

DoD Rethinks Proposal to Micro-Manage Contractors' IR&D Efforts, Or Does It?

Written by Nick Sanders

Friday, 04 September 2015 00:00

Readers may recall our [reaction](#) to DoD's Better Buying Power 3.0. We were, in a word, *alarmed*.

We wrote –



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

Our delicately phrased criticism notwithstanding, we were not alone in voicing concern with the proposed approach. CEOs of major defense contractors thought it was a poorly thought-out idea as well.

Recently, USD (AT&L) Kendall announced he was going to rethink his proposed IR&D management approach. This [article](#) summarized the new approach thusly—

Frank Kendall, undersecretary of defense for acquisition, technology and logistics, said he no

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longer planned to require companies to seek a 'technical sponsor' before beginning an internal research program but would instead propose they be *required to brief an appropriate defense official before and after such work*

(Emphasis added.)

The article continued—

'This should not constrain industry's freedom in any way that current regulations and statute don't already require, and it will have the benefit of ensuring more frequent and effective communication between industry and government,' Kendall said in prepared remarks for a conference in Rhode Island. ... He said the goal was to ensure that the research work done - and billed as overhead - was technically meaningful.

We found a copy of a [White Paper](#) (dated August 26, 2015) that purports to establish the new DoD IR&D management approach. The White Paper stated—

To ensure that a two way dialogue occurs between the Department and IR&D performing organizations and to provide for some minimum oversight of IR&D, the department believes that proposed new IR&D efforts should be communicated to appropriate DoD personnel prior to the initiation of these investments and that results from these investments should also be shared with appropriate DoD personnel. The intent of such engagement is not to reduce the independence of IR&D investment selection, nor to establish a bureaucratic requirement for government approval prior to initiating an IR&D project. Instead, the objective of this engagement is to ensure 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 and completed IR&D work.

That doesn't sound too bad. Communication is always a good thing, right?

But then later in the White Paper, we came across this pernicious bit of mischief—

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The intent is that by FY 2017, every new IR&D project will be preceded by an engagement with appropriate DOD technical or operational staff to ensure that the department is aware of the goals and plans for the effort and that Industry is informed of related ongoing efforts and future potential opportunities from the Department. To document that this interchange is occurring, beginning in FY 2017, *DoD will require contractors to record the name of the government party with whom, and date when, a technical interchange took place prior to IR&D project initiation and to provide this information as part of the required IR&D submissions made to the Defense Technology information Center* IR&D electronic portal (which is accessed through the Defense Innovation Marketplace (www.defenseinnovationmarketplace.mil)).

Defense Contracts Management Agency and Defense Contracting Auditing Agency will use these DTIC inputs when making allowability determinations for IR&D costs.

In order to effect this procedural change, I intend to direct the Defense Acquisition Regulations Council to draft an amendment to the Defense Federal Acquisition Regulation Supplement and begin the public rulemaking process.

(Emphasis added.)

Thus, in reality the “rethinking” is not a rethinking at all. It is the same approach, with all the attendant problems. Contractors who fail to “brief” the unspecified and unidentified DoD technical personnel run the risk that their IR&D expenditures will be determined to be unallowable.

Among the myriad problems associated with this proposed approach is the sheer volume of individual IR&D projects that will need to be “briefed” via technical interchange. Some of the larger contractors have literally hundreds of such projects going on at any given time. For those large contractors, the current requirement to input their project information into DTIC has become a bureaucratic process that adds no value but requires labor—labor that is charged to overhead and passed right back to the DoD buying commands via the contractors’ indirect rates. This approach, if implemented, will make things worse.

For example, who pays for the labor and materials associated with the technical interchange briefings? We don’t think it should be IR&D, because the IR&D effort could take place whether or not the briefings are made. We don’t think the effort should be charged as a direct contract cost—even though the effort would be required by the DoD contracts that contain the new

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requirement. But we don't think the buying commands will want to pay for such non-value-added labor that is neither engineering nor manufacturing. Instead, we suspect it will be good ol' overhead that pays for the briefings. And so the overhead rates will go up and up, and DoD will (once again) pay more for goods and services, because it insists on micro-managing its contractors.

All the foregoing is in addition to the basic problem, which is that DoD will be slowing down contractors, who must now wait to schedule their individual briefings before starting work. So much for agility and innovation.

There will be a proposed rule and the public will have an opportunity to provide comment and input. We strongly suggest that your company avail yourself of that opportunity, even though the DAR Council has a horrible track-record of actually listening to public input.