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March 27, 2023

The Honorable Lloyd Austin
Secretary of Defense
The Pentagon
Washington, DC 20301

Dear Secretary Austin:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE) which represents more than 750,000 federal and District of Columbia employees who serve the American people in 70 different agencies, including approximately 250,000 in the Department of Defense (DoD), we appreciate your support of a strong national defense and your recognition of the importance of a professional, apolitical civil service supporting our uniformed servicemen and women.

The nation is ramping up production to confront the multiple challenges to our security across the globe and has been calling on the private sector to help. We urge you as well to leverage the vast network of public industrial installations that maintain, overhaul, and repair our multitude of complex weapon systems and equipment. The over 80,000 highly skilled public sector employees who work in these facilities stand ready to meet these national security challenges.

It is clear that the private sector industrial base alone is inadequate to meet our defense needs. We must invest in and fully deploy existing federal facilities to fully meet the urgent requirements in Ukraine that are straining our global military supply and equipment capability. These shortfalls recently required the administration to invoke the Defense Production Act for:

- Next Generation Electronic Safe, Arm and Fire (eSAF) Devices for Missile Systems.
- Redesign of Ignition Safety Devices (ISD) for Missile Systems.
- Modernized and Expanded Large Caliber Shell Forging Capabilities.
- Enhanced Tooling, Testing, and Lab Equipment for Guidance and Warhead Fuze Sub-Components in Missile Systems.
- Expanded Capacity for High Precision, Performance Ball Bearings for Missile, Space, and Other Advanced Systems.

Some have estimated that the United States has already exhausted at least one-third of its supply of Javelin anti-tank missiles and one quarter of its Stinger missiles to supply Ukraine. Some have argued it may take at least 32 months to replenish the Stingers.



The private sector industrial base alone is clearly not prepared for the multiple global challenges that arise when Ukraine has such critical needs. Moreover, federal facilities can be mobilized on demand rather than having to coax, incentivize, or nationalize the private sector.

These supply chain vulnerabilities can be corrected by fully employing the organic Defense production capability. These vulnerabilities result from many causes including insufficient U.S. manufacturing capacity, misaligned incentives, a focus on short-term returns in private markets, restrictive industrial policies of other nations, geographic concentration in global sourcing, and limited international coordination.

Further, we need to budget responsibly by ensuring a countervailing organic capability to keep private sector charges to the government reasonable and not duplicate investments in the private sector that have already been made in the public sector.

We urge consideration of emergency waivers to re-capitalize and utilize other capabilities in the organic industrial base that have been eroded over the years through various so-called “reforms” advocated by industry to “streamline” procurement of private goods and services. These changes enable price gouging through exceptions from the “Truthful Cost or Pricing Data Act” (previously referred to as TINA) for defense oligopolies and monopolies. Misguided rules allow companies to sell the government highly specialized pieces of military equipment as “commercial items” bypassing requirements for disclosure of cost or pricing data. These repeated and often successful efforts by the defense industry have also weakened the government’s ability to negotiate for access to intellectual property through changing the burden of proof on whether government or industry bore the primary research, development, test and evaluation expenses for any weapon system component sold to a foreign military.¹ Performance-based logistics, once bandied as a best practice of the Defense Acquisition University has been found to be at the root of the readiness and high sustainment costs of the F-35.

Currently, our organic industrial base has been progressively weakened by underinvestment in favor of the private sector,² sequestration, government furloughs, and excessive reliance on term or temporary employment for skilled workforces – particularly at Anniston Army depot and the ammunition plants. Today more than ever, we desperately need the

¹ Section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) repealed several years of congressional adjustments to the statutory presumption of development at private expense for commercial items in the validation procedures at paragraph (f) of 10 U.S.C. 2321. The presumption of development funding at private expense for commercial items was established in 1994 by section 8106 of the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103–355). This statutory presumption has been amended numerous times, including by section 802(b) of the NDAA for FY 2007 (Pub. L. 109–364), section 815(a)(2) of the NDAA for FY 2008 (Pub. L. 110–181), section 1071(a)(5) of the NDAA for FY 2015 (Pub. L. 113–291), section 813(a) of the NDAA for FY 2016 (Pub. L. 114–92), and most recently by section 865. During the same period the scope of what is a “commercial item” expanded so that a single foreign military sale of a weapon system would result in the spare parts to that weapon system being deemed to be “commercial”, to use just one example. This substantial weakened the ability of the government to negotiate access to technical data rights.

²See GAO-22-105009, “MILITARY DEPOTS: DoD Strategy for Addressing Deteriorating Facilities and Equipment Is Incomplete,” May 10, 2022: “Since fiscal year 2016, the condition of the depots’ infrastructure—their facilities and equipment—generally has remained in the fair-to-poor range and has not improved. Though facility condition ratings at some depots have increased, backlogs of facility projects grew by \$3.1 billion. Further, most depot capital equipment remains past its service life...”

depots' surge capacity that the title 10 core logistics statutes mandate. To that end, we ask that the administration, with the cooperation of Congress, either repeal or exercise waivers of the following statutes or practices to address this emergency:

- Section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).
- The definition of “commercial item” and “commercial service,” appearing at 41 U.S.C. § 103 and § 103a, respectively, should be waived for all sole source or other non-competitive contracting actions exceeding \$2 million. Such contracting actions, when conducted non-competitively, regardless of any prior description as “commercial” or other exemption from the “Truthful Cost or Pricing Data Act” (previously referred to as TINA) are rife with overpricing problems. The present national emergency should not be used to allow contractors to pursue business as usual, focusing their work primarily on financial gain at taxpayer expense.
- Appropriators should suspend applying arbitrary time limits on depot carryover, that have particularly disadvantaged the Army at Anniston and Tobyhanna, harming the recruitment and retention of skilled workers due to recurring budget uncertainty.

There are other statutory reforms needed as well:

- DoD civilian police provide essential security and law enforcement for industrial base facilities but do not receive similar enhanced pay and retirement benefits to other federal law enforcement officers. The lack of comparable benefits threatens the recruitment and retention of DoD police, harms readiness, and places stress on military forces. Please help enact H.R. 1322 and S. 1888, the “Law Enforcement Officers Equity Act,” currently re-introduced as H.R. 1322.
- Wage grade (WG) employees who are the backbone of the depots are underpaid, threatening the long-term future of these facilities. Directive report language from the FY2021 and FY2022 NDAA noted that “since 2010, the Federal Prevailing Rate Advisory Committee (FPRAC) has voted three times to recommend that the Office of Personnel Management (OPM) align Federal Wage System (FWS) wage areas with General Schedule locality pay areas across the country.” The FPRAC recently recommended changing FSGG appropriation rider section 737 by raising the cap on WG pay increases so that hourly workers can finally get the prevailing rates they are meant to receive. In addition, FPRAC would maintain the floor so that every WG employee gets at least the average GS raise in the locality where they work. It is estimated that the annual cost of lifting the WG cap on pay adjustments would be about \$254 million per year, primarily for about 212,000 employees in the Defense Department and other agencies.
- Total force management statutes need to be strengthened and complied with to prevent salami slicing, hiring freezes and arbitrary personnel constraints that harm readiness, lethality, stress on the force, the fully burdened costs of the total force (of military, civilian employees and contractors), military force structure, operational effectiveness and workload. To do otherwise simply shifts work from

the civilian workforce onto more expensive contractors and overburdens military personnel.³

In addition, the Department can do more within its existing authorities to use the organic industrial base. While we applaud the Army for its plans to accelerate the delivery of Abrams tanks and Patriot missile defense systems to Ukraine this fall, leveraging Federal facilities may have resulted in these systems already being on the ground in Ukraine.

The Department should consider converting term or temporary workers in depots and ammunition plants to more stable jobs, using the authority provided in H.R. 1776, James M. Inhofe National Defense Authorization Act for Fiscal Year 2024 Section 1108, “Eligibility of Department of Defense employees in time-limited appointments to compete for permanent appointments.” Many of these temporary employees are really performing enduring functions, perpetuating a bad business practice from the era of sequestration when such appointments were

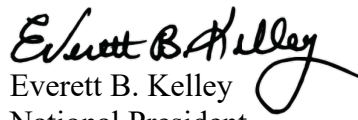
³ See, e.g., sections 129 and 129a of title 10. Manpower documentation of “requirements” should not be arbitrarily constrained by funded “authorizations” without taking into account the risk assessments required by the total force management statute and the USD (P&R) should update DODI 1100.22, “Policy and Procedures for Determining Workforce Mix (Apr. 12, 2010, incorporating Change 1 on Dec. 1, 2017), which has not been updated to reflect statutory changes since 2017, incorporating the Army checklist that was supposed to be the basis for the Standard Guidelines required by section 4506 of title 10. See, Pub. L. 115-291, Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for FY2015; “Requirement for policies and standard checklist in procurement of services,” (2014); Pub. L. 117-81, National Defense Authorization Act for FY2022, “Modification to procurement of services: data analysis and requirements validation;” H.R. 7900, National Defense Authorization Act for Fiscal Year 2023 H. Rept. No. 117-397, pp. 237-9: “Total Force Management.” Enforcement of section 4506 for a comprehensive services contract budget with supporting FYDP detail with funding tables in the appropriations process affording full transparency over services contracts funded from the same appropriations as is already applied to the civilian workforce should be established. Otherwise, civilian under-execution from arbitrary hiring constraints merely shifts the work to contractors performing the work at greater cost. And the truncated and inadequate contractor inventory statute at section 4505 of title 10 should be replaced with the comprehensive statute that fully covered functions performed by the private industrial base prior to changes made in 2016 by the Senate Armed Services Committee, using the Enterprise Contractor Manpower Reporting Application business processes successfully piloted by the Army for collecting the data that had generated comprehensive inventory data displayed in a 2017 Defense Business Board study, “Fully burdened and Life Cycle Costs of the Workforce.” This would require replacing Section 4505 of title 10 with the statutory framework for a comprehensive contractor inventory in effect prior to the changes made by Pub. L. 114-328, Div. A. title VIII, Section 812 on Dec. 12, 2016, changes that the depot caucus on a bi-partisan basis opposed. July 14, 2016, Senate and July 14, 2014, House Depot Caucus Letters to HASC and SASC opposing changes that would limit contractor inventory to “contract augmentees;” See also, See DODI 7041.04, “Estimating and Comparing the Full Costs of Civilian and Active Duty Military Manpower and Contract Support” pp. 14-15: “Army’s ECMRA has accumulated data over a number of years by location and function at: <https://www.asamra.army.mil/scra>. The eCMRA data includes direct labor costs, total cost and non- labor costs for many services by location and year.” See, e.g., GAO-21-267R, “SERVICE ACQUISITIONS: DOD’s Report to Congress Identifies Steps Taken to Improve Management, But Does Not Address Some Key Planning Issues,” (22 Feb. 2021) (System for Award Management (SAM) does not identify requiring activity, location where the contractor or subcontractor performs the work, and the various cost categories ECMRA described in DODI 7041.04. SAM also excludes most fixed price services contracts and has extremely high thresholds that would exclude a substantial amounts of services contracts. ECMRA captured information by weapon system supported, program element, object class and various elements of appropriation data. SAM is structured around FPDS-NG originally designed for tracking procurement actions oriented to contracting activity rather than requiring activity.) The Congressional Budget Office recently highlighted the imperative for better transparency over services contract compensation in its FYDP analysis. Recent work by the Center for Naval Analysis (CNA) provides support for the need to strengthen total force management, update DODI 1100.22, develop short, mid and long term readiness metrics for the DoD civilian workforce, use the Army checklist on a DoD-wide basis, and revive the ECMRA contractor inventory processes. See, CNA, “Identifying Contributions of DoD’s Civilian Workforce to Readiness,” (Sep. 2021); and CNA, “Optimizing Total Force Management,” (Jul. 2021).

exempted from reductions. Finally, improving Departmental and Congressional oversight over compliance with sections 2464 (core logistics requirements), 2466 (50-50 rule) and 2476 (capital investment requirements for depots) of title 10 would serve to strengthen the organic industrial base.

Before providing guaranteed payments to contractors regardless of requirements, the Department should instead be leveraging the organic industrial base which already has been established for this purpose to attain the consistent flow that the government is seeking. Putting all resources in an industry subsidization basket fails to attain the consistent flow that these programs lobbied for by industry may or may not achieve. The government has already invested in these federal facilities. The organic government capability should be an important component of any surge mobilization.

We call for creating a joint task force to fully mobilize Federal production assets and integrate these with private sector capabilities.

Sincerely,


Everett B. Kelley
National President

cc:

Director, Office of Management and Budget
Senate and House Leadership
Chair and RM, SASC and HASC
Chair and RM. SAC-D and HAC-D