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January 5, 2017

President-Elect Donald Trump
1717 Pennsylvania Avenue, NW
Washington, DC 20006

Subject: Federal Contracting

Dear President-Elect Trump:

The Procurement Round Table (PRT) is a nonprofit organization chartered in 1984 by former Federal acquisition professionals to promote policies and practices that improve the effectiveness and efficiency of the federal procurement/acquisition system. Our 60 Directors are private citizens who serve pro bono. With collective experience that spans many administrations, we offer recommended actions to:

- Speed the delivery of goods and services that support our nation's troops and citizens,
- Use proven buying strategies that emphasize innovation and cross-government collaboration to reduce duplication and provide greater value, and,
- Position the government to fully use technological advancements that improve mission delivery and manage costs.

With these goals in mind, we suggest three critical areas for focused attention:

1) Providing strong leadership

Appoint acquisition executives with experience in both the private and public sector. This approach allows an infusion of fresh business principles, while assuring that individuals can hit the ground running – with a knowledge of government laws and ethics considerations.

Reward government acquisition professionals who make sound buying decisions that expedite mission outcomes. Provide training to assure that officials use critical thinking skills, act with integrity, and offer required transparency.

2) Emphasizing getting things done

Review acquisition regulations that implement social programs. Many administrations have used the federal acquisition system to further social program objectives. Review and eliminate regulations that place unwarranted burdens on the acquisition process, driving up costs and delaying speed to product or service delivery.

Reduce layers of red tape. Reduce the numbers of internal approvals and reviews that currently burden the acquisition system. Trust contracting professionals to make sound business decisions, in concert with their mission program partners. And hold them accountable for results.

Support the work of the Section 809 Task Force. This Congressionally commissioned two-year review of Department of Defense acquisition regulations is aimed at streamlining processes and maintaining a defense technology advantage.

3) Eliminating unnecessary rules and duplicative oversight

Streamline audits and reviews. Require only the number of audits and reviews necessary to assure reasonable accountability. Don't let reviewers and auditors outnumber those charged with accomplishing the work.

Focus on providing insights that will improve government practices. Stop the "Gotcha" approach to oversight. The "gotcha" climate reduces acquisition professionals to "box-checkers" and significantly inhibits expeditious delivery of program.

Promote accountability. Instill a culture of accountability that rewards acquisition professionals for good performance and appropriately addresses missteps.

We provide a more in-depth set of suggestions in the attachment to this letter.

The Directors of the Procurement Round Table are ready to assist you in addressing the foregoing issues, as well as the many others you will encounter in the acquisition system. Please feel free to call on us to provide our expertise. You may call me directly at 202-626-8565 or reach me at aburman@jeffersonconsulting.com. You may also reach out to any of my fellow Directors for assistance.

Sincerely,

A handwritten signature in black ink that reads "Allan V. Burman". The signature is fluid and cursive, with a long horizontal line extending to the right.

Allan V. Burman, PhD
Chairman, Procurement Round Table
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Washington, DC 20005

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ATTACHMENT 1

Recommendations of the Procurement Round Table

The Procurement Round Table (PRT) is a nonprofit organization chartered in 1984 by former Federal acquisition professionals to promote policies and practices that improve the effectiveness and efficiency of the federal procurement/acquisition system. Our 60 Directors are private citizens who serve pro bono. With collective experience that spans many administrations, we offer recommended actions to:

- Speed the delivery of goods and services that support our nation's troops and citizens,
- Use buying strategies that emphasize innovation and cross-government collaboration and,
- Position the government to fully use technological advancements that improve mission delivery and manage costs.

With these goals in mind, we suggest three critical areas for focused attention:

- ***Providing strong leadership.*** Pick the right people in your appointments and reward leadership among the civilian acquisition workforce. Set the right tone for integrity and transparency. Expect value for money. Foster innovation and creativity.
- ***Emphasizing getting things done - job one is to accomplish the mission.*** Expedite and streamline acquisition processes to achieve mission fulfillment, while honoring core values of integrity, transparency, value for money and customer satisfaction.
- ***Eliminating unnecessary rules and duplicative oversight.*** Eliminate rules that are unnecessary or fail to offer anticipated benefits. Assure appropriate checks and balances to combat fraud waste and abuse, but don't inhibit innovation and speed to delivery.

Providing Strong Leadership

Appoint acquisition executives with experience in both the private and public sector. This approach allows an infusion of fresh business principles, while assuring that individuals can hit the ground running – with a knowledge of government laws and ethics considerations.

You will make the following political appointments to bring leadership to the Federal acquisition community and implement the policies of your Administration and the Congress:

- The Administrator of the Office of Federal Procurement Policy (OFPP),
- The Administrator of the General Services Administration (GSA),
- The Under Secretary of Defense for Acquisition, Technology and Logistics, and
- The Chief Acquisition Officers (CAO's) of the Federal agencies.

We recommend you appoint leaders who have experience in acquisition either in government or in the private sector, but preferably in both. The function these people perform is more akin to that of the private sector than virtually any other function in government. Thus, these individuals need to bring a business-like approach to the exercise of their roles. They will also lead, on your behalf, reforming the current acquisition processes, and thus, they will need the resources, including, most importantly, the right people, to ensure that the government makes good business deals and delivers value for money to its ultimate customer, the taxpayer.

Reward those government acquisition professionals that make sound buying decisions that expedite mission outcomes. Provide training to assure that officials use critical thinking skills, act with integrity, and offer required transparency. Reduce the numbers of internal approvals and reviews that currently burden the acquisition system. Trust contracting professionals to make sound business decisions, in concert with their mission program partners. And hold them accountable for results.

The last, most comprehensive review of the acquisition workforce was conducted by the Service Acquisition

Reform Act Panel (SARA Panel)¹ ten years ago. The SARA Panel's report² found, among other things, that:

“Without a workforce that is qualitatively and quantitatively adequate and adapted to its mission, the procurement reforms of the last decade cannot achieve their potential, and successful federal procurement cannot be achieved.”³

The SARA Panel's findings remain valid today.

We recommend that you direct the Administrator of OFPP to adopt a comprehensive plan to recruit, train, and retain a highly skilled workforce and to introduce proven business practices to the federal acquisition processes. Some specific areas that would benefit from a fresh look include:

- Training and education, and
- Tools to strengthen work practices.

Acquisition Training and Education

Current strategies for training the acquisition workforce rely on government and private sector training institutions. Typically, these organizations are staffed by individuals who have great familiarity with government contracting but less so with that of the private sector. This training environment does not easily lend itself to the introduction of newly developed, innovative business practices. Additionally, there are no easy paths for transferring best practices across federal agencies. We recommend that you charge the Administrator of OFPP to develop an integrated approach to training and educating contracting officers that highlights innovation and that equips them to meet not just individual agency needs but also those of any agency across the government, Defense or non-Defense.

Acquisition Tools

The U.S. federal government does not have an end-to-end acquisition tool that covers the acquisition process from the development of requirements through the disposal of excess property and contract closeout. The absence of such a tool creates a large administrative burden and increased risk of introducing unintentional errors associated with rekeying large amounts of data into multiple databases. It also undermines appropriate levels of transparency into the government's procurements.

Not having such a tool can result in buying process inefficiencies, like multiple contracts awarded for purchases of the same, or essentially the same, products or services. The absence of such a tool also makes it difficult for agencies to manage their procurements to ensure compliance with the various acquisition provisions, Executive Orders, regulations, and policies.

The following are more specific examples of opportunities to be gained from investing in tools that provide common access to data and information on government goods and services:

- *Reuse of existing government property* – The current process requires the end item user to determine whether there is excess government property available to meet their needs/requirements. This information is obtained manually. There is no real check in the system to make sure that an end item user has fully explored availability and thus avoided the cost to the government of acquiring new property.
- *Required Sources of Supply* – The current process does not give contracting officers a means to identify all the current required sources of supply, forcing them to rely on their background knowledge, notwithstanding the fact that failure to do so violates specific Congressional and Executive socio-economic programs.

¹ Services Acquisition Reform Act, Section 1423, Pub. L. No. 108-136 (2003)

² Report of the Acquisition Advisory to the Office of Federal Procurement Policy and the United States Congress, January 2007, https://www.acquisition.gov/comp/aap/24102_GSA.pdf

³Pg. 330, *ibid*

- *Use of existing government contracts* – The current process does not provide the contracting officer any visibility from their desktops into what government contracts are available for their use, causing them to miss an opportunity to avoid extra administrative costs.
- *Leveraging technology tools to analyze government information in contract decision-making* - By failing to leverage technology to effectively manage the wealth of contracting information it controls, the government misses the opportunity to maximize data-driven decision-making.

Considering the multiplier effects for the government's acquisition workforce and associated process improvements, we believe that implementation of an end-to-end acquisition process tool is worthy of your consideration.

Emphasizing getting things done - job one is to accomplish the mission.

The Federal Acquisition Regulation sets the following vision for the acquisition system:

The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.⁴

Clearly, fulfilling the mission is job number one. However, the challenge for participants in the system lies in identifying the breadth of above vision, and particularly about "fulfilling public policy objectives." Some assert that public policy objectives should be limited exclusively to those that facilitate agency mission fulfillment. Others believe that such objectives should be viewed more broadly to enable the government to leverage its market power in furtherance of social aims.

As it exists, the procurement system serves as the platform for several public policy drivers in areas like labor, small business/socio-economic, and environmental practices. It also contains directives on ethics, award disputes, audit and oversight, government-unique cost accounting practices, data rights, and a host of other issues that have broader policy drivers embedded within them. Moreover, the procurement system is often a vehicle for policy driven by legislation and Executive Order.

Without passing judgment on the merits of any of these matters, we believe it would be helpful for the new Administration to lead the development of a consensus on the role of the acquisition system. Such a review would address each of the objectives noted above and their associated direct and indirect costs, not the least of which is the monetized cost associated with mission delay. Clear identification of the system's purpose would aid the government in assessing the impact of policy drivers implemented through procurement, balance that impact against the policy benefit, and, determine whether procurement is the best means to implement those policies.

In seeking to meet mission needs, the new leadership team should embrace an acquisition strategy that emphasizes four key characteristics:

- Integrity,
- Transparency,
- Value for money, and
- Innovation and creativity.

Integrity

The integrity of the process and its participants is essential to maintaining the public's trust in how the Federal government spends the tax dollars entrusted to it. The leaders you choose set the tone by their actions. Unfortunately, of late, there have been a number of instances where senior government personnel have accepted

⁴ FAR 1.102(a).

personal benefits in exchange for the performance of their duties. We believe you will find that this aberrant behavior was the result of lapses of judgment or personal greed, neither of which rule nor training will eliminate. These are cases where individuals should be held accountable for their misdeeds, as opposed to the government's establishing new rules that then impose constraints on the vast majority of those successfully carrying out their acquisition roles. The credo of all public servants, but most particularly those in acquisition, should be that they will not solicit or accept any personal benefit for performing their duties on behalf of the American people.

We recommend that you adopt an ethical code of conduct which reiterates that government employees will accept nothing from individuals with whom we do business or who are seeking to do business with us.

Transparency

The U.S. Federal acquisition system, spending over \$400 billion per year on goods and services, is the most transparent system in the world. Information about what we want to buy, what we have bought, and the rules by which we buy are available for all to see. The Federal Procurement Data System has already been providing for many years now extensive information on what is bought and by whom. We should look for ways and tools such as those described above to further enhance that transparency.

Value for Money

We recommend that your acquisition strategy focus on obtaining value for money. The complexities of the procurement process often lead acquisition professionals to focus on achieving the lowest prices. While cost is important, a focus on total value allows consideration of factors important to the long-term stability of programs and of mission fulfillment. It is easy to celebrate the cost savings at the time of contract award, but much more important to assure that value is delivered through the life of the program and the government's desired outcomes are achieved.

Reward acquisition officials who exercise critical thinking skills to create an acquisition strategy that looks beyond price to assure that the government is getting value for the dollars spent.

Innovation and Creativity

With the scale of government acquisition operations and the attention that is paid to process compliance, it is easy to squash efforts to bring much needed innovation and creativity to government buying practices. Many successful businesses create incubators for innovation. We recommend that the new acquisition executives create programs and strategies particularly focused on fostering and rewarding innovation and creativity. Also recognize rather than punish innovators when they take measured risks to achieve worthy outcomes, even in the event of failure.

Eliminating unnecessary rules and duplicative oversight

We are aware of, and emphatically support, your determination to reduce the number of regulations in government. The current construct of statutes, regulations, and policies

- Adds a premium to the government's cost of buying goods, services, and solutions, and
- Represents a significant barrier to companies seeking to enter the government marketplace -- companies whose innovation and research have produced goods and services the country needs for defense and the provision of services to citizens.

There is a need to reform the policy, regulatory, and statutory constructs which underlie our Federal Acquisition System.

New rules should add value, without undermining agency mission fulfillment.

Additionally, the underlying policy justification for new rules should be exposed to public view and comment in all cases before they are made effective. The use of Interim Rulemaking (discussed *infra*), to issue rules without public notice and comment, contributes to the growth of inordinate regulatory burden.

We recommend that you introduce a policy of cascading sunset clauses for all procurement regulations and policies governing the Federal Acquisition System. Such clauses would force Federal departments and agencies to review these regulations systematically and affirmatively renew acquisition rules (through the notice and comment process) on a reasonably periodic basis. Cascading sunset clauses would do away with generational deregulatory efforts in favor of annual, real-time, manageable reviews that invite improvements for the sake of efficiency or to leverage technological advances.⁵

Section 809 Panel

We strongly recommend that you support and expand the on-going work of the “Section 809 Panel” which was commissioned by Congress in 2016.

In Section 809 of the 2016 Defense Authorization Act (NDAA) Congress directed the Secretary of Defense to establish a Panel to review the acquisition rules affecting the Department of Defense (DOD). The goal is to streamline processes and maintain a defense technology advantage. There are 18 panel members all with significant experience in the acquisition arena and the Panel has been given two years to produce its report and findings. Six Procurement Round Table Directors are serving on the Panel including its Chair, Dee Lee.

The Panel is charged with evaluating only those rules that affect DoD. While many of the rules may also apply to the civilian agencies, as currently framed, Panel recommendations would only pertain to DoD. Failure to expand the scope to government wide analysis could lead to differences across government that create additional complexities for companies wanting to do business with the federal government.

We recommend that you request that the Panel evaluate the rules and statutes from a government-wide perspective and provide recommendations that may be applied government-wide, as well. To this end, given the critical need for the Panel’s output here, the addition of resources to assist the Panel, including detailed support personal, would facilitate the Panel’s ability to expedite its work.

Labyrinth of Acquisition Legislation and Rules

Key legislation affecting the policies and practices governing federal acquisition rulemaking include:

- Section 22 of the Office of Federal Procurement Policy (OFPP) Act (Pub. L. No. 93-400, Aug 30, 1974), as amended, now codified in 41 USC §1707;
- The Administrative Procedure Act (APA) (5 USC Subchapter II),
- The Paperwork Reduction Act (44 USC §3501 *et seq.*),

Over time, these combined rule making processes have become unwieldy. They do not reflect the robust conversation between Government and the public prior to the issuance of rules (especially those rules having a significant impact on Government and industry costs) and access to the Government marketplace, that was anticipated by Congress.

We do not recommend the elimination of the OFPP rulemaking process in favor of that of the APA. The procurement process needs the flexibility authorized by the OFPP Act language. We do recommend that you instruct the Administrator of OFPP to engage in a robust conversation with the public before implementing acquisition statutory provisions or your policy initiatives, except in unusual and compelling circumstances.

Once a rule is promulgated and is in effect, industry must begin to comply with it. Government regulators frequently do not have a full appreciation of the cost of a method of implementation until that information is provided to them by the public. In this regard, the use of interim rules is particularly problematic because interim

⁵ See pgs. 6 – 7, Testimony of Jonathan Etherton before the Senate Armed Services Committee, April 30, 2014, http://www.armed-services.senate.gov/imo/media/doc/Etherton_04-30-14.pdf. Mr. Etherton is a PRT director.

rules allow for comment after-the-fact. Thus, they do not avoid the costs of implementation, which later may be determined to be unnecessary. Further, once industry begins to incur costs to implement an interim rule, it often is loath to incur additional costs to revise/replace actions, unless there is a significant benefit from changes made by any final rule. The result is that government and industry simply live with an accommodation to dysfunction. Advance conversation can avoid unintended dysfunctional consequences.

- **Provide Greater Transparency to Rule Implementation Costs**

The rule making process often does not reflect accurately the full costs of implementation. For example, the analysis of the costs of implementation, as required by the Paperwork Reduction Act, often is limited only to the costs incurred by the person who enters the data.

Regardless of the source of the rule (statute, Executive Order, or internal agency policy), the costs of gathering the data required, not just reporting it, as well as the costs of the process creation/changes required by the rules, both within the Government and industry, should be identified in the proposed, interim, and final rules. Moreover, those costs should be aggregated periodically for the information of the agency, Congress, and the public.

In the same vein, the rules do not evaluate the costs and benefits of the rules themselves. We fully recognize that some rules are necessary as a matter of principle to avoid corruption and to maintain the public trust, and they must be adopted. Having said that, the public still should know what the cost of all rules are, such as the costs to the system, the impact on price to the government, and the lost opportunity costs for both the government and industry in complying with them; not just the administrative costs.

- **Codify Federal Procurement Statutes**

Multiple studies (Section 800 Panel⁶ Packard Commission.⁷) have highlighted that statutory provisions affecting Federal and DoD acquisitions are not codified in a single location in the US Code. The statutory provisions are spread throughout the US Code, or not codified at all, and found only in the "Statutes At Large." Moreover, the jurisdiction for these provisions rests with a variety of committees in the House and Senate. Codification of at least some of these provisions would be a significant step towards the goal of a consolidation and codification of all DoD and government-wide acquisition provisions.⁸

We recommend that, in your budget submission to the Congress, you request that all procurement statutes be codified in a single place, that those statutes have sunset provisions, as discussed above regarding regulations, and that any statute which does not reference the codified provisions will have no effect.

- **Review Key Acquisition Policies**

There are many specific acquisition policies that should be reviewed, but, from our perspective, key among them are:

- **Commercial Items, and**

⁶ Named for Section 800 of the NDAA for FY 1991.

⁷ Page I-19, Section 800 Panel Report.

⁸ In 2011, Congress passed and the President signed a bill "To enact certain laws relating to public contracts as title 41, United States Code, "Public Contracts," Public Law 111-350 (Jan 4, 2011), without substantive change. The last significant re-codification of provisions in title 10, applicable to the Department of Defense, was in 1988 through Public Law 100-370 (July 19, 1988). At this juncture, it may be worthwhile to consider that, to the extent that the issues identified herein are not addressed, there is incentive for policymakers to "go it alone," *i.e.*, to issue reforms for acquisition activities within their jurisdictional purview, creating a further balkanization of the rules governing the system, and with it, increased complexity and disincentives to participate in the government marketplace.

- Cybersecurity.

- **Commercial Items**

In the mid-1990s, based on the findings of multiple panels studying the process, the government recognized the benefits associated with appropriately utilizing commercial goods, services, and practices. Indeed, purchasing commercial items allowed the government to leverage the research and innovation expenditures of the private sector, freeing up funds for mission activities that otherwise would have been paid for the development of duplicative government-unique items. Notwithstanding the government's determination to purchase commercial items,⁹ there continues to be reluctance to utilize them and the commercial practices by which they are purchased.

In addition, to limit the unintentional effect of future laws, Congress, in the Federal Acquisition Streamlining Act (FASA),¹⁰ required that for any new statute to apply to commercial items, the proposed legislation must contain a specific reference to the FASA commercial item language. If not, the Administrator of OFPP is charged with determining whether the statute should be applied to a commercial item pursuant to detailed criteria contained in (now) 41 USC §1907. This legislative proscription has not always been effective.

While intended to reduce complexity in buying commercial items, the number of statutes applicable to commercial items has more than doubled since 1994. We recommend that you suspend regulatory actions that have increased the number of statutes applicable to commercial items; direct the Administrator of OFPP to re-evaluate the regulatory rationale for applying those statutes to commercial items and publish for public comment each determination/rationale justifying the continued application of statutes; and publish all final determinations for the public's information. Further, the Administrator of OFPP should be directed to promote the use of commercial items, where appropriate and applicable, throughout the government.

- Cybersecurity

We believe that cybersecurity poses one of the most significant threats to national security and that steps must be taken to reduce that threat, not only to protect the government's interests, but those of industry, as well. The risk of dealing with cybersecurity, however, appears to have been shifted to industry with no relief from either the consequences of implementation or the availability of solutions to reduce the risk. This shift has become a barrier to entry into the government marketplace for small and large businesses alike. We recommend that you task the Administrator of OFPP to bring together both government and industry to jointly define the risk and agree upon solutions and risk allocation among the parties.

Eliminate Duplicative Oversight

With regard to oversight the focus should be on providing insights that will improve government practices. The "gotcha" approach to oversight reduces acquisition professionals to "box-checkers" and significantly inhibits expeditious delivery of program. In addition, audits and reviews should be streamlined, requiring only the number of audits and reviews necessary to assure reasonable accountability. Don't let reviewers and auditors outnumber those charged with accomplishing the work.

Conclusion

While the tone of these recommendation may make it appear that our Federal acquisition system is broken, it is not. It is the example against which most countries in the world measure their systems. The Federal acquisition system has delivered the goods, services, and solutions that this country has needed to respond to threats and to disasters that have affected our citizens, and it has responded spectacularly. Each day it successfully delivers goods, services, and solutions to support our citizenry, as well as citizens of countries around the world in times of disaster/need.

⁹ Commercial Item include goods, services, and solutions.

¹⁰ The Federal Acquisition Streamlining Act of 1994.

The Federal Acquisition System, however, needs improvement to reduce costs and improve the delivery of the goods, services, and solutions agencies needs to fulfill their missions. We hope that our recommendations will be useful to you as you review potential reforms.

We offer our good wishes and also our services to you to provide the benefit of the experience and expertise of our Directors. The PRT is committed to the common goal of ensuring that the Federal acquisition system allows our government to obtain the best outcomes possible in acquiring its goods, services and solutions. Our members are listed on the front page of our cover letter. Please feel free to call on any of us if we can be help. I can be reached at 202-626-8565 or at aburman@jeffersonconsulting.com.

Allan V. Burman, Ph.D.
Chairman, Procurement Round Table