We are not known for our shyness at expressing critical opinions of various aspects of DoD's contractor management. In fairness, we're not shy at calling out contractor mismanagement either. We tell it like we see it, and that often means pointing the finger at the civilian leaders who manage DoD, the so-called "Fourth Estate" that makes up the Pentagon's "overhead".

The Honorable Frank Kendall, Under Secretary of Defense (AT&L) has been a frequent target of this blog; not because we dislike the man (How would we know? We've never met him) but because he seems to typify the kind of "leader" who gets appointed (and confirmed) to a position of responsibility within the DoD—a man who takes credit for various initiatives without being able to actually point to any tangible improvements that resulted from those initiatives.

The kind of bureaucrat who splashes a lot in the pool, without actually moving any water.

Which is normal for a bureaucracy. If it can't measure any output, it will focus intensely on measuring its inputs in order to justify itself. That's just organizational psychology 101.

Again, we don't know Mr. Kendall and he's probably a fine man. It's his policies we despise. And they may not even be his policies; but he's certainly taking credit for them. So to us, that makes them his policies.

We have had cause to write many articles about Mr. Kendall's efforts to reform DoD's management of contractor's independent research and development (IRAD or IR&D) efforts. We have been quite critical of those efforts. Among the many criticisms we have made, the **most recent** has been about DFARS **rule changes** that mandate a contractor must communicate its R&D intentions with a knowledgeable person within the DoD bureaucracy and then document that communication. Failure to communicate or to document the communication will lead to the DoD's refusal to accept the contractor's R&D expenditures as being allowable indirect costs used to calculate billing rates.

We were fairly scathing in our criticism, but we noted we were not alone in criticizing the rule.

We predicted problems.

And then our predictions were confirmed as DCMA issued guidance to its contracting officers helping them deal with an apparent deluge of contractor questions, since certain technical fiefdoms within the Pentagon Fourth Estate refused to cooperate with the new rule's implementation, even though the DAR Council had promised the public that they would do so.

And then another Fourth Estate fiefdom published a DFARS Class Deviation that acknowledged the new rule wasn't working. Even though the rationale for the Class Deviation said contractors needed more time to implement the new requirements, anybody with half a brain understood the real problem was within DoD.

The DAR Council had promulgated a half-baked rule with requirements that could not be implemented. The DAR Council ignored public input that told them that would be the case. The DAR Council rushed through the rule-making process and ignored public input because Mr. Kendall had a policy initiative that he wanted to execute, and many if not most of the DAR Council reports (in one way or another) to Mr. Kendall. They were just following the boss' orders.

And so here we are: Mr. Kendall just issued a **personal letter** defending his pet policy initiative and clarifying what he
really
meant. Let's do some quoting, shall we?

By law and DoD policy, contractor IR&D investments are not directed by the Government. The intent of this rule is to promote transparency, communication, and dialog between IR&D participants and DoD, ensuring that both IR&D performers and their potential DoD customers have sufficient awareness of each other's efforts and to provide industry with some feedback on the relevance of proposed IR&D work. To fulfill the technical interchange requirement, contractors should communicate with a knowledgeable DoD Government employee who is cognizant of related ongoing and potential future opportunities in the area of interest. Appropriate DoD Government employees include, but are not limited to, scientists/engineers or other subject matter experts working similar science and technology projects, acquisition officials working similar projects, and/or operators who might use the technology in a future fight, such as a Combatant Command official.

You can almost feel the exasperation, can't you? *Who cares what the rule says or your problems with implementation*, it seems to say. *Here's what I meant it to say.*

And yet … notice one key phrase in the above paragraph that seems to signal what's really going on here. That phrase is "proposed IR&D work". Mr. Kendall seems to assume that the contractors are "proposing" to undertake R&D efforts, which means that somebody, some "DoD Government employee" is reviewing a proposal and judging it. Well, *that ain't it at all*. The reason that IRAD is "independent" is because contractors do not propose projects; they do not submit them for judgment. They undertake projects to advance their technology. Certainly, they do so with the expectations that their efforts may result in a future contract award; but oftentimes that doesn't happen. Yet they do so anyway.

And here's a little secret: when budgets are tight and contract awards don't materialize as planned, contractors may not want to lay off their best and brightest scientists and engineers. Instead, they give them some IRAD money and tell them to get to work. It may work out or it may not, but the technical folks were kept busy doing something technical until the next contract materialized. How do you explain that fact to some Fourth Estate bureaucrat who's protected by the civil service and the MSPB?

Here's another quote from Mr. Kendall's memo:

I would like to stress that this new IR&D rule merely codifies a long-standing practice that many Services and DoD agencies already use to engage industry on IR&D projects …

And that's a ... misleading statement, of course. It's a ... misleading statement because the new rule imposes new requirements and also imposes a penalty for failing to meet the new requirements, in the form of a cost disallowance. There is nothing "merely" about such a new rule and it's disingenuous (at best) to suggest that's the case.

Finally, Mr. Kendall admits that his fellow Fourth Estate colleagues aren't cooperating with

contractors seeking to comply with the new rule. He states that “we are developing an additional approach using the existing IR&D database hosted in the Defense Innovation Marketplace (http://www.defenseinnnovationmarketplace.mil/). By no later than 31 January 2017, DoD will implement an electronic process to facilitate this approach.”

Left unspoken is how contractors’ IRAD project information will be protected. Mr. Kendall’s memo didn’t address that concern.