In 2010, Ashton Carter—then Under Secretary of Defense for Acquisition, Technology, and Logistics—established the Better Buying Power initiative. The initiative challenged acquisition officials in the Department of Defense (DoD) to seek savings by eliminating excessive costs and unproductive overhead and by increasing industry’s involvement. Both objectives can be achieved if the DoD increases industry’s share of the administrative burden necessary to arrive at an executed contract.

Industry’s share of administrative burden can be increased if, after a contractor has been selected, the DoD requires the contractor to use its own resources to write the physical contract. The DoD should begin to migrate away from this responsibility because writing the contract itself does not add value to the contracting process and industry can institute a more efficient process. Both the DoD and industry stand to gain from this practice.

If the DoD is trying to adopt better commercial practices then DoD should evolve from how it did business more than 20 years ago. Think about how contracts are formed between parties within the private sector. Does the buyer of the goods or services write the contract and then send the contract to the seller? Or does the seller respond to a need, communicated by the buyer, with a contract that is ready to be signed by the buyer if acceptable? It is most often the latter.

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Many agencies within the DoD rely on the Standard Procurement System, Procurement Desktop-Defense (SPS/PD2). Some agencies use other programs such as Microsoft Word. No system is consistently used by the DoD. The contractor that created and maintains the SPS/PD2 software states on its website the system’s purpose:

In the early ‘90s the DoD sought commercial software and best practices to streamline procurement, one of their [sic] major business functions. This effort eventually led to the DoD Standard Procurement System (SPS), deployed using our Procurement Desktop-Defense (PD2) application.

More than 20 years later, according to the contractor’s website, PD2 is still “providing the technology and business process foundation necessary for DoD to achieve its procurement business goals by ... eliminating multiple outdated legacy systems and automating manual business processes.” This statement implies that the goal was, and still is, to streamline the contract writing process and to eliminate “multiple outdated legacy systems.” The system has not done so because many DoD agencies still use various types of contract writing software. What is the cost to the taxpayer for this software that was designed to integrate and streamline but has yet to accomplish the objective more than 20 years later? In 2006, a contract was awarded in the amount of $70 million (1 year with 4 option years) to continue support for SPS/PD2. If the contract cost $70 million for 5 years, then what has been the total cost since inception? Has SPS/PD2 streamlined procurement? Has it eliminated multiple outdated legacy systems? Is the price for this process worth the benefit or is there a better way? I argue that there is a better way.

The technology environment has fundamentally changed since the early 1990s, which has dramatically increased the ability of contractors, particularly small businesses, to do business with the government. Despite significant effort, SPS/PD2 remains a product of the early 1990s that does not meet the needs of today’s information technology environment. It is unreliable and
non-user friendly. Today, vigorous competition by industry and for industry can create a much better commercial software product that creates contracts in the uniform contract format as required by the Federal Acquisition Regulation. The DoD should stop attempting to acquire and maintain its own contract writing software and instead should place the burden of contract writing on industry itself.

As a contract specialist, I see firsthand that government contract writing is inefficiently performed. An astounding number of man-hours are spent writing each contract in SPS/PD2. Rather than being occupied with this administrative task, my attention should focus more on bona fide contracting skills such as conducting in-depth market research; interacting with requiring activities to help them draft accurate statements of work (SOWs); or assisting with source selection. Adam Smith (1723–1790), the famous economist, taught the world that the division of labor increases the efficiency of output. Industry will find a more efficient way to write contracts than the government has been attempting for more than 20 years. If this happens, both the government and industry stand to benefit because then each will focus on tasks it is most capable and inclined to perform.

What would it look like if industry were to write contracts for the DoD? Requirements definitions, SOWs, performance work statements (PWS), solicitations and evaluations would remain under government control. All solicitations would be advertised by using government points of entry as opposed to using SPS/PD2 to build solicitations. The contractors would be responsible for creating responsive offers that conform to the uniform contract format. The government would evaluate offers received and make a selection. Part of being considered responsive would be the contractor’s utilization of the correct contract format and the inclusion of all the applicable clauses. Contracting officers would still be responsible for verifying the accuracy of every detail and would award the contract via their signatures. Essentially, the contractor would perform most of the administrative work by creating the contract, but the government would maintain full control of the process because of its power to accept or reject offers.

In a competitive environment, a solicitation would result in potential contracts (not proposals) ready for evaluation and signature. These potential contracts would be transformed into contracts after selections are made. This process would not inhibit the ability of the contracting officer to resolicit or conduct clarifications, communications or discussions. If necessary, new potential contracts could be evaluated after a resolicitation. In the area of sole source, particularly actions under the Simplified Acquisition Threshold, this new process could be immensely helpful. After justifying a sole source, imagine going to a contractor’s website or sending the contractor an email simply communicating your PWS or SOW. In return the contracting officer would receive a “ready to review/ready to sign” potential contract in just as short a time as the contractor would be eager to begin the work.

As a result, in both competitive and sole source environments, the acquisition timeline would be reduced because the onus would be on the contractor to create a timely and accurate contract prior to beginning any work. This reduced acquisition timeline helps the contractor and the government. Cash flow for the contractor will improve because the work will begin and finish sooner, which will allow the contractor to be paid more quickly. The government will benefit because it will receive its goods and services earlier.

In some very simple acquisitions, such as commercial off-the-shelf software (where the DoD Enterprise Software Initiative requires procuring certain software from specified contractors), the software could be requested, contracted, delivered and paid for in a single day. That is what an industry-to-industry software buy would look like. The government would not need to use its own labor force to write contracts in cases where the government already knows with which business it will contract. Instead, the government could focus strictly on the accuracy of the content in the industry-presented contract. In this process, the government’s administrative burden would be reduced and industry could deliver the product sooner and be compensated faster.

This proposal inherently comes with challenges. What would happen if the contractor placed the wrong clauses or forgets...
clauses in the contract? Today, if the government places the wrong clauses or forgets clauses in a contract, the “Christian doctrine” protects the government by permitting the incorporation by law of mandatory contract clauses that express a significant or deeply ingrained public procurement policy. Would the Christian doctrine still apply if the government agreed to the wrong clauses? It’s an area to consider, but precedence indicates the courts would likely protect the government.

A process would need to be created to allow the contracting office to input the contract into Wide Area Workflow for proper invoicing and payment for contracts that do not use the Government Purchase Card as a method of payment. Also, the contracting office would be required to input the necessary contract data into the Federal Procurement Data System. Currently, SPS/PD2 achieves both these functions, yet other agencies that do not use SPS/PD2 still accomplish this. The most visible challenge would be an initial increase in the contractors’ cost of doing business with the government. This would present a major hurdle to clear with the Small Business Administration (SBA) because the increased costs would disproportionately affect smaller firms compared to large ones.

Beyond potential SBA resistance, Congress would likely be a formidable opponent for the same reason, especially since the DoD has the largest footprint in federal contracting. The other side of the coin is that industry will see this as an opportunity to create competitive software products to do business with the government. Vigorous competition could, theoretically, create excellent and inexpensive software options that small businesses can use to write their contract proposals in a more efficient manner than relying on the government to do so. It is worth exploring whether the increased costs to industry are worth the increased cash flow and reduced acquisition lead time.

The first step to testing this idea would be a pilot program. Such a program should start with large businesses that offer products in a sole-source environment, such as with the DoD’s Enterprise Software Initiative. The metrics used to determine success would include the length of the acquisition lead time and the number of government labor hours spent pursuing contract awards. If the contracts are awarded in a more timely fashion, with the same accuracy and less government labor at the same price, then success would have been achieved.

In conclusion, the removal of SPS/PD2 aligns with the Better Buying Power goals to eliminate excessive costs and unproductive overhead and to involve industry. Let’s begin the conversation with industry and discover its level of interest. Let’s see how frustrated industry is with the cumbersome and slow acquisition process and whether the added cost of writing contracts is worth the decreased acquisition lead time and improved cash flow. Most important, let’s see if we can save taxpayer dollars while continuing to defend this nation.

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