



January 31, 2013

Mr. Brett Lambert  
Deputy Assistant Secretary of Defense  
Manufacturing and Industrial Base Policy  
Department of Defense  
3000 Defense Pentagon  
Washington, D.C. 20301

Dear Brett:

AIA and its member companies appreciate the opportunity to provide you with our comments on Better Buying Power 2.0 (BBP 2.0). Secretary Kendall has stated that he wants to achieve a 'culture shift' toward value and that under Better Buying Power 2.0 (BBP 2.0), DoD is prepared to pay a premium for superior cost, quality and performance. AIA supports this trend.

To achieve this shift, Secretary Kendall has referred to 'incentives' on the government side for more deliberate spending which achieve greater efficiency/cost reductions. More than any other feature of BBP 2.0, the alignment of incentives throughout the entire procurement value chain (both government and industry), has the capacity to drive cost reduction and greater efficiency. At the same time, if not constructed and applied appropriately, they have a tendency to drive negative unintended consequences, which can actually reduce efficiency. Examples of this include the inappropriate use of FPIF contracts and competitive prototyping. To avoid such unintended consequences, AIA would like to be given the opportunity for meaningful engagement in developing further guidance on, among other items, the following:

1. the appropriate application of existing incentive structures, such as the Preferred Supplier Program, and
2. the development and application of any new metrics/incentives, which will be developed to measure performance, and
3. the alignment of incentives with DCMA / DCAA oversight to promote a risk based approach to and mitigate related costs for both government and industry, and
4. linking the evaluation of cost for initial equipment procurement to sustainment (or the Life Cycle Cost), at the time of the initial procurement, and
5. re-configuring the Open System Architecture approach to data rights to align with commercial best practices.

Care should be taken to educate the entire DoD acquisition community concerning what BBP 2.0 is (and, perhaps more importantly, isn't) about. As DoD transitions to BBP 2.0, it is appropriate to examine how certain elements of the 2010 BBP have been distorted at the working level. For instance, the continued focus on achieving affordability should not be confused with an attack on contractor profits. Despite senior DoD officials repeatedly making the point publicly since 2010 that affordability goals would be achieved by reducing costs and incentivizing better cost control, some DoD negotiators focused instead on eroding contractor profits in the name of BBP. This has undermined the 2010 BBP effort somewhat and should be corrected.

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Additionally, perhaps the greatest potential for efficiencies is to be found in the BBP 2.0 initiative to try and eliminate requirements imposed on industry where costs outweigh benefits. This will require establishing a measurable baseline. AIA believes that DoD should update the 1994 Coopers & Lybrand study on "The DOD Regulatory Cost Premium" as a first step in attacking what is now probably greater than the previously reported 18 percent regulatory cost premium on DOD procurements. This regulatory cost premium translates into tens of billions of dollars of misdirected resources that could be better utilized in providing new capability to the men and women of the armed forces.

Again, thank you for the opportunity to provide industry comments on BBP 2.0. We would be glad to meet with you to further discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Greenwalt", with a long horizontal flourish extending to the right.

Bill Greenwalt  
Vice President, Acquisition Policy

# AIA Comments on Better Buying Power 2.0

## January 30, 2013

### **Focus Area: Achieve Affordable Programs**

#### **Initiative #1: Mandate Affordability as a Requirement**

Comment: Commercial off-the-shelf (COTS) or modified off-the-shelf (MOTS) solutions should be considered to the maximum extent practicable. Reinforcing the preference for commercial item contracting would result in significant savings for DoD. However, DoD must ensure that affordability mandates do not become a code word for contractor profitability concessions. "Affordability" needs to be defined on a Program of Record (PoR) such that the contractor is not discouraged from investing in the future of the program. There are many examples where a mandate for full and open competition has abandoned the PoR and moved to an acquisition strategy of lesser technical performance.

#### **Initiative #2: Enforce Affordability Caps**

Comment: AIA believes it is important for DoD to better identify the affordability caps placed on all programs and to explain how the affordability cap was determined. We recommend that DoD thoroughly define requirements at the outset of a contract, based on cost/schedule/performance tradeoffs. The government has many techniques at its disposal to accomplish these objectives, but of paramount importance will be to optimize implementation in the context of DoD's wide range of products and services. Under BBP 2.0, Affordability Requirements established during the detailed design phase for new programs will form important baseline expectations regarding future costs in the acquisition as well as operation and support phases. Because these up-front DoD projections will, in most instances, span decades, it is critical that reasonable variables, tailored to the particular set of program circumstances, be incorporated into forecasts. To achieve optimal results, DoD's approach should be to establish cost forecasts that reflect differentiation between items being procured and award profit rates that are commensurate with contractor performance. Additionally, changes to the current DoD annual budgeting process should be enacted to allow for effective implementation of long term investment strategies.

### **Focus Area: Control Costs Throughout the Product Lifecycle**

#### **Initiative #1: Implement "Should Cost" Based Management**

Comment: The "should cost" initiative would reward government officials for effective "should cost" management. Based on our members' experience with the should-cost review process, we recommend that DoD further clarify the proper elements of a should-cost review, when it should be conducted, the skills needed to be part of a should-cost review team, and the type of auditable information that should be used to construct the should-cost estimate.

Managing costs is an important thrust of the BBP 2.0 initiative but there is a concern that DoD's emphasis on scrutinizing every element of program cost misses the point and will ultimately lead to the "can't see the forest for the trees" syndrome. AIA has consistently recommended that

DoD scrutinize total cost. In other words, focus negotiations on total cost savings rather than on reducing individual elements of cost (some of which may have already been incurred). This approach ensures unit price integrity in years when part numbers are not forecasted and also keeps prices low based on supply chain management efficiency.

Setting "should cost" targets below independent cost estimates simply doesn't make sense. These targets could be used as a tool to attempt to gain concessions from industry based on arbitrary decremented independent cost estimates. They could also be used inappropriately to set unreasonably low targets in FPIF contracts to the detriment of both the contractor and government.

A more basic concern with the concept of DoD's undertaking "should cost" reviews is the dearth of professionals within the Department who are sufficiently trained and seasoned to undertake the intricacies and technicalities of a "should cost" review. In the face of a shifting workforce demographic, the immediate need to hire and train new members of DoD's acquisition workforce has been noted by both government and industry. However, thrusting novice DoD acquisition employees into the stringent and complex world of "should cost" estimating would be a grave disservice to the employee, DoD, industry and, ultimately the U.S. taxpayer. We recommend that this approach be adopted incrementally and only where there is sufficient experience and expertise.

#### **Initiative #2: Eliminate Redundancy within Warfighter Portfolios**

Comment: AIA agrees that significant cost savings can be obtained by avoiding redundancy. Consequently, DoD needs to focus more on market research, commercial item acquisition and a product line approach to acquisition. Additionally, redundant oversight by DoD entities serves no purpose and drives contractor costs up. Accordingly, we recommend a risk based approach to oversight and assigning clear responsibility to the appropriate DoD entity to preclude unnecessary duplication.

#### **Initiative #3: Institute a system to measure the cost performance of programs and institutions and to assess the effectiveness of acquisition policies**

Comment: There are clear benefits to using data-driven analyses to drive decision-making and we support DoD's adoption of this methodology; however, there are also risks associated with burdening the system with too many metrics. Collectively, there are a significant number of metrics the government and industry use to measure performance. Numerous program reports, contractor data reports, cost and schedule reports, contractor performance assessment reports already exist due to standing requirements to measure and assess performance. Prior to developing additional metrics, AIA recommends that existing systems (i.e., Cost Assessment Program Evaluation (CAPE)) should be used to complete this initiative rather than developing new data. If those cost reporting tools do not meet DoD's needs, they should be tailored rather than adding another layer of reporting burden. In addition, when deemed appropriate, DoD should clearly call out data collection tasks in a solicitation so the offeror may prepare for and build the cost of this effort into its proposal; it is appropriate that contractors be compensated for preparing the data.

Furthermore, at a time when contractor reporting of various kinds has reached near-unprecedented proportions, guidelines should be established to make clear that productivity data may not be solicited from contractors performing contracts awarded competitively or under FAR Part 12. Similarly, with respect to non-competitive fixed-price contracts, we recommend

that guidelines should limit cost-reporting obligations only to the most significant multi-year programs. With certified cost or pricing data provided prior to award of such contracts and modifications, the benefits of extracting such data post award are not readily apparent, may provide a distorted view of the contractor's effort depending on when the data is pulled, and burden the contractor with additional requirements that are unlikely to yield significant benefits. For those contracts deemed appropriate for data collection, we request that DoD consider the wide variation in contractor accounting systems and include such tasks in the statement of work so contractors and their supply chains may be compensated for delivering data they may not regularly keep in the format requested by DoD.

Finally, DoD should periodically consider what will be measured and tracked, how often it will be reported, and assess its value before soliciting data from contractors. More broadly, we suggest DoD work with industry to ensure information that is obtained is enabling effective insight and understanding, and through the use of that information, appropriate conclusions and decisions are being made.

#### **Initiative #4: Build stronger partnerships with the requirements community to control costs**

Comment: Further emphasis on COTS and MOTS capabilities can be used to control costs. The requirements community should focus on market research to determine what technology is currently available, or could be available with minor modifications, to meet DoD's needs.

#### **Initiative #5: Increase the incorporation of defense exportability features in initial designs**

Comment: Similar to the benefits of acquiring commercial items generally, one of the more significant contributing factors to program affordability is quantity. Bringing a new level of efficiency to the foreign military sales program could increase foreign military sales and/or offset fluctuations in quantity sales to the United States.

AIA encourages the incorporation of features during the initial design process that would increase exportability of products. Design requirements that would allow for greater exportability should be included in the government's procurement strategy and implemented as a contract requirement. Early collaboration and planning during the development phase and early identification and designation of exportable components that need these features should speed exportability once the product is developed.

### **Focus Area: Incentivize Productivity & Innovation in Industry and Government**

#### **Initiative #1: Align profitability more tightly with Department goals**

Comment: Affordability is primarily driven by requirements and there is currently no effective "closed-loop" evaluation process between the requirements generation and cost/affordability. BBP 2.0 refers to a much closer link between the generation of requirements and acquisition stakeholders. It also references the need for much more effective market research and partnership with industry, to close that requirements/cost loop at the earliest stages of procurement. Industry would appreciate the opportunity for meaningful engagement in:

1. developing a more effective operating model between the requirements generation community and acquisition stakeholders, for early industry engagement in the

- Technology Development Strategy and Acquisition Strategy, at the time when the affordability caps and cost capability 'trade-off' mechanisms are being established, and
2. how to optimize 'buying power' through alignment on business forecasting/stability of demand, allowing both government and Industry to take better advantage of 'bundling' procurements and to drive longer term investments from the Supply Base.

AIA applauds efforts to reward successful contractor performance that has high value to DoD. We believe DoD's approach to affordability, while at the same time incentivizing productivity and innovation, would be best implemented through the use of reasonable cost estimates and profit rates that are commensurate with contractor performance as well as the types of products/services being procured. Critical to the success of this initiative – as with affordability and other objectives in the long term – is to ensure the high-level directive to provide incentives and rewards for strong performance is adopted at all levels of the DoD acquisition community.

We agree that profit, when used properly, can be an effective incentive. In situations where consideration of profit is a determination of contract pricing, we are concerned with the decreased profitability or no profit at all on cost elements where no regulatory requirement to preclude profit exists. For example, the contractor is required to effectively manage the supply chain and is responsible for the performance of its subcontractors but may not be allowed to add profit. Effective management should be recognized and rewarded with an appropriate profit level. Firm directives regarding profit that are outside the regulation hinder the ability of the parties to come to agreement and do not follow the regulatory process. Also, the application of weighted guidelines assessment seemed to be inconsistently applied. It is unclear what DoD's goals on profitability are.

There is still a lack of objectivity on the part of the line PCO when it comes to negotiating profit. In competitive circumstances, industry has seen a trend in RFP's which instruct the bidder not to include fee on certain elements of cost. In sole source circumstances, the Weighted Guidelines allow for four additional percentage points of fee under the Cost Efficiency factor. This is one of the PCO's most powerful tools in driving efficiency/cost reduction. However, in recent years, PCO's are generally reluctant to use it, for fear of it being "questioned" by DCAA in post award audit. In addition, Under Secretary Kendall has discussed development of new methods for incentivizing industry alignment with DoD objectives, in addition to current tools such as award fee, and new metrics for evaluating the performance of government organizations and contractors. Industry would appreciate the opportunity for meaningful engagement in developing further guidance on:

1. the appropriate use of the Cost Efficiency Factor in the negotiation of profit;
2. how to "force" a more distinct linkage in negotiation between contract type, cost reduction, improve quality and higher profit;
3. contemplated methods for incentivizing industry alignment with DoD objectives and metrics for evaluating the performance of government buying organizations and contractors; and
4. weighted guidelines accommodation for additional profit for contractors who self-finance rather than receiving progress or performance based payments from the government.

Industry embraced the concept of DoD incentivizing productivity and innovation when the first set of BBP initiatives were introduced in 2010. The high-level DoD message was that contractors who invested in technology, took on risk to benefit DoD, leveraged commercial practices, effectively managed costs, and delivered high-quality complex items would be

rewarded during negotiations with profit rates that incentivized this type of continued behavior. Senior DoD leadership repeatedly stated publicly the intent was to reduce costs not profit. Unfortunately, many DoD agencies interpreted this 2010 message to mean that contractors should always be awarded lower profit rates and lower prices, regardless of their performance and risk profiles. Furthermore, because many DoD contractors such as those who have controlled costs through integration of their commercial/military businesses are no longer able to receive performance based payments due to the complexity of the new DoD Cash Flow Model, industry returns on investment have been eroded even further.

We recommend that all levels of the DoD acquisition community look critically at the experience of the 2010 BBP and ensure that contractors are in fact rewarded appropriately for meeting or exceeding DoD performance objectives. The most effective way to transform these initiatives into enforceable requirements would be for the government to publish an objective and clearly worded re-write of the DoD Profit Weighted Guidelines, thereby eliminating ambiguity within certain sections of the Weighted Profit Guidelines, reflecting more objective criteria and promoting consistency in their interpretation.

Any new regulations should promote the establishment of short-term profit agreements that would apply to groupings of similar products or services rather than requiring potentially thousands of individual profit negotiations for contracts and orders that are awarded each year. Additionally, there should be recognition of the substantial effort required of large, complex businesses with highly technical products to manage their subcontracted items. This is particularly vital in the current economic environment that is marked by limited subcontractor resources and stringent government standards that must be met to manufacture and deliver high quality parts. For many contractors and subcontractors, government business continues to be a smaller percentage of their overall sales. When committing resources and determining which business to pursue (*i.e.*, commercial vs. government), business entities may not be attracted to government business based upon its' lower profit rates/rewards. Any changes to the profit policy that are proposed should be pursued through the public comment process.

## **Initiative #2: Employ appropriate contract types**

Comment: AIA concurs with this initiative as a positive shift from BBP 1 which discouraged the use of cost reimbursement contracting methods. We appreciate the reconsideration for emphasizing the use of the appropriate contract type using the scrutiny of programmatic considerations like performance risk, product maturity and program phase. The choice of contract type requires the use of certain provisions that also may have unintended consequences that drive cost. For example, which party bears the risk of loss is dependent on contract type. If risk of loss is the corporation's and the work in progress is substantive or near the limits of insurance, then special insurance may be procured as a direct cost to the government, whereas the government is a self-insurer and can remain so if the government continues to bear the risk of loss.

We believe that an upward profit adjustment should be made in the event that the contractor agrees to payments subsequent to delivery rather than requesting financing payments. The FAR should be modified to formally add late-development or early-production FPIF efforts to the list of contract types eligible for bi-weekly interim cost billings. We recommend a FAR change that would more equitably balance the increased technical, schedule, and cost risks assumed by the contractor under FPIF contracts with a financing option that would be more appropriate for the late-development and early-production efforts targeted by DoD's pricing strategy.

### **Initiative #3: Increase the use of fixed price incentive contracts in low rate initial production**

Comment: We agree that it is appropriate to use FPI contracts for LRIP production in those cases where the technology or manufacturing processes are not mature or predictable. However, requiring FPIF pricing for products that have not yet been subjected to qualification testing represents an unacceptable risk for contractors. Industry does not believe that solicitations should specify the FPIF arrangement, but rather enable the offeror to propose the arrangement that provides the best incentive for contract performance. Also, FPIF contracts will impact company working capital. Contract type and share lines should be based on risk in the program.

The shift from Cost Type to FPIF for LRIP programs has a significant impact on cash flow, in an industry that is facing substantial financial challenges now and in the foreseeable future. FPIF only allows the contractor to invoice 80 percent of cost incurred every month, versus 100 percent of costs plus fee every two weeks, under cost type. FPIF progress payment financing has the potential to increase working capital balances by billions of dollars. This increase likely would not be well received in the financial market-place responsible for providing the additional liquidity required by contractors to perform DoD work. The increased investment required will also discourage new businesses from competing in the market-place and reduce the number of businesses willing to serve as primes.

We do not believe the intent was to create a major shift in working capital investment levels, but rather to establish better controls over contract price. If the latter was the case, the unanticipated impact could be eliminated in the near-term with the issuance of a class-deviation by the Director of Defense Procurement and Acquisition Policy to permit the same type of financing provided for cost type programs (*bi-weekly interim billings*) on late-development or early-production FPIF programs. The deviation would simply add FPIF as a contract type eligible for interim billings in FAR 16.307(a)(1) (*Clause 52.216-7 Allowable Cost and Payment*). In the long-term, the FAR should be modified to formally add late-development or early-production FPIF efforts to the list of contract types eligible for bi-weekly interim cost billings. Other options to minimize the adverse working capital impact include the authorization of progress payment rates above the statutory level (we recommend 99 percent rates and bi-weekly billings), or the use of performance based payment financing, both of which should be offered with no requirement for consideration as the financing provided would be less than under the cost type scenario. The performance based financing option in late development or early production efforts may not be suitable in many situations as even a minor performance issue has the potential to suspend contractor financing which in turn would place both contract performance and contractor's liquidity at risk.

If the deviation and eventual FAR change to permit interim cost billings were implemented, the Department of Defense would achieve the price control without positively or negatively impacting working capital investments required. The proposal above attempts to equitably balance the increased technical, schedule, and cost risks assumed by the contractor under FPIF contracts with a financing option that would be more appropriate for the late-development and early-production efforts targeted by the new Department of Defense pricing strategy.

### **Initiative #4: Better define value in "best value" competitions**

Comment: The key to a successful 'best value' competition is efficiency. AIA members have experienced competitions where multiple Final Price Revisions were required and acquisition

strategies were changed mid-process, thus driving up bid and proposal costs.

A better understanding of how credit for exceeding thresholds will be evaluated by DoD will enable contractors to make more effective price/performance tradeoffs. Contrary to longstanding policies, solicitations are now making the granting of greater or unlimited data rights criterion for award. This will drive contractors and subcontractors away from government funded business as their intellectual property (developed at private expense) is the lifeblood of their business.

**Initiative #5: When LPTA is used, define Technically Acceptable to ensure needed quality**

Comment: We are concerned that DoD is moving away from the “best value” method of source selections. Past performance, including an assessment of prior product quality, should be integrated into the “technically acceptable” determination. AIA believes that “technically acceptable” does not have a place in complex electronic procurement with the exception of “build to print.” The government should allow for more effective cost, technical trade-offs; in other words, a best value. For example, the lethality of a weapon may drive the unit price but may require the process of fewer weapons. A “technically acceptable” determination does not allow such flexibility.

**Initiative #6: Initiative: Institute a superior supplier incentive program**

Comment: AIA encourages DoD to launch this program, but only after a formal administrative rulemaking process is completed. This would allow the entire acquisition community to comment and offer recommendations. Specifically, we believe it will be critical to structure the program in such a way as to ensure fairness while providing meaningful incentives for good performance against establish criteria.

While the proposed Navy pilot program may result in some slight improvements to the Department's acquisition process, there are many outstanding questions that remain. For instance, if DoD determines that a contractor should not be placed on the Preferred Suppliers List, there must be an alternative administrative or legal process through which the contractor can challenge their exclusion from the program. Industry is also concerned that the Navy's preferential treatment for PSP-approved contractors will inevitably lead to a *de facto* nullification of the Competition in Contracting Act (CICA) standard of “full and open competition.” If the contracting officer believes that PSP participants will bid on a contract, he/she can include more favorable terms in the solicitation that will be applicable after award (assuming that the PSP participant is the awardee). If PSP status is not an evaluation criterion, the fact that program participants might be submitting proposals based on assumptions of different contract terms creates a flawed and unequal playing field. Dividing the contracting community into the “haves” and “have nots” will only serve to stratify the competitive process.

It is essential that DoD publish clear and simple criteria, articulate the degree of discretion afforded the rewards that may be earned (e.g., early payments, higher past performance ratings). Recognizing the program likely will attract controversies, DoD should also provide a simple means for contractors to address shortcomings identified in the process.

In addition, care should be taken to avoid a cookie-cutter approach to incentives and establish criteria that respect the broad diversity of business models across the DoD supply chain. An open dialog with industry and comment period should help guide the DoD to structure an appropriately diverse set of incentives.

While AIA agrees with DoD's intent to institute this program, due to the many questions that remain unanswered, implementation of the DoD pilot program should be postponed until its impact on the Navy acquisition process is fully measured and these questions are answered.

#### **Initiative #7: Increase effective use of Performance-Based Logistics**

Comment: AIA applauds DoD's intent to expand its use of PBL contracts. As it pivots to more fully embracing this commercial concept, we suggest that DoD factor the following items into its plan.

- Evaluate the successes the Navy has achieved in this area and challenge the other services to embrace PBLs with the same level of enthusiasm and commitment.
- Whether considering the efficacy of PBL programs generally or evaluating specific PBL proposals, conduct a thorough "before-and-after" analysis that recognizes the true cost savings and performance improvements that can be achieved by transferring key logistics functions and program risk from the Government to the contractor.
- PBLs are somewhat unique with respect to the degree to which contractors are required to assume performance risk, and contractors should be rewarded accordingly. The DoD Profit Weighted Guidelines rewrite effort discussed above should expressly provide for the opportunity to earn increased profits under PBLs.
- Remove the disincentives created by color-of-money issues, which tend to lead to sub-optimal outcomes. A comprehensive and consistent funding structure for PBLs would drive proper incentives for all stakeholders involved.

Additionally, we suggest that DoD evaluate the 50/50 depot strategies in terms of cost/benefit as another opportunity to reduce costs.

Finally, although we do not agree with all of its recommendations – in particular, we take strong exception to cost-reporting requirements and requirements to flow down performance metrics to subcontractors – we believe the entire DoD acquisition community could benefit immensely from a memorandum the Navy published entitled "Performance Based Logistics Guidance and Best Practices Memorandum (Revised April 2012)".

#### **Initiative #8: Reduce backlog of DCAA audits without compromising effectiveness**

Comment: It is encouraging to note DoD's acknowledgement under BBP 2.0 that existing procurement cycle times are too long, and that a major factor that is driving this is the increase in audit requirements over recent years. Some AIA members have not had incurred cost audits in over ten years. Industry continues to be impacted by the lack of timely review of contractor forward pricing rates, incurred cost audits, and contract close outs. AIA suggests that DCAA and DCMA strive to clear the backlog of audits, and complete incurred cost audits within 18 months of submission by the contractor, and within 24 months of submission contracting officers conducting final negotiations of that fiscal year. Further, AIA supports concurrent auditing of its systems and incurred costs in order to optimize efficiencies inherent in the process. DoD should discuss with the Internal Revenue Service its Continuous Audit Program (CAP) to see if lessons can be learned and applied to DCAA regarding risk assessment and tolerance. Establishing metrics to improve the tracking and completion of these necessary audits would benefit the government and its contractors. Utilizing third party auditors experienced in performing financial audits could be of significant benefit to the government and contractor.

New metrics tracking a renewed focus in these areas would yield significant positive results to contractors and subcontractors. Alternatively, where appropriate, and within a tolerable risk structure, DoD should consider implementing a plan to eliminate the DCAA incurred cost audit backlog, by using prior year(s) DCAA audit results and applying those audit findings, and sustainment rates to unaudited contractor proposals, and have the relevant contracting organization negotiate final settlements for those years using those sustainment rates.

Audits are taking much longer to complete and, with the concurrent influx of new auditors, contractors are being required to repetitively train government personnel on the complex workings of their cost estimating systems. For example, recent DCAA audits have resulted in the government requiring the production of copies, and in some cases actual canceled checks, bank statements, and labor vouchers, notwithstanding the fact that the associated contractor business systems were approved by the government.

Industry is concerned with the amount of time that is spent during audits and negotiations deliberating whether the contractor is required to obtain cost or pricing data for items provided by subcontractors. [For example, in at least one case, DCAA auditors have demanded that the contractor obtain cost or pricing data for a \$10 washer to be purchased under an existing subcontract when the total value of the parts to be supplied by the washer subcontractor for the particular proposal exceeds \$700,000.] These types of misunderstandings result in prolonged negotiations, increases in contractor and government proposal/audit headcount, and could play a role in the disapproval of contractor estimating systems.

While all government auditors have a responsibility to protect the government's interests, DCAA's primary role is providing advice and support to the Contracting Officer. DCAA should be allowed to perform "engagements" as opposed to what it interprets as GAGAS compliant audits. A perfectly performed audit is of little value if it is not timely and does not support the needs of the Contracting Officer.

A more efficient system would include the assignment of dedicated auditors to contractors with complex estimating systems and proposals. Government personnel would focus on the particular proposals being audited rather than expanding them into overall contractor business system audits. There would be more training of new audit personnel and more stringent guidelines with respect to the types of documentation required to be produced by contractors.

In order to properly address the subcontractor issue, the FAR should be revised to clarify the requirements for obtaining subcontractor cost or pricing data. The revision should include a clear distinction between: (1) the process of supporting subcontractor costs with the prime contractor's proposal to the government, and (2) the process of obtaining cost or pricing data prior to the contractor's award to its vendors of subcontracts for supplies or services.

Secretary Kendall has referred to a number of 'techniques' that he wants to put in place so that DCAA can reduce the audit backlog and accelerate the cycle time. However, while DCAA remains under a separate reporting structure with different metrics and incentives, it is difficult to see how any meaningful change can be achieved. We recommend aligning all audits under a single organization in lieu of the current arrangement whereby DCAA and DCMA both conduct very similar audits without sufficient coordination since these organizations report to different officials and reside in different organizational structures. Aligning all audits under a single organization would cut down on duplicative efforts and should substantially reduce costs and the time needed to complete these activities. Industry would like to be given the opportunity for meaningful engagement in:

1. developing a more efficient operating model for managing resources and priorities, between the various stakeholders (DoD, Buying Commands, DCMA, DCAA and industry), and
2. developing guidance on reducing duplicative audit activity and the more efficient use of sampling/price-based analysis versus almost exclusive reliance on certified cost and pricing data.

**Initiative #9: Expand programs to leverage industry's IR&D**

Comment: AIA believes there are many contradicting practices that undermine the government's ability to leverage IR&D. A few examples include the demand for broader license rights, the desire to compete programs following EMD development, the increased demand on B&P as part of overhead which will have a commensurate reduction effect to IR&D. Increased insight into contractor IR&D would be acceptable; however, DoD must recognize contractor discretion as to the scope of their investments (at private expense), as well as ensuring that the competitive sensitivity of their IR&D plans are protected. There is also a strong concern that DoD's data rights policies will impair contractor IR&D (private expense) investment that otherwise would benefit DoD. Companies will alternatively focus their IR&D solely on the commercial market

**FOCUS AREA: ELIMINATE UNPRODUCTIVE PROCESSES AND BUREAUCRACY**

**Initiative #1: Reduce frequency of OSD level reviews**

Comment: We concur with this initiative.

**Initiative #2: Re-emphasize AE, PEO and PM responsibility and accountability**

Comment: Increasing administration requirements inhibits affordability. We are experiencing an increase in the number of CDRLs, meetings and other data requests, both formal and informal, that appear extraneous to the primary purpose of the contract.

In addition, there are examples where we have multiple proposal submissions and BAFO/FPR requests, all of which increase contractor/subcontractor indirect costs. As the government encouraged more fixed price contracting in the original Better Buying Power release, we have a shared obligation to make the cultural shift between cost reimbursable to fixed price type contracting in order to be successful. In the past, under cost contracts, a large contingent of SETA contractors often influenced design and production decision making. Under the new fixed price strategy, with a strong desire for affordability, this past culture and structure may complicate such a shift.

Further, the decision making process at the appropriate levels is being undermined by the DCMA negotiating task team.

We are also concerned with the increasingly frequent trend of ignoring comments on draft solicitations, not only on requirements but also on cost driving terms and conditions. Option clauses with ill-defined option exercise periods, comments relative to cost technical trade-offs, and more cost effective schedules are often ignored. Sections L&M are not provided with the

draft. It would be beneficial if the government established internal metrics regarding RFP issuances and responses.

AIA also notes there is a misuse of the draft RFP Process (*i.e.*, no Sections L&M being released) to avoid additional OSD review. As a result, industry comments are frequently ignored and questions remain unanswered. Clearly opportunities for cost reduction and value enhancement are being missed.

### **Initiative #3: Eliminate requirements imposed on industry where costs outweigh benefits**

Comment: This initiative, which is carried over from BBP 1.0, has great potential to reduce costs given its multiplier effect across the entire industrial base, but, unfortunately has gained little traction to date. In recent years, there has been a trend by the government to expand contractor oversight and compliance requirements through the implementation of increased regulatory and policy changes without any apparent cost-benefit analysis to support the efficacy of these new requirements. On average, over the past three years, industry has seen 182 new or revised DoD and other agency acquisition-related regulations issued annually.

Today's acquisition process is not reflective of any coherent overall design. It has become a collection of salutary incremental measures intended to fix narrowly defined problems. The government continues to add more compliance requirements on companies with new or revised interpretations of policies, laws, and regulations—without regard to any cost-benefit analysis. The unintended consequence of the additional layers of statutes, regulations, and policies has been an increasingly complex process that is proving to be less than the sum of its parts. Rather than simplifying the process, rigid safeguards have been adopted that give Federal managers little flexibility to buy what they need.

DoD must engage in a meaningful cost-benefit analysis for all regulatory burdens to ensure that the increased costs of doing business with the Government are reasonable and affordable to both the government and its contractors. We recommend three actions: First, DoD should commission an update of the 1994 Coopers & Lybrand study (*"The DoD Regulatory Cost Premium: A Quantitative Assessment"*) which would provide visibility into the true costs of the hundreds of new requirements imposed on industry. This update should incorporate an enhanced way to assess the true cost of new regulations—the total life cycle impact of costs, the unique requirements deterring companies from doing business with the government which limit competition and the government's access to the latest technologies. Second, using the knowledge gained from the first action, DoD should engage in a thorough cost-benefit review of all existing acquisition regulations and revalidate those which are essential to its procurement business and eliminate those that are wasteful, duplicative, and excessive. Third, DoD should impose at least a six-month moratorium on future regulatory activity and not promulgate any final regulations without conducting a cost-benefit analysis that clearly demonstrates a rational basis for every regulation, together with a finding of affordability to both government and industry.

Most acquisition reform efforts have fallen short, not due to a shortage of ideas, but from the difficulty in identifying and changing counterproductive government and industry incentives. DoD must realize that the enormous impact of its policies on those small- to mid-size companies that represent the majority of its contractors. Rather than enabling innovation and productivity through best commercial practices, DoD has reverted to a "one size fits all" regime that focuses on oversight based on government-unique regulations. Unfortunately, the acquisition reform successes and lessons learned in the 1990s are now only a fading memory. Due to the narrow

focus on escalating costs associated with contingency operations, a small and unique subset of DoD acquisition, many of these successful cost efficiency programs were abandoned in the last decade.

In his remarks during the roll out of the *Efficiencies Initiative*, Secretary of Defense Robert Gates stated, "This department simply cannot risk continuing down the same path—where our investment priorities, bureaucratic habits, and lax attitudes towards costs are increasingly divorced from the real threats of today, the growing perils of tomorrow, and the nation's grim financial outlook." He stressed that DOD's reform efforts were only possible "if followed through to completion." [See *Statement on Department Budget and Efficiencies, Delivered by Secretary of Defense Robert M. Gates, The Pentagon, January 06, 2011.*] However, a flood of new regulations will negatively impact the entire DOD acquisition process despite the fact that the issues being addressed may be unique to contingency contracting operations.

We recommend that DoD champion a requirement that future regulations be accompanied by a cost-benefit statement so decision makers will know the cost impact of the new requirement and able to make an informed judgment about the costs and benefits of implementation. The following quotation is particularly apt, "So confusing and time-consuming is the current legal and regulatory environment for defense acquisition that it suffocates its own reason for being: aiding the war fighter." [See *BENS Report of the National Security Task Force on Defense Acquisition Law and Oversight, "Getting to Best: Reforming the Defense Acquisition Enterprise," July 2009.*] Some policy decisions with unintended consequences include:

- DoD wants increased competition, but bid and proposal (B&P) costs are being cut. B&P costs increase as contractors submit more proposals.
- DoD wants to accelerate innovation and encourage entry of new competitors, but RFPs often insist on the contractor providing greater or unlimited rights to technical data and computer software (previously developed at private expense), thus undermining the incentive for contractor innovation.
- DoD wants increased productivity brought about by increased automation and capital expenses, yet DOD negotiators are arbitrarily reducing overhead costs and placing a premium on direct labor in profit negotiations.
- DoD wants to reduce or eliminate profit on major subcontracts. Continuance of this behavior will affect "make or buy" decisions and encourage prime contractors to vertically integrate, with unintended consequences for the industrial base.
- DoD does not adequately fund undefinitized contracts or annual contract increments, thus forcing use of contractor funds with interest expense unallowable. Nevertheless, DOD wishes to curtail profit levels when it does provide needed cash flow to support contract performance. This appears to be an inconsistent initiative.

Fair acquisition policies are needed to maintain a competitive defense acquisition environment and sustain a healthy defense and aerospace industrial base. To do so, the government must focus on developing contracting and financial policies that encourage and reward efficiency and good performance, promote fairness and stability, incentivize cost savings, and establish balanced and equitable risk-reward financial relationships.

We recommend that DoD seize this opportunity to return to a preference for commercial item acquisitions and sharply reduce the number and frequency of reporting requirements levied on DoD contractors and their subcontractors for commercial and noncommercial products and services. By one count, the number of clauses currently imposed on contractors required by

statutes or executive orders has more than doubled since enactment of the Federal Acquisition Streamlining Act of 1994 (FASA). We respectfully suggest most of this regulatory "scope creep" is unwarranted and the DoD should lead the way in identifying and reversing this trend toward increased requirements.

Significant savings could be achieved by identifying non-value added activity. The current Administration has added many new regulations that require additional administration on the part of the Contractor. One tool that could be beneficial would be the re-establishment of the Single Process Initiative program that was implemented in 1994 by the SECDEF. This program focused on common practices that reduced operating costs for industry.

Additionally, while industry recognizes the need for a robust pre-award review process, the Pre-Award Peer Review requirement has at times had the effect of delaying contract award, thereby impacting timeliness in meeting warfighter needs. Under the Peer Review process, contractors are asked to provide further documentation, not for the purposes of contract award, but rather to satisfy the 21 required documents or elements needed for a Pre-Award Peer Review. We recommend that DoD look at whether these reviews are necessary and, if so, consider dramatically reducing their frequency and volume of required documentation.

#### **Initiative #4: Reduce cycle times while ensuring sound investment decisions**

Comment: The factors identified to reduce cycle times by BPP 2.0 are appropriate; however, AIA suggests an additional method for consideration. Commercial Items, or COTS, with minor modifications, should be considered to meet the DoD requirements, to the maximum extent possible. However, contractor investment is often disincentivized due to the government's desire to acquire "Government Purpose Rights" on all of the contractor's technical data and computer software.

AIA recommends that DoD review the process used for intelligence programs. They seem to have a better balance of technical and delivery risk commensurate with investment decisions. An assessment of their process may be beneficial when considering possible contributing factors.

### **FOCUS AREA: PROMOTE EFFECTIVE COMPETITION**

#### **Initiative #1: Enforce open system architectures and effectively manage technical data rights**

Comment: AIA has significant reservations about DoD's introduction of Open System Architecture (OSA) as the future of DoD data rights management. While DoD has responsibility to manage and enforce its data rights, we respectfully believe OSA is a short-sighted approach that runs directly contrary to the growing push by DoD for contractors to invest in programs through cost-sharing and other types of investments, and should be withdrawn.

If contractors are expected to invest resources and know-how into next-generation DoD platforms, including incorporating commercially developed technology and products, they should be able to maintain exclusive rights to the resulting data. OSA upends this logic and takes the unfounded view that a contractor will continue to commit valuable resources to programs that, if successful, could result in the contractor's competitors reaping substantial rewards.

BBP 2.0 initiatives are generally consistent with those practiced routinely in the commercial marketplace. OSA, however, does not resemble a commercial best practice and should be curtailed in light of the short- and long-term disincentives it imposes on contractors.

### **Initiative #2: Increase small business roles and opportunities**

Comment: Industry has always been a strong advocate of small business and has long supported initiatives which increase small business participation in government contracting. The FAR is robust in addressing all types of small businesses planning for their success. To a large extent, prime contractors are the nurturers of small business; however, some terms, like the movement to progress payments for the prime, may negate the ability to develop small businesses.

When prescribing modifications to the existing acquisition system it is important for the government to recognize that this is not a situation where “one size fits all.” Some acquisitions contain more risk or are more time critical than others, some are of higher cost than others, and some have fundamentally different characteristics (*i.e.*, product upgrades, commercial items or services, information technology and international programs). Each acquisition needs to be treated in a fashion suitable to its character.

### **Initiative #3: Emphasizing competition strategies and creating and maintaining competitive environments**

Comment: Industry supports a strong competitive environment. Key, of course, is maintaining a vibrant industrial base. Contracting with the government can be risky: There is a significant risk due to changes in specifications, quantity, funding, and/or delivery requirements. These changes significantly alter the contractor's original business case analysis. Contractors price this level of risk in their contracts through fee or profit. Unfortunately, industry has experienced an erosion in fees and profits. Recent competitive solicitations have also sought to mandate certain reduced parameters (*i.e.*, fixed fee, target fee/profit, min fee, max fee, share ratios, ceiling price). In a competitive environment, mandating reduced fee/profit parameters can be considered counterproductive as it runs contrary to the government's stated objective to reward contractors for cost reduction through fee/profit incentives.

- Leveraging the competitive environment to essentially modify the responsibility for areas like environmental preconditions, unreasonably shifts risk to the contractor.
- Excessive and redundant justification requirements, approvals and other non-material administrative directives add cost in this competitive environment.
- The same competitive strategy that applies to industry should be applied to the government's decision to in-source.
- Introducing competition for full rate production on programs of record disincentivizes the contractor from investing in related IR&D and capital expenditures during the development phase of the program.

### **FOCUS AREA: IMPROVE TRADECRAFT IN ACQUISITION OF SERVICES**

No comments on any of the Initiatives in this focus area.

## **FOCUS AREA: IMPROVE THE PROFESSIONALISM OF THE TOTAL ACQUISITION WORKFORCE**

### **Initiative #2: Establish stronger professional qualification requirements for all acquisition specialties**

Comment: We share the collective challenge of maintaining a knowledgeable acquisition workforce. With “baby boomer” acquisition professionals retiring in record numbers, knowledge transfer is critical to retaining the skills required. It may be beneficial to establish additional common training venues to be shared between the government and industry such that expertise can be shared between the parties in an innovative learning environment.

Although the DAU certification programs play an important role in overall professional competency, it is apparent more foundational and practical training is required. Prior to the enactment of the Defense Acquisition Workforce Improvement Act, the Services developed and delivered such training courses in the areas of contracting, engineering, program management, etc. Today, much of the practical coursework and training has been phased out. We are not suggesting that the Services reinstate past practices, but rather work together to develop technical training that is “common” across the Services. This will expose acquisition personnel to a broader experience base, promote greater consistency in execution of acquisition programs, and increase the opportunities to leverage lessons learned and share best practices. We believe industry can play a valuable role in select coursework development.

We also encourage DoD to consider a renewed support for training programs that provide opportunities for government and industry managers to learn and train together. The Education with Industry programs the Services and industry jointly sponsored in the past provide a successful model to consider for future programs. In addition, government and industry rotational assignments for key managers should be considered. The benefits to exposing both parties to each other’s business objectives, knowledge, processes, and procedures could prove to be invaluable as we execute programs together. We believe that government and industry senior acquisition professionals would benefit from smaller joint discussion forums sponsored by DAU to openly review and discuss acquisition related case studies as well as current acquisition regulations and policies (e.g., commercial item pricing and should-cost management).

We agree with DoD’s intent to raise the recognition and prestige of the acquisition workforce at all levels. We suggest an annual acquisition award that recognizes outstanding program execution, whereby program cost, schedule, and performance objectives are achieved. Government and industry-wide recognition will incentivize individuals and rightfully reward leaders who deliver in the best interest of the taxpayer.