

Advisory Panel on Streamlining and Codifying Acquisition Regulations

Summary of Recommendations Volume 3 of 3



OVERVIEW

Volume 3 of the Final Report represents the culmination of more than 2 years of collective brainstorming, engagement, and intense research about how to change defense acquisition from an outdated, industrial-era bureaucracy to a more streamlined, agile system able to evolve in sync with the speed of technology innovation.

The Section 809 Panel has recommended both evolutionary and revolutionary changes. The panel's recommendations, in part, will allow DoD to make purchases in a manner similar to the way private-sector businesses do—which is difficult, and in some cases impossible under the current acquisition system. If implemented, these recommendations would reduce barriers that deny DoD timely access to innovative technology and creative solutions from

nontraditional companies and bridge the technical superiority gap that is beginning to develop today between the United States and near-peer competitors and nonstate actors.

To defend against potential enemies, DoD must move to a war footing approach for acquiring and delivering capabilities to ensure warfighters have the tools they need. The DoD acquisition system's ability to meet threats that exist today is questionable. DoD lacks flexibility the nation's near-peer competitors have, limiting its ability to field innovative solutions before potential adversaries do. In deliberating its recommendations, the Section 809 Panel considered ways in which DoD still uses Cold War-era approaches while operating in a cyber-war-era society.

The 58 recommendations (and associated subrecommendations) in this volume add to the 35 recommendations (and associated subrecommendations) released in Volumes 1 and 2 of the Final Report and the five recommendations put forth in the Supplement to the Section 809 Panel Interim Report. It has been no small task to tackle the formidable challenges facing the United States as it strategizes how best to defend its citizens and interests when the pace of technological change dramatically affects the nature of the threats the nation faces and the capabilities at its disposal. Ultimately, the Section 809 Panel aimed to make recommendations that allow DoD to deliver and sustain technologically superior capability inside the turn of near-peer competitors and nonstate actors.

Think **BOLD**

Section 809 Panel

Streamlining & Codifying Acquisition

SECTION 1: MARKETPLACE FRAMEWORK

Operating in a complex security environment with rapidly changing technology, the defense acquisition system must deliver a wide variety of warfighting and combat support capabilities as efficiently as possible. Not all capabilities are acquired in the same way, and DoD must adjust its acquisition processes to meet the demands of the diverse markets in which it operates. The Volume 1 Report introduced a framework for optimizing how DoD operates across this dynamic marketplace. The Volume 2 Report further refined the Dynamic Marketplace Framework into three capability lanes and introduced the Section 809 Panel plan to develop the framework's concepts into procedures and policy recommendations. DoD must be able to rapidly buy cutting-edge innovation for warfighters to use in addressing emerging threats.

The Dynamic Marketplace Framework is shaped by dividing what DoD buys into three categories. Defense-unique development includes DoD-financed development, either to repurpose a readily available product or solution or to develop a new product or solution, to deliver a defense-unique capability. Readily available includes any product or service that requires no customization by the vendor and can be ordered directly by customers, to include products and services that only governments buy. Readily available with customization includes products and services

Dynamic Marketplace Framework



that are sold in the private sector for which customization, consistent with what is offered to existing private-sector customers, is necessary to meet DoD's needs.

As set forth in the Volume 1 and Volume 2 Reports, reform is required for all three market segments in the Dynamic Marketplace Framework. Many of the recommendations in the preceding volumes, as well as in Volume 3, address issues related to defense-unique acquisition, as outlined in Section 1. For those items that can be purchased without development on DoD's part, Section 1 puts forth a plan for purchasing products and

services that are readily available and readily available with customization. This approach will facilitate acquiring the most up-to-date products and services in the least amount of time possible from the open, accessible marketplace, including nontraditional and other private-sector suppliers.

Rec. 35: Replace commercial buying and the existing simplified acquisition procedures and thresholds with simplified readily available procedures for procuring readily available products and services and readily available products and services with customization.

Readily Available: Any product or service that requires no customization by the vendor and can be ordered directly by customers, to include products and services that only governments buy.

Readily Available with Customization: Includes the products and services that are sold in the private sector, including to other public-sector customers, for which customization or manufacturing that is consistent with existing private-sector practices is necessary to meet DoD's needs.

DEFENSE-UNIQUE DEVELOPMENT: DoD-financed development, either to repurpose a readily available product or solution or to develop a new product or solution, to provide a defense-unique capability.

SECTION 2: PORTFOLIO MANAGEMENT FRAMEWORK

Portfolio management is a disciplined process that helps organizations optimize investments by prioritizing needs and allocating resources. Through portfolio management, all of an organization's product investments are addressed at an enterprise level, rather than as independent and unrelated projects or activities. In a threat environment that is increasingly dynamic and complex, defense acquisition must deliver capabilities in an equally dynamic and effective way, and moving from a program-centric model to a portfolio-based model would meet this objective. DoD has previously struggled to adopt and implement the best practices of portfolio management. The main challenges to DoD transitioning to portfolio management include a fragmented governance structure, a lack of sustained leadership and policy, and a perceived lack of decision-making authority delegated to the appropriate level.

Section 2 addresses all three of these challenges in its recommendations to establish an enterprise portfolio execution framework first introduced in the Volume 2 Report. The recommendations in this section offer a comprehensive, robust solution set for DoD portfolio management, expanding on portfolio best practices outlined by the Government Accountability Office (GAO). Section 2 provides specific recommendations related to a portfolio management framework at the enterprise and execution levels, including portfolio best practices. It also addresses a portfolio view for requirements and professionalizing the requirements management (RM) workforce, as well as establishing a sustainment program baseline and addressing issues related to sustainment funding.

[Rec. 36: Transition from a program-centric execution model to a portfolio execution model.](#)

[Rec. 37: Implement a defensewide capability portfolio framework that provides an enterprise view of existing and planned capability, to ensure delivery of integrated and innovative](#)

[solutions to meet strategic objectives.](#)

[Rec. 38: Implement best practices for portfolio management.](#)

[Rec. 39: Leverage a portfolio structure for requirements.](#)

[Rec. 40: Professionalize the requirements management workforce.](#)

[Rec. 41: Establish a sustainment program baseline, implement key enablers of sustainment, elevate sustainment to equal standing with development and procurement, and improve the defense materiel enterprise focus on weapon system readiness.](#)

[Rec. 42: Reduce budgetary uncertainty, increase funding flexibility, and enhance the ability to effectively execute sustainment plans and address emergent sustainment requirements.](#)

SECTION 3: IT PROCUREMENT

Due to the limited interaction between commercial and DoD information technology (IT) markets, the two now operate at substantially different paces of technological advancement. Because the commercial IT market has outpaced the DoD market for decades, DoD regularly acquires outdated and inferior technology, often at higher prices and slower rates. DoD's slower acquisition pace has a direct effect on warfighting capability in a defense era defined by technological edge. Warfighters, and their support commands, are often operating with less functionality and at higher operating costs. This market segregation is caused by the vastly different way in which DoD and the wider federal government acquire IT. Rather than operating in the private-sector market of readily available options, DoD often creates detailed, intricate and unique requirements for its IT systems and services.

DoD must acknowledge its acquisition system suffers from processes and procedures that are obsolete, redundant, or unnecessary and work to move quickly enough to keep pace with private-sector innovation. The recommendations in Section 3 offer strategies for transforming DoD's IT acquisition from both the top down

and bottom up. Strategic revisions to how DoD understands and acquires IT are integrated with smaller-scale changes that restore efficiency to routine processes that have become bogged down by layers of bureaucracy. None of the actions recommended in Section 3 alone will solve the challenges associated with IT market segregation; however, together they offer a series of changes that can better align DoD acquisition with private-sector practices. Allowing DoD to buy in a manner similar to private-sector companies will reduce barriers to sellers in the marketplace.

[Rec. 43: Revise acquisition regulations to enable more flexible and effective procurement of consumption-based solutions.](#)

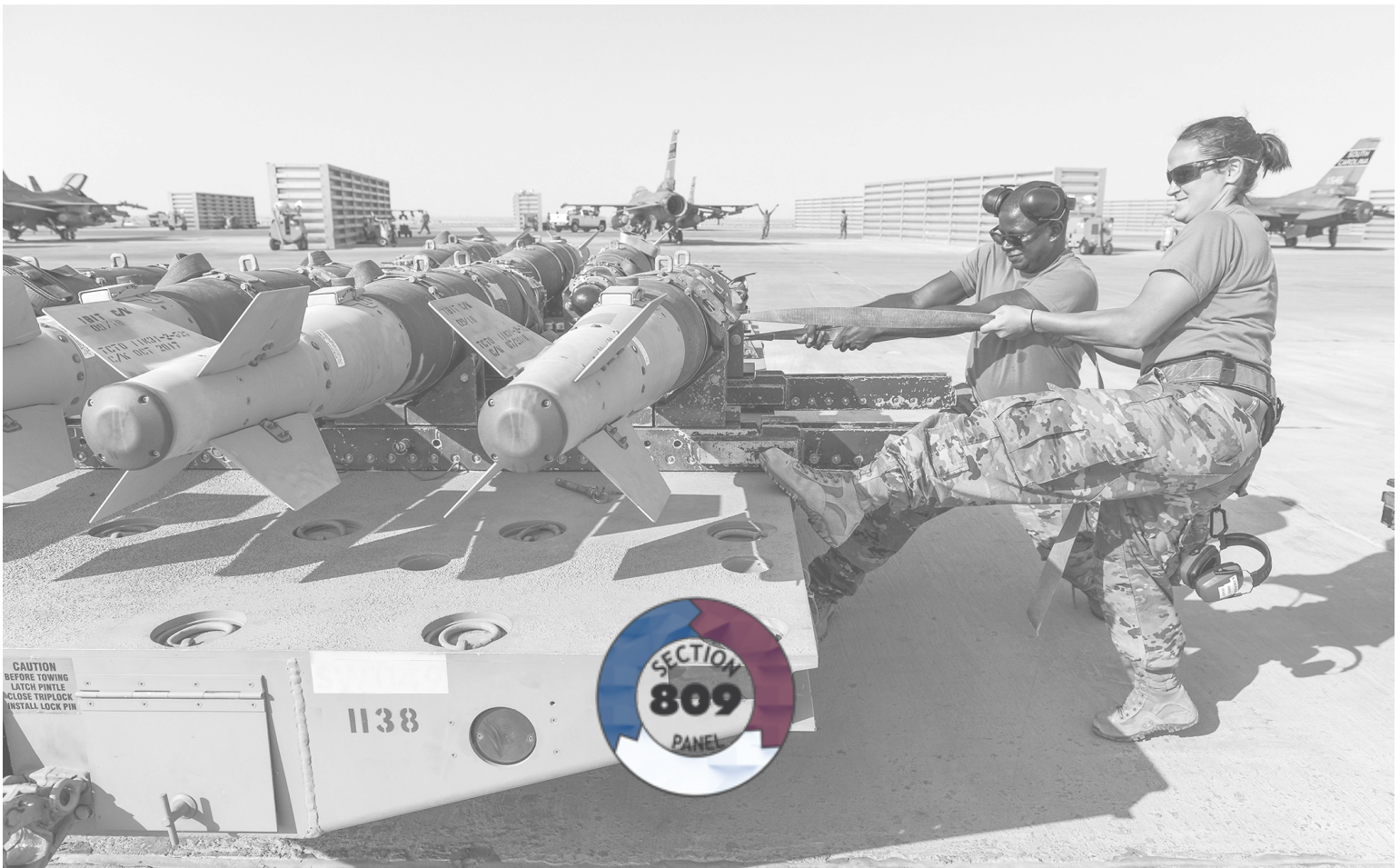
[Rec. 44: Exempt DoD from Clinger–Cohen Act Provisions in Title 40.](#)

[Rec. 45: Create a pilot program for contracting directly with information technology consultants through an online talent marketplace.](#)

SECTION 4: BUDGET

In a very real sense, DoD must move to a war footing to maintain technological dominance—competitors already have—yet the budget-related issues described in Section 4 hamper efforts in that regard. Delivering capability to warfighters depends on integration of the budgeting process and authorization and appropriation of funds. The ongoing unreliable availability of new-start funding from fiscal year to fiscal year puts DoD's mission at risk. Secretaries of Defense perennially identify this unreliability as the biggest risk to the nation's defense. Current rules limit the flexibility of DoD's acquisition workforce in dealing with the realities of the marketplace such that near-peer competitors and nonstate actors have a decided innovation advantage.

Section 4 contains recommendations intended to reduce inefficiency and dysfunction in the defense acquisition system's budget formulation and appropriations processes; however, the section does not include specific reforms to the planning, programming, or budget formulation processes. Instead, overarching goals of these



recommendations include empowering DoD managers to reallocate resources between programs as needed; flowing down decision authority to the lowest possible levels; eliminating or mitigating some of the perverse incentives that exist in fiscal law; and mitigating the harmful effects of late funding on DoD acquisition programs.

Rec. 46: Empower the acquisition community by delegating below threshold reprogramming decision authority to portfolio acquisition executives.

Rec. 47: Restore reprogramming dollar thresholds to match their previous levels relative to inflation and the DoD budget.

Rec. 48: Increase to 50 percent the lesser of 20 percent restriction that creates artificially low reprogramming thresholds for smaller programs.

Rec. 49: Provide increased flexibility to the time periods within which contract obligations are permitted to occur.

Rec. 50: Enact regular appropriations bills on time.

Rec. 51: Mitigate the negative effect of continuing resolutions by allowing congressional regular appropriations to remain available for a standardized duration from date of enactment.

Rec. 52: Permit the initiation of all new starts, provided Congress has appropriated sufficient funding.

Rec. 53: Permit the initiation of all production rate increases, provided Congress has appropriated sufficient funding.

Rec. 54: Permit the initiation of multiyear procurements under a CR.

Rec. 55: Raise the Prompt Payment Act threshold.

Rec. 56: Use authority in Section 1077 of the FY 2018 NDAA to establish a revolving fund for information technology modernization projects and explore the feasibility of using revolving funds for other money-saving investments.

Rec. 57: Modify fiscal law to extend the duration of when funds cancel from 5 years to 8 years in expired status to align program acquisitions with funding periods and prevent putting current

funds at risk and to support meeting appropriation intent.

Rec. 58: Address the issue of over-age contracts through (a) establishing an end-to-end, integrated, streamlined process, (b) codifying DCMA's Quick Close Out class deviation in the DFARS, and (c) extending DCMA's Low Risk Quick Close Out initiative by 2 years.

SECTION 5: ACQUISITION WORKFORCE

As the rapid transformation of the defense acquisition system continues, DoD will require a professional, talented, experienced, flexible, and broad-minded workforce to succeed on warfighters' behalf. Career management is a critical element for the acquisition workforce (AWF), and the recommendations in Section 5 concentrate on workforce development issues. In this chapter, the Section 809 Panel proposes a series of changes to DoD's career development framework for AWF members.

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The recommendations in Section 5 revolve around three crucial aspects of career development: qualifications as opposed to certifications, career paths for all acquisition career fields with a competency model for the entire workforce, and public–private exchange programs (PPEPs). The current three-level certification system, established by DoD 3 decades ago, leads to early-career workforce members who are certified, but not necessarily qualified. This system lacks clear-cut career paths and a competency model to help workforce members identify a clear career trajectory and then gain the right skills to navigate that path. Additionally, the system lacks successful opportunities for public–private exchange programs that could help acquisition leaders enhance their knowledge. Addressing these shortcomings will ultimately lead to a workforce that is better equipped to navigate the global macro-business environment and embolden appropriate risk-taking skills.

Rec. 59: Revise the Defense Acquisition Workforce Improvement Act to focus more on building professional qualifications.

Rec. 60: Implement acquisition career paths that are integrated with an institutionalized competency model tailored to mission needs.

Rec. 61: Create a comprehensive public–private exchange program for DoD’s acquisition workforce.

SECTION 6: STREAMLINING AND IMPROVING COMPLIANCE

DoD is not a typical private-sector buyer; complying with its many layers of requirements is burdensome for both DoD and contractors. Federal procurement law, federal acquisition regulations, and DoD’s internal regulations combine to create a labyrinth of challenges to the acquisition workforce, in both the public and private sectors. The recommendations in Section 6 acknowledge that DoD’s processes and procedures are outdated, creating barriers to entry for prospective industry partners and that a compliance-driven culture needs to be recalibrated to address the body of laws and regulations in a more efficient way.

Section 6 addresses a variety of topics under the compliance umbrella. Included among these topics are subcontracting clauses that are flowed down from prime contractors to their suppliers, socioeconomic policy objectives unrelated to contract requirements, bid protests, the Inventory of Contracted Service, and adapting to commercial financial auditing practices. Making changes in these areas would alleviate some of the unnecessary burdens of the current compliance requirements, reduce the barriers to doing business with DoD, reduce the lengthy bid protest process, and optimize the auditing process.

Rec. 62: Update the FAR and DFARS to reduce burdens on DoD’s commercial supply chain to decrease cost, prevent delays, remove barriers, and encourage innovation available to the Military Services.

Rec. 63: Create a policy of mitigating supply chain and performance risk through requirements documents.

Rec. 64: Update socioeconomic laws to encourage purchasing from nontraditional suppliers by (a) adopting exceptions for DoD to domestic purchasing preference requirements for commercial products, and (b) adopting a public interest exception and procedures for the Berry Amendment identical to the ones that exist for the Buy American Act.

Rec. 65: Increase the acquisition thresholds of the Davis–Bacon Act, the Walsh–Healey Public Contracts Act, and the Services Contract Act to \$2 million.

Rec. 66: Establish a purpose statement for bid protests in the procurement system to help guide adjudicative bodies in resolving protests consistent with said purpose and establish a standard by which the effectiveness of protests may be measured.

Rec. 67: Reduce potential bid protest processing time by eliminating the opportunity to file a protest with the COFC after filing at the GAO and require the COFC to issue a decision within 100 days of ordering a procurement be delayed.

Rec. 68: Limit the jurisdiction of GAO and COFC to only those protests of procurements with a value that exceeds, or are expected to exceed, \$75,000.

Rec. 69: Provide as part of a debriefing, in all procurements where a debriefing is required, a redacted source selection decision document and the technical evaluation of the vendor receiving the debriefing.

Rec. 70: Authorize DoD to develop a replacement approach to the inventory of contracted services requirement under 10 U.S.C. § 2330a.

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Rec. 71: Adopt the professional practice guide to support the contract audit practice of DoD and the independent public accountants DoD may use to meet its contract audit needs, and direct DoD to establish a working group to maintain and update the guide.

Rec. 72: Replace 18 system criteria from DFARS 252.242-7006, Accounting System Administration, with an internal control audit to assess the adequacy of contractors' accounting systems based on seven system criteria.

Rec. 73: Revise the definition of business system deficiencies to more closely align with generally accepted auditing standards.

SECTION 7: SIMPLIFYING PROCUREMENT AND CONTRACTING

The topics addressed in Section 7 vary across the range of defense acquisition practices, yet they all aim to streamline defense acquisition regulations and return time and flexibility to the acquisition workforce. These recommendations undertake streamlining in one of four ways: decluttering excess documentation requirements or procedures; utilizing existing authorities in a more efficient way; removing rigidity; or clarifying definitions. Regulatory decluttering is a constant challenge for DoD; these recommendations take aim at improving some particularly timely and important acquisition issues.

address eliminating duplicative or non-value-added documentation requirements, using existing authorities and processes to greatly reduce burden in the field, removing the rigidity of the regulatory system in specific circumstances, allowing energy to be purchased in a manner more consistent with the private sector, encouraging use of advanced payments to finance small business contracts, modernizing the Armed Services Board of Contract Appeals, and clarifying regulations related to commercial preference and use of Other Transaction authority. These regulatory adjustments have the potential to reverberate across DoD and to deliver great efficiencies to the acquisition workforce.



Rec. 74: Eliminate redundant documentation requirements or superfluous approvals when appropriate consideration is given and documented as part of acquisition planning.

Rec. 75: Revise regulations, instructions, or directives to eliminate non-value-added documentation or approvals.

Rec. 76: Revise the fair opportunity procedures and require their use in task and delivery order competitions.

Rec. 77: Require role-based planning to prevent unnecessary application of security clearance and investigation requirements to contracts.

Rec. 78: Include the supply of basic energy as an exemption under FAR 5.202.

Rec. 79: Enable enhanced use of advanced payments, at time of contract award, to small businesses.

Rec. 80: Preserve the preference for procuring commercial products and services when considering small business set-asides.

Rec. 81: Clarify and expand the authority to use Other Transaction agreements for production.

Rec. 82: Provide Armed Services Board of Contract Appeals authority to require filing of contract appeals through an electronic case management system.

Rec. 83: Raise the monetary threshold to provide agency boards of contract appeals accelerated, small business, and small claims (expedited) procedures to \$250,000 and \$150,000 respectively.

SECTION 8: GOVERNMENT-INDUSTRY INTERACTIONS

Communication is key to harnessing private-sector technology in a complex regulatory environment. For DoD to regain strategic overmatch and achieve goals set out in the National Defense Strategy, Congress must mandate that the defense acquisition workforce and the private sector improve the way in which they exchange information and communicate needs. Without appropriate communications with industry, warfighters are likely to receive more costly, less advanced equipment later than desired. A culture of open communication would allow the entire acquisition workforce to identify innovative capabilities, share best practices, learn from mistakes, and align missions among buyers and sellers in the marketplace. Such a culture would also allow the federal government and its contractors to better understand each other's needs, constraints, and areas for confluence all focused on delivering capability to warfighters inside the turn of DoD's near-peer competitors.

Section 8 focuses on DoD's communication with contractors and potential contractors. In many cases, the FAR and other regulations allow for more interaction with industry than is common practice. The following recommendations offer specific ways in which DoD can better communicate with industry. The recommendations in Section 8 work together in an effort to foster behavior that values interaction with industry and reduces fear of missteps and risk-taking normally associated with interacting with marketplace.

[Rec. 84: Direct DoD to communicate with the marketplace concerning acquisition from development of the need/requirement through contract closeout, final payment, and disposal.](#)

[Rec. 85: Establish a Market Liaison at each procuring activity to facilitate communication with industry.](#)

[Rec. 86: Encourage greater interaction with industry during market research.](#)

[Rec. 87: Establish a market intelligence capability throughout DoD to facilitate communication that enhances the government's industry knowledge through open, two way communication.](#)

SECTION 9: ACQUISITION DATA

For several decades, DoD has worked to more effectively use enterprise acquisition and financial data in forming decisions. This process involves enormous technical complexity, and requires institutional improvements to accompany any IT upgrades. DoD does not lack this type of data, but rather lacks the full capacity and capability to use information systems to access data and provide for standardized data architectures. The recommendations in Section 9 aim to address these inadequacies.

[Rec. 88: Use existing defense business system open-data requirements to improve strategic decision making on acquisition and workforce issues.](#)

[Rec. 89: Direct DoD to consolidate or eliminate competing data architectures within the defense acquisition and financial system.](#)

SECTION 10: TITLE 10 REORGANIZATION

The acquisition-related statutory provisions that apply to the rest of the federal government were recently recodified in Title 41. No similar effort has been made with regard to Title 10, where the organization of the acquisition-related statutory provisions has become problematic. Reorganizing defense acquisition statutes into a cohesive structure provides a long-term benefit to the acquisition community and those companies doing business with DoD or seeking to enter the DoD marketplace. Section 10 addresses the need to reorganize Title 10, so it is easier to locate key acquisition statutes, many of which are currently hidden within note sections of the code.

[Rec. 90: Reorganize Title 10 of the U.S. Code to place all of the acquisition provisions in a single part, and update and move acquisition-related note sections into the reorganized acquisition part of Title 10.](#)

SECTION 11: FAR REFERENCE DOCUMENT

The FAR and DFARS provide the primary regulatory framework by which the federal government and DoD respectively contract for supplies and services and implement pertinent statutes, policies, and Executive Orders (EOs). It is difficult to effectively navigate and understand the regulations, which prevents acquisition personnel from leveraging the flexibilities, methods, and authorities available to maximize speed in the acquisition process and encourage innovation, competition, and investment by the private sector. Section 11 highlights the problems with navigating FAR and DFARS requirements and recommends a resource that would make researching related statutes, policies, EOs and FRNs easier for government and private-sector acquisition team members.

[Rec. 91: Require the Administrator of General Services and the Secretary of Defense to maintain the FAR and DFARS respectively, as electronic documents with references to the related statutes, Executive Orders, regulations, and policies, and with hyperlinks to Federal Register Notices.](#)

SECTION 12: MINIMIZE FLOWDOWN OF GOVERNMENT-UNIQUE TERMS IN COMMERCIAL BUYING

Currently the FAR and DAR Councils hold the authority to determine if procurement-related statutes, Executive Orders (EOs), or regulation should apply to commercial buying. Recently, Congress has mandated that the councils conduct comprehensive reviews of all the procurement-related statutes, EOs, and regulations and determine which government-unique terms should flow down to the acquisition of commercial products and services. The FAR and DAR Councils have proven constrained in their ability to reduce the number of government-unique terms required to flow down. Section 12 reiterates the need for Congress to take the lead in minimizing the government-unique terms applicable to commercial buying, which was first addressed in Recommendation 2.

[Rec. 92: Minimize the flowdown of government-unique terms in commercial buying by implementing the Section 809 Panel's Recommendation 2.](#)

SECTION 13: CENTER FOR ACQUISITION INNOVATION

Pursuant to its congressional authorization, the Section 809 Panel will complete its work and cease to exist on July 15, 2019. The need to identify challenges associated with the DoD acquisition system will continue to exist, as will the need to propose policy alternatives for addressing those challenges. The need exists to maintain the Section 809 Panel's records for future research and to create a center for acquisition policy research that continues the work of reforming DoD acquisition. Section 13 addresses these issues.

[Rec. 93: Create a Center for Acquisition Innovation located at the National Defense University, Eisenhower School.](#)



For detailed analysis, see the Section 809 Panel's Volume 3 Report at section809panel.org