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January 15, 2013

The Honorable Frank Kendall  
Under Secretary of Defense (Acquisition, Technology and Logistics)  
3010 Defense Pentagon  
Washington, DC 20301-3010

Subject: Better Buying Power 2.0 Comments

Dear Secretary Kendall:

We thank you for extending us the opportunity to provide comments on the Department's draft Better Buying Power 2.0 (BBP) initiative released on November 13, 2012, and applaud you for continuing to pursue affordability and productivity efficiencies with a focus on achieving better value for the warfighter. The National Defense Industrial Association (NDIA), a non-partisan, non-profit trade association is comprised of over 1700 industry members, including large, mid-tier and small businesses, and over 92,000 individual members, all of whom work to provide goods and services to meet the department's requirements and protect the nation.

The scope of the BBP 2.0 initiative allows many new opportunities for improvement in the acquisition system, and we note first the underlying contribution to the process from BBP 1.0. Because the BBP 2.0 document contains many broad focus areas, this letter highlights the main policy themes NDIA believes integral to achieving additional efficiencies and the detailed recommendations are included in a separate attachment.

#### Major Policy Themes

- Increase the use of Commercial Items and Commercial Practices to eliminate costs unique to DoD acquisition and continue to enable a streamlined acquisition process
- Build market intelligence capabilities to address requirements and pricing data gaps
- Coordinate a dedicated acquisition regulatory process reform initiative to eliminate requirements where costs outweigh benefits
- Leverage industry investment in independently funded Research & Development
- Create contract incentives that properly value contract and performance risk that incentivize productivity
- Reward superior contractor performance with process relief to improve cycle times
- Take organizational steps to improve the capabilities of the acquisition workforce
- Leverage Small Business innovation and agility in the DoD marketplace
- Build a structural interface with industry to improve communications on core acquisition issues

## Conclusion

The policy recommendations identified in the themes above and in the attachment are a start to improved sharing of ideas between the department and the industrial base that we believe should continue after your review of the comments and prior to any final policy disposition of the BBP 2.0 comments. Considering the scope of the initiative, it is reasonable to conclude that multiple layers of policy will take shape, some of which could be regulatory, others in the form of internal department guidance and others a hybrid of guidance and regulation. As recommended later in this letter, the department should be transparent whichever way they choose to implement any policy changes and ensure that the industrial base has the fullest opportunity to comment and engage further as needed. It is also our understanding that BBP 2.0 will lead to further initiatives on a continuing basis (BBP 3.0 and 4.0) over the coming years to improve the acquisition system, so we are prepared to continue fostering a regular dialogue within our policy committees and with the department to help achieve the goals of the BBP initiatives.

For organizational purposes, we have been advised that the Department will accept comments in a form that allows them to classify the ideas into the thematic buckets in BBP 2.0, but will not reject ideas that are not in a specific design or format. Our members would be happy to provide any additional support needed to follow up these comments. Please do not hesitate to call me directly, or your office can contact NDIA Senior Director of Government Policy, Chandra Burnside at (703) 247-2595 or [cburnside@ndia.org](mailto:cburnside@ndia.org) with any questions or needs.

Respectfully submitted,



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Lt. Gen, USAF (Ret.)  
President & CEO

## Attachment

### Introduction

BBP 2.0 is the policy successor to BBP 1.0 which introduced to industry and the defense acquisition establishment the concept that governmental and industry parties to the acquisition process needed to begin a serious rethinking of the precepts and regulatory structure of the acquisition system. BBP 1.0 succeeded in some areas, as noted on the Department's BBP 1.0 status update, but more can be done by the department and the defense industrial base to achieve the department's goals to do more with less. As a threshold matter, the policy genesis leading to BBP 1.0 and 2.0 grew out of many forces interacting with each other over time including, but not limited to:

- (a) The shift towards transactional efficiency based on commercial buying practices and a preference for commercial items starting the early 1990's;
- (b) The more recent shift over the past decade towards an enforcement and oversight centric contracting process based on frustration with contract outcomes and performance;
- (c) A changing budget paradigm; and
- (d) A generational change in acquisition leadership and contracting knowledge in both the government and industry.

To meet these important challenges, the parties need to begin a deeper dialogue about what attributes of the acquisition system are required to meet the new budget paradigm and how to steer a policy path towards maximizing transactional efficiency and contract outcomes that serve the warfighter and also recognize government and industrial base needs. BBP 2.0 is the next step towards addressing those problems.

For the most part, this attachment will focus attention on addressing those underlying areas through the themes identified in the cover letter and will leave it to the department to bucket these recommendations into the BBP 2.0 categories.

### Themes

#### **1. Increase the use of Commercial Items and Commercial Practices to eliminate costs unique to DoD acquisition and continue to enable a streamlined acquisition process.**

Commercial item acquisition has a long and fruitful history going back to 1994 and the seminal pieces of acquisition streamlining policy legislation. The Government Accountability Office (GAO) and many others, including the DoD Inspector General, have commented favorably over many years on the benefits of commercial items to meet government requirements, including:

- a. Access to and more rapid deployment of state-of-the art technologies;
- b. Increased integration of the defense and commercial industrial bases to benefit the nation's security and economy;
- c. Lowering government research and development costs;

- d. leveraging state of the art technologies developed in the commercial marketplace;
- e. reducing economic risk associated with developing new government unique items;
- f. Increased competition;
- g. Availability of market prices for price analysis;
- h. Utilization of open industry standards.

There are many important examples of leveraging commercial items for DoD requirements over the years, but a commercial item approach is applicable more broadly across most commercial commodities and services currently being used in the department for a multitude of purposes ranging from the ordinary to the highly classified. Some examples are listed below, but there are innumerable cases available to show that commercial items and services can achieve greater life cycle savings, economies of scale and achieve dominance in the battle space moreso than attempting to build unique military solutions:

- a. Handheld Global Positioning Systems (GPS) units are modeled on commercial units developed for commercial satellite and navigation functions;
- b. MRAPs and Stryker vehicle systems are evolutionary vehicles built from a commercial Hummer baseline and now manufactured by Oshkosh, General Dynamics and other contractors;
- c. Kevlar protective helmets and vests are the outcome of a DuPont commercial development to make stronger tires for commercial vehicles;
- d. Satellites designed for communications services by Intelsat, and space exploration services, such as provided to NASA by Space-X, are designed and manufactured for commercial business purposes;
- e. Commercial IT systems designed and supported by IBM, Oracle and Intel, among many others, were designed to support speed in world-wide financial networks and are now routinely integrated into various everyday government agency health care, information security, HR and data processing functions;
- f. The Navy P-8 surveillance program and the Air Force tanker are both modeled on militarized versions of Boeing commercial aircraft.

Unfortunately, there has been a recent legislative and regulatory trend to attempt changes to commercial item policy that have caused serious concerns among all companies that directly or indirectly support the defense industrial base. Generally these proposals have tried to reinstate government unique requirements and add more process regulations to the list of requirements currently allowed by law on commercial item acquisitions. We believe the regulatory drift towards limiting access to commercial items should be discontinued in order for the department to achieve the type of affordability savings envisioned in BBP 2.0. Furthermore, we believe that in conjunction with building a robust market intelligence process and increasing communications with the industrial base, expanding the use of commercial items and services as authorized in the regulations could be

the single most important attribute to improving the acquisition system to meet force structure and warfighter needs for both the near and far terms.

Other than acquiring commercial items or generating requirements based on commercial items, the department could increase their use of commercial practices by adopting more tools and policies prevalent in the commercial market, such as:

- a. more strategic sourcing to leverage buying power;
- b. use shared services for back office functions;
- c. use more performance based contracts that are outcome based, including performance based logistics;
- d. reemphasize performance based payments;
- e. adopt more share-in-savings contracts;
- f. use extended contract terms or other long term arrangements (multiple year or Multi-Year) or award term contracts to invest suppliers in a customer focused relationship.

Affordability can be taken to a higher level of efficiency by emphasizing the benefits of increased use of commercial items and commercial business practices. Industry has worked to cut costs and develop solutions that benefit the Department by leveraging commercial business solutions and international partnerships. We urge the Department to continue to leverage the existing authority to access these commercial items and technologies and resist the spread of process regulations that attempt to limit access to commercial items (such as changing the definition of commercial items or requiring access to cost data for commercial items for price reasonableness purposes). Practical ways to accomplish such an increased emphasis include ensuring that contracting officials emphasize the use of, and advantages of, commercial items during the acquisition planning and approval processes, ensure that training in commercial item acquisition is reinforced at the management level and the department should issue corresponding guidance stating a preference for commercial items over unique solutions.

## **2. Build market intelligence capabilities to address requirements and pricing data gaps.**

In the case of building intelligence capabilities, market knowledge can inform the estimating, pricing and budget functions as well as provide valuable insight into technical solutions currently available in the marketplace to meet any given mission requirement. The Department should begin building a robust market intelligence capability for these integrated purposes and to utilize existing commercial items or technologies to fulfill requirements and leverage private sector investment in existing solutions.

Market intelligence models are available for purchase in the open market for any given market segment, and that could help design a short term capability, but the DoD needs to create their own capability since their mission is unique to the nation's security interests. It is also possible that assembling market intel may reveal how to meet an existing requirement as-is, but it is also probable that existing market solutions will be a preliminary step to department subject matter experts generating requirements tailored to a specific mission based on available solutions.

Conceptually, market intelligence can thus feed a joint industry-DoD requirements building process within the agencies, express a process (and source selection) preference (as in the Commercial Item Handbook) for commercial items and services (or mature products or service solutions), reduce

costs to develop unique military products (feed the affordability loop) and lead to more existing 80/20 solutions needed to avoid complete technology start-ups each time the DoD needs to develop or field a product or capability.

Greater focus on acquisition planning/development utilizing underlying market research derived from a range of internal and industry based sources will undoubtedly drive improvements throughout the acquisition life-cycle for DoD requirements generation and also allow contracting officials to determine whether transaction prices are reasonable during the source selection process and prior to making award decisions.

### **3. Coordinate a dedicated acquisition regulatory process reform initiative to eliminate requirements where costs outweigh benefits.**

The federal acquisition system is the most heavily regulated business environment in the United States. There is agreement among DoD and private sector policy observers that multiple layering of regulation year over year increases the cost of doing business with the department and creates many overlapping barriers to market entry for non-traditional DoD contractors, especially those whose commercial market militates against cost increases attributable to unique DoD compliance. Cost estimates for contracting and regulatory compliance have historically ranged from 18 to 30% of contract costs, and a recent study of cost of compliance for small business from 2010 reflect even higher cost levels.

However, even the best intentioned efforts over the past decade by individual contractors, academia, and government agency personnel to identify and recommend the elimination of specific rules have not been able to conclusively enumerate enough detailed cost-benefit data to drive the necessary change to the acquisition system. Conversely, there has been no detailed investigation of regulatory costs since the Coopers-Lybrand industrial base study in the mid-1990's, even though it is reasonable to conclude from the number of regulations issued since then that compliance costs have dramatically increased.

It would be naïve to suggest that the department could completely stem the flow of more acquisition statutes and regulations, but there is merit to the department studying the issues more fully if there is to be true change. To fully achieve the needed affordability savings, DoD should place a legislative priority within the next year on setting aside funds to support a study that would completely investigate the total cost of regulatory compliance in all faceted areas of contract formation (cost or pricing data, proposal costs), performance (data collection & reporting) and administration (contract lifespan from award to close-out and ongoing audits). The data from conducting such a study could lead to serious cost-benefit tradeoffs by the department when proposing new regulatory provisions and allow policy makers to understand how much of the funding for DoD programs goes to fulfill requirements that do not have any bearing on the contract's requirements.

In the absence of such a funded independent study, the department should work with industry, academia and other government agencies to build joint teams and capabilities to develop reliable data on the cost of compliance. There is no doubt that reducing the cost of regulatory compliance would allow industry to reduce their indirect rates and result in lower costs to the government.

In the interim, the proliferation of internal agency policy and a policy of "regulation by guidance" has been overtaking the pace of regulatory implementation for many years and has created a parallel

system for compliance unique to every service and agency in the department. The department must attempt to aggressively address and curtail the ongoing use of class deviations, agency internal guidance and process memos that act as regulation without public comment.

Recognizing that very problem, the Director of Defense Procurement and Acquisition Policy (DPAP) started a department-wide clause standardization project several years ago to control non-standard clauses and policies, but it has never been completed, so agencies and commands continue to feel free to create clauses and unique internal policies that contradict existing regulations or are designed to negate the existing rules. Those unique local agency approaches increase industry costs to engage in the procurement process because of the many disparate systems required to address differing agency compliance demands. We recommend that before any internal DoD agency guidance is implemented, the DPAP office be incorporated into the review cycle to insure that the agency authority to issue such guidance does not conflict with existing regulatory or transparency requirements.

#### **4. Leverage industry investment in independently funded Research & Development.**

The DoD efforts to leverage private sector R&D should be collaborative and focus on maximizing the value of existing technology and avoiding duplication of investments by making the development pipeline more transparent and accessible to Program Managers. They should also promote innovation by making the regulatory and legal environment more navigable with respect to intellectual property rights, which will help preserve key industrial base capacities around design.

Since BBP 1.0, the Director Research and Engineering (DR&E) has been collecting data from the performers of IRAD about how they used IRAD dollars. A database managed by the DTIC now exists to recognize and realize potential leverage of IRAD costs. Leveraging industry's independent IRAD is good for visibility and transparency as long as it does not go beyond that to unauthorized disclosure of the industry R&D, which could severely stifle innovation. As ideally structured, these data collection efforts should foster more government and industry collaboration on research, such as in the Small Business Innovative Research (SBIR) Program, to avoid technology gaps and to promote innovation, with a keen focus on retaining industrial base capabilities in design, high yield manufacturing processes, engineering and other critical production capabilities currently at risk of being lost in a budget downturn.

There have been ongoing efforts to reshape how the department addresses technical data rights so as to leverage future competition to address sustainment. These efforts have been addressed over the years through legislation and regulation, but the regulatory efforts have lagged behind the policy in the contracting agencies and thus data rights ownership policy enforcement at DoD has been mixed, and there are cases in which company private investment in development and technology have not been fairly leveraged by agencies. In order to address this succinctly, we offer the following principles to help guide the relationship:

- a. Re-establish a balanced intellectual property and data rights ownership policy that enables the continued industry ability to assert rights in data and software developed at private expense;
- b. Stop regulatory changes encouraging active DoD infringement or passive "taking" policies;

- c. Avoid weakening of existing legal and process protections for company IR&D, whether developed under mixed ownership regimes or inadvertently or unintentionally transfused by the department to other third parties;
- d. Pursue the development and growth of SBIR outcomes in basic and developmental research through further programmatic integration;
- e. Incentivize industry innovation, independent technology investment and cost savings/avoidance in the source selection and requirements definition processes;
- f. Establish a mechanism when utilizing open systems architecture for properly acquiring rights in technical data.

**5. Create contract incentives that properly value contract and performance risk and incentivize productivity.**

There are a multitude of recommendations that we suggest the department review and work with industry further to refine after initial comment submittal is complete, including the following:

- a. Properly incentivize profit in the contract formation process – we note that the FY13 Defense Authorization Act includes a provision requiring the department to evaluate profit policy, including review and overhaul of the structured weighted guidelines approach if necessary, and to include industry in those deliberations;
- b. Ensure contract type selection matches risk allocation profile (economic, schedule, funding, technical) for the requirements, including using a “decision tree” analysis where feasible;
- c. Stop arbitrary limits on manpower labor rates and fees on service contracts and stop penalizing prime contractors for engaging in teams and/or managing functional capabilities in the supply chain, including use of small business subcontractors;
- d. Clarify contract source selection processes to emphasize quality and superior performance (best value trade-offs) and not overuse low bid (LPTA) – see also below;
- e. Educate DoD engineering and program management workforce in contract type, source selection tradeoffs and other important acquisition functions;
- f. Emphasize more use of Performance Based (PB) acquisitions for clear measurable performance results, including Performance Based Logistics;
- g. Factor in product exportability into acquisition, requirements building and export regulatory process improvement to leverage economies of scale in the total market;
- h. Prohibit the proliferation of ad hoc, non-contractual program meetings unless specifically called out in CDRLs or the performance requirements;
- i. Prohibit changes to contract requirements without higher level approval
- j. Support the use of longer term service contracts (at least 5 instead of 3 years) – longer term contracts encourage investments in innovation, prevent unintended consequences and reduce excess industry transactions costs;
- k. Use FPI contracts where the contract “geometry” allows for optimal results for both DoD and the contractor and the incentive structure represents the proper risk profile;

- l. Support broader use of risk based auditing for reducing the DCAA audit backlog;
- m. Focus on requirements based on outcomes, long-term benefits, that create synergy across different programs or objectives when making contract type decisions and drafting requirements.

The use of LPTA vice Best Value selection processes deserves some further discussion. LPTA should be used sparingly and only when warranted and when technical acceptability can be defined in a way that allows agency officials to distinguish between offers using a price only decision methodology. It is also critical to ensure the right level of quality even when the contract is awarded based on LPTA source selection methods.

We have recently experienced DoD source selection evaluators attempt to address this in a number of competitions through hybrid LPTAs, the “Risk/Price” tradeoff, and the “Past Performance/Price” tradeoff. In both cases, threshold technical requirements are evaluated upon a pass/fail basis for technical capability, but once the proposals are qualified for award, source selection authorities still retain the discretion to select a higher price for either assessed risk or past performance respectively, if they reasonably determine the difference in risk is worth the difference in price or that superior past performance outweighs the cost difference. While that selection approach is an alternative to a strict LPTA process, it would be wise to understand that too many LPTA variants will also muddy the waters on source selections that require more adherence to best value trade-offs. Best value acquisitions have been the standard for many years now on how to identify quality discriminators among offerors and should thus clearly define the trade space in the evaluation process and allow for award to other than the lowest offeror without the need for an overly elaborate price justification.

## **6. Reward superior contractor performance with process relief to improve cycle times.**

BBP 2.0 recommends instituting a superior supplier incentive program. BBP 1.0 had a similar recommendation, but that program was not implemented because the program could not be shaped to institute an effective reward mechanism. In this case, the superior supplier program envisioned appears based on commercial supplier preference programs that provide elevated selection status to company suppliers that meet or exceed specific performance goals or metrics in quality, schedule, cost, or other achievement areas as defined by the program or company. It is not clear now how such a program would align with regulatory requirements for competition, and there is a risk that such a program could lead to unintended consequences during the source selection process, but the potential for the department to establish a large cadre of trusted sources or preferred suppliers should motivate both the department and industry to work together to build a reliable and repeatable process.

One positive way to think about a superior performance program would be to link superior performance (however that might be measured) to a tangible reward system and not use the program to punish or otherwise simply exclude suppliers. It is not altogether clear whether limiting an acquisition to those on a preferred supplier list would inhibit competition, but FAR Part 9 and the acquisition system have historically held that qualifying sources for such a preference would not violate the Competition In Contracting Act. Such rewards could include providing exemptions for certain types of oversight audits, decreasing the turn-around time for invoice payments from 30 to 15 days or lower, increasing the level of contract financing provided (Progress and Performance

Based Payment), authorizing more frequent invoicing of high dollar value financing requests, or other process improvements that improve cash flow, etc.

Whatever ideas and elements are posited for erecting a superior performance program that evolves from the BBP 2.0 submissions, we recommend that DoD engage with industry and allow an extended public comment process and regulatory cycle before such a program is initiated and use a pilot so that industry can ramp up their efforts to align with the designated rewards mechanisms.

## **7. Take organizational steps to improve the capabilities of the acquisition workforce.**

One of the central tenets expressed in the cover letter and in many GAO studies over the past decade that are well documented in the acquisition policy environment is the diminished capability of the government's acquisition workforce beginning in the mid 1990's. One general recommendation we could offer is that the entire acquisition workforce, including procuring and policy customers, prime contractors, subcontractors, and oversight personnel, receive as much joint training as possible. We believe that a better understanding of each party's objectives will facilitate better problem solving skills and improve transactional capabilities. Currently, there are joint industry-government class materials in several sanctioned training environments, including at the Defense Acquisition University, the Federal Acquisition Institute, and at the Eisenhower school (formerly the Industrial College of the Armed Forces at the National Defense University), so there are precedents to build on. Specific suggestions on acquisition workforce improvement also include the following:

- a. Encourage development of business risk mitigation knowledge as a performance competency;
- b. Develop structural ways to change the acquisition cultural and reward systems to include risk taking capabilities;
- c. Measure acquisition personnel performance by tying to agency performance overall and/or contributions to integrated technical or capabilities competencies in service of the agency mission;
- d. Focus on building basic crossover business knowledge capabilities (including engaging in the market intel functions above);
- e. Improve communications skills and techniques emphasizing full disclosure over limited information;
- f. Reinvigorate the ability of contracting officers to perform a wider spectrum of contracting functions, including training and experience in the differing processes used for large and small programs, and create more generalist capabilities within the contracting workforce by rotation throughout their careers into various functional assignments.

## **8. Leverage Small Business innovation and agility in the marketplace.**

Over the past 5 years, there have been significant strides in the law and regulations towards increasing the visibility and viability of small businesses in the federal acquisition process, both as prime contractors and as subcontractors. Many of the legislative requirements enacted over that time have yet to be implemented in the acquisition regulations, but many steps have been taken to close the gap between simply meeting agency small business goals and fully leveraging small business capabilities by aligning higher level small business contracting goals with agency personnel

performance achievements and training. Specific suggestions to leverage small business capabilities include the following:

- a. Incorporate small business program personnel into the acquisition process as early as practicable;
- b. Participation of small businesses at the subcontractor level should not be ignored when assessing total participation of small businesses in the DoD marketplace, but data collection should be complemented by substantive targeted subcontracting with qualified small business subcontractors;
- c. Opportunities must be “right-sized” for small businesses. DoD is setting small businesses up to fail by setting aside extremely large contacts, or targeting business areas not within most small business capabilities, but bundling regulations should be monitored within agencies to prevent seepage of potential small business requirements to aggregators;
- d. On and Off Ramps may be necessary on set-aside contracts as small businesses expand beyond the designated size standard;
- e. Adopt a systemic approach to establishing supplier diversity at all levels, recognizing that a dynamic market for services includes small, mid-size, and large businesses;
- f. Expand program outreach for SBIR and other small R&D and support service contractors to market and merge their innovation capabilities and agility with DoD program managers and program and support contractors;
- g. Make it easier in terms of regulations for prime contractors to provide subcontractors with financing without having to assume all the risk;
- h. Reward contractors that actively foster mentor-protégé arrangements and transfuse technology knowledge to small businesses that feeds the department’s technology goals.

## **9. Build a structural interface between the department and industry to improve communications on core acquisition issues.**

This interface should address topics such as requirements generation and market research, understanding profit and loss and how public companies operate in the capital markets, contract incentives and risk assessment, how to identify affordable products and solutions, continue the myth-busting process and generally advocate for a more liberal and collaborative approach to communication between members of the DoD acquisition workforce and industry subject matter experts.

One area where collaboration would be valuable is in erecting a standing department-industry joint task force (both senior level and journeyman personnel) solely focused on identifying and recommending unnecessary processes, policies and clauses for elimination, especially if an independent regulatory study is not conducted by DoD. In addition to having a general process improvement agenda, such a team could also coordinate joint legislative recommendations to Congress and build regulatory structures to address acquisition problems common to both parties.

- a. Increase transparency and industry collaboration related to the buying activity mission and requirements development;
- b. Evaluate both the intended and unintended consequences of all recommendations and legislative actions;
- c. Focus on communication, best practices, information sharing, and templates;

- d. Allow detailed unfettered engagement on requirements definitions and during the source selection process.