

Better Buying Power 3.0: Triumph of Bureaucracy

Written by Nick Sanders
Monday, 13 April 2015 00:00

Introduction

On April 9, 2015, Under Secretary of Defense (Acquisition, Technology and Logistics) Frank Kendall announced the “next step” in the Pentagon’s efforts to “increase the productivity, efficiency, and effectiveness” in the areas of acquisition, technology and logistics. It was called “Better Buying Power 3.0” (“BBP 3.0”).

As the name implies, it is the latest “iteration” of such efforts. Accordingly, it has much in common with prior iterations. As Mr. Kendall noted in the [memo](#) announcing BBP 3.0’s advent, “there is more continuity than change.” (Note for readers who are also members: we are adding the memo to our knowledge resources page.) Among other long-time initiatives, the DoD will continue to focus on driving down the cost of the products it buys through such efforts as “should-cost reviews” and increasing competition.

But USD (AT&L) Kendall noted that BBP 3.0 contains some additional initiatives as well. The Pentagon is looking to emphasize “innovation, technical excellence, and the quality of our products.” How the Pentagon will navigate the Scylla and Charybdis of fostering innovation, excellence and quality, while at the same time fostering competition and awarding to the low bidder remains to be seen.

In fact, as long-time readers know, we have been skeptical of the efficacy of the Better Buying Power initiative (in all of its many iterations) since inception. While SECDEF Gates called for one thing five years ago, the Pentagon bureaucracy has seemed determined to deliver something else. Recently the Government Accountability Office (GAO) issued a [report](#) that seemed to clearly show that BBP has failed to meet its goals. It’s been five years; at what point do we throw in the towel and look for other approaches that don’t involve adding additional processes to fix the processes that most observers admit are broken?

Need a more concrete example of what we’re talking about? Sure. Let’s talk about commercial items.

Buying Commercial Items: Process on Top of Process

During the first Gulf War (“Desert Shield/Desert Storm”) the Pentagon had trouble obtaining communications equipment. It was easier for the troops to go to Radio Shack and buy a radio than it was for the Department of Defense to buy that same radio and issue it to the troops. As Jacques Gansler wrote in his book *Defense Conversion*—

... the U.S. Army found that it urgently needed a large number of modern radios. The model that Motorola was producing for city police forces was ideal to satisfy the army’s ... requirements ... However, since U.S. law makes it a crime for a company to sell an item to the government at anything but the lowest price offered to any other purchaser, and since Motorola could not guarantee that the army was getting the lowest price offered anywhere to anyone (because of discounts given to police by local sales distributors), it could not sign the necessary certificate. The army attempted to get someone at a high political level in the army to sign a waiver ... but was unsuccessful. No one was authorized to violate the law without congressional approval. The solution to this dilemma was to have Japan purchase the radios from Motorola and then supply them to the U.S. Army as part of Japan’s contribution ...

In 1987, the Defense Science Board had identified the need to use more commercial procurement practices in the acquisition of Defense supplies (though GAO and some politicians pushed-back on some of the DSB’s recommendations). In 1994, Coopers & Lybrand published an analysis which asserted that the Pentagon paid as much as a 20 percent premium for insisting on MILSPEC descriptions, obtaining cost or pricing data, and imposing Federal regulatory requirements on supplies that were readily available in the commercial marketplace. Finally the message started to seep into the heads of policy-makers and, as a result, the Federal Acquisition Streamlining Act of 1994 was signed into law. That led to the current FAR Part 2.101 definition of “commercial item” and the FAR Part 12 reduced regulatory requirements applied to the acquisition of such items.

Flash-forward two decades and it’s obvious that Pentagon buyers—and policy-makers—are still uncomfortable with the notion that regulatory requirements should be reduced for items readily available in the commercial marketplace. Contractors face great difficulty in convincing Contracting Officers (and OIG auditors) that their items (or services) meet the criteria for commerciality found in FAR Part 2.101. Contractors still face great difficulty in convincing CPSR reviewers and DCAA auditors that their subcontract awards meet the criteria. As a result, there is a well-founded concern that it is riskier to assert commerciality (and be second-guessed later) than it is to simply treat the commercial items and services as not being commercial. It is easier to obtain certified cost and pricing data than to look at pricing history. And [comments](#) (and policy [guidance](#)) from the Pentagon confirm this bias.

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To address contractors' concerns about the perversion of Congressional intent, the DoD Director of Pricing recently committed that Contracting Officers would review and confirm (or deny) claims of commerciality within 10 days. To accomplish this feat (which is really no feat at all) the DoD is creating a new centralized group of cost and pricing specialists to assist Contracting Officers in making the decision. In other words, each instance will have to be transmitted to a central location for review and then the call will be transmitted back to the individual Contracting Officer. So much for training.

The Pentagon has so much faith in the training and professionalism of its Contracting Officers that it has taken away from them the discretion to make a commerciality determination on their own.

And there are other concerns with this approach, as Stan Soloway [wrote](#) recently..

He wrote –

On the surface it sounds like a step toward greater efficiency and consistency in the acquisition process. But the new cadres are being trained by, and will report through, the very offices within the Pentagon that have taken the hardest line on commercial items. And they tend to see the issue primarily through a major weapons systems' aperture, rather than through a much broader technology perspective.

Moreover, the initiative perpetuates a central point of dispute: whether an item or service is commercial is determined by what it is, not by how it is priced or what it costs. Price is important, of course, but it is not relevant, in law or in practice, to determining 'commerciality.' Yet, that is precisely how some in DOD continue to construe the issue. For them, it is largely about audit access and the use of the government-unique cost principles. Hence, making this new cadre part of the department's cost and pricing offices would seem to bias the issue in the wrong and potentially disruptive direction.

To sum this up, here is a great example of how the Pentagon fixes a broken process by adding more process on top of it, perhaps leading (as Mr. Soloway warns) to unintended

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consequences.

BBP 3.0: More of the Same and Worse

We're not going to dive into BBP 3.0 in this article (which has already grown too long in any case) but we do want to address one worrisome point.

Independent Research and Development. IRAD. IR&D. It's clear that BBP 3.0 is targeting how contractors spend their precious IR&D funds and we need to warn our readers about that targeting.

BBP 3.0 has established a goal of "Increase the productivity of corporate R&D". To a great extent, this is a continuation of the original BBP goal, [established](#) in 2010 by Dr. Ash Carter, of improving the IR&D investment made by industry and government. A couple of years later, we [commented](#) on how that initiative was playing out.

We wrote—

Looking at the bigger picture, we wonder if naysayers weren't correct in worrying that the Defense Department's renewed focus on contractor IR&D expenses wouldn't tend to stifle innovation and technology development. If the Pentagon's vision is an implementation of centralized planning and control that will act to channel contractors' technology development efforts into only approved channels, then we don't think that's going to work out in the long run. Just ask the former Soviet Union how that centralized planning and control thingee worked out for them.

In BBP 3.0, the means by which the productivity of corporate R&D will be increased is found on Page 11 of the implementing memo. It states—

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Reviews of IRAD spending indicate that a high fraction of IRAD is being spent on near-term competitive opportunities and on de minimis investments primarily intended to create intellectual property. A problematic form of this use of IRAD is in cases where promised future IRAD expenditures are used to substantially reduce the bid price on competitive procurements. In these cases, development price proposals are reduced by using a separate source of government funding (allowable IRAD overhead expenses spread across the total business) to gain a price advantage in a specific competitive bid. This is not the intended purpose of making IRAD an allowable cost.

The intent of the actions below is to ensure that IRAD meets the complementary goals of providing defense companies an opportunity to exercise independent judgement on investments in promising technologies that will provide a competitive advantage, including the creation of intellectual property, while at the same time pursuing technologies that may improve the military capability of the United States. The laissez faire approach of the last few decades has allowed defense companies to emphasize the former much more than the later [sic].

- . The goal of this initiative is to restore the balance between these goals.

In order to achieve the stated goal, the memo then describes three specific actions to be taken. The second of the three specific actions was described as follows:

Director DPAP, with ASD(R&E), will recommend to USD(AT&L) new guidelines for allowable [sic] of IRAD expenses by May 2015. The new guidelines will include: identification and endorsement of an appropriate technical DoD sponsor from the DoD acquisition and technology community prior to project initiation; and provision of a written report of results obtained following the completion of the project, or annually if the project spans multiple years. Following USD(AT&L)'s approval, the new guidelines will be implemented through a standard rule making notice and comment process.

If we understand the action correctly, it said that in order for IR&D expenses to be allowable, the contractor's IR&D project must be "sponsored" by some unnamed person within the USD (AT&L) community "prior to project initiation. At the end of the IR&D project (or annually if the project's duration is more than one year) a report must be submitted to that unnamed USD (AT&L) sponsor.

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Well, there you go.

If that's not adding more process on top of process, then we don't know what would be.

Rather than let the market dictate the appropriate level of contractor IR&D spending, the USD (AT&L) intends to reverse decades of "laissez faire" market freedom and, instead, require centralized planning and control. The definition of "laissez faire" is "abstention by governments from interfering in the workings of the free market" and thus Mr. Kendall and Dr. Carter have declared their intention to overturn free market capitalism in favor of a Stalinist approach.

The third of the three specific actions was described as follows:

Director DPAP, with ASD(A), will develop a proposed regulatory or statutory change that would preclude use of substantial future IRAD expenses as a means to reduce evaluated bid prices in competitive source selections and provide it to USD(AT&L) by July 2015.

We almost don't know what to say to that one. We cannot count the number of programs that have benefited from contractors "carving out" certain development tasks and performing them instead on IR&D. This specific action will lead to a situation where DoD will realize (perhaps for the first time in history) how much its weapon systems actually cost taxpayers. There is no budget for these weapon systems if all the development costs are included. Nunn-McCurdy breaches are just waiting to happen. Congressional and taxpayer criticism will manifest quickly. We predict disaster will follow for DoD if this specific action is successfully implemented.

So let's wrap this up.

Conclusion: The Triumph of Bureaucracy

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Characteristics of a Bureaucracy

1. Division of Labor
2. Rules and Regulations
3. Hierarchy of Authority
4. Technical Qualifications
5. Impersonality