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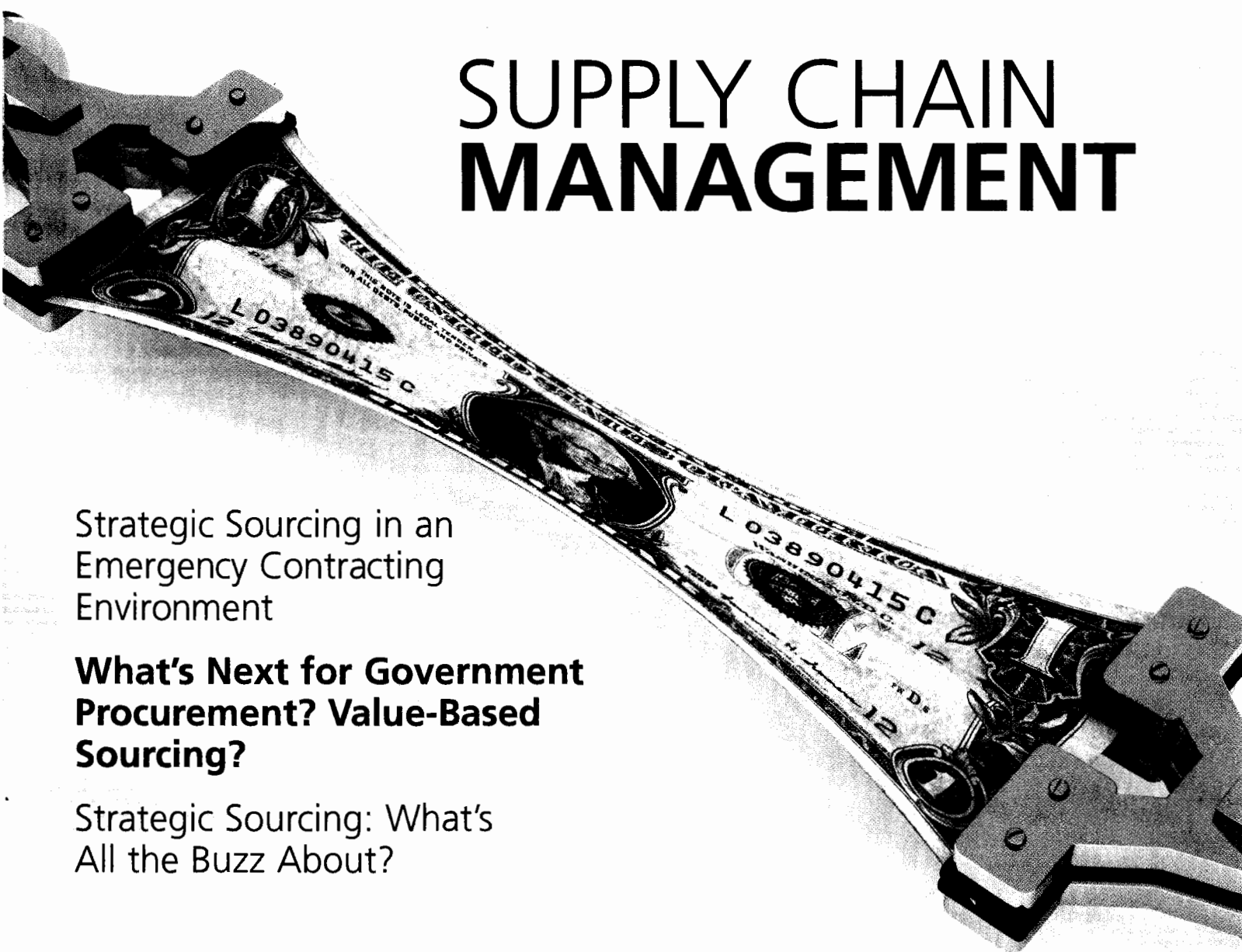
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Award-Term Contracting: The Right Tool for the Right Environment

In our view, the authors of an article on award-term contracting that appeared in the September 2005 issue of *Contract Management* magazine ("Award-Term Contracts: Good for Business?") have unjustifiably attacked the award-term technique and strongly discouraged contracting officers from even considering its use.

Specifically, we are concerned that many readers of this article will be misled, or at least confused, by the authors' largely unsupported conclusion that, "The use of award-term contracts doesn't seem to represent the best interests of the U.S. taxpayer—rather, it smacks terribly of the government acquisition environment of two decades ago that preceded the passage of the Competition in Contracting Act (CICA)." Neither this emotionally charged headline nor the three reasons cited in the article that award-term contracts are "Not Useful for Government Acquisition Professionals" are supported by data included or cited in the article. While the authors are entitled to express their opinions, unsupported speculation about the potential results of award-term contracting should not be accepted as fact. It would require comments approximating the length of the article to cover all the detailed statements with which we disagree, but we will present some key points for consideration by those who wish to better understand award-term contracts and when their use may be appropriate.

The impetus for the article was apparently the previous thoughtful articles by Vernon J. Edwards in 2001 and 2002, plus the authors' replication of his method of searching synopses for the words award-term. While the authors discuss some shortcomings in this methodology, they seem to consider the "marked increase" in citation of award-term in the synopses to be a serious problem, even though the total number is very small in relation to the total synopses issued and there was no examination of the subject matter of the acquisitions and their appropriateness for the award-term incentive. Mr. Edwards did look behind some of the synopses in his 2002 article, and we would agree that some of those appeared to be questionable candidates.

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In their relatively brief coverage of the advantages of award-term contracting, the authors do recognize the value to world-class business organizations of long-term relationships in supply chain management. They also recognize that award-term may provide a more powerful incentive than short-term profit, motivate capital investment and process improvement, and enable contractors to gain efficiencies not available to contractors who are subject to constant churn. In our view, the acquisitions that are likely to benefit from properly and thoughtfully structured award-term contracts are those in which the government is likely to obtain the same benefits that lead business organizations to long-term relationships. In general, those are likely to be acquisitions for which a requirement is known to exist over a long period; there is opportunity for investment in equipment, process improvements, and a skilled work force; and there are likely to be substantial physical and/or efficiency costs associated with contractor turnover. A good example would be the contractual support of a weapon system, such as is currently in effect for the E-8 Joint STARS Total Systems Support Responsibility (TSSR) contract. We would agree that award-term should not be used for commodity type supplies or services available from many sources or solely to avoid the time and effort associated with re-competition.

In their citation of disadvantages, the authors cite, as did Mr. Edwards in his 2001 article, the possibility that the parties will begin to conduct business on a personal, instead of a proper professional, basis. Unlike Mr. Edwards, who also discussed the advantages of a long-term cooperative relationship facilitating team development and effectiveness, as well as the opposite potential problem of a change in personnel resulting in conflict, these authors focus only on the one negative potential. In our experience with both award-fee and award-term, there are more likely to be problems and inconsistencies from turnover of evaluators than from the problem cited in the article. A properly structured award-term plan, including objective as well as subjective measures of performance, and a well-structured organization's up-to-the-term determining official are key elements for success. In any event, we reject the notion that government personnel are less able to maintain professional relationships over the long term than those in world-class businesses.

We also question that the "potential neglect of fiscal law" and the Competition in Contracting Act are significant concerns, since we trust that experienced contracting officers with competent legal advice can and will ensure

their award-term contracts comply with all legal and FAR requirements. Award-term contracts are likely to be requirements contracts or indefinite-delivery-indefinite quantity contracts in which funds are obligated by delivery order. In other contracts, an appropriate availability-of-funds clause will protect the fiscal process.

The case of CICA compliance presents a more difficult challenge in justifying the status of the award-term years when out-year pricing is not firm or is subject to changes over time. This problem was discussed by Mr. Edwards, but not by these authors. In his article, Mr. Edwards calls for creativity in addressing this challenge, and we believe the Joint STARS TSSR contract offers one such creative answer. In that case, the program obtained approval for a 22-year J&A that called for pricing in appropriate rolling increments throughout a contract term equal to the projected useful life of the weapon system. Joint STARS was a fully justified sole source because of the requirement for close integration between the sustainment contract and other contractual aspects of a rapidly evolving program. The contract contained an award-term plan that carefully defined the performance, schedule, cost, and long-term affordability criteria that, if met, would justify extensions through the total contract period. It also included very specific criteria and processes for ending the arrangement in the event performance deteriorates. This approach allowed both the government and the contractor to appropriately share the risk associated with firm pricing out-year requirements within the potential award-term period.

We believe that similar innovative approaches can also be applied to the competitive environment. The keys to success are (1) selection of an appropriate and well-justified contract term based on analysis of the requirement and the industrial base; (2) development with appropriate early industry involvement of an award-term plan that puts a mechanism in place to ensure the government's interests in performance, cost, and schedule objectives are protected throughout the potential contract term; (3) a mechanism to end the contract through a defined off-ramp if performance deteriorates; and (4) a clear explanation of the potential contract term and justification for its length in both the synopsis and the solicitation for the information of all interested parties.

Later in the article, the authors state, "Perhaps the most disadvantageous aspect of the award-term incentive is the irreparable harm to the industrial base." They ask, "Do we really want to devise an acquisition strategy that caters only to a select few businesses?" There is no data to support the view that the incidence of the use of award-term contracting would even approach such dire consequences. A strong industrial base can come only from an appropriate number of viable competitors, not from maximizing the number of contractors fighting to underbid each other to secure a share of requirements that will not sustain that number. Those of us who have been at this a long time have seen far too many instances of hungry competitors underbidding competent incumbents, resulting in poor

performance and significant transition costs. If one were to ask a responsible small or small disadvantaged business if it would rather have the opportunity to win a contract with the potential for a long-term relationship or a chance to win, perform, and re-compete every year or two, we believe it would most often chose the former.

The authors selectively use FAR-guiding principles to support their conclusion that, "Given these constraints, it appears unseemly that award-term contracts would make an appropriate part of any acquisition strategy, since they arguably require increased administrative oversight and do little to promote small and disadvantaged business opportunity." In appropriate circumstances, award-term contracts may be the best means of following the FAR-guiding principles to "(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example, (ii) using contractors who have a track record of successful past performance or *demonstrate a current superior ability to perform*" (emphasis added). Minimizing administrative operating costs must be construed within the circumstances of the acquisition and in the light of the benefits to be received by the government. In addition, the government's long-term relationship in an award-term contract may be directly with a small or small disadvantaged firm but, even more likely, will result in long-term, stable subcontracts with such firms by a prime contractor.

The use of award-term contracts is neither an impending disaster, as the authors would seem to view it, nor a solution to the government's longstanding acquisition problems. It is one tool to be used in appropriate circumstances to achieve affordable, continuous improvement in processes, investments, and workforce skills to better meet the user's needs where the requirement is complex and known to exist over a long period. To be useful, it must properly balance incentives for the control of current period costs and long-term affordability. A well-thought-out incentive structure, often including both award-fee and award-term, using meaningful objective metrics and subjective measures is needed to achieve these goals with reasonable administrative oversight effort. Award-term is not an alternative to competition. Whether an award-term contract must be entered into by full and open competition, set-aside, or sole source justification is to be determined under the Competition in Contracting Act, the same as any other contract. Competition is not an end in itself, but a means to achieve quality performance at a fair and reasonable cost. By making a contract more desirable to win, award-term may actually increase competition by interesting more and more competent competitors.

John D. Slinkard
Major General, USAF (Retired)

Gary L. Poleskey
Colonel, USAF (Retired)