

By: Steven Koprince | January 22, 2019

Section 809 Panel: Congress Should Order Government to Communicate with Contractors

Congress should require Government acquisition personnel to communicate with industry, according to the [Section 809 acquisition reform panel](#).

In the [third and final volume](#) in its series on streamlining and improving DoD acquisition processes, the Section 809 Panel takes aim at Government reticence to communicate with industry, and says that merely *permitting* such communications doesn't go far enough.

The Section 809 Panel writes that "Congress has not explicitly directed the acquisition team to communicate with the marketplace but has *encouraged and permitted* communication with industry."

The Panel notes that the Office of Federal Procurement Policy, in its well-known "[Myth-Busting](#)" memos, encouraged increased communications between acquisition personnel and contractors. Likewise, [a March 2018 memo](#) from then-Deputy Secretary of Defense Patrick Shanahan encouraged communications with industry. [FAR Part 1](#) allows for Government-industry communications, and a [proposed FAR change](#) would more explicitly state that Government acquisition personnel are encouraged to communicate with industry.

But this encouragement hasn't been enough, according to the Panel:

The difference between directing and encouraging and permitting is key in terms of DoD culture and behavior regarding communication with industry. Over time, the perceived risks that members of the acquisition team have attached to communication between govern-

ment and the marketplace have created a perception that such communication is risky and may even be prohibited.

The Panel says that the culture of fear surrounding Government-industry communication is bad for everyone:

Every aspect of the acquisition process is adversely affected by acquisition team members' apprehensiveness when communicating with the marketplace. This apprehension is reinforced by legal advice provided by the various offices of general counsel, staff judge advocate's offices, and fear of protests. It discourages communication between government and the private sector even when the related fear is unfounded. The potential costs of failing to communicate adequately with the private sector include added time to already inherently lengthy acquisitions processes and lost opportunities to access the innovative solutions accessible to nonstate actors and the nation's near-peer competitors

The Panel writes that, because encouragement hasn't worked, "[i]t is apparent that a congressional mandate is the only condition that will convince government acquisition team members that they are really empowered" to engage in communications with industry. The Panel proposes to "[d]irect DoD, by statute, to communicate with the marketplace concerning acquisition from development of the need/requirement through contract closeout, final payment, and disposal."

In my experience, many in Government and industry alike are afraid of robust communication. I've seen Contracting Officers who believe (wrongly) that they cannot take one-

on-one meetings with potential offerors, and contractors who believe (again, wrongly) that they cannot contact a Contracting Officer outside of a formal written Q&A.

Of course, not all communications are allowed: [the FAR](#), for example, places limits on post-proposal discussions with offerors. And, while it should go without saying, bringing a briefcase stuffed with unmarked bills to a one-on-one meeting with a Contracting Officer is a big no-no.

But with a little training and common sense, these limits shouldn't pose much of a barrier to effective Government-industry communication. Instead, as the Panel indicates, a "culture of fear" surrounds communications, and memos—even ones with catchy titles like "Myth-Busting" haven't been enough to change that culture.

Is a Congressional mandate the right solution? Maybe, although changing a culture with a mandate could be a tricky business. It will be interesting to see how policymakers react to the Panel's recommended solution, but I'm glad to see the Panel so squarely raise the underlying problem.