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**DRIVING THE FUTURE OF ACQUISITION—  
FOCUS ON WHAT WORKS**

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# Buying Consumption-Based Solutions

## Session A03

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# Background: Section 809 Panel

- Congressionally mandated (FY16 NDAA), independent commission tasked with streamlining and improving defense acquisition.
- 16 commissioners: senior marketplace and government leaders with 300+ years of combined experience.
- A catalyst for restoring agility and simplicity to defense acquisition through bold, simple, and effective solutions.
- Focused on creating a modern, agile defense acquisition process that provides warfighters what they need, when they need it.
- Completed its work in July 2019: reports + roadmap.
- ***Today's topic was 1 of the 98 recommendations.***

SECTION  
809  
PANEL

# What is a Consumption-Based Solution?

*Any combination of hardware/equipment, software, and labor/services that together provide a seamless capability that is metered and billed based on actual usage and predetermined pricing per resource unit and that includes the ability to rapidly scale capacity up or down.*

Cloud services



Tractor  
as a service

Aerial  
reconnaissance



Transportation  
on demand



# Why did we tackle this topic?

- IT previously considered an investment; now can be bought as a utility.
- Influence from factors such as:
  - Ubiquitous internet access.
  - Internet of Things (IoT).
  - Bring Your Own Device (BYOD).
  - Familiarity from consumer-oriented services.
  - Commoditization of IT.
- Like everyone else, the government will be buying more consumption-based solutions in the future.



# So what's the problem?

- The *FAR* categorizes all purchases as either **supplies** or **services**.
- What about Software as a Service (SaaS)?



THEN: Supply



NOW: Service?

- Service contracting rules: how many people?
- Subscriptions: pay in advance, not arrears.
- Utilities: highly regulated.

# How are we doing it now?

- Cloud services are frequently bought as Other Direct Costs (ODCs) on service contracts with large systems integrators.
- JEDI: plans to use all FFP task orders.
- GSA Schedule IT 70 Cloud Special Item Number (SIN 132-40).



# Recommendations

- Revise appropriation law and budgeting rules to address the unique aspects of buying consumption-based solutions.
- Create a new subcategory of services called “consumption-based solutions” in FAR Part 37, Service Contracting.
- Agency-specific regulations, policies, and guidance regarding service contracting are not applicable to contracts for consumption-based solutions or hybrid contracts when the primary purpose is to procure consumption-based solutions.
- Update the Product Service Code (PSC) data architecture to accommodate consumption-based solutions as a new data type.
- Add a new contract type called “fixed-price resource units” to FAR Subpart 16.2.
- Not just for IT: any consumption-based solution.

# New Contract Type

- The fixed-price resource units contract type:
  - Establishes a fixed price per unit of measure (e.g., one hour of computing resource).
  - Sets a ceiling for the overall contract value against which consumption of individual resource line items will be charged.
  - Is the preferred contract type for consumption-based solutions, and when used for those procurements should not require special approvals.
  - Can be incrementally funded.
  - Sets a maximum unit price for each resource unit and captures price reductions when commercial catalog prices are reduced.
  - Is permitted for use under commercial item/service acquisition in FAR Part 12, Acquisition of Commercial Items.

# Status of Recommendation

## National Defense Authorization Act for Fiscal Year 2020

### Section 835. Report on requirements relating to consumption-based solutions.

(a) Report. —The Undersecretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report on the feasibility of revising the Defense Federal Acquisition Regulation Supplement to include requirements relating to consumption-based solutions.

(b) Consumption-based solutions defined. —The term “consumption-based solutions” means any combination of hardware or equipment, software, and labor or services that together provide a capability that is metered and billed based on actual usage and predetermined pricing per resource unit, and includes the ability to rapidly scale capacity up or down.

HASC Amendment—Requires a report on the feasibility of revising the Defense Federal Acquisition Regulation Supplement to include requirements relating to “consumption-based solutions” to provide capabilities that are metered and billed based on actual usage, with the ability to scale capacity up or down, in line with defense acquisition system reforms identified by the Section 809 Panel created by the FY2016 NDAA.

# How to Do It Better Now

**Step 1:** Document Why Consumption-Based Solutions Were Chosen.

**Step 2:** Prepare Special Clauses for Section H.

**Step 3:** Obtain *FAR* Individual Deviation.

# How to Do It Better Now (Cont.)

- Select contract type: fixed-price resource units.
  - A fixed-price resource units contract establishes a fixed price per unit of measure. Unless otherwise specified in the contract, the unit prices are subject to downward adjustment only, with such adjustments based on changes to the contractor's commercial catalog pricing.
- Prepare D&F for why contract type was selected.
- FAR 16.102(b)—“Contract types not described in this regulation shall not be used, except as a deviation under Subpart 1.4.”

# How to Do It Better Now (Cont.)

- Include Special Clause for Section H.
  - Monitoring and Using Consumption-Based Solutions.
    - The Contractor shall measure/meter consumption of awarded line items and their associated price and provide reports of such consumption to the Contracting Officer no less than monthly. More frequent reporting, up to and including real-time consumption information, is preferred when available through an online user console or similar capability.
    - The Contractor shall notify the Contracting Officer when consumption reaches 75 percent and 90 percent of the contract funded amount.
    - The Government will not be obligated to pay the Contractor any amount in excess of the contract funded amount, and the Contractor shall not be obligated to continue performance if to do so would exceed the contract funded amount.

# How to Do It Better Now (Cont.)

- Include Special Clause for Section H
  - Prices and New Services for Consumption-Based Solutions.
    - If during contract performance the Contractor lowers prices in its publicly-available commercial catalog for any awarded services or features, Contractor shall within 45 calendar days notify the Contracting Officer and begin using the lower price(s) on this contract or order, taking into account any discounts, premiums, or fees consistent with the terms and conditions of the contract, unless specifically negotiated otherwise. The Contractor may offer new or additional discounts at any time.
    - When new (including improved) services or features are made publicly available to the commercial marketplace and those services are not already included in this contract or order, the Contractor must notify the Contracting Officer within 30 calendar days. At its discretion, the Contractor may also seek to incorporate new services into the contract or order in advance of availability to the commercial marketplace. The Contracting Officer must approve incorporation of any new services or features into the contract or order. Any discounts, premiums, or fees shall equally apply to new services or features, unless specifically negotiated otherwise. The price incorporated into the contract or order for new services or features shall not be higher than the price that is publicly-available in the commercial marketplace, plus any applicable discounts, premiums or fees.

# How to Do It Better Now (Cont.)

- Obtain a *FAR* Individual Deviation for Contract Type and Special Clauses (approval policies vary by agency).
- FAR 1.4 Policy. Unless precluded by law, executive order, or regulation, deviations from the *FAR* may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency. **The development and testing of new techniques and methods of acquisition should not be stifled simply because such action would require a *FAR* deviation.** The fact that deviation authority is required should not, of itself, deter agencies in their development and testing of new techniques and acquisition methods.



# Questions?

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