they will be able to sell to the government under the same rules they sell to their commercial customers and because all contracts under $100,000 will be reserved for small business. Electronic Commerce will ease access to the Defense market and at the same time ensure enhanced notification of procurement opportunities.

C. Background/Experience:

Government agencies are allowed to use simplified procedures if the contract would amount to less than $25,000. Purchases under the threshold are not subject to many of the laws and regulations that apply to larger purchases. These solicitations are far less complex -- 12 pages on average. Large purchase solicitations, partly because they must include a large number of required clauses, are 29 pages on average.

The laws that impose various socio-economic requirements upon the acquisition process lack a uniform threshold (some apply at $2,500, others apply at $10,000), and have not been

updated to reflect inflation or other trends. Because socio-economic laws are scattered throughout various statutes, including authorization and appropriation bills, many companies are afraid they are not aware of all the requirements. This discourages them from competing for DoD contracts and subcontracts. As the DoD Acquisition Law Advisory Panel, commonly known as the Section 800 Panel reported:

> It seems unlikely that any company not already engaged in the business of selling to the government would actually be willing to spend the money necessary to make the fundamental changes in the way that it conducts its business in return for a sale of $100,000 or less. This may be particularly true of small businesses, which are the preferred recipients of contracts of this size.

From the government's standpoint, overwhelming administrative efforts and an inordinate amount of time are required to solicit, award, and administer contracts between $25,000 and $100,000. For example, if a contract will exceed $25,000, DoD generally must publish in the *Commerce Business Daily* an announcement of the intent to award a contract, wait 15 days before it can issue a solicitation, and then wait 30 more days before making an award. As a result, the average lead-time for awards below $25,000 is 26-days. Above $25,000 the average lead time is 90-days for simple sealed bids and 210-days for competitively negotiated contracts.

The DoD budget requires a reassessment of the role and ability of the acquisition workforce to monitor compliance of a panoply of social policy intertwined with DoD contract requirements. An exemption from the socio-economic requirements for commercial items and those within the simplified acquisition threshold would use tax dollars more efficiently.

D. Plan for the Future -- DoD Will:

- **Propose Congress enact a $100,000 Simplified Acquisition Threshold under which purchases would be exempt from most government unique statutory requirements, (e.g., those that specify the source of materials, specify the means of transportation, require the submission of reports by the contractor, or impose unique socio-economic provisions on contractors, except those noted below).**

  Under the DoD proposal, procurements under the $100,000 simplified acquisition threshold would be: reserved for small business, while allowing awards to Small and Disadvantaged Business under both the Small Business Administration's 8(a) program and what is best known as DoD's section 1207 program; reported under the Office of Federal Procurement Policy Act for a period of five years if over $25,000; and subject to new notice requirements dependent on how well DoD implements electronic means of providing notice and opportunities to bid.

- **DoD is moving aggressively to enhance the use of Electronic Bulletin Boards (EBB) and Electronic Commerce and Electronic Data Interchange (EC/EDI), through a quick-reaction Process Action Team.**

Existing pilot electronic purchasing systems (e.g., GATEC at Wright-Patterson Air Force base and EASE at NSC Jacksonville) have demonstrated the potential to reduce lead-time from 29 to 11-days; achieve price savings of approximately 12 percent on price volatile commodities such as food; increase the number of bidders competing; and increase the percentage of awards going to small business firms from 50 percent to 96 percent.

E. Action Plan:

A legislative proposal has been transmitted to the Office of Management and Budget (OMB) and will be factored into the administration's position on acquisition reform legislative provisions.

F. Performance Metrics:

DoD believes that it could realize significant saving as a result of increasing the small purchase threshold to a $100,000 simplified acquisition threshold and by removing the applicability of various impediments that are unique to the government contracting process.

A $100,000 threshold for DoD will:

- Remove about 40,000 contracts (approximately 20% of all contract actions in excess of $25,000) with a value of about $2 billion from the burdens and cost of complex purchasing procedures while at the same time increasing participation and awards to small business;

- Permit 99 percent of DoD's contract actions (12.1 million in FY92, or one million actions per month -- 46,000 actions each working day) to be accomplished using simplified procurement procedures, including use of automated processes and credit cards, which would reduce the number of acquisition personnel required to perform these functions;

- Reduce acquisition lead-time; and

- Provide contractors, particularly small businesses, enhanced incentives to do business with the Department by removing the burdens of unique laws only associated with contractors who sell to the federal government and their subcontractors.

2. Commercial Items

A. Description of Current Program

A large telecommunications company developed a narrow band voice radio featuring full-function digital technology, improved voice quality, and enhanced encryption capabilities -- features highly sought after by DoD and law enforcement agencies. Although it was designed for sale as a commercial product, it had not yet been sold to anyone. Because of complicated laws and regulations governing the non-competitive acquisition of new commercial products and technologies that haven't yet been sold in substantial quantities to the public, federal government buyers were reluctant to purchase the product without requiring cost and pricing data. The company would not sell the item to the government if it had to generate and provide cost and pricing data to support the price it is charging, which it did not do to establish the commercial price. Thus, the government continued to buy a less advanced "old technology" system, while commercial customers bought "state-of-the-art."

The Defense Personnel Support Center (DPSC) wanted to contract with a large clothing manufacturer to redesign military trousers so that the company they purchased from could produce both defense and commercial products on an integrated line. Both the Government and the company could then share in the resulting cost savings. DPSC also wanted to learn from the company, an industry leader in electronic quick response systems, how it could take advantage of such a system to deliver trousers to new recruits. Present law required DoD to obtain and audit data from the company explaining how it set its price. The company would not provide the data and, as a result, DPSC's attempts to learn from this experienced, successful company were thwarted.

B. A Better Way:

Maintain DoD's technological superiority by ensuring it has access to state-of-the-art commercial technology and integrate the defense and commercial industrial base by allowing DoD to acquire commercial products using standard commercial practices. Large segments of the U.S. Industrial Base will view DoD as a new market never before open to them on their business terms. Many firms will see enhanced sales opportunities to DoD.

C. Background/Experience:

As a purchaser of military hardware and weapons systems, products for which there is no commercial counterpart, DoD always has had unique contracting requirements. To ensure accountability for taxpayer dollars, a complex system of audit and oversight was considered necessary. With soldiers' lives and military security at stake, government inspectors were installed in manufacturing plants to make sure stringent quality requirements were met.

In addition, as Congress passed laws to promote various worthy social goals, Government contracts became more complex. Contract clauses required contractors to set up drug-free workplace programs, and to purchase certain items only from U. S. sources, among other things.

The administrative cost to comply with these requirements, the resulting reduction in profit, and the sheer sense of regulatory gridlock have now advanced to the point that some commercial firms have simply decided the cost of doing business with the government is too great. Although their position is understandable, the potential loss to DoD of critical commercial technologies, combined with reductions in defense spending, could severely compromise our national defense technology and industrial base.

Many defense contractors who also sold to the commercial market have set up separate divisions to deal with these unique Government requirements which they did not want to impose on their commercial products. Firms have cited six primary areas in which government procurement policies and requirements impose significant burdens and require them to fundamentally alter the way they normally do business:

- Government cost principles and accounting standards;
- Extensive audit and oversight requirements;
- Requirements to meet unnecessarily detailed specifications and standards and the resultant testing and inspection done to ensure conformance with those requirements;
- Government technical data rights policies which may require companies to give up rights to proprietary data which are closely guarded in the competitive marketplace;
- Contract clauses intended to promote certain social goals (e. g., requirements to transport materials only in U.S. flag vessels) which interfere with the contractor's normal business practices; and
- Commercially unacceptable requirements levied on subcontractors.

Unique oversight, auditing, and pricing requirements do not need to be applied to commercial products because the marketplace regulates the buyer/seller relationship. Unique socio-economic laws applied only to government contractors discourage commercial companies who could otherwise meet the government's needs.

D. Plan for the Future - DoD:

Has proposed a new subchapter of Title 10, specifically tailored to commercial item acquisitions, to create a new rule structure and provide for exemptions from statutes that create barriers to the use of commercial items. This new chapter will:

- **Include stronger policy language in favor of the use of commercial and nondevelopmental items in 10 U.S.C. Sec. 2301.**

- **Create a new definition of commercial items and non developmental items in 10 U.S.C. Sec. 2302.**

- **Exempt the acquisition of commercial items from the Truth in Negotiations Act, 10 U.S.C. Sec. 2306a, by utilizing fair and reasonable pricing standards.**

- **Create new exemptions to technical data requirements for commercial items.**

- **Exempt commercial items from "Buy American" restrictions and certain other socio-economic requirements.**

E. Action Plan:

- A legislative proposal has been transmitted to OMB and will be factored into the administration's position on acquisition reform legislative provisions.

- A Process Action Team has been formed to develop an implementation plan for the move from government-unique product or process specifications or standards to commercial specification or standards.

- By December 1993, DoD will have determined the most serious impediments to commercial items acquisition which do not require statutory change and will form a Process Action Team to develop regulatory changes.

- By December 1993, a Process Action Team will be formed to evaluate actions necessary to ensure full utilization of commercial buying practices authorized under DFARS 211.

F. Performance Metrics:

As the administrative burden on contractors is reduced, we expect substantial reductions in costs to the government. There also will be a commensurate reduction in the number of DoD personnel required to enforce lessened oversight requirements for commercial item acquisition. This will translate into significant savings as well. DoD also expects increased access to the latest advanced commercial technologies.

3. Defense Acquisition Pilot Program

A. Description of Current Program

For years Rockwell had been manufacturing and selling semiconductor devices to both the defense and commercial markets. To produce economies of scale and take advantage of efficiencies available through a combined operation, Rockwell moved its military semiconductor operations into its commercial facilities. Because only a very small percentage (less than 5%) of the business was defense, it was not cost effective to redo the accounting systems to comply with accounting, purchasing, and other government procurement regulations. Because it did not want to comply with government cost accounting and other rules, Rockwell was unable to sell semiconductors made on the commercial line (even though the economy of producing in high volume would have been a cost advantage to the government) to its defense customers. Attempts to resolve this dilemma with government representatives were not successful. Rockwell continued to support its existing defense customers by giving them the semi-conductors free, until they could obtain alternate sources. Rockwell ended up giving away about $1 million worth of commercial work over three to four years until the programs were completed. Since then, that Rockwell division has not sold to the government.

B. A Better Way:

The critical ingredient of adaptation to commercial practice is conversion from a regulation based system to a market based system. The purpose of the pilot programs is to take early advantage of conversion to a market based system by removing barriers to the use of commercial practices and products. Successful Pilot Programs will enhance use of commercial products and reliance on a national industrial base. This will preserve the U.S. industrial base and stabilize domestic employment opportunities.

C. Background/Experience:

Section 809 of the fiscal year 1991 Defense Authorization Act created a "Defense Acquisition Pilot Program" to test whether or not efficiencies could be achieved from using standard, commercial industrial practices to procure defense goods and services. Section 800 of the same Act, created the DoD Advisory Panel on streamlining and codifying acquisition laws. Its final report is now the baseline for the acquisition of commercial items.

In 1991, the Center for Strategic and International Studies (CSIS) released a report entitled, "Integrating Commercial and Military Technologies for National Strength." In that report, CSIS concluded that "many companies have dual systems of administration, management, research and development (R&D), or production in order to comply with the unique requirements of federal contracting while also pursuing their commercial goals." The study further found that "the burdens and risks of federal contracting increase the cost of the goods and services the government buys (without increasing the value), unnecessarily limit

competition to companies that have instituted the appropriate compliance systems, and restrict federal access to world-class commercial production and management systems."

Because the original report was based on case study evidence, CSIS conducted a follow-on study, surveying more than 200 firms. The principal conclusion of the survey analysis, stated in the CSIS report entitled, "Integrating Civilian and Military Technologies: An Industry Survey," was that "most companies that operate in both the commercial and federal markets alter their business procedures in order to sell to the federal government and that the cost premium to the government can be substantial."

DoD has identified seven candidate pilot programs analogous to commercial item acquisitions to get a head start on the efficiencies achieved through the use of commercial practices, while awaiting legislative action on the Section 800 Panel recommendations. The seven pilot programs are: Fire Support Combined Arms Tactical Trainer (FSCATT), Joint Direct Attack Munition (JDAM), Joint Primary Training Aircraft System (JPATS), Commercial Derivative Aircraft (CDA), Commercial Derivative Engine (CDE), Global Grid, and certain medical, subsistence, and clothing commodities of the Defense Personnel Support Center (DPSC).

D. Plan for the Future – DoD Will:

- **Develop a package of statutory waivers that will be applied to the pilot programs.**

- **Develop a package of regulatory waivers that will complement the statutory waivers. They will remove barriers to commercial practices and commercial item acquisition that are imposed by DoD.**

- **Develop an implementation strategy for each pilot program that will govern how that program will operate and be overseen in the streamlined commercial environment.**

E. Action Plan:

The pilot programs candidates have been approved by OMB and submitted to Congress. Congress must designate the programs as pilot programs in the fiscal year 1994 authorization act and specify the statutory waiver authority permitted the SECDEF for pilot programs.

F. Performance Metrics:

The pilot programs will be evaluated against baselines such as: competition (both increased numbers of firms competing and the number of commercial firms who have not previously competed for defense contracts); program schedule and cost; and administrative support cost and time.

4. Military Specifications and Standards

A. Description of Current Program

The FAA certified Allison 250-C30R Army helicopter engine (used in lieu of a milspec engine) differs from the commercial version only in its electronic fuel flow component (ESC). The engine was procured as an off-the-shelf item, eliminating five to eight years of DoD development time and cost. Only the ESC which required approximately 30 months to develop and certify, was developed specifically for DoD. Compared to a military developed and qualified engine, which the Army estimates would have cost approximately $200 million, seven certified off-the-shelf commercial engines were procured for less than $2 million. Commercial warranties have proven to be as good as -- if not better -- than military equivalents. In addition, the Army has been able to take advantage of several "commercial use" changes which provided extended life in the desert environment of the Gulf War.

B. A Better Way:

Use of military-unique specifications and standards must be prohibited unless they are the only practical alternative to ensure a product or service will meet the user's needs. DoD must describe its needs in terms of performance required and in a manner that permits maximum reliance on existing commercial items, practices, processes, and capabilities. Firms currently unwilling or unable to change their products to comply with military-unique specification and standards will see enhanced business opportunities with DoD.

C. Background/Experience:

The Center for Strategic and International Studies has published a report entitled, "Road Map for Milspec Reform: Integrating Commercial and Military Manufacturing." The report notes that "in the milspec area, there is literally nothing new under the sun." The report goes on to say that, "the problem is not defining what needs to be done, but identifying the best way to do it and then committing the resources and staying the course in the face of bureaucratic or political resistance."

Since 1986, there have been at least seven major initiatives to decrease reliance on military-unique specifications and standards. These seven initiatives are:

- 400 Federal Supply Class Initiative, to restrict the revision or introduction of new military specifications and standards in those commercial-like product supply classes.

- Qualified Manufacturers List Initiative, to qualify a manufacturer's process rather than individual products.

- Defense Management Review Working Group 9 Initiative, to perform a zero-based review of military specifications and standards, canceling those documents that were no longer

needed, replacing those documents that could be replaced with commercial specifications and standards, and retaining and updating documents for military-unique products and processes.

- Commercial Acquisition Demonstration Program Initiative, to define commercial item acquisition and identify impediments or restrictions.

- Simplified Non-government Standard Adoption Initiative, to significantly increase the number of adopted non-government standards.

- Commercial Military Document Tiger Team Initiative, to ensure that action was being taken to adopt commercial specifications or convert military specifications to commercial documents in a limited number of highly commercial federal supply classes.

- Special Non-government Standard Conversion Initiative, by establishing or using existing private sector standards committees, to convert military and federal specifications and standards in specific product areas to non-government standards.

Although progress toward decreasing reliance on military specifications and standards has been made, it is not moving quickly enough. DoD has increased the number of adopted non-government standards from 3,279 to 5,617 (a 51 percent increase) and the number of commercial item descriptions from 1,973 to 4,857 (a 146 percent increase) over the last seven years.

D. Plan for the Future -- DoD Will:

- **Perform comprehensive market research to identify potential commercial alternatives, and conduct aggressive cost-performance trade-offs to ensure that system requirements do not preclude commercial products or processes.**

- **State requirements in terms of performance or form, fit, and function and eliminate "how to" requirements for management and manufacturing processes and permit "best commercial practices."**

- **Rapidly eliminate unnecessary and obsolete specifications and standards.**

- **Use commercial-type specifications and standards and non-governmental standards to the greatest extent practicable.**

- **Expedite conversion of military specifications and standards for commercial items to commercial item descriptions (CIDs) and non-governmental standards; work with non-governmental standards bodies to develop commercial equivalencies where suitable non-governmental standards do not exist today.**

- **Encourage industry, where military specifications and standards are used, to propose alternative solutions as substitutes for the referenced military specifications and standards to the maximum extent practicable.**

- **Ensure that military specifications and standards documents are applied correctly on contracts.**

E. Action Plan:

The Deputy Under Secretary of Defense (Acquisition Reform) has directed that a cross-functional Process Action Team be formed including representatives from the Office of the Secretary of Defense, the Military Departments, and the Defense Logistics Agency to: (1) develop a specific and comprehensive strategy and plan of action to ensure maximum progress within the shortest period of time toward elimination of unnecessary military product and process standards and specifications; and, (2) to ensure that DoD describes its needs in ways that permit maximum reliance on existing commercial items, practices, processes, and capabilities. They began work in late August and will develop their draft plan for the future by the end of November.

F. Performance Metrics:

The Defense Science Board reports that savings of 15 percent are feasible if only half of the major weapons systems were designed without military specifications. The Process Action Team will develop appropriate metrics, considering such tools as the number of commercial item descriptions and nongovernment standards applied on contract.

5. Contract Formation

A. Description of Current Program

Several contracts were awarded for urgently needed supplies to support military units in Europe. One week after the awards were made, an unsuccessful offeror lodged a protest with GAO. Under existing bid protest rules, DoD had to suspend contract performance until the bid protest was resolved. Generally this takes a minimum of 45 days. After two informal discussions, and one formal debriefing, explaining the bid selection to the protestor, the company withdrew its protest. The needed supplies finally were delivered to the European theater.

B. Better Way:

Current procurement regulations make it difficult if not impossible to do business with private industry on terms that they customarily use. The system needs to be streamlined, mirroring commercial practices when appropriate, so that companies are encouraged, not discouraged, from doing business with DoD. For example, DoD is considering experimenting with purchasing aircraft that are derived from commercial aircraft such as the 767 or MD-11. By reforming the acquisition system, DoD will be able to tap innovative products and services that otherwise would be unavailable, and at the same time provide increased business opportunities to many firms not now interested in contracting with DoD.

C. Background/Experience:

DoD has identified a number of burdensome laws and regulations which clearly inhibit the buyer-seller relationship and DoD's ability to buy the products it needs. These laws and regulations were passed to prevent waste, fraud and abuse, and to promote competition. But there have been many changes in technology. DoD needs to rely more heavily on the commercial marketplace.

Mindful of this, the Section 800 Panel, which reviewed 80 DoD contract laws relating to the contract formation process, recommended changing the laws to build more flexibility and innovation into the acquisition process. DoD contracting laws cover publicizing requirements, competing or justifying the absence of competition, soliciting offers, evaluating bids and proposals, and pricing and awarding contracts. The proposed changes would allow DoD to continue to conduct its procurement process in an open, fair and ethical manner while still meeting mission requirements more effectively.

Examples of burdens on the contracting system:

The Truth in Negotiation Act (TINA) allows large contracts to be awarded without price competition only if the supplier can provide a detailed breakdown of how it arrived at its

price. Because of the expense, and because commercial contractors do not price their products on the basis of the specific costs to build them, commercial contractors do not typically maintain cost accounting systems that can provide the type of detailed cost information required by the government. The Section 800 Panel concluded that the requirement to provide cost or pricing data should be stabilized at contracts worth $500,000, rather than having it revert back to $100,000, as present law provides. It also recommended that the exemptions to TINA be broadened to facilitate the acquisition of commercial products.

Current law requires that executive agencies publish notice of their intent to contract 15 days before releasing their requests for bids and proposals, and that companies be given 30 days to respond before a contract is awarded. The law was established to promote competition and enhance opportunities for small businesses. However, the statutes do not recognize that many in the private sector now routinely use electronic bulletin boards to find out about business opportunities, which convey information more quickly, and use total electronic data interchange systems that allow them to provide quotes automatically.

In 1986, Congress established a preference for off-the-shelf technology available in the commercial marketplace. DoD believes that this preference will become more and more important as its budget is reduced. When Congress established this preference, it did not amend many basic competition statutes to ease regulations governing these purchases. After a review of these statutes, the Section 800 Panel recommended that laws be amended to lift these barriers to the competitive acquisition of non-developmental items.

D. Plans for the Future -- DoD Will:

- **Champion the effort to maintain our technological superiority by fostering the integration of the defense and commercial industrial sectors into a national industrial and technology base (composed primarily of commercial companies who can meet the needs of DoD).**

- **Propose Congress amend Title 10 U.S.C. to incorporate a broad defense procurement policy which integrates existing congressional policy and the 10 strategic DoD procurement objectives identified by the Section 800 Panel.**

- **Propose establishment of a uniform threshold of $500,000 for application of the Truth in Negotiations Act (TINA) statute and broaden the exemption to include commercial products and leading edge commercial technology.**

- **Propose the establishment of a legislative policy requiring timely and meaningful debriefings to unsuccessful offerors and the establishment of a contract protest file which would be accessible to all offerors.**

- **Propose that Congress consider and study the creation of a single independent forum for resolving bid protests (to streamline the process).**

- **Propose that Congress amend the statute to delete the authority and rule structure for master agreements for advisory and assistance services and set forth a new more flexible authority for task order and other similar contracts.**

- **Propose to Congress a change to allow the head of an agency to waive the percentage limitations on obligations on undefinitized contract actions (in certain limited cases).**

E. Action Plan:

For those items requiring congressional action, DoD has transmitted legislative proposals to OMB for consideration in developing the administration's position on acquisition reform legislation being considered by Congress. DoD has already begun to pursue the increased use of EC/EDI with the creation of a Process Action Team (discussed further in section on Simplified Acquisition Threshold). Another Process Action Team has been established for military specifications to assist us in implementing a clear preference for commercial and non-developmental items.

F. Performance Metrics:

The Department anticipates cost savings can be achieved by redesigning its acquisition processes. Significant savings will occur in overhead for both DoD and the private sector. DoD anticipates more favorable prices will be offered as competition increases and contractor overhead is reduced. The application of electronic solutions will lead to increased efficiencies by eliminating tasks currently performed by acquisition personnel. Material managers both within DoD and private industry should also be able to significantly reduce their inventory holding costs as we move toward an acquisition system which provides improved customer support. Improved debriefings to unsuccessful offerors will also result in DoD cost avoidance for protests not filed.

6. Contract Administration

A. Description of Current Program

The executive was very proud of her new job. She had been promoted from the commercial division of the company, and was looking forward to working in a division whose major customer was the Department of Defense. She was being briefed on all of the unique rules that applied to DoD contracts -- cost accounting standards, audits, invoicing, vouchering, which costs were allowable and which weren't, and so on - and how all those affected her job. Much of what she was hearing, particularly about some of the costs not allowed under government contracts, she thought made good sense for taxpayers. But she had many questions. Too often the answer was, "I'm not sure, I'll have to check with counsel or accounting." Finally, the new executive exclaimed, "You may not mean to, but you're making it sound like if anybody wants to work on Government contracts, they need to hire hundreds of attorneys and CPA's!"

"Well, actually," one of the managers admitted, after some hesitation, "that is often the case."

B. A Better Way:

The laws and regulations relating to the contract administration process should be clear, concise, easy to locate, and easy for non-lawyers to understand. They should not prevent companies from selling to the government. The government's cost of administering a contract should not be so high it does not justify the benefits received.

C. Background/Experience:

An April 1993 Center for Strategic and International Studies (CSIS) report, *Integrating Civilian and Military Technologies: An Industry Survey*, said that in a survey of 206 companies, administrative costs of selling to the Government were from three to five times those when selling commercially. A 1992 Defense Systems Management College (DSMC) survey had reported costs associated with government sales were roughly four times those associated with those to commercial customers.

The DSMC data further showed that for every employee in a comparable position in a commercial division of the company, the government division employed: 8 people in accounting; 6 in purchasing and subcontracting; 12 in auditing; and 2 in the legal department. In both reports, the Government's unique accounting requirements were identified as one of the primary causes of those higher expenses.

The government needs to streamline its accounting requirements and acquisition laws -- in effect, make them more "commercial-like" and easier to understand. While DoD

clearly recognizes that the public must always remain fully protected against possible abuses and waste, excessive administrative costs harm companies' competitiveness and unnecessarily increase costs for DoD and the public.

D. Plan for the Future -- DoD Will:

- **Propose a change to the Truth in Negotiations Act to exempt commercial items from Cost Accounting Standards (CAS). Propose to the CAS Board that it make its advance rule change a final rule. The imposition of CAS on commercial companies significantly increases their costs, and forces most to set up separate production facilities for DoD and non-DoD customers, even though the product is largely, or even purely, commercial. Although the Cost Accounting Standards Board recently issued an advance rule change that increases the number of commercial item acquisitions that are exempt from CAS, many commercial item purchases will continue to be covered by CAS unless Congress adopts DoD's proposed changes to the Truth in Negotiations Act (TINA). DoD believes that contractors should be completely free to fully integrate defense and commercial production whenever possible.**

- **Propose the consolidation of laws relating to advance, partial, and progress payments into one comprehensive statute. As the Section 800 Panel found, the many laws relating to payment are among the most duplicative, dispersed, and difficult to understand of any of the laws affecting contract administration.**

- **Propose the amendment of useful and valuable laws and authorities originally passed for wartime or national emergency conditions so that they are applicable to normal, peacetime conditions as well. For example: Public 85-804, "Extraordinary Contractual Relief," has proved useful during peacetime, yet is available only during a national emergency declared by the Congress or the President and for six months thereafter; 41 U.S.C. 15, which limits assignments of payments under contracts except in time of war or national emergency, has proven useful particularly to small businesses in obtaining private financing.**

- **Propose the repeal of duplicative, superseded, or outdated laws. For example: the Vinson-Trammell Act, a limitation upon defense contractors' profits, has been ineffective for most of its life because the Congress, starting in the 1940's, came to realize that its approach of limiting profits to specific percentages of contract prices actually curtails incentives to reduce costs, and so actually passed several successive statutes which restricted the application of the Act.**

- **Propose the repeal of laws that are not cost effective. The Section 800 Panel found that some laws, such as 10 U.S.C 2403, which requires contractor guarantees for major weapon systems, inadvertently cause DoD managers and contractors to take actions or make decisions that cost more than the benefits are**

worth. Even though such laws often contain provisions for exemptions where costs of compliance outweigh the benefits, the laws nonetheless establish such strong presumptions for a particular course of action that many managers are reluctant to challenge the laws' presumptions.

- **Establish a Process Action Team (PAT) to develop recommendations for change to DoD's internal contract administration procedures. DoD already has several initiatives underway to streamline and simplify contract administration. Two very successful initiatives are the Defense Contract Management Command's Process-Oriented Contract Administration Services (PROCAS), and the Contractor Risk Assessment Guide (CRAG) program, administered by the Defense Contract Audit Agency. The success of these programs suggests DoD can go still further in relieving the burden of contract administration for both the Government and contractors. Our PAT will look at all contract administration activities and develop a strategy and implementation plan for improving the efficiency of DoD contract administration procedures while still fully protecting the public's interests against abuse and waste. Some of the issues the PAT will examine are: exempting mostly commercial producers from incurred cost audits, and allowing contractors' interest costs in lieu of Government-provided financing.**

E. Action Plan

For those items requiring congressional action, DoD has forwarded a legislative proposal to OMB for consideration in developing the administration's position on acquisition reform legislation being considered by Congress. DoD will make a recommendation to the Cost Accounting Standards Board to make its recent advance rule changes in CAS a final rule.

F. Performance Metrics:

With implementation of the measures above, DoD expects that the administrative costs companies incur in doing business with the Department will decline substantially and come much closer to those costs experienced in selling to the commercial market.

7. Major Systems and Testing Statutes

A. Description of Current Program

A government procurement expert from academia testified before the Senate that DoD program managers spend more time answering questions from all the people around the Department of Defense than they do running their program. The program manager of an admittedly troubled Air Force program estimated that 70 percent of the program office's activity was consumed in responding to external oversight demands rather than managing the contract.

One Army Program Executive Officer indicated that Army Program Managers spend between 300 and 600 manhours of effort annually preparing just the Selected Acquisition Report and the Unit Cost Report.

Some weapons systems undergoing testing to determine whether they meet operational performance criteria must comply with testing requirements in three different statutes, and at least two different reports must be submitted to Congress.

B. A Better Way:

Weapons systems, which consume the majority of the DoD acquisition budget, require independent oversight and thorough testing. DoD needs to retain the broad policy contained in the current major systems and testing statutes, which are excessively detailed, duplicative, and inconsistent with the realities of declining defense budget. The Department needs to streamline them, provide additional flexibility, and reduce non-value-added oversight.

C. Background/Experience:

The DoD Acquisition Law Advisory Panel, commonly known as the Section 800 Panel, reviewed the major systems and testing statutes and made the following recommendations:

Remove the excessive detail from the Selected Acquisition Report (10 U.S.C. §2432), incorporate the Unit Cost Report requirement (10 U.S.C. §2433) into the Selected Acquisition Report statute, and eliminate the 25 percent unit cost certification requirements.

Streamline the requirement for independent cost and manpower estimates (10 U.S.C. §2434) and for program baselines (10 U.S.C. §2435) by eliminating statutory detail but retaining existing policy.

Repeal the Defense Enterprise Program (10 U.S.C. §2436) and the Milestone Authorization Program (10 U.S.C. §2437) because neither program has been successfully implemented by DoD or supported by Congress.

Repeal the statutory requirements for competitive prototyping (10 U.S.C. §2438) and competitive alternative sources (10 U.S.C. §2439) because mandating such strategies is inappropriate in today's reduced budget environment and may be unaffordable.

Consolidate the four current testing statutes (10 U.S.C. §2362, §2366, §2399, and §2400), which contain different definitions and excessive reporting requirements, into one streamlined statute.

D. Plan for the Future -- DoD Will:

- **Propose legislation incorporating many of the Section 800 recommendations.**

- **Establish a Process Action Team to develop an implementation plan to better integrate the processes for resource allocation and requirements determination. This will ensure the most effective, affordable, technically feasible and best value solution to a deficiency in current military capability or emerging need is developed after consideration of realistic cost, schedule, performance, and industrial base considerations.**

- **Establish a Process Action Team to develop a plan for tailoring acquisition strategies and policies to various types of procurements (e.g., commercial products, research and development, major systems acquisitions with little risk, major systems acquisition with significant risk), considering such factors as the appropriate amount of oversight, among others.**

E. Action Plan:

The DoD comments on the Section 800 Panel report have been finalized and a legislative proposal has been transmitted to OMB and will be factored into the administration's position on acquisition reform legislative provisions. Process Action Teams will be established by the end of December 1993 to recommend actions to better integrate resource allocation, requirements determination, and the acquisition system and to tailor acquisition processes and regulations.

F. Performance Metrics:

The Military Departments have estimated that reduction in oversight and reporting requirements could reduce program office workload and lead to program office staffing reductions. Reduction of workload and any staff reductions will be tracked.

8. Defense Trade and Cooperation

A. Description of Current Program

Negotiations on the U.S. Navy's AV-8B Harrier II Plus cooperative radar integration program with Italy and Spain were significantly disrupted by an unrelated U.S.-Spain dispute over the statutory prohibition against purchasing foreign anchor mooring chain. This jeopardized the entire II Plus R&D Program. The $165 million Harrier II Plus Program was equally shared by the three countries and has resulted in additional follow-on production and support of approximately $1 billion -- which translates into 25,000 U.S. jobs.

The United States and its allies cannot continue to proceed down parallel development and production paths because of the staggering costs of developing and fielding new systems. For example, it would have been far less expensive for the nations which are participating in the development of the European Fighter Aircraft (EFA) to have bought an improved F-16 Agile Falcon or F-18 Hornet. The comparable costs are $20-30 million per copy for F-16/F-18 variant versus costs of approximately $40-60 million for the EFA.

B. A Better Way:

To promote U.S. defense technology and the industrial base in times of declining defense expenditures by exporting defense items to our allies and broadening the pattern of international armaments cooperation.

C. Background/Experience:

The integration of international and domestic economic security is emerging as a key issue to be considered as the United States restructures its defense establishment. DoD needs to focus on the economic aspects of American security, because defense acquisition faces the twin challenges of reducing procurement expenditures while preserving a viable industrial and technology base. A robust industrial base is required to promote American technological competitiveness and ensure needed domestic "surge" capacity in a wide variety of crisis mobilization scenarios -- not unlike Operation Desert Shield.

DoD also needs to reassess its international agreements in light of the new types of threats it faces. Just as DoD found in Operation Desert Storm that its inter-service agreements did not provide the needed flexibility to accommodate all contingencies, the same holds true for its international cross-servicing agreements.

Items acquired by DoD must often be the same as -- or function with -- articles acquired by our allies. DoD should have additional statutory authority, for example, to encourage the purchase of NATO-standard items, which may or may not be

available from U.S. sources, as well as to encourage increased allied burden-sharing. Likewise where NATO-standard items are or could be available from U.S. sources, DoD should encourage their export and thus enhance the competitiveness of our national defense technology and industrial base.

As the domestic requirement for new weapons systems decreases, there may be an increased opportunity to participate in defense cooperation projects and sell U.S. products and services abroad. Selling U.S. defense products abroad not only permits the economic production of such products, while lowering the unit cost of items for U.S. forces, but will also enhance the national defense technology and industrial base. The United States can expect that our allies will be looking to foreign exports to help their own industrial base problems, defense companies could use assistance in promoting their exports, assistance that DoD is not in a position to provide without additional statutory authority.

Further, the issue of domestic source restrictions, such as the Buy American Act is a contentious one. To determine whether DoD may or must limit competition for an item to domestic sources only, a contracting officer must review the following sources:

The Trade Agreements Act, Title 19;
The Buy American Act, Title 41;
Military assistance and foreign military sales, Title 22;
Various annual authorization and appropriations acts;
International treaties; and
Memoranda of understanding and related international agreements.

Although there are certain technologies which may be so essential to national security that such products be developed and acquired only from United States sources, "Buy-American" statutes often are not tied to a clear analysis that production of the items in the U.S. is essential to the national security. Restricting acquisitions to U.S. sources often causes a "tit-for-tat" reaction from other countries that precludes U.S. companies from bidding. Protectionism has not proven effective in maintaining the viability of U.S. industry absent other factors.

The Secretary of Defense is in the best position to restrict acquisitions to United States sources and control the foreign ownership of key defense industry sectors to ensure this country's continuing military strength. The Secretary is in the best position to determine whether there is a level playing field in defense trade with a particular country, and to enter into defense acquisition partnerships to share research, development and/or production costs accordingly. In analyzing the legislative changes needed to help provide that level playing field in defense trade and cooperation, the Section 800 Acquisition Law Advisory Panel concluded that:

- Department of Defense international defense acquisition policies should be consistent, on a reciprocal basis, with the defense acquisition and trade policies of United States allies;

- Department of Defense international defense acquisition policies on international and cooperative agreements should be consistent with the maintenance of strong domestic technology, industrial, and mobilization bases;

- Department of Defense international defense acquisition policies should be consistent with international operational agreements, allied logistics support and standardization, and export sales of defense items to foreign countries.

In order to better take advantage of cooperative program opportunities, the Secretary of Defense should have the flexibility to adapt to the acquisition practices, rules, and procedures for international partnerships which treat our allies as partners (contributing a significant portion of a cooperative program costs while receiving a commensurate share of the program work) as compared to customers pursuant to the sales procedures and rules of the Arms Export Control Act.

D. Plan for the Future -- DoD Will:

- **Seek to repeal or rescind all domestic source restrictions which are not enacted as part of a comprehensive restatement of law or established pursuant to the inherent statutory authority of the Secretary of Defense and based on industrial base considerations. DoD proposes to Congress an amendment to the Buy American Act to incorporate a substantial transformation rule-of-origin test, making it consistent with the Trade Agreements Act and other trade agreements, and seeks to eliminate the DoD balance-of-payments evaluation differential.**

- **Seek to consolidate the statutory authorities concerning international cooperation, acquisition, cross-servicing, and standardization, into a dedicated new chapter in Title 10, while recommending specific statutory revisions to cooperative project and international agreement authority.**

E. Action Plan:

DoD has transmitted to OMB legislative proposals based on the Section 800 Advisory Panel Report's Chapter 7, "Defense Trade and Cooperation" for consideration in developing the administration's position on acquisition reform legislation being considered by Congress. The "Plan for the Future" in section D above will be studied and addressed, with appropriate legislative and regulatory recommendations, through the formation of an International Defense Acquisition Process Action Team (PAT). The PAT membership will be comprised of experts and experienced practitioners in

the international defense acquisition community and will be tasked to devise a strategy and implementation plan for achieving the DoD vision.

F. Performance Metrics:

One military department recently calculated that during the period 1987-1992, approximately $555 million in savings was realized from international cooperative research and development programs. While these savings demonstrate success in pursuit of "win-win" international cooperative research and development programs, its success has largely been accomplished in spite of -- rather than because of -- the present legislative and regulatory system. With implementation of a streamlined legislative and regulatory framework to extend the cost sharing and interoperability benefits of international cooperative research and development programs throughout DoD, savings of a similar or greater magnitude are anticipated.

9. Intellectual Property Rights

A. Description of Current Program:

The company's V.P. for Business Development was meeting with his President. "This," the V.P. said, referring to a DoD Request for Proposals, "we could do very easily with an adaptation of the new traveling wave technology we've just developed."

"So what's the problem?" the president asked.

"Technical data rights."

"That shouldn't be any problem," the president said. "That technology's ours. We developed it all by ourselves."

"Under their contracts, DoD always get unlimited rights in 'form, fit, and function' data. They also get unlimited rights to any manuals or training materials. Now, throw in that adaptation I was talking about earlier. If we bill the costs of developing the adaptation to the contract, DoD is probably going to insist we negotiate with them over rights to that data - and probably more data, as well."

"What do they plan to do with the data?"

"Among other things, probably use it for competitive spare parts buys."

"Which means," the president filled in, "some sharp person just might get enough information to figure out the basis for our technology, and all of a sudden, it's in the open and we have nothing to show for our investment!"

"Right."

The president shook his head slowly.

"Our choices, as I see it," the V.P. said, "are to bid with the new technology and take our chances, bid with the old 'standard' technology, or not bid. What do you want to do?"

"I don't know."

B. Better Way:

On an increasingly lethal battlefield, the nation's soldiers, sailors, airmen and Marines require the best technology available, no matter what its source. In order to achieve this goal, DoD should acquire rights in technical data and computer software in a manner that maximizes the flow of technology from the commercial sector to DoD and

from DoD to industry, but which also allows companies (and individuals) to protect their commercial interests in technology, products, or processes they have developed.

C. Background/Experience:

In 1983, the stories of exorbitant spare parts prices ($600 toilet seat and $400 claw hammer) outraged the nation. Congress reacted by encouraging DoD to acquire rights in technical data, not only to ensure safe and efficient operation of the equipment it buys, but to make "follow on" and spares purchases competitively to ensure DoD would not become "captive" to the original equipment manufacturer.

Companies, on the other hand, are concerned about protecting their competitive position in an economic environment where success increasingly is being determined by which company is first in bringing new products or new technology to a global marketplace. This makes companies, particularly those with commercial products, cautious of releasing data, and wary of DoD as a customer.

In the mid-1980s, it began to become apparent that the areas of confluence between commercial and military technologies were increasing. Indeed, in some areas vital to the development of weapon systems, commercial companies had outpaced DoD's efforts (as, for instance, microprocessor technology, where defense technology lags behind the best commercial technology by 3 to 5 years). However, as the Packard Commission pointed out in 1986, DoD's policy of acquiring nearly all intellectual property rights was affecting the willingness of firms to bring their best technologies to the defense marketplace.

Congress, aware of industry's concerns, responded with amendments to existing statutes to promote a better balance between the Government's needs for technical data and contractors' needs for protection of proprietary data. In September 1985, DoD published proposed implementing regulations which failed to satisfy companies' needs. The proposed regulation was withdrawn. Several revised proposals have been published since, that have also failed to satisfy industry's concerns. DoD's current policy for acquisition of technical data rights is defined by an "interim rule" which took effect in 1988.

In 1991, Congress created the Government-Industry Technical Data Committee to review the Government's technical data rights policies. The committee has been performing an exhaustive review of the current policies and procedures and has made encouraging progress. It has determined that a balancing of developers' and the Government's interests in technical data and software can be made without statutory change.

Finally, secrecy orders on patent applications, patent infringement by government contractors, and copyright protection of software continue to present a problem between DoD and its contractors. Resolution of these problems, along with those noted above, is necessary to improve the long-term competitiveness of domestic firms.

D. Plan for the Future – DoD Will:

- **Promote new policies for the acquisition of technical data and computer software which will strike a balance among technology developers' commercial interests and the Government's needs.**

- **Establish a Patent and Trademark Advisory Committee, chaired by DoD, to shift responsibility from the Patent and Trademark Office to a body with expertise in both the control of technology and its development, and the capability to assess whether publication would be detrimental to the national defense, to conduct reviews to determine if a secrecy order should apply to a patent application.**

- **Propose an amendment to allow federal agencies to copyright software that their employees have developed as part of the employees' official duties. Allow federal agencies to license software to commercial companies to assure them whatever developments or improvements they make in the software will be protected by law.**

E. Action Plan:

The Government-Industry Technical Data Committee plans to submit its final recommendations to DoD in October, 1993. DoD will obtain public comments on those recommendations, analyze the comments, and prepare regulatory coverage within 120 days after receipt of the comments. As required by Section 807 of the 1992/1993 National Defense Authorization Act, the Secretary of Defense will report the committee's recommendations to Congress at least 30 days before issuing the final regulations. For the other intellectual property issues, a legislative proposal has been transmitted to OMB and will be factored into the administration's position on acquisition reform legislative provisions. DoD will have any required implementing regulations in place six months after passage of the authorizing legislation.

F. Performance Metrics:

With the implementation of the measures described above, DoD will begin closing the technology gap in those areas where commercial technology leads. We anticipate that there will be a significant increase in the number of federal software developments that are successfully commercialized.

10. Contracting for Commercial Activities Under OMB Circular A-76

A. Description of Current Program

During Operation Desert Storm/Desert Shield, the commander of the National Naval Medical Center advised the Chief of Naval Operations that he intended to use contract personnel to supplement the in-house guard force because of a terrorist threat and unavailability of in-house personnel. He was advised that he was statutorily barred from doing so. The Medical Center, a high visibility target, was placed at significant risk.

B. A Better Way:

Streamline and consolidate conflicting laws into a coherent rule as to when the DoD should contract with the private sector for commercial services, with due consideration of "inherently governmental functions." That rule should provide DoD with the managerial flexibility to evaluate both cost and performance quality factors (even when the cost of quality factors cannot be determined).

C. Background/Experience:

The current statutory scheme for DoD contracting for commercial services under OMB Circular A-76 presents a confusing and contradictory set of rules reflecting the diversity of interests at stake in this area. The laws require DoD to procure from the private sector if that source is less expensive than the government, based on a cost comparison when the activity involves more than 10 employees.

But, the laws also:

- Prohibit conversion to private contractor performance without extensive notice to Congress, including a duplicative annual report.

- Inhibit management flexibility and in some instances have hindered military mission requirements by prohibiting contracting out for fire fighting and security guard functions.

- Give installation commanders broad authority to make contracting-out determinations under Circular A-76, which may not have achieved its intended effect of decreasing A-76 administration costs within the DoD and may have the unintended, detrimental effect of decentralizing resource management in an era of draw down.

- Require DoD to maintain cost data after conversion to in-house performance, even though such data is speculative and of limited value for future comparisons.

In addition to the somewhat contradictory provisions noted above, the statutory requirement to procure from the private sector if less expensive does not permit flexibility to consider performance (e.g., quality provided by established, in-house staff).

D. Plan For the Future -- DoD Will:

Propose enactment of a single, streamlined statute governing traditional A-76 contracting procedures for the DoD. That statute would:

- **Provide that the DoD shall procure from the private sector if such a source can provide a service or supply adequate to meet defined performance standards at a cost lower than that of an in-house, government source, using a "realistic and fair" cost comparison process and at a threshold number of employees consistent with thresholds used elsewhere by the DoD.**

- **Retain existing waivers (e.g., "inherently governmental functions") and add base closure as an additional waiver from that rule.**

- **Require federal employee consultation.**

- **Repeal prohibition on contracting out for fire fighting and security guard functions.**

- **Repeal the statutory authority for installation commanders to make A-76 determinations. Rather than a broad authority mandated by statute, DoD would prefer to tailor such authority through regulatory implementation.**

E. Action Plan:

For those items requiring Congressional action, DoD will forward legislative proposals to the Office of Management and Budget which will be factored into the administration's position on acquisition reform legislative provisions.

F. Performance Metrics:

Savings will be generated by adding base closure as an additional waiver from contracting out requirements, thereby removing unnecessary administrative costs from both A-76 and base closure process. Qualitative gains will be made by expressly permitting performance standards to be considered in A-76 determination processes; system will be developed to measure costs and evaluate performance factors. Savings will also be achieved by removing the absolute bar on contracting out for fire fighting and security guard functions.

11. Service Specific Acquisition Laws

A. Description of Current Program

A 1926 statute, specifying that invitations for bids for experimental aviation design and procurement be advertised in at least three leading aeronautical journals for not less than 30-days, remains in effect even though it has clearly been superseded by more recent legislation and no longer is relevant to modern aviation acquisition.

The Navy International Program Office faced significant delays in the transfer of 3 Knox class frigates and an Adams class destroyer to Greece in early 1992 because of a requirement to notify the congressional defense committees of such transfers and then await expiration of 30 days continuous session. Such delays, particularly in "hot-ship" transfers where the foreign crew relieves the U.S. watch simultaneously with decommissioning, cost money and manpower.

B. A Better Way:

Grants of authority that remain useful should be retained, consolidated and, where necessary, amended to modernize them. Authorities that are no longer used or otherwise obsolete, should be repealed.

C. Background Experience:

Service specific acquisition statutes include Army and Air Force statutes that evolve historically from the same source law, and Navy-unique laws. The laws include many authorities that are decades, or even centuries old, and that have become obsolete or rendered useless by more recent legislation. Authorities that remain useful are not available to all the Secretaries of the Military Departments and the Secretary of Defense.

Specific limitations, such as the six percent fee limit on architect-engineering contracts, no longer serve their original purpose and are significant administrative burdens, particularly for modern, technically complex projects. Certain historical authorities, while remaining useful to the military departments, do not fully address modern acquisition requirements.

D. Plan For the Future – DoD Will:

Transmit to the Office of Management and Budget a legislative proposal based on the Section 800 Panel for consideration in developing the administration's position on acquisition reform legislation being considered by Congress. That proposal will:

- **Retain useful authorities and amend them to vest such authorities, when appropriate, in the Secretary of Defense as well as the secretaries of the Military Departments.**

- **Repeal obsolete statutes, such as the six percent fee limit on architect-engineering services.**

- **Amend to modernize the authority to sell or loan to allow DoD to give samples of items that may promote independent research and development, and provide for the sale of services from government test facilities for use by private contractors; and the authorities provided the Civil Reserve Air Fleet, to permit private contractors limited commercial use of military airfields.**

E. Action Plan:

A legislative proposal has been transmitted to OMB and will be factored into the administration's position on acquisition reform legislative provisions.

F. Performance Metrics:

Elimination of the obsolete six percent fee limit should result in higher quality, more efficient architect-engineering services and eliminate significant administrative burdens in ascertaining which services are subject to fee limit and which are not. Elimination of duplicative congressional notice requirements for Navy ship transfers will reduce administrative costs. Enactment of modernized authority to sell, loan, or rent, will facilitate technology transfer between government and private sector. Enhancement of Civil Reserve Air Fleet authorities will increase use of the commercial air fleet to meet military transport needs, with savings from decreased demand on military aircraft.

12. Standards of Conduct

A. Description of Current Program

A DoD official violates ethics rules by accepting a DoD contractor's offer to fly on the contractor's aircraft to the plant for an official inspection visit, even if the alternatives cost much more and are very inconvenient.

One defense-unique post employment restriction resulted in DoD issuing more than 4,300 legal advisory ("safe harbor") opinions in a 19 month period; in only 4 percent of those opinions did the DoD find that the law even potentially applied.

B. A Better Way:

Acquisition laws should promote financial and ethical integrity in ways that are simple, understandable, not unduly burdensome and which encourage sound and efficient procurement practices.

C. Background/Experience:

There are more than 100 statutory sections setting forth the rules guiding standards of conduct in defense procurement. These include statutes covering post-employment restrictions of government personnel, contractor certifications, and false claims.

Criminal fraud statutes - within title 18 of the U.S. Code apply to all federal sector procurement, and provide for criminal remedies on false claims, conspiracy to commit false claims, conspiracy to defraud the government and false statements; they generally require a finding of specific intent to deceive.

Civil fraud statutes - the False Claims Act - provide remedies for knowingly presenting, or conspiring to present, false or fraudulent claims to the United States for payment; the action may be brought by the government or a private person on behalf of the government (so-called *qui tam* actions) and provide treble damages, with a *qui tam* plaintiff entitled to up to 30 percent of recovery.

Piecemeal legislation sets forth a wide variety of restrictions on post-government employment (including opportunities and discussions), gifts and gratuities, acts affecting personal financial interests, disclosure of procurement-related information, and certification and reporting requirements related to these issues; as well as administrative, civil and criminal penalties for violations.

Nearly all ethics laws overlap. The propriety of a given event is nearly impossible to measure when two laws apply competing tests to the same situations. This spectrum of laws is a significant impediment to defense acquisition.

The recent efforts to create a scandal-proof government have gone so far that they, on balance, do more harm than good. Some of these ethics reforms, especially recent attempts to purify the procurement process by imposing broad post-government employment restrictions, afford little ethical protection at very high cost--a bad bargain for the government and a bad bargain for the public. (Report of the National Academy of Sciences, Science and Technology: *Leadership in American Government; Ensuring the Best Presidential Appointments* (1990)).

D. Plan For the Future -- DoD Will:

Propose that Congress:

- **Adopt legislation proposed by Office of Government Ethics (OGE) and the OFPP in 1990 and 1991 that would revise procurement integrity laws to simplify ethics requirements and make them consistent across government, including deletion of current contractor certification requirements in favor of a prohibition on disclosure or receipt of certain sensitive source selection or proprietary information;**

- **Clarify and simplify "revolving door" laws by establishing one law that would prohibit certain former procurement officials from representing, aiding or advising any person concerning a procurement for one year after government service.**

- **Examine whether *qui tam* suits should not be allowed if the suit is based on information acquired during course of government work.**

- **Examine whether contract disputes involving fraud allegations may be more efficiently resolved.**

E. Action Plan:

A legislative proposal has been transmitted to OMB and will be factored into the administration's position on acquisition reform legislative provisions.

F. Performance Metrics:

Greater clarity in government ethics laws will ease administrative burden of unnecessary interpretative opinions. Modification of "revolving door" laws will remove barriers to higher quality recruitment within the federal sector. Modifying availability of *qui tam* remedies will prevent their manipulation by industry and government employees seeking to maximize their personal share of recoveries.