FEATURE ARTICLE

¶ 10 BBP 2.0 ‘First Glimpse’—What Does This Mean For Contractors?

Bill Walter and Mark Burroughs¹

In November 2012, Frank Kendall, the undersecretary of defense for acquisition, technology and logistics, issued a “First Glimpse” memorandum on “Better Buying Power 2.0; Continuing the Pursuit of Greater Efficiency and Productivity in Defense Spending.” Contractors are working to determine how this will impact their business processes. This article is intended to put this in context of the view towards how the focus of increased reliance on cost will impact pricing in the near future.

In staying with the current “practice” of using numeric codes to track generations of software tools, Kendall’s memo is intended to be the next significant update to the initial Better Buying Power (BBP) concept issued in late 2010 by Ashton Carter.²

BBP is aimed at obtaining greater efficiency and productivity in defense spending. The chart below compares the summary priorities of the initial BBP and the new BBP 2.0. Note that the original BBP priority “Target Affordability and Control Cost Growth” is broken into two separate priorities under BBP 2.0. One of the most significant differences between the two versions is a priority aimed at improving the acquisition workforce.

¹ Bill Walter, CPA, is a partner at Dixon Hughes Goodman and leads the Government Contractor Consulting Services group. Mark Burroughs, CPA, is a partner at Dixon Hughes Goodman and brings over 20 years of experience to the firm’s Government Contractor Consulting Services group.
The new priority to improve the professionalism of the acquisition workforce is a direct result of the simplified acquisition rules in the mid-1990s that led to a significant attrition of the procurement workforce. The Department of Defense and Congress have recognized the need to rebuild the workforce, as demonstrated through increased funding for additional procurement and oversight staffing contained in defense authorization bills. The addition of new, inexperienced contracting officers is driving the new priority aimed at improving the acquisition workforce—one of the key elements required to achieve the lofty goals of BBP 2.0.

The purpose of this article is three-fold. First, we want to acknowledge the fact that the concept behind BBP 2.0 is appropriate and should be supported by industry and acquisition professionals. In addition, we agree with Kendall that the BBP concept is not simply a textbook, one-size-fits-all solution for many of the challenges faced by COs today and over the last decade.

Second, we will provide comments regarding the lurking dangers tied directly to the escalating preference to require cost and cost-related information to support price determinations. We believe that there is a risk that BBP successes resulting from continuous improvement will likely be overshadowed by the increase in bureaucratic challenges that industry has faced and dealt with throughout procurement history. Although the BBP priorities encompass many proactive initiatives, we do not have enough space to address them all in detail in this article.

Third, we will close by discussing some of the comments raised by industry groups to help Kendall and his team before they draft the final version of the guidance.

**BBP Is a Good Concept**

Through the BBP initiative, DOD has identified a proactive path to create an environment to support the ultimate goal of Government contracting—to obtain quality goods and services from responsible sources at fair and reasonable prices.¹

Buying goods and services for the Govern-
ment is not easy. There are many conflicting needs, requirements and pressures that present challenges for pricing activities. Over the last few decades, studies have shown that as procurement experience has waned, the need for a path to provide opportunities for experience to grow has been made clear. BBP 2.0 is not intended to be a simple set of checklists that will guarantee that quality goods and services are obtained at fair and reasonable prices. Kendall's memo cannot be provided to a team of acquisition professionals and instantly generate picture-perfect, consistent solutions for each and every contract award. Indeed, one of the most realistic statements regarding BBP 2.0 was provided by Kendall in an article for Defense AT&L Magazine, in which he stated that “BBP 2.0 is the next step in a process of continuous improvement. Like BBP 1.0, it is not intended to be a 'school solution' or a checklist of ideas for you to unthinkingly 'check-off.'”

Overall, Defense Procurement and Acquisition Policy has identified that BBP 1.0 has provided a successful beginning. The information contained on the DPAP website demonstrates that DOD believes that it has achieved success in several of the initial BBP priorities laid out in 2010. However, as we will discuss, our concern deals with the objective of reducing non-productive processes and bureaucracy, which BBP 2.0 wants to eliminate.

When introducing BBP 2.0, Kendall stated, Now, the [Defense Contract Audit Agency], the contract audit administration agency—has a long backlog of... closeout audits at the end of contracts.... So, we’re working closely with the DCAA to put a number of techniques in place to try to reduce that backlog and improve our efficiency and productivity there. It’s taking far too long to get people on contract today. Kendall stated at a luncheon meeting for the Washington chapter of the National Defense Industrial Association (NDIA) that DOD currently takes 18 to 24 months to award a contract, whereas a decade ago DOD took six months or less. Clearly the bureaucratic quicksand continues to create risk for defense contractors.

The risk of getting tied up in the red tape of audits, covering the cost of compliance and pursuing cost recovery claims are just a few of the concerns with BBP and other procurement initiatives. Compound these concerns with ever-changing regulations and laws, and consider the public and media opinions of Government contractors, and people will begin to wonder why companies do business with the Government. DOD clearly recognizes that waiting for audits is the root cause of the significant backlog and inefficiency with their cost experts. The risk is even greater because one of the significant focuses of BBP 2.0 leads to placing even more work on an already overloaded agency.

The Slippery Slope of Cost—Déjà Vu All over Again?
The overall intent of BBP 2.0 and its goal to “control costs throughout the product life cycle” is admirable and appropriate. However, the use of the term “cost” both as an overall objective and in a significant number of the detailed initiatives outlined in the BBP 2.0 memo presents risk to companies and potentially higher prices for DOD.

Both sides of the Government contracting industry—the Government and contractors—have misunderstood and misused the terms “cost” and “cost analysis” for decades. The BBP 2.0 memo is not clear on whether these are used in the generic “cost to the Government” meaning, or if they are part of what appears to be a continued emphasis by the Government to believe that cost and cost-related information are de facto requirements to document that it has achieved fair and reasonable pricing.

The escalating trend toward obtaining cost information is reflected in updates to regulations and guidance, including,
the change, in the 2010 update of Federal Acquisition Regulation pt. 15.4, which replaced the prohibition on obtaining cost or pricing data with a revised wording encouraging COs to request cost data for competition and commercial items, and which expanded use of data other than certified cost or pricing data;\(^9\)

an increased emphasis on cost analysis to support the reasonableness of prices derived from competition or market data when the CO does not have sufficient data;\(^10\) and

a proposed Defense FAR Supplement rule to require analysis of cost data when establishing performance-based payment for a contractor.\(^11\)

Taken as a whole these changes and proposed changes, such as eliminating the words “of a type” from the definition of commercial item, continue to reduce the benefits associated with streamlined acquisition methods. The focus on cost increases industry concern that BBP 2.0 is leading a continued movement towards a trend of overreliance on cost data.

History demonstrates how the procurement process becomes bogged down as the burdens of regulation and oversight increase. We believe that BBP 2.0 may be heading down this same road, focusing on cost as an element of price determination. DPAP must consider that similar issues led to the acquisition reforms included in the Federal Acquisition Reform Act (FARA)\(^12\) and Federal Acquisition Streamlining Act (FASA),\(^13\) which achieved a goal to open the U.S. Government acquisition environment to innovative, commercial suppliers, and significantly improved competition. The BBP 2.0 initiatives that rely on unnecessary cost requirements most likely conflict with the stated goals to encourage innovation and to do more with less.

Although the emphasis of the noted changes expands the use of “other than certified cost or pricing data,” a natural progression is to require audits of that data, which will likely not be in a format familiar to Government auditors. It will not take long to understand that the next step in the process will be to foresee conclusions based on cost data of contractors proposing “unwarranted profits because the data used in establishing target costs or prices were inaccurate, incomplete or out of date.”\(^14\) This is the same conclusions that led to the enactment of the Truth In Negotiations Act.\(^15\)

If the demands for cost details continue to expand, commercial companies will likely once again be hesitant or refuse to do business with the Government. The Government’s inability to obtain access to state-of-the-art technology and innovations from the commercial marketplace is what led Congress to request various reviews of the complex patchwork of laws applicable to defense procurement and make recommendations for streamlining them.\(^16\)

The impact of cost and cost-related rules, regulations and standards is something particular to Government contracting and has demonstrated that these rules cause significant increases in the overall cost of Government contracts.

Understanding cost and cost-related rules is a complex exercise that consumes significant quantities precious resources that can be used more effectively. The concept of how cost analysis can result in questionable pricing results can be demonstrated through an exercise outlined in the Air Force Institute of Technology Contract Pricing Reference Guide:

Suppose that you wanted to procure a custom-made automobile. At your request, your neighborhood mechanic agrees to build you such a car. In building the car, the mechanic gets competitive quotes on all the necessary parts and tooling, pays laborers only the minimum wage, and asks only a very small profit.

How do you think the final price will compare to a car off an assembly line? Probably at least
ten times more expensive. Parts alone may be five times more expensive. The entire cost of tooling will be charged to one car. Labor, although cheaper, will likely not be as efficient as assembly-line labor. Is the price reasonable? That decision can only be made through price analysis.

This exercise highlights the complexity of cost and its often unintended impact on both price and the timely award of a contract. One can clearly understand that the price of an automobile purchased from a dealer will be significantly lower than a price using reasonable cost estimates and guaranteed lowest unit prices for the individual elements identified in the example. In addition, a CO can complete a comprehensive price analysis in a relatively short period of time. To perform an analysis of the neighborhood mechanic's cost estimate would require auditing expertise and would add a considerable amount of time to the process—with no significant benefit to achieve the department goal of “obtaining more with less.”

When talking about better buying in today's environment, one should include a discussion on how to utilize all the tools available to the buyer and not emphasize cost to the exclusion and (one could argue) detriment of the others. There are concerns among industry members that procurement methods are not being used properly. Perhaps these should be the areas of concentration and not removal.

Rather than moving away from or eliminating the reforms put in place by FARA and FASA, BBP 2.0 should include how best to use the price analysis tools available to the CO and avoid the use of cost analysis and audits. A more open environment maximizes the choices available to the Government buyer, and arguably reduces the burdens associated with cost-based acquisition to both the buyer and seller. After all, “Companies that do not sell to the federal government keep their books in accordance with [generally accepted accounting principles] and, if required to meet government cost accounting requirements would have to implement a completely separate accounting system at great expense.”

In the end, rather than attempting to roll back years of acquisition reform, DOD should remember the most important acquisition tool available: the ability to walk away from an acquisition. It is after all the CO who determines that adequate price competition exists, or whether the item being purchased meets the definition of a commercial item in FAR 2.101.

Industry Response to BBP 2.0

Industry groups provided input to Kendall and his team during the comment period. On Sept. 26, 2012, the Professional Services Council (PSC) provided its input and focused on trends, such as performance length, buying for value and squeezing profit to drive cost reductions, in addition to cost analysis.

PSC's initial comments provide insight that simply holding competitions every three years (competition for competition’s sake) will not ensure reduced prices to the Government. The group recommended that BBP 2.0 consider contract terms that are tied to the nature of the work involved, which can drive quality competition rather than frequent competition.

PSC also discussed the recent trends of contract awards based on lowest-priced, technically acceptable offers, rather than on best-value strategies and appropriate quality and technical requirements. PSC recognized that the use of lowest-priced, technically acceptable offers is acceptable in some instances, but results in an outcome rarely beneficial to either the Government or industry. PSC also warned that this tactic can carry a greater risk of cost growth.

PSC concluded its comments by discussing the Government objective of squeezing profits—similar to our discussion earlier—through extensive pre- and postaward audits—even
when the regulations state that such audits are not appropriate.

On January 15, NDIA provided a list of main policy themes integral to achieving additional efficiencies. The major policy themes include:

- 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 if costs outweigh benefits;
- leverage industry investment in independently funded research and development;
- create contract incentives that properly value contract and performance risk and 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; and
- build a structural interface with industry to improve communications on core acquisition issues.

Most of the issues discussed in NDIA’s recommendations are directly associated with the benefits that the Government has received by using commercial-item acquisition processes to the maximum practical extent. By avoiding unnecessary bureaucracy and cost associated with cost-justified contracting and regulatory compliance, the Government can help contractors avoid costs that have historically ranged from 18 to 30 percent.\(^20\)

NDIA recommended that DOD remain transparent in how it ultimately implements policy changes, and offered DOD full opportunity to comment and engage as needed. In fact, NDIA hinted at continued improvement by mentioning BBP 3.0 and 4.0.

**Conclusion**

BBP is an initiative by DOD to provide a continuous improvement framework to help the new generation of federal procurement officials to focus on “buying more with less.” The recent update to this initiative adds excellent concepts, but increasing the emphasis on cost analysis and audits adds risk to contractors. Considering the comments outlined in this article along with those made by industry groups, most of us remember the challenges faced early in our careers when the bureaucracy need to support cost-justified pricing kept innovative commercial companies from providing goods and services to the Federal Government.

DOD must consider that one of the best ways to do more with less is to streamline the contract pricing process and limit the use of cost and cost analysis to those circumstances in which there is clear value added to the pricing process. Many studies show that the emphasis on cost consumes precious resources with little to no value added.

The Government acquisition professional has a range of tools to use in determining prices—but not every pricing action should require cost or cost analysis. Wielding the heavy burdens of cost analysis is comparable to something a wise man once said: “If all you have is a hammer then everything looks like a nail.”
ENDNOTES:


3November 13, 2012 Memorandum from Frank Kendall on Better Buying Power 2.0: Continuing the Pursuit for Greater Efficiency and Productivity in Defense Spending.

4FAR 15.402.


7Yogi Berra.

8BBP 2.0 informational briefing with Focus Areas/Initiatives, November 13, 2012 Memorandum for Defense Acquisition Workforce.

9FAR; Definition of Cost or Pricing Data, Final Rule 75 Fed. Reg. 53135 (Aug. 30, 2010).


15Act of September 10, 1962, P.L. 87-653 § 2306(f), and subsequently codified as amended at 10 USCA § 2306a.


18FAR 15.403-1(b)(1).

19FAR 14.503-1(c)(3).