

Advisory Panel on Streamlining and Codifying Acquisition Regulations

Summary of Recommendations for Volume 1 of 3



Summary of Recommendations Published in *Volume 1*

THE SECTION 809 PANEL'S *VOLUME 1 REPORT* is the first of three volumes and continues the panel's mandate for making recommendations to streamline acquisition. To date, the efforts of the panel have proven highly productive, and outreach efforts continue to generate hundreds of ideas for improving acquisition that the panel is diligently investigating. The May 2017 Section 809 Panel *Interim Report* provided three statutory recommendations that were all enacted into law in the FY 2018 NDAA. Through these actions, Congress demonstrated its willingness to expedite the panel's recommendations to improve the efficiency and effectiveness of the DoD acquisition process. In the coming months, the panel will continue to be a partner to Congress, DoD, and industry in support of further efforts to streamline acquisition to better enable DoD to meet its strategic warfighting goals. One key area of work for the Section 809 Panel is the conceptualizing of a Dynamic Marketplace framework—an outcome-based acquisition process for providing DoD simplified access to the global marketplace. The panel's research shows that the current acquisition process is an obstacle to DoD's ability to access a marketplace that has moved far beyond the traditional defense industrial base of the Cold War era. Accordingly, the Section 809 Panel has started to develop a new framework that can harness the benefits from the global marketplace of ideas, solutions, products, and services at a speed that is closer to real time than the current acquisition process allows (see the *Volume 1 Report* for details). The *Volume 1 Report* contains recommendations to update the process by which DoD acquires IT business systems, to streamline DoD's cumbersome auditing requirements, to address challenges in how the small business community and DoD interact, to update commercial buying, to clarify the definition of personal and nonpersonal services, to remove statutory requirements for 13 acquisition-related DoD offices, and to repeal 20 acquisition-related statutory reporting requirements. In all cases, the Section 809 Panel has laid out the rationale for change, and followed up with specific, actionable, statutory and regulatory language.

Rec. 1: Revise definitions related to commercial buying to simplify their application and eliminate inconsistency.

The FAR's commercial buying terms are confusing, poorly defined, or undefined altogether. For more than 2 decades, Congress and DoD have encouraged use of commercial buying by easing the statutory, regulatory, and procedural framework for buying commercial goods and services, yet DoD's acquisition workforce has struggled to interpret and apply commercial buying policy. Revising the related definitions would enhance the preference for acquiring commercial items.

Rec. 2: Minimize government-unique terms applicable to commercial buying.

The Federal Acquisition Streamlining Act was intended to allow the government to be more commercial-like in its dealings with the commercial market place. Success has been limited. To effectively use the commercial marketplace, selling products to the government must be much simpler and more closely reflect commercial practices. Streamlining contracts for commercial items

by eliminating as many government-unique contract terms as possible will support expanded commercial buying.

Rec. 3: Align and clarify FAR commercial termination language.

Policy for terminating commercial contracts has been subject to litigation in the last 24 years, and policy guidance in FAR parts 12 and 49 does not align and should be reconciled. Additionally, the language at FAR 52.212-4(l) and (m) requires further clarification to elucidate the fair compensation principle in paragraph (l) and the use of a cure notice for termination for cause in paragraph (m).

Rec. 4: Revise DFARS sections related to rights in technical data policy for commercial products.

DFARS clauses 252.227-7015 and 252.223-7037 establish rights in intellectual property for DoD that are not aligned with commercial practice. The policies in FAR 27.102 and DFARS 227.7102-1 are generally adequate to protect DoD and balance interests of the government and the contractor, yet subsequent paragraphs of DFARS 227.7102

deviate from commercial practice. Adopting policies aligned with commercial practice will remove barriers that inhibit access to innovations in the commercial market.

Rec. 5: Align DCAA's mission statement to focus on its primary customer, the contracting officer.

Although DCAA was established to provide accounting, auditing, and financial advisory services to DoD contracting officers, in 2010, the organization's mission statement shifted emphasis to taxpayer and public interest. Aligning DCAA's mission statement to focusing on serving contracting officers will support the contracting officers in performing quality work, which will, in turn, benefit taxpayers.

Rec. 6: Revise the elements of DCAA's annual report to Congress to incorporate multiple key metrics.

Congress's reporting requirement for DCAA lacks critical merit to adequately measure DCAA's performance. The current reporting

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requirement emphasizes the number of audits and the questioned costs. Congress should measure DCAA's effectiveness by using a balanced scorecard that keeps the focus on serving contracting officers.

Rec. 7: Provide flexibility to contracting officers and auditors to use audit and advisory services when appropriate.

Prior to requesting field pricing/audit assistance, contracting officers should consider other available internal resources and tailor their request for assistance to the maximum extent. To help contracting officers in this process, the term *audit* should be defined so there are clear distinctions between audits and advisory services. DCAA should use the full range of audit and nonaudit services available. The roles of DCAA/DCMA should be reviewed to ensure alignment and eliminate redundancies.

Rec. 8: Establish statutory time limits for defense oversight activities.

Financial and business system oversight of DoD's contractors often starts too late and takes too long. DCAA's work is untimely, causing delays in contract awards, as well as other negative effects. Congress should establish statutory oversight time limits to focus oversight on providing contracting officers what they need in a timely manner, to focus on what matters, to better manage audits and other services, and to forge more cooperative relationships among contracting officers, compliance professionals, and contractors.

Rec. 9: Permit DCAA to use IPAs to manage resources to meet time limits.

DCAA cannot eliminate its current backlog of unaudited final indirect cost rate proposals while providing timely financial oversight and advisory services to contracting officers. DCAA should use independent professional auditors (IPAs) to provide timely audit and advisory services in accordance with statutory time limits. Timely performance of risk management activities will facilitate faster corrective action, reduce risk of noncompliance, and reduce DoD's oversight burden.

Rec 10: Replace system criteria from DFARS 252.242-7006, Accounting System Administration, with an internal control audit to assess the adequacy of contractors' accounting systems.

DoD is not obtaining timely assurance that internal controls for defense contractors' accounting systems are properly designed and functioning. DoD should use the framework provided by the Sarbanes-Oxley Act as a basis for defining criteria and

terminology, which in turn will reduce time needed to make that framework operational. Internal control audits should be performed as the basis for assessing adequacy of defense contractors' accounting systems because these audits (a) use an engagement framework used in the private sector that is well established and understood; (b) provide more useful and relevant information to the acquisition team, contracting officer, and contractor; and (c) offer clear and objective criteria for accounting system requirements.

Rec. 11: Develop a Professional Practice Guide for DoD's oversight of contractor costs and business systems.

DoD's oversight functions within DCAA provide professional services and skilled advice to contracting officers. The quality and consistency of this advice is highly dependent on the quality and consistency of foundational standards that guide the professionals' work. Although professional standards are common in the accounting and auditing profession, none have been collectively developed or interpreted for the unique purpose of federal government contract oversight. A Professional Practice Guide would clarify the types of engagements that may be performed to accomplish DoD's contract compliance oversight objectives.

Rec. 12: Require DCAA to obtain peer review from a qualified external organization.

Peer reviews are designed to validate a professional service organization's compliance with professional standards. DoDIG currently performs peer review for DCAA; however, DoDIG's mission is vastly different than DCAA's, so the two organizations do not perform similar services. DoDIG cannot serve as an independent, qualified peer reviewer of DCAA while supervising DCAA in oversight of contract audits. DCAA peer review should be performed by an organization other than DoDIG. Congress should amend the targeted DoD-specific portions of the IG Act and other relevant sections of U.S. Code to eliminate DoDIG as the peer reviewer for DCAA.

Rec. 13: Increase coverage of the effectiveness of contractor internal control audits by leveraging IPAs.

DoD has not provided sufficient reviews and audits of contractor business systems that would satisfy the requirements in the DFARS. Deficiencies almost always are identified. Leveraging IPAs would allow timely assurance that defense contractors have effective internal controls is an essential component of all cost-effective compliance frameworks.

Contacting Us...

The Section 809 Panel interacts regularly with stakeholders inside and outside government. The research teams have met with hundreds of representatives from industry, think tanks, DoD, and other entities in an effort to carefully consider all aspects of the system. Outreach efforts have generated hundreds of ideas for reform that the panel is diligently investigating.

Website

The Section 809 Panel offers multiple avenues for offering feedback on its website at section809panel.org. Stakeholders can submit general comments and questions about the Section 809 Panel by choosing the *General Comments* option under the *Contact Us* tab.

Daily Media Clips

Each business day, the Section 809 Panel publishes news clips that highlight current articles related to defense acquisition.



Social Media

For information related specifically to the panel, stakeholders can follow the Section 809 Panel on Twitter (@Section809Panel) and connect on LinkedIn (Section 809 Panel).



50 Worst! Campaign

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BoldBites Podcast

The Section 809 Panel produces a monthly podcast called Bold Bites. Commissioners and professional staff speak about their latest research, recommendations, and meetings. To listen, go to section809panel.org/media/bold-bites-podcast/.



Rec 14: Incentivize contractor compliance and manage risk efficiently through robust risk assessment.

DCAA uses a simple risk assessment to prioritize workload. Because DCAA bears all oversight responsibilities regarding contractor costs and related business systems, and it will be affected by recommended oversight time limits, DCAA needs a more robust risk assessment approach. With a refocused mission, oversight time limits, more tools in the oversight professional's toolbox, and more robust risk assessments, DCAA can become more effective and efficient.

Rec. 15: Clarify and streamline the definition of, and requirements for, an adequate incurred cost proposal to refocus the purpose of DoD's oversight.

The term *incurred cost proposal* is not defined within federal acquisition regulations, creating unnecessary burdens on both the government and contractors. The timeliness of final rate settlements and consequent contract closeouts will substantially improve if DCAA refocuses on ensuring the allowability of contractors' indirect costs, not direct costs. DCAA must refocus on its mission of providing contracting officers with the information they need and auditing direct contract costs only by contracting officer request.

Rec. 16: Combine authority for requirements, resources, and acquisition in a single, empowered entity to govern DBS portfolios separate from the existing acquisition chain of command.

Responsibility for acquisition of DBSs is diffused across DoD, with no single entity accountable for results. Consequently, DBS programs take too long and cost too much to implement. Fragmented and overlapping oversight processes create a burdensome parallel acquisition system that hinders flexibility and inhibits use of modern commercial IT acquisition and implementation practices. Some progress has been made in terms of deployed DBSs, but only with vast amounts of financial and personnel resources. The need exists to transition to enterprise services, and the Military Services must be empowered to transform their own DBS portfolios while supporting the larger departmentwide transition to enterprise services. Combining authority for requirements, resources, and acquisition in a single, empowered entity will facilitate this transition.

Rec. 17: Eliminate separate requirement for annual IRB certification of DBS investments.

The Investment Review Board (IRB) annual certification requirement for DBS investments leads to unnecessary delays

and is duplicative of the program objective memorandum in the PPBE process. Eliminating the separate requirement for annual IRB certification would facilitate more timely development and deployment of DBSs.

Rec. 18: Fund DBSs in a way that allows for commonly accepted software development approaches.

The current statutory and policy regime does not enable the speed DoD needs to effectively acquire DBSs. Funding constraints, in various forms, are key contributors to this problem. The traditional appropriations model provides a helpful framework when developing complex weapons systems is fundamentally incompatible with open-architecture business software programs intended to deliver new capabilities multiple times per year. Greater funding flexibility is required if DBSs are to deliver value to warfighters at substantially lower cost to taxpayers.

Rec. 19: Eliminate the Earned Value Management (EVM) mandate for software programs using Agile methods.

DoD established use of EVM as a requirement for periodically measuring linear programs with firm baselines established prior to starting development. EVM is not well suited as a measurement tool in an Agile environment, which is dynamic by design. By its nature, Agile provides dynamic and ongoing feedback to stakeholders participating on development teams. PMs should have the option to choose the project monitoring and control methods best suited for their acquisition programs.

Rec. 20: Clarify the definitions of personal and nonpersonal services and incorporate in the DFARS a description of supervisory responsibilities for service contracts.

The FAR, DFARS, and other DoD issuances provide policies for contracted services for mission support. Acquisition policies are vague on supervisory responsibilities of contractors providing contracted services support and on appropriate direction that government employees can provide contractors, which creates confusion. Providing clear and definitive guidance will streamline the requirements definition process and improve communication.

Rec. 21: Refocus DoD's small business policies and programs to prioritize mission and advance warfighting capabilities and capacities.

DoD's slow acquisition system and ineffectiveness in engaging with small, innovative businesses, puts DoD at risk of losing the race to advanced capabilities.

DoD's small business policies and programs currently focus on acquiring supplies and services that further socioeconomic goals but do not fully leverage innovative and unique capabilities of small businesses to support DoD's mission. Establishing the infrastructure necessary to create and execute a DoD small business strategy, ensuring alignment of DoD's small business programs with the agency's critical needs, and building on the successes of the SBIR/STTR and RIF programs could enable innovation in the acquisition system and foster more effective inclusion of small businesses.

Rec. 22: Eliminate, or sunset within 5 years, statutory offices and Secretary of Defense designated officials when practical to increase flexibility and/or reduce redundancy.

Codifying the existence and structure of certain offices may unnecessarily restrict the Secretary's ability to adapt the DoD organizational structure to improve efficiency and effectiveness consistent with the intent of the FY 2017 NDAA. Congress should repeal or sunset the statutory requirement for acquisition-related offices or Secretary of Defense designated officials.

Rec. 23: Establish a permanent, automatic 5-year sunset provision for DoD congressional reporting requirements.

Excess reporting requirements can impose costs on DoD that outweigh the specific benefits of each individual report. Automatic sunsets can be an effective means to encourage Congress to regularly assess the value of a report. A sunset created by Congress will always be susceptible to the decisions of a later Congress. Inevitably, sunset provisions are only as strong as the congressional will to uphold them, yet an automatic sunset for reporting requirements is still a useful tool for maintaining congressional discipline. A sunset forces Congress to make an active decision to explicitly reauthorize a reporting requirement, prevents the unwitting growth of reports, and imposes an evaluation of costs and benefits for determining the necessity of a report.

Rec. 24: Repeal, preserve, or maintain various DoD congressional reporting requirements.

Despite widespread support for reporting requirement reform, remedies have repeatedly failed. Congress should repeal, preserve, or maintain the statutory requirement for various reports in a manner consistent with Recommendation 23 above.



For detailed analysis, see the Section 809 Panel's Volume 1 Report at section809panel.org