

Coalition for Government Procurement

By: Roger Waldron | March 14, 2019

Section 809: Will Accountability & Transparency Be the Price of Reform?

In January, the Section 809 Panel released its much-anticipated [Volume III Report](#) to Congress, which includes recommendations for streamlining the Department of Defense's (DoD) acquisition system. Cumulatively, the Panel's two-plus year effort, which includes its previously issues [Volume I](#) and [Volume II](#) Reports, generated 93 acquisition reform recommendations that are dissected across more than 2,000 pages of analysis.

As many of you know, the Coalition has been a longstanding supporter of streamlining the procurement process and has been an active participant before the Section 809 Panel. The Panel's approach to the concept of "readily available" products and services, however, gives us pause. Unintended consequences of this approach may sacrifice accountability and transparency in the name of reforming the acquisition process to access cutting-edge technologies.

Under the proposed readily available approach, existing preferences for commercial buying would be replaced by new procedures for acquiring products and services that are procured by DoD. Specifically, DoD procurements of products and services would be reorganized into the following categories:

- **Defense-Unique Development** – Solutions that are financed by DoD to provide a defense-unique capability.
- **Readily Available** – Any product or service that, without customization, can be ordered directly by customers.
- **Readily Available with Customization** – Products and services that can be ordered directly by customers provided that they are customized only in a manner that is consistent with existing private-sector practices.

As the Coalition noted in a [prior blog](#), from a policy perspective, this approach is tantamount to elevating DoD's Micro-Purchase Threshold (MPT) to \$15 million for the procurement of solutions that are readily available or readily available with customization.

Full and open competition notice requirements would be eliminated. Further, no public advertising would be required. Rather, there would be a preference for “market research” and “market-based competition.” According to the report, this approach would also utilize standing price quotes and oral/direct solicitation. The report further observes that, for readily available products:

“[i]ssuing a competitive RFP for these products typically does not increase competition. In fact, soliciting the product or service using today’s processes presents a barrier to entry for many companies, and likely increases the total procurement cost and delivery timeframes.” [1]

The Coalition does not believe the report has vetted this issue adequately to support this conclusory statement. Indeed, there exists empirical evidence regarding market concentration in the Federal space that throws this conclusion into question.

Market concentration is the cumulative value of the market share for the largest firms in an industry. So, for instance, in 2018, the market concentration of the 20 largest firms in the Federal market was 35.67 percent. Since the enactment of the Competition in Contracting Act in 1984, competition in the Federal market has increased and market concentration has decreased. Specifically, competition in the Federal market has increased by more than 13 percent since 1984, with more than 5 percent of that increase occurring since the enactment of the Federal Acquisition Streamlining Act in 1994. By comparison, using this same market concentration metric, competition in the U.S. economy, which, presumably, would contribute to the “market-based” analysis proffered in the report, *decreased* by more than 12 percent during the same time period. At the very least, these results suggest that the veracity of the conclusion, “soliciting the product or service using today’s processes presents a barrier to entry for many companies,” should be analyzed.[\[2\]](#)

Rather than completely overhauling the way DoD procures commercial items, one way that the Department could achieve comparable improvements is by expanding its utiliza-

tion of the Multiple Award Schedules (MAS) program. [Indeed, the MAS program already provides](#) Federal customers with a cost effective, readily available, streamlined, and transparent channel for efficiently and effectively accessing innovative, best-value solutions that meet their mission needs. Moreover, as research by the Coalition and others suggests,[\[3\] \[4\]](#) the MAS program, may offer a cheaper, faster, more compliant commercial product purchasing option for agency customers than the “market-based” commercial alternative to which it has been compared.

Interestingly, while the panel report recommends the elimination of the pre-award public notice/advertising requirements, it also effectively delays transparency by recommending the post-award publication of the contracting officer’s market research and award decision document. This recommendation almost epitomizes the notion of closing the barn door after the horse has bolted. Timely transparency, via pre-solicitation public notice and other means, signals openings for market entry, and it is fundamental to establishing confidence that the Federal market is a fair, viable channel through which innovators may offer solutions to customers. Likewise, timely transparency affords the government the opportunity to know of capabilities and solutions from across the commercial market that it might wish to access. Ironically, then, rather than increasing competition, the elimination of the public notice requirements would institutionalize a significant, cross-cutting barrier to market entry, the very such problem the report appears to want eliminated. Thus, simply put, for agency buyers and government suppliers, transparency delayed, is opportunity denied.

The foregoing discussion suggests that, although there may be good ideas embedded in the large body of work produced by the panel, bringing those ideas to fruition in a manner that does not undermine the fundamental drivers of the procurement system is no easy task. It requires reflection and dialog, and, in the regard, the Coalition offers its support.

[\[1\]](#) See: Section 809 Panel (2019). Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3., p. 23

[\[2\]](#) For additional analysis related to market concentration, See: <http://thecgp.org/the-federal-market-is-competition-is-in-the-eye-of-the-beholder.html>

[\[3\]](#) See: <http://thecgp.org/images/AbilityOne-e-Commerce-Report.pdf>

[4] See: <http://thecgp.org/images/Amazon-Business-and-GSA-Advantage-A-Comparative-Analysis.docx>