

## USD (AT&L) Disappoints with Notions for Regulatory Roll-backs

Written by Nick Sanders

Wednesday, 25 November 2015 00:00

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We have been less than enthusiastically supportive of the various incarnations of “Better Buying Power” (BBP). It’s not that we don’t support acquisition reform—we do! It’s just that so much of the BBP efforts strike us as bureaucratic B.S. designed to show effort without any measurable situational improvement. You can search this blog (we have a keyword search feature up in the top right of the home page!) and see our many articles on the topic. You’ll see that we’ve been following the various BBP initiatives closely and we have some ideas on what efforts are substantive, and what efforts are less so.

One of the more promising efforts has been to “remove unproductive requirements imposed on industry.” The specific actions under this initiative were detailed in [this article](#) found on our knowledge resources page (members only). This is a BBP 3.0 initiative that was a carry-over from [BBP 2.0](#)

, where it was called “eliminate requirements imposed on industry where costs outweigh benefits.” To achieve that objective, BBP 2.0 called for DoD to “work with industry to collect data that will enable the Department to identify requirements that can be reduced or eliminated to reduce cost without adversely affecting performance.” The BBP 2.0 initiative was a carry-over from BBP 1.0 (or “Better Buying Power” as it was called in 2010 when it was rolled-out by then-USD (AT&L) Dr. Ash Carter). In BBP 1.0, it was called, “Identify and eliminate non-value-added overhead and G&A charged to contracts.”

The point is, the Pentagon has been pursuing this initiative for five years, in every single Better Buying Power incarnation. Since 2010, no matter how worded, the consistent goal has been to reduce the cost of weapons and services by reducing contractors’ overhead costs, and to drive that overhead cost reduction through a reduction in requirements imposed on contractors.

Five years’ of effort devoted to this initiative. During that five-year period, we’ve changed the Secretary of Defense, we’ve change the Under Secretary of Defense (Acquisition, Technology and Logistics), we’ve changed the Director of Defense Procurement and Acquisition Policy, we’ve changed the Director, DCMA, we’ve changed the Director, DCAA, and we’ve changed the OFPP Administrator. Despite those changes, the DoD bureaucracy under the USD (AT&L) has doggedly pursued this initiative for five years.

And so how’s that working out for the Pentagon and the taxpayers?

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After five years, we finally have an answer, as the office of the USD (AT&L) recently issued [a report](#) showing the results of the five-year efforts.

The report, called “Eliminating Requirements Imposed on Industry Where Costs Exceed Benefits,” is a huge disappointment.

Before we get into the whys and wherefores, let’s pause and acknowledge that perhaps we should have been expecting such a stinker, such a waste of \$600,000. Perhaps we should have expected the bureaucracy to spend most of its efforts waving-off contractor suggestions for regulatory relief and justifying the status quo. After all, Godel [theorized](#) that no formal complex system will ever be complete, and no management activity within the boundaries of that formal complex system can conceive of the unknowns that lie outside it. Thus, asking the bureaucrats within the bureaucracy to design a new bureaucracy is always going to be a difficult, if not impossible, proposition.

Yet, despite knowing the difficulty of asking bureaucrats to reduce the bureaucracy that keeps them employed, we were still mightily disappointed at the results of the study.

The report is divided into five primary sections: (1) acquisition of commercial items, (2) contract auditing and management, (3) application of earned value management, (4) Truth in Negotiation Act (TINA) and requirements for Cost or Pricing Data, and (5) application of the Buy American Act.

### 1.

Acquisition of Commercial Items. Areas covered included the initial determination of commerciality, determining that prices paid for commercial items were fair and reasonable, and government source inspection of commercial items during manufacturing. Even though the DoD study team was provided with real-life examples in which the government demonstrably paid more, and took longer, to acquire commercial items through adherence to its bureaucratic processes, the report concluded that “The examples provided were insufficient to support a quantitative, generalizable cost/benefit assessment of DoD’s policies and practices for acquiring commercial items.” In fact, the study team doubled-down on DoD’s [controversial proposal](#)

that would make it even harder and more bureaucratic to acquire commercial items. To support the status quo, the DoD will create more bureaucracy (Centers of Excellence), develop

more process guidance, and will train its Contracting Officers better.

1.

Contract Auditing and Management. Contractors provided a number of recommendations in this area, but failed to provide “quantitative costs associated with specific inefficiencies associated with DCAA auditing or DCMA contract management” and, thus, no cost/benefit analysis of those recommendations was possible. Instead, the study team parsed those recommendations into “most promising” and “other” based on “a subjective assessment of their merit.” The “other” recommendations were not considered. The “most promising” recommendations were dismissed. For example, contractors said that certain Contractor Business System reviews could be streamlined if government reviewers would rely on the work performed by external auditors during Sarbanes-Oxley (SOX) control system reviews. DCAA (sort-of) agreed, but stated that it would need access to the external SOX reviewers’ working papers in order to rely on them. That ain’t going to happen, mostly because those working papers are the property of the external reviewers and not the contractors, and the government lacks privity. Separately, much verbiage was directed at reducing DCAA’s backlog of incurred costs audits. DCAA defended itself and pointed to all the progress it has made since 2012 via use of its [risk-based approach](#).

(Figure 3.1 shows that, as of May 2015, DCAA’s incurred cost backlog had been reduced to 17,600 years, which was allegedly only 170% of the “regular inventory” of 10,300 years.) In addition, contractors recommended changes to FAR 4.703 retention requirements related to scanned images, but the study team concluded that the current requirement “seems reasonable” and therefore did not need to be eliminated. Other contractor recommendations were similarly dismissed, with DCMA, PARCA, and DCAA each (generally) supporting the other’s rationale for why a particular contractor recommendation was already been addressed. For example, footnote 38 on Page 36 states “PARCA: DCAA’s comment indicates they have been responsive to industry concerns on this issue and are open to addressing contractor concerns about multiple requests for information as they are made aware of such instances. If systemic issues remain, recommend that contractors provide specific details and recommended actions to the Director, DCAA and the USD(C).” We could provide numerous other examples; readers are encouraged to review pages 34 to 41 of the report.

1.

Application of Earned Value Management. This was a happy place, with the study team accepted several contractor recommendations and promising to incorporate the recent Class Deviation into DFARS (which would establish the EVMS review threshold at \$100 million). DCMA also promised to scale-back EVMS and individual program implementations to better match levels established by the ANSI/EIA 748 guidelines. The study team also recommended

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that EVMS metrics (e.g., cost or schedule variances) not be included in award fee evaluations.

1.

TINA and Requirements for Cost or Pricing Data. Contractors recommended reducing the number of submissions, increasing thresholds for applying TINA requirements, and relaxing the requirements associated with obtaining a TINA waiver. The study team agreed with the first recommendation, disagreed with the second (on the basis that DoD would pay higher prices and that would outweigh any cost reductions achieved), and sat on the fence with respect to the third recommendation. Many report pages were devoted to documenting the rationale for retaining the status quo.

1.

Application of the Buy American Act (BAA). Contractors made three primary recommendations. None of the three were found worthy of implementation by the study team. The status quo is acceptable.

We were interested in the concluding paragraph of this massive study, which indicates that the report is simply Phase 1 of a multi-phase effort. The concluding paragraph states—

Phase II of this study will continue under the Better Buying Power 3.0 initiative: “Remove Unproductive Requirements Imposed on Industry.” Industry will again be invited to play a key role, both in selecting topics for examination as well as providing evidence, ideas, and alternate approaches to achieve mutually beneficial outcomes. Based on industry inputs, some areas under consideration for future study include: DoD’s Application of Low Price Technically Acceptable Criteria; Reducing Procurement Administrative Lead-Time for Contract Awards; Providing Greater Clarity on Intellectual Property Policies and Practices; Reducing Undefinitized Contract Actions; Limiting Flow-Down of FAR/DFARS Clauses; and Consistent Rules for Contract Sun-Setting.

Thus, in the time-honored way of all bureaucracies, more efforts will be undertaken in the

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efforts to reduce bureaucracy. We look forward to seeing the results of the Phase II efforts, as we are quite sure they will be as value-added as the results of the Phase I efforts.

All we know is, as taxpayers, we want our \$600,000 back.