

# Section 809 Panel Final Report: Put Defense Acquisitions on ‘War Footing’

By: Stew Magnuson | January 15, 2019

## Section 809 Panel Final Report: Put Defense Acquisitions on ‘War Footing’ (UPDATED)



The Section 809 Panel — which has a congressional mandate to recommend changes to the way the Defense Department procures technology — [released its final report Jan. 15](#), stating the department must put its antiquated acquisition system on a “war footing” if it is expected to keep ahead of adversaries’ technological advances.

The third installment is the culmination of two years of work. It puts forth 58 recommendations that are added to the 40 recommendations released in volumes 1 and 2, plus one interim report. The ultimate goal of the recommendations is to create a new acquisition system that “will allow DoD to deliver and sustain technologically superior capability inside the turn of near-peer competitors and nonstate actors,” the report said. Volume 3 repeats what many have said: that the Defense Department’s “acquisition oper-

ates within a stovepiped management structure that values strict adherence to processes and procedures over meeting the mission.”

Its industrial age principles do not work in a 21st century market, it added. “All too often, DoD is buying yesterday’s technology for delivery tomorrow at inflated prices, rather than buying tomorrow’s technology for delivery today at competitive market prices,” it said.

Panel Chair Dave Drabkin recommended that policymakers read the report “as a whole.” There might be individual recommendations that aren’t popular.

“Our recommendations individually might not seem purposed, but they are and we identify that purpose in Volume 3,” he said.

The report acknowledges that progress has been made since the panel began its work two years ago. The Army has set up its Futures Command in order to speed up modernization and focus on its core missions. The Air Force has set up innovation hubs. And some of the recommendations in the first reports have found their way into recent National Defense Authorization acts.

Drabkin said there are no assurances that Congress or the Defense Department will act on any parts of the new report. But he noted that all of the recommendations in the interim report were enacted into legislation.

The panel has met frequently with both the House Armed Services Committee and Senate Armed Services Committee along with office of the secretary of defense officials, he said Jan. 15 at a U.S. Chamber of Commerce event introducing the final report. “We have every indication that they are very interested,” Drabkin said. Three service acquisition executives served on the panel. Assistant Secretary of the Air Force for Acquisition, Technology and Logistics Will Roper attended the briefing, along with many congressional staffers.

The report is broken into 13 sections, some of them building on Volumes 1 and 2. Those works put forth the idea that program managers should instead be considered “portfolio managers,” who have much more budget and regulatory flexibility to deliver capabilities quicker. It also broke acquisitions down into a “marketplace framework” with three categories: defense-unique items; readily available items; and readily available items that need customization to fit defense needs. Each category requires different acquisition

strategies, it said. Volume 3 further refines the marketplace framework concept and makes recommendations “that 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.”

Acquiring information technology warrants its own section in Volume 3, which recommends exempting the Defense Department from Title 40 of the Clinger-Cohen Act, which spells out a long list of procedures and approvals needed to acquire IT and created the chief information officer position in 1994.

“I would argue that Clinger-Cohen was originally primarily for civilian agencies,” said Panel Commissioner Elliott Branch. The role of CIOs in the Defense Department has never been clear and has depended on the person occupying the role, he added. The department needs to move toward “software as a service”-type contracts and away from complex, long-cycle programs, he added.

The report addresses budget issues, some of which are not of the Defense Department’s making, that prevent the acquisition system from being put on a “war footing.”

## Dynamic Marketplace Framework



It asks that below threshold reprogramming decision authorities be delegated to portfolio acquisition executives. These thresholds also need to be increased, said Commissioner Al Burman. Both chambers of Congress need to weigh in on acquisition programs reprogramming funding at thresholds above \$10 million and \$20 million for research and development. It can take up to 75 days for a decision. These numbers are too low and have not been adjusted for inflation, he noted.

“There is a need for more flexibility and speed in making these adjustments,” Burman said.

Congress should also allow new starts and increases in production numbers during continuing resolutions if the money has been appropriated, the report said. “Continuing resolutions are not a good way of doing business, but we can probably say it’s better than a shutdown,” Burman said.

Much of Volume 3 seeks to eliminate “non-value-added activities.” In other words, red tape that slows down acquisitions.

It asks for flexibility in laws that encourage purchasing from nontraditional suppliers by adopting exceptions for the Defense Department. Domestic purchasing preference requirements for commercial products should also be loosened. Lawmakers should adopt a public interest exception and procedures for the Berry Amendment identical to the ones that exist for the Buy American Act, the report said. The Berry Amendment requires the department to give preference to domestically produced metals, fabrics, foods and other items.

Volume 3 also encourages more open dialogue with industry. It recommends establishing a "market liaison" at each procuring activity to facilitate communication with industry. There should be greater interaction with companies during market research and a market intelligence capability throughout the department to "facilitate communication that enhances the government's industry knowledge through open, two-way communication."

The report carved out a section on human resources. It took to task current risk-averse thinking and suggested that a new cadre of acquisition professionals is needed. "DoD must recruit, train and retain a quality workforce and provide it with appropriate training and qualifications." These new recruits must be taught "to promote a culture that values taking risks, rather than preserving antiquated but safe approaches," it said.

The acquisition team comprises more than program managers and contracting officers. It includes many different disciplines and both the public and private sector, the study said. They must be trusted to do what needs to be done and encouraged to innovate, the report said. "The workforce will be at the heart of all meaningful change," it added.

Drabkin said the department needs more personnel who can make the Federal Acquisition Regulation "sing." They can take the tools provided and make things work.

"The problem is we don't have a lot of leadership in the department who is willing to stand up and protect and provide cover that people at the ground level need in order to take expansive views and make interesting interpretations," he added.

The study also has a catch-all section with miscellaneous recommendations designed to reduce red tape and declutter regulations. "These regulatory adjustments have the potential to reverberate across DoD and to deliver great efficiencies to the acquisition workforce," the report said.

One suggestion is to “clarify and expand the authority to use Other Transaction agreements for production.” The use of OTAs by military acquisition professionals is increasing as it allows them to circumvent regulations and rapidly move from prototypes to production contracts. The panel clearly wants to see more of this. Some of the recommendations included eliminating redundant documentation requirements or superfluous approvals when appropriate consideration is given and documented as part of acquisition planning.

Finally, the panel asked that its work be preserved and the Defense Department create a Center for Acquisition Innovation located at the National Defense University’s Eisenhower School.

The panel will cease to exist on July 15, but the need for acquisition reform will continue so its findings should reside there for research purposes, the report suggested. The panel will publish one more report Feb. 15 that will tie all the volumes and the interim report together to provide both Congress and the secretary of defense a single picture of how all of the recommendations come together.

[The National Defense Industrial Association will host a discussion about the Section 809 Panel’s findings Feb. 13 at the law office of Covington & Burling LLP in Washington, D.C.](#)

*Update: This story has been updated to include remarks from 809 Panel members at an event where the panel's final report was introduced.*