



May 24, 2017

Subcommittees on Information Technology and Government Operations
Committee on Oversight and Government Reform
United States Congress
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Committee Members:

Thank you for the opportunity to appear before the Subcommittee on Information Technology and the Subcommittee on Government Operations joint hearing on March 28, 2017, titled, "Reviewing Challenges in Federal IT Acquisition."

Pursuant to the direction of your letter dated May 11, 2017, attached are responses to all questions for the record. If you have any additional questions or need additional information or changes, please contact xxxxxx at xxxxxx.

Best Regards,
Deidre A. Lee
Chair
Attachments as stated:
Responses to the Questions for the Record

**QUESTIONS FOR THE RECORD
ANSWERS FROM MS. DEIDRE A. LEE
CHAIR, ADVISORY PANEL ON STREAMLINING AND CODIFYING
ACQUISITION REGULATIONS (NDAA 2016 SECTION 809)
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON INFORMATION TECHNOLOGY
AND GOVERNMENT OPERATIONS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

May 25, 2017

**Questions for the Record from Rep. Will Hurd, Chairman
Subcommittee on Information Technology
Committee on Oversight and Government Reform**

- 1. Would a “trimming” of the FAR do anything to procure IT services faster?**
 - a. If Yes, which sections should be removed and why?**

Trimming the FAR would help with timeliness of almost all acquisitions, including information technology (IT). Much of the bureaucracy that slows defense acquisition comes from the DFARS, service-specific FAR supplements, as well as other regulations and policies. Institutional culture also serves to slow the process through extensive reviews and oversight, as well as detailed documentation requirements. The Section 809 Panel has a team dedicated to analyzing the FAR, including sections relevant to IT services, to identify the source of FAR/ DFAR regulations and to develop specific recommendations to emphasize the following:

- Putting mission first
- Making timely acquisitions
- Simplifying the acquisition process
- Decriminalizing acquisition

These cross-cutting themes and their recommended actions will affect IT acquisition.

- 2. What initiatives should be undertaken to speed up the acquisition process?**

As highlighted in the answer to question 1, to emphasize the importance of speed and simplification, the Section 809 Panel is looking into ways to accomplish the following:

- Reduce or eliminate certain government-unique statutes and regulations to facilitate Department of Defense's (DoD's) ability to do business more like commercial industry.
- Bring approvals to a lower level (e.g., do not require every IT investment greater than \$1 million to go all the way to the Office of the Secretary Defense level).
- Empower a single decision-maker or decision-making body with accountability and consequences. The current process requires far too many boards and individual members to agree—no one person can say yes, and anyone can say no.

3. In the interest of efficiency, what can be done to reduce the number of internal agency checkpoints to get IT proposals out to the bidders?

The concepts described in the answer to question 2 above will reduce the number of checkpoints to get requests for proposal (RFPs) out to bidders faster. The IT team is also looking at ways to more quickly evaluate proposals and to adapt agile development in IT projects.

4. What is the key improvement area needed to get the federal government to an agile IT acquisition model?

The current defense acquisition system is fundamentally incompatible with Agile concepts. Although the development activities (i.e., coding) can be organized into smaller, shorter Agile sprints, that capability cannot be released to the end users who need it without time-consuming, independent test activities and formal milestone decisions.

The entire lifecycle must be modified to incorporate Agile concepts throughout—an approach widely used in the private sector and even by some entities in the public sector. For example, the upfront program initiation and requirements process often takes 2 years or more, resulting in a situation for which technology has changed before DoD has even secured the approval to pursue a specific solution. The system must be changed to facilitate faster decision-making and to break large programs into smaller projects that can quickly begin development before requirements are firm, and to frequently release capability to end users. This includes much more flexible and timely budgeting and fund allocation.

5. If you were the Federal CIO for a day, what would be the first thing you would address to get the government to an Agile acquisition cycle?

Develop a new process for IT acquisition that is inherently Agile and places decision authority, including budget, with a single empowered entity that supersedes all existing decision forums. This approach would contribute to DoD's ability to replace legacy systems with new technology—an objective that is absolutely crucial in serving the mission given the pace of technological change.

Another school of thought regarding the slowness of IT acquisition focuses on the acquisition workforce itself. The complaint is that IT acquisition personnel lack the proper expertise or training to run a successful IT acquisition, and that the federal acquisition workforce has a long “culture of being risk averse.”

- 1. Have you ever conducted acquisition workforce assessments?**
 - a. What did you find to be the condition of your acquisition workforce and how did you address the challenges you discovered?**

The services and the Office of the Secretary of Defense have conducted many acquisition workforce assessments. Going forward, the Section 809 Panel will leverage existing assessments and conduct additional research as necessary.

- 2. In your dealings with the federal IT contract acquisition process, what have you found to be the level and expertise of federal acquisition personnel?**

Although the Section 809 Panel has not yet studied this topic extensively, based on previous studies and anecdotal evidence, the skills and abilities of federal acquisition personnel are highly variable based on individual circumstances, agency or command, and specific role assigned. The skills and productivity of federal acquisition personnel can always be improved, and the Section 809 Panel will consider existing programs and recommendations that help achieve that goal.

- 3. What areas of training would help improve the skills of the acquisition workforce?**

The Section 809 Panel plans to study this topic. The commissioners recognize the value of training to achieve specified levels of competency in each functional area for the acquisition workforce.

The Partnership for Public Service last year referred to a practice it called “reverse industry day” where agency personnel have a chance to learn industry representatives’ perspectives on what is it like for them to work with government and how they view government contracts. Government representatives can also hear from industry about their agencies’ acquisitions and acquisition processes.

- 1. Are you familiar with this term, and if so, could you explain a little more about this practice?**
 - a. [IF YES] Have you found any validation to this practice in improving the speed of the acquisition process and encouraging innovation?**

To date, reverse industry days primarily have been used by the Department of Homeland Security to engage with industry. The Section 809 Panel is aware of a few other agencies that have also explored the concept. The practice is to have a panel of industry participants present their thoughts on government solicitations in general, without a particular solicitation on the table. Industry partners are interested in these events because they encourage open dialogue about acquisition with the government. Topics covered typically include how industry decides to pursue an opportunity, business cycles, evaluation preferences, and new approaches.

A high-ranking federal procurement official spoke about the reverse industry days concept at a Section 809 Panel meeting. Industry leaders also discussed reverse industry days with the panel. In general the panel is getting favorable reviews of this and other opportunities for engagement between industry and government. The Section 809 Panel has also found that some procurement officers tend to be risk averse—keeping industry at arm’s length to avoid missteps in the proposal process.

Broadly speaking, there appears to be demand for more of these kinds of engagements, as such discussions may generate innovative thinking. Because they are not linked directly to a solicitation, it would be difficult to gauge whether reverse industry days contribute to the speed of an acquisition. Regardless, the dialogue such programs foster potentially could lead to positive outcomes, and in particular could lead to contracting officers restructuring potential solicitations with speed as an objective based on industry input.

Questions for the Record from Rep. Mark Meadows, Chairman
Subcommittee on Information Technology
Committee on Oversight and Government Reform

Addressing Complexity of the Federal Acquisition System: There are reportedly 126 contract clauses (including close to 85 mandatory clauses) for commercial item contracts under the federal acquisition rules. The number of clauses has grown over time. In the mid-1990s, there were reportedly only three mandatory clauses and three more that were applicable for commercial item contracts as needed.

- 1. How do we reduce the complexity of the current acquisition system, particularly with respect to commercial items and services?**

There are a few key approaches the Section 809 Panel is studying that have potential to reduce the complexity of the current acquisition system with respect to commercial items and services. The first is to reduce the number of government-unique terms and conditions that create barriers to entry or incentives to exit the defense market. The second, flowing from the first, is to make government terms and conditions for commercial items and services consistent with those that are customary to the commercial market. The third is to reduce the supplemental policy, guidance, and flow-down requirements that bog down the Department of Defense (DoD) acquisition process. Together, these approaches could facilitate adaptability and agility that currently does not exist in the DoD acquisition process.

- 2. Should Congress or the Federal Acquisition Regulation Council require any new clauses expire after a certain number of years, essentially sunset these clauses?**

The Section 809 Panel is considering recommendations for streamlining defense acquisitions submitted by private-sector, government, and general-public stakeholders. The panel has undertaken aggressive outreach. Commissioners and staff have already met with hundreds of stakeholders and are cataloguing and investigating recommendations provided through the Section 809 Panel website and from in-person interactions.

Many of the recommendations have pertained to clauses in the FAR, including instituting sunset mechanisms for certain types of regulations. The Section 809 Panel is also considering the possibility of recommending greater discretion for DoD in removing regulations. In all cases, commissioners and staff are assessing the original purpose of certain policies, whether the respective purposes still makes sense in light of

changing circumstances, and whether regulations comport with underlying statute. The objective is to provide recommendations to Congress and DoD that would dramatically streamline the acquisition process. The Section 809 Panel's goal is to develop recommendations for comprehensive change that will enhance DoD's ability to maintain technological dominance and deliver equipment, goods, and services in a timely fashion to meet the challenge of fast-evolving threats from multiple adversaries.

3. Should there be a periodic review of the entire Federal Acquisition Regulation? Who is best placed to do this?

There is not currently a periodic review process for the entire FAR. Having said that, the Defense Acquisition Regulation (DAR) Council and the Civilian Agency Council can be directed to undertake reviews by statute, executive order, and internal directives. Some Parts of the FAR have been revised over the years as a result.

The Section 809 Panel is currently identifying the underlying statutory basis for provisions in all 53 Parts of the FAR. One objective of the review is to enable the panel, as well as congressional committees and the FAR Council, to assess the relevance of FAR provisions. Some of the questions the panel is asking include the following: What provisions are no longer necessary? What provisions do not comport with statutory intent? Given that some of the relevant statutes and regulations are decades old, what statutes and regulations need to be changed in light of new circumstances?

4. How can we quantify the compliance costs for IT federal contractors?

The question of the *cost of doing business* with the government has been discussed for decades. The definition of these costs, specifically compliance," could include a wide variety of requirements (e.g., cost accounting standards, industrial security, subcontracting); hence, an agreed-upon definition of unique government business practices and the costs involved must be agreed on before quantifying compliance costs. The Section 809 Panel is examining *barriers to entry* and will make recommendations on how to reduce barriers, including those that affect mission, cost, and timeliness. When possible, the panel will attempt to quantify cost effect.

Barriers to Entry: The complexity of the federal acquisition system results in barriers to entry that lead some vendor to decide the cost of doing business with the federal government is too high. Bloomberg has reported that the number of the first-time vendors has fallen to a 10-year low (down from 24 percent in 2007 to only 13 percent in 2016).

5. Based on your experience, what does the federal government do well, and not so well, in terms of engaging with first-time vendors?

DoD has many programs which are aimed in part at engaging first-time vendors. These include the Small Business Innovation and Research (SBIR) program, Small Business Technical Transfer (STTR) program, Procurement Technical Assistance Program (PTAP), Mentor-Protégé Program, and small business set-asides.

At the same time, businesses, small and large, express frustration over the lack of clarity on points of entry into the defense market and the time it takes the process to run its course. For example, companies can spend months or years searching for a person or office with the ability to begin and drive an acquisition. Additionally, first-time vendors or vendors with new technology unknown to DoD cannot easily introduce their products and services into the defense market. The opaqueness with which RFP requirements are written, often leaves companies unable to discern DoD's needs. Companies either struggle to generate viable proposals or simply opt not to pursue the business opportunity at all.

DoD's vertical structure, including multiple layers of authority and complex regulations and preconditions, contributes to slow decision-making and limits the number of viable points of entry for small companies into the defense market. A number of companies with which the Section 809 Panel has spoken indicated a quick *no* was more valuable than a lengthy wait to *yes*. Exacerbating the lack of clear points of entry, first-time vendors also indicate DoD does not conduct sufficient outreach and lacks awareness of what capabilities exist among small technology firms.

6. Are there existing tools in the federal procurement rules that if fully leveraged could encourage the participation of more first time vendors—or could you suggest strategies for encouraging such participation?

The Section 809 Panel is considering ways to increase access by first-time vendors. Initial research indicates that DoD could be a more attractive partner for first-time vendors if it pursues initiatives that enable the Department to do the following:

1. Execute or reject acquisitions from small businesses within weeks, not months or years.
2. Maintain constant awareness of emerging technology to inform acquisition requirement development.
3. Provide clear access points for first-time vendors to showcase technology and quickly reach decision-makers within the acquisitions enterprise.

The Section 809 Panel is researching these issues as they relate to the Small Business Innovation and Research (SBIR) program, Small Business Technical Transfer (STTR) program, Procurement Technical Assistance Program (PTAP), Mentor-Protégé Program, and small business set-asides. In addition to understanding the relevant challenges, identifying strengths and best practices upon which to build will enable DoD to best leverage not only first-time vendors but also companies with long-standing relationships with DoD to acquire dominant technological capabilities.

7. The Section 809 panel established a study team on barrier to entry. Could you provide more detail on the framework for approaching this area of study?

The Barriers to Entry Team is conducting a literature review on U.S. Government and Defense Department small business acquisition and socio-economic programs. The team is gathering information to assess the effects of current small business programs and set-asides on industry's and DoD's ability to meet warfighter needs. Meetings with other government agencies will yield lessons learned from other models of small business contracting and/or partnerships implemented across the federal government.

To understand industry's perspective on barriers to entry into the defense marketplace, the team is also relying heavily on interviews with representatives of large and small businesses falling into four categories:

- Companies that do business with DoD
- Companies that choose not to do business with DoD
- Companies that are interested, but thus far unsuccessful in doing business with DoD.
- Companies that have chosen to leave the DoD's marketplace

By meeting with various companies and government agencies, the team intends to not only gather their perspectives on barriers to entry, but also to develop an understanding of how DoD can most effectively identify, foster, optimize, and integrate innovative technologies emerging from traditional and nontraditional defense contractors. The team is looking at a range of aspects of the problem, including auditing, protests, and socioeconomic policies.

Getting Back to Commercial: There is a strong preference for buying commercial goods and services in federal acquisition law and rules. This preference is supposed to help the federal government leverage the innovation and capabilities of the commercial sector.

**8. Does the federal government actually buy commercial? Why/why not?
Examples?**

DoD does in fact buy commercial, although not necessarily in a way recognizable in the public sector. The range of statutes, regulations, policies, and directives that condition the DoD acquisition process hamper commercial purchases to the point that commercial buying policies are often inconsistent with commercial market practices. For example, the acquisition regulations include 34 definitions for the term commercial item, and the FAR definition requires contracting officers to consider items with “minor modifications” or “of a type” as commercial – but the item must be “sold, leased or licensed” or “offered for sale, lease or license” to the general public. Streamlining or reforming these and similar policies would improve DoD’s ability to buy commercially. The 809 Panel has a team specifically focused on Commercial acquisition.

9. What is the cause of this drift away from buying commercial? Is this an acquisition workforce training issue?

The Federal Acquisition Streamlining Act (FASA) in 1994 represented a major effort to simplify commercial buying practices. Since that time, however, commercial buying has become substantially more complex, as witnessed by a near tripling of the number of requirements since the passage of FASA. As a result, the goal of streamlining commercial buying has not been realized.

The most important component of a solution may be simpler criteria for determining commerciality, coupled with training that, taken together, would improve DoD’s ability to buy commercially in a timely way. Productive avenues might be to focus on managing the commercial subcontracting process, working with GSA governmentwide acquisition contracts (GWACs), and making fair and reasonable price determinations, particularly for sole-source commercial *of a type items*. Additionally, creating a forum for sharing best practices and across DoD might improve the consistency of commercial-item determinations.

10. Would the civilian acquisition system benefit from a renewed emphasis on commercial buying with provisions similar to those enacted for the defense acquisition system in fiscal years 2016 and 2017?

The NDAA provisions that make buying commercial IT the default option emphasize to DoD that commercial IT should always be an early consideration. The Section 809 Panel is examining the extent to which this provision is making its way to the working levels

of DoD. It is also investigating whether a policy that allowed for commercial buying for research and development requirements would be of value.

Strategies for Streamlining Federal Acquisitions: There have been multiple panels, studies, and reform ideas for acquisition reform over the years. Some strategies for streamlining the federal acquisition process have included multi-year funding solutions for long-term projects, emphasizing results versus process, using new contracting models, and leveraging industry capabilities to deliver non-core services with shared service models.

1. What specific strategies would you recommend to streamline the federal acquisition process? Please specify whether these strategies would require use of existing tools or new laws/rules?

The strategies the Section 809 Panel is considering include both updating and streamlining existing tools and processes *and* innovative approaches that would require new laws and potentially the elimination of existing processes that hamper DoD's ability to maintain technological dominance and deliver the goods and services needed to serve the mission. For example, the panel is examining the FAR to identify *regulatory underbrush* that is getting in the way of DoD's ability to deliver goods and services in a timely fashion. In all cases, the panel's recommendations will be data-driven; actionable; and include needed line-in, line-out statutory and regulatory language. The panel's overarching strategy is to make recommendations that accomplish the following:

- Enable DoD to be more adaptable in the face of a rapidly changing threat environment.
- Make DoD a more attractive customer in the new, dynamic defense marketplace.
- Enable DoD to use scarce resources allocated to procurement more efficiently.
- Simplify the acquisition process so goods and services can be purchased in a timely manner without unnecessary burden.
- Encourage and incentivize the workforce to make sound, mission-driven decisions.

The bottom line is that DoD adjusted neither to the pace of the threat environment nor to a marketplace that bears no resemblance to that of just a few decades ago. Both the strategic and marketplace realities require a degree of agility that DoD is not currently able to deliver. The nation's strategic needs must drive the business model, not the other way around.

2. Are there particularly effective contracting models for IT acquisitions?

There is no one contracting model that is optimal for IT acquisition because it encompasses such a broad spectrum of hardware, software, and services. The Section 809 Panel has heard consistently that other transactions authority is being used effectively for time-sensitive purchases, but it is limited to the front-end of the lifecycle. The panel is studying IT contracting extensively and will make specific recommendations in its final report.

IT Acquisition Workforce: Some experts have said the federal acquisition workforce has been overtaken by process to the detriment of focusing on results. Further, the IT acquisition workforce has become risk averse.

3. What do you think are the key challenges that we need to address to better prepare the IT acquisition workforce?

The Section 809 Panel plans to study this topic and make specific recommendations regarding training the acquisition workforce in its final report. Overall, roles and processes need to be flexible enough to adapt quickly to new technologies. Some of the key trends for the IT workforce that may be addressed include the following:

- the blurring of the line between cybersecurity practitioners and IT specialists
- high demand for mobility skills for customer-facing mobile applications or for managing internal workforce processes and resources
- balancing the employment of younger IT professionals with the need to have more seasoned employees with experience

4. How do we address the challenge of incentivizing the civilian acquisition workforce and retaining the best performers, particularly those with IT expertise?

The Section 809 Panel plans to study this topic and make specific recommendations regarding incentivizing the civilian acquisition workforce in its final report. Programs to address the trends listed in the response to question 3 need to be examined to develop programs that may not exist today.

5. I understand that the Department of Defense has some government–industry exchange programs, including the Secretary of Defense Corporate Fellows program. Are these programs effective? Do we have sufficient opportunities for the civilian IT acquisition workforce?

For the acquisition workforce, the Section 809 Panel is exploring use of training with industry programs. Potential research topics include the number of acquisition workforce members that train with industry, selection criteria for the program, functional disciplines that are represented in the program (engineering, contracting, IT, etc.), and use of the fellows when they return to their parent service/organization. Because IT is a broad and rapidly changing area, it is important to examine not only programs that allow training with industry but also how the IT workforce stays current using continuing education opportunities such as seminars, online learning, and rotational assignments.

**Questions for the Record from Rep. Robin Kelly, Ranking Member
Subcommittee on Information Technology
Committee on Oversight and Government Reform**

- 1. As Chair of the Section 809 Panel, what have been the guiding principles for you and your fellow commissioners as you collectively approach the challenge of analyzing the current procurement system for the Department of Defense's (DoD's) information technology (IT) acquisitions, and work toward developing recommendations for improvement?**

The Section 809 Panel's guiding principles for improving DoD's IT acquisition process include the following:

- Recognizing that IT acquisition is inherently different from acquisition of weapon systems and requires an approach that fits the need
- Enabling DoD, given the speed of technological evolution, to adopt technology changes more rapidly than it currently does
- Simplifying the process by reducing the number of steps and individual requirements, as well as the number of approvals required
- Empowering a single individual or decision-making body to make IT investment decisions to replace the current multilayer decision process.