

February 21, 2014

SUBJECT: OUSD(AT&L) Study Supporting BBP 2.0 Initiative: “Eliminating Requirements Imposed on Industry for which Costs Outweigh Benefits”

Dear [Industry Participant],

The Assistant Secretary of Defense (Acquisition) (ASD(A)) and Director, Performance Assessments and Root Cause Analyses (PARCA) are conducting a study to examine the costs and benefits of six specific Department of Defense-related regulations and statutes. You are receiving this letter because your company has agreed to participate in this study to analyze costs and benefits of one or more of the following areas:

- 1) Government-Unique Clauses for Procurement of Commercial Items
- 2) Contract Auditing and Production Surveillance and Reporting
- 3) Component Specific DFARS Supplements
- 4) DoD Application of EVM Reporting
- 5) Conditions to provide cost and pricing data related to the Truth in Negotiation Act (including thresholds and frequency of reporting)
- 6) DoD Application of the Buy American Act

The goal of this study is to eliminate requirements imposed on industry where costs outweigh benefits. Such non- or low-value added requirements may result from poorly conceived or written DoD-related regulations or statutes. In such cases, our study objective is to propose alternatives to modify, replace or delete such requirements. Low-value added requirements may also result from DoD’s inappropriate or inconsistent application of such regulations or statutes. In those cases, our objective is to propose alternatives that will improve DoD’s appropriate and consistent application of such regulations and statutes.

Another purpose of this study is to foster a continuing dialogue with DoD’s industry partners to identify and eliminate inefficient practices that increase costs or reduce the quality of DoD’s purchases. We anticipate that industry’s recommendations offered during this study will result in additional areas to examine in the future as we continue to streamline and improve efficiency of DoD processes.

We would like your initial inputs in your chosen area(s) by the end of March, 2014, if possible. We appreciate and look forward to your participation in this study.

With kind regards,

//signed//

Dr. D. Mark Husband, Senior Advisor for Root Cause Analysis, OUSD(AT&L)/PARCA

Attachment: Survey Questions

## **QUESTIONS FOR OUSD(AT&L) STUDY ON “ELIMINATING REQUIREMENTS IMPOSED ON INDUSTRY FOR WHICH COSTS OUTWEIGH BENEFITS”**

We are seeking information centered around two basic questions: (1) what the regulation or statute requires your company to do; and (2) the resulting burden to your company. To provide compelling evidence for change, we are seeking data with the following attributes:

- Rigorous evidence (quantitative, derived from company cost accounting systems where possible; when specific program examples are used, consider and provide evidence or indicators of generalizability when possible).
- Clear identification of source of issue (regulation itself, inconsistent or faulty application, conflicting regulations, etc.)
- Clear identification of marginal cost (where applicable). Provide costs for baseline and alternative(s) when comparisons are used or solutions identified.
- Broad interpretation of “cost” (money, time, schedule, performance, opportunity, risk, etc.)

The following questions are provided as a guide for your inputs to this study. They are not intended to constrain your inputs—we welcome all recommendations for improving DoD’s interaction with industry, so please include any comments you deem relevant. For example, you may wish to identify recent changes that have made things better or worse or suggest alternative ways the government could accomplish its goals.

## 1) Government-unique clauses for procurement of commercial items based on FAR Part 12.

The FAR (52.212-5) and DFARS (252.212-7001) currently list over 80 government-unique clauses that can apply to contracts for commercial items. These clauses are intended to impose provisions of law or Executive order on acquisition of commercial items. DoD has received comments asserting that such clauses result in unnecessary costs or burdens for DoD and its suppliers and make it difficult and more costly for predominately commercial firms to compete for DoD contracts. DoD has also received comments that the Department sometimes requests oversight, audit surveillance, and/or data on commercial items that is burdensome and inappropriate for commercial items.

- i) Identify specific clauses that in your opinion impose an unnecessary cost burden on your contracts and/or other interactions with the DoD.
- ii) Provide accrued costs associated with complying with one or more of the clauses listed in i), over a specified time period associated with a specific, identified DoD-contract, or costs accrued at a business unit or corporate level. Costs should be derived from your company's cost accounting system to the extent possible; alternatively costs should be estimated via quantitative techniques. Provide a brief explanation describing how such costs were determined. Costs incurred because subcontractors or suppliers included in the contract because of the regulation performed poorly.
- iii) Provide an estimate of Full Time Equivalent positions associated with complying with one or more of the clauses listed in i), based on costs accrued at a business unit or corporate level. Provide a brief explanation describing how such costs were determined.
- iv) For the clauses selected in i), briefly explain why you believe the costs exceed the benefits.
- v) If/as applicable, provide examples of instances in which the DoD inappropriately applied one or more clauses identified in i) and an estimate of the corresponding additional marginal costs accrued by your company as a result of this misapplication.
- vi) For the clauses identified in i), provide your recommended approach to modify, replace, or delete the clause(s).
- vii) How have the exceptions from FAR 52.212-5 affected your business practices compared to the commercial contract intended in FAR Part 12 Acquisition of Commercial Items?

## **2) Contract Auditing (41.1) and Production Surveillance and Reporting (42.11)**

Contract auditing under FAR Part 42.1 and Production Surveillance and Reporting under FAR 42.11. FAR 42.1, Contract Audit Services, applies to government auditors and contracting officers while FAR 42.11, Production Surveillance and Reporting, is applicable to the contract administration offices, contracting officers, and government personnel conducting contract surveillance. DoD has received comments claiming redundancy between DCMA surveillance and DCAA audits and objecting to the level of details required by contract administrators and/or auditors.

- i) Identify specific FAR provisions related to contract auditing or surveillance that in your opinion impose an unnecessary cost burden on your contracts and/or other interactions with the DoD. This may not be FAR 42.1 or 42.11, but another FAR provision, DoD FAR provision, or Component FAR provision.
- ii) Provide accrued costs associated with complying with one or more of the provisions listed in i), over a specified time period associated with a specific, identified DoD-contract, or costs accrued at a business unit or corporate level. Costs should be derived from your company's cost accounting system to the extent possible; alternatively costs should be estimated via quantitative techniques. Provide a brief explanation describing how such costs were determined.
- iii) Provide an estimate of Full Time Equivalent positions associated with complying with one or more of the provisions listed in i), based on costs accrued at a business unit or corporate level. Provide a brief explanation describing how such costs were determined.
- iv) For the provisions selected in ii), briefly explain why you believe the costs exceed the benefits.
- v) If/as applicable, provide examples of instances in which the DoD inappropriately applied one or more provisions identified in i) and an estimate of the corresponding additional marginal costs accrued by your company as a result of this misapplication.
- vi) For the provisions identified in i), provide your recommended approach to modify, replace, or delete the provision(s).
- vii) Provide your recommendations for improving the effectiveness and efficiency of DCAA and DCMA interactions with your company, including reducing audit backlogs and streamlining or clarifying roles and responsibilities of DCAA and DCMA to reduce DoD's imposition of redundant compliance requirements.

### 3) Component-specific DFARS supplements

The Army, Air Force, Navy and Marine Corps, Defense Logistics Agency and U.S. Special Operations Command each have unique supplements to the DFARS. DoD has received comments asserting that provisions in these supplements result in unnecessary costs or burdens for DoD and its suppliers.

- i) Identify specific provisions in Service or Component DFAR Supplement that in your opinion impose an unnecessary cost burden on your contracts and/or other interactions with the DoD.
- ii) Provide accrued costs associated with complying with one or more of the provisions listed in i), over a specified time period associated with a specific, identified DoD-contract, or costs accrued at a business unit or corporate level. Costs should be derived from your company's cost accounting system to the extent possible; alternatively costs should be estimated via quantitative techniques. Provide a brief explanation describing how such costs were determined.
- iii) Provide an estimate of Full Time Equivalent positions associated with complying with one or more of the provisions listed in i), based on costs accrued at a business unit or corporate level. Provide a brief explanation describing how such costs were determined.
- iv) For the provisions selected in ii), briefly explain why you believe the costs exceed the benefits.
- v) If/as applicable, provide examples of instances in which the DoD inappropriately applied one or more provisions identified in i) and an estimate of the corresponding additional marginal costs accrued by your company as a result of this misapplication.
- vi) For the provisions identified in i), provide your recommended approach to standardize, modify, replace, or delete the provision(s).
- vii) Do the Component specific DFARS Supplements require compliance with requirements in excess of what is required in DFARS?

#### 4) Application of Earned Value Management

There are three EVMS-related clauses in DFARS that apply to DoD contracts: 252.234-7001: Notice of EVMS; 252.234-7002: EVMS; and 252.242-7005: Contractor Business Systems. DoD has received comments asserting that DoD's surveillance and implementation requirements for EVMS impose unnecessary costs or burdens for DoD and its suppliers.

- i) Identify specific requirements in the EVMS-related clauses that in your opinion impose an unnecessary cost burden on your contracts and/or other interactions with the DoD. In addition to DFARS clauses 252.234-7001 and 7002, and 252.242-7005, you may consider other related DFARS clauses or implementing guidance.
- ii) Have you developed and executed a plan to implement EVMS that you believed was compliant with ANSI/EIA-748, but was assessed by a DoD agency as not fully compliant according to their standards? If so, please describe the points of disagreement.
- iii) Have you had to make changes to your company's business or accounting systems in order to comply with the level of detail of cost or EV reporting requested by the Department? If so, please describe the circumstances, including the changes required and an estimate of the associated costs of compliance.
- iv) How does compliance to DFARS on EVMS change the way you do business compared to other government contracts under FAR Part 52 on EVMS or commercial practices?
- v) Provide accrued costs associated with complying with one or more of the EVMS-related requirements listed in i), over a specified time period associated with a specific, identified DoD-contract, or costs accrued at a business unit or corporate level. Costs should be derived from your company's cost accounting system to the extent possible; alternatively costs should be estimated via quantitative techniques. Provide a brief explanation describing how such costs were determined. Are any of these costs passed on to DoD through negotiations of the terms of the contract?
- vi) Provide an estimate of Full Time Equivalent positions associated with complying with one or more of the EVMS-related requirements listed in i), based on costs accrued at a business unit or corporate level. Provide a brief explanation describing how such costs were determined.
- vii) For the EVMS-related requirements selected in ii), briefly explain why you believe the costs exceed the benefits.
- viii) If/as applicable, provide examples of instances in which the DoD inappropriately applied one or more of the EVMS-related requirements identified in i) and an estimate of the corresponding additional marginal costs accrued by your company as a result of this misapplication.
- ix) For the EVMS-related requirements identified in i), provide your recommended approach to modify, replace, or delete the provision(s).

## 5) Conditions to provide cost and pricing data (Truth in Negotiation Act (TINA))

FAR Subpart 15.4 contains provisions related to the requirements for contractors to submit certified cost and pricing data. DoD has received comments asserting that DoD's interpretation and application of FAR 15.4 impose unnecessary costs or burdens for DoD and its suppliers, and that Section 817 of the FY03 NDAA effectively eliminated the possibility to obtain waivers on mature programs for which detailed cost and pricing history is available.

- i) Identify specific FAR provisions related to providing certified cost and pricing data that in your opinion impose an unnecessary cost burden on your contracts and/or other interactions with the DoD. This may not be FAR 15.4, but in DoD's interpreting documentation.
- ii) Provide accrued costs associated with complying with one or more of the provisions listed in i), over a specified time period associated with a specific, identified DoD-contract, or costs accrued at a business unit or corporate level. Costs should be derived from your company's cost accounting system to the extent possible; alternatively costs should be estimated via quantitative techniques. Provide a brief explanation describing how such costs were determined.
- iii) Provide an estimate of Full Time Equivalent positions associated with complying with one or more of the provisions listed in i), based on costs accrued at a business unit or corporate level. Provide a brief explanation describing how such costs were determined.
- iv) For the provisions selected in ii), briefly explain why you believe the costs exceed the benefits of the clause.
- v) If/as applicable, provide examples of instances in which the DoD inappropriately applied one or more provisions identified in i) and an estimate of the corresponding additional marginal costs accrued by your company as a result of this misapplication.
- vi) For the provisions identified in i), provide your recommended approach to modify, replace, or delete the provision(s).
- vii) Provide your recommendations how DoD could improve its implementation of the requirement for companies to provide certified cost and pricing data.

## 6) DoD application of the Buy American Act

Federal Acquisition Regulation (FAR) Part 25 implements the Buy American Act, trade agreements, and other laws and regulations. Defense Federal Acquisition Regulation Supplement (DFARS) 225 is the DoD application of FAR Part 25. DoD has received comments asserting that DoD's interpretation and implementation of the Buy American Act is unnecessarily onerous and adds unnecessary costs to goods and services DoD purchases.

- i) If/as applicable describe how implementing the Buy American Act imposes unnecessary cost burdens on your contracts and/or other interactions with the DoD compared to other government contracts. For example, NASA's application of the BAA has been said to impose a 6% premium or evaluation factor compared to DoD's practice that imposes 50%.
- ii) Provide accrued costs associated with complying with the Buy American Act over a specified time period associated with a specific, identified DoD-contract, or costs accrued at a business unit or corporate level. Costs should be derived from your company's cost accounting system to the extent possible; alternatively costs should be estimated via quantitative techniques. Provide a brief explanation describing how such costs were determined.
- iii) Provide an estimate of Full Time Equivalent positions associated with complying with the Buy American Act based on costs accrued at a business unit or corporate level. Provide a brief explanation describing how such costs were determined.
- iv) Briefly explain why the costs exceed the benefits of the Buy American Act.
- v) If/as applicable, provide examples of instances in which the DoD inappropriately applied the Buy American Act and an estimate of the corresponding additional costs accrued by your company.
- vi) Provide your recommended approach to modify, replace, or delete the Buy American Act.
- vii) Provide your recommended approach to modify how the DoD implements the Buy American Act.
- viii) In some instances, complying with the Buy American Act results in the preparation and submission of two cost proposals: one with a request for a waiver of the Buy American Act, and the other without the request for a waiver. Can you provide an example comparison of the cost of a proposal(s) with and without the waiver? Can you provide an example of added costs of preparing an additional cost proposal?