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Congressional Blue-Ribbon Panel Recommends Major Changes to DoD Acquisition Process

The Section 809 Panel has issued its final report with additional recommendations to streamline the DoD acquisition process, some of which would make revolutionary changes.

Earlier this week, the Section 809 Panel released Volume 3 of its Final Report containing a list of recommendations for streamlining and improving the efficiency and effectiveness of the defense acquisition process. The Section 809 Panel was established by Congress in the Fiscal Year (FY) 2016 National Defense Authorization Act (NDAA) to address issues with the way the Department of Defense (DoD) buys what it needs to equip its warfighters. See Section 809 of the NDAA for FY 2016 (Public Law 114-92), as amended by section 863(d) of the NDAA for FY 2017 (Public Law 114-328). The goals of the Section 809 Panel, as outlined in the 2016 NDAA, include the following:

- Review the acquisition regulations applicable to the DoD with a view toward streamlining and improving the efficiency and effectiveness of the defense acquisition process and maintaining defense technology advantage.
- Establish and administer appropriate buyer and seller relationships in the procurement system.
- Improve the functioning of the acquisition system.
- Ensure the continuing financial and ethical integrity of defense procurement programs.
- Protect the best interests of the DoD.
- Eliminate any regulations that are unnecessary for the purposes described.

Since its inception in 2016, the Section 809 Panel has spread out the publication of an Interim Report and a three-volume set of Final Reports. All the Reports of the Panel can be found [at this link](#). It is important to note that of the 39 Recommendations included in the Section 809 Panel's earlier Volumes, which were released in early 2018, 12 already have been enacted into law by Congress, either partially or fully, in the NDAs for FY 2018 or 2019. The Section 809 Panel's newest Report, Volume 3 of the Final Report, represents the culmination of more than two years of work and includes 58 new recommendations intended to change defense acquisition from "an outdated, industrial-era bureaucracy to a more streamlined, agile system able to evolve in sync with the speed of technology innovation."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, are intended to 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. The Section 809 Panel's recommendations are premised on the argument that DoD still uses Cold War-era approaches for acquisitions while operating in a cyber-war-era society. The Section 809 Panel heard from multiple sources that DoD's acquisition system lacks a sense of urgency. The Panel argues that DoD must move to a war footing approach for acquiring and delivering capabilities to ensure warfighters have the tools they need to meet the threat represented by near peer competitors and non-state actors.

The Section 809 Panel's collective recommendations work together to change the overall structure and operations of defense acquisition both strategically and tactically. Some changes hold potential for immediate effect, such as those that remove unnecessary layers of approval in the many steps contracting officers and program managers must take and remove unnecessary and redundant reporting requirements. Other changes require a significant shift in how the system operates, such as buying readily available products and services in a manner similar to the private sector and managing capabilities from a portfolio, rather than program, perspective.

Of particular interest to defense contractors are the numerous recommendations intended to streamline defense acquisition regulations. These recommendations undertake streamlining in one of four ways: (1) decluttering excess documentation requirements or procedures; (2) utilizing existing authorities in a more efficient way; (3) removing rigidity; or (4) clarifying definitions.

Additionally, many of the recommendations are designed to remove barriers to entry for nontraditional defense contractors. The Section 809 Panel's recommendations in this area attempt to remove alleged unnecessary and burdensome compliance requirements, reduce the barriers to doing business with DoD, amend the bid protest process, and update socioeconomic policies and supply chain issues.

Finally, the Report contains a new Guide that provides information on how to interpret and apply specific auditing concepts to audits of government contract costs and compliance-related internal controls. This Guide was developed with a Panel working group that included representatives from the Defense Contract Audit Agency, the Defense Contract Management Agency, the Government Accountability Office, American Institute of Certified Public Accountants and industry.

As the Section 809 Panel's latest Report is extensive and contains more than 1,100 pages of Recommendations and Appendices, we will issue a series of Client Alerts over the coming days that cover key areas of interest to government contractors. Future Client Alerts will address:

- Financial issues, including the interpretation and application of specific auditing concepts to audits of government contract costs and compliance-related internal controls and the replacement of the current 18 DFARS accounting system criteria with seven objective criteria.
- Socioeconomic / Small Business issues, including the amendment of the socioeconomic laws to encourage purchasing from more nontraditional suppliers and to increase substantially the acquisition thresholds of the Davis-Bacon Act, the Walsh-Healey Public Contracts Act, and the Service Contract Act.
- Acquisition planning, contract formation and protest issues, focusing on changes to bid protest jurisdiction and increased DoD communications with contractors and potential contractors.
- Commercialization of Government Contracting issues, to include regulatory revisions related to commercial item preferences and the use of Other Transaction Authority.