

National Defense

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Some Final Words From The Section 809 Panel

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“Here we go again – another acquisition reform effort.” That’s what many people said when they heard about the Section 809 Panel. When the panel formed in August 2016 as directed by Congress, excitement and cynicism abounded.

The well-known Wifcon blogger Vern Edwards wrote, “The problem is that, unless I’m mistaken, they’re old.”

It’s true the panel of seasoned experts have a collective 350 years of experience in defense acquisition as well as industry. Did their years navigating that infamous bureaucratic morass hold them back or motivate them to fix systemic problems they knew all too well?

Now that the panel’s work is done, some observers have changed their tune and worry the 98 recommendations are too radical. So has the panel been too bold or not innovative enough? As operations wind down for a closing date of July 15, panel members took the

opportunity to reflect on what the panel's legacy might be, mixing healthy doses of optimism with tempered pragmatism.

In January, the panel delivered to Congress and the secretary of defense its third and final volume of recommendations, sending over 2,400 pages of data-driven analysis, discussion and rationale with corresponding line-in, line-out changes to statutes and regulations. This approach differentiates the panel from previous reform efforts, increasing the likelihood of recommendations being implemented and decreasing the chances they will be misunderstood. The panel also took on "Big A" acquisition – requirements, resources and acquisition – not just one part of the system.

"Other similar reform efforts over the past 50 years have been focused primarily in a particular area such as contracting, services or program management," said Commissioner Larry Trowel. "The 809 Panel touched on the full range of areas that impact the success of DoD procurement: program authority, budget, services, workforce, contracting, requirements development and more."

The last time acquisition reform was tackled on this scale was the Section 800 Panel in the early 1990s. That effort led to the Federal Acquisition Streamlining Act (FASA) and the Federal Acquisition Reform Act (FARA). Since then, the threat landscape has changed and acquisition continues to struggle to keep pace. As stated in the 2018 National Defense Strategy, "Success no longer goes to the country that develops a new technology first, but rather to the one that better integrates it and adapts its way of fighting. Current processes are not responsive to need; the department is over-optimized for exceptional performance at the expense of providing timely decisions, policies and capabilities to the warfighter."

The threat from near-peer competitors is more real than it has been in decades. There are also new threats, principal among them cyber activities that are not as obvious or as easily detected as a traditional military offensive. We live in a new era defined more by bits and bytes than kinetic energy. Many of the technologies used in this new type of warfare are commercially available, and they do not take decades to develop.

Despite these urgent threats and changed marketplace dynamics, the acquisition system still relies on processes designed for the Cold War. Tasked with addressing this disparity, panel members wondered if it will take another catalyzing event like Pearl Harbor to jolt policymakers into action – or if the case can be made to revolutionize the system in advance.

The panel's first chair, Deidre Lee, stated unequivocally that the Section 809 Panel would not "nibble around the edges" of reform but rather develop recommendations that were bold, simple and effective to position defense acquisition to meet this threat. In early meetings, panel members excitedly considered totally scrapping regulations such as the Federal Acquisition Regulation and Defense Acquisition Regulations System and getting rid of indefinite-delivery/indefinite-quantity contracts. As research and deliberations continued, these lofty dreams gave way to more practical solutions that strike a balance, offering both revolutionary and evolutionary changes to the current system.

The panel's revolutionary proposals tackle weighty topics like budget processes, workforce, portfolio management and reorganizing Title 10. Clearly the panel's boldest and most revolutionary recommendation is for Congress to authorize new, radically simplified procedures for buying readily available products and services (Recommendation #35).

Someday these procurements may become those "formerly known as commercial items." Commissioner Al Burman identified these radically streamlined processes as one of "the two things that can make the greatest difference in improving defense operations and outcomes."

The other is centering more authority – including reprogramming decision-making – in portfolio acquisition executives. This second revolutionary concept was described by Commissioner Dave Ahern as "knitting together a fundamentally different approach to defense acquisition: collaborative requirements, budget and acquisition in multi-tiered capability portfolios." One of the leads on the portfolio management recommendations, Ahern noted his amazement that the Defense Department "continues to use three separate decision support systems and focus on programs instead of capabilities."

Highlighting another revolutionary undertaking from the panel, Commissioner Cathleen Garman pointed to the reorganization of the defense acquisition laws within Title 10 to make the statutes more readable and easier to track. "In my opinion this is the most significant of all the panel's actions and will reap huge long-lasting benefits," she said, adding, "but being a former congressional committee staffer, I'm biased."

Because implementing the revolutionary recommendations will take time, Congress should also adopt, and direct the department to implement, the panel's evolutionary recommendations. Chief among those are changes to improve commercial buying practices. The panel proposes modifying statutes and regulations to clarify definitions and stream-

line commercial buying processes to better achieve Congress' intent of maximizing the efficiencies and innovations of commercial buying.

Despite repeated direction from Congress, only 18 percent of the Defense Department's total obligations in fiscal year 2017 were for commercial items, and commercial item spending actually declined by 29 percent between fiscal years 2012 and 2017. The panel's commercial buying changes will incrementally increase the department's access to innovation in the private-sector marketplace in advance of full implementation of the readily available procedures.

Other evolutionary changes the panel has recommended can happen today: greater use of simplified acquisition procedures and the streamlined fair opportunity process, consolidation of hiring authorities governing the acquisition workforce, and the establishment of execution portfolios within military services and across the department. These changes require no legislative action, but they do demand a cultural revolution.

None of the panel's recommendations will fundamentally change the outcomes of the defense acquisition system if the culture does not embrace the imperative to value time and prioritize results over process. U.S. Army Chief of Staff Gen. Mark Milley did not mince words when he said, "The whole dysfunctional acquisition system needs to be deregulated and decentralized. Officers doing acquisition need more freedom, longer tenure and – critically – stricter accountability."

The panel's research discovered many organizations and individuals that deliver great results within the current system. They take advantage of existing authorities to solve problems and find a reason to say "yes" instead of "no." These innovators were referred to in shorthand as "people who can make the FAR sing," and the panel considered how to duplicate that mentality across the system. As the Defense Department continues to absorb the many acquisition reforms from the past four years, it must first and foremost support a culture that encourages the following behaviors from every individual in the process: value time; dispense with the checklist mentality; recognize perfect is the enemy of good; become smart buyers that understand value, not just price; embrace smaller projects that have a higher likelihood of success; and act like it's your money.

So what will be the panel's legacy? Will the panel's recommendations be adopted by Congress? Will the Defense Department buy into them? How long will all this take? The Section 800 Panel was chartered in the 1991 National Defense Authorization Act to assess

laws affecting defense procurement, to encourage the use of commercial and non-developmental items, and to expand the exemption for “adequate price competition” in the Truth in Negotiations Act.

Immediately upon the report’s release in January 1993, a bipartisan group of members in both the Senate and the House, along with their staffs, began work on a reform package that continued for the next nine months. Meanwhile at the Defense Department, Colleen Preston, a 10-year House Armed Services Committee veteran, was named to the new position of deputy undersecretary for acquisition reform and focused heavily on implementing the Section 800 Panel’s recommendations.

She later stated that “for the first year we practically did nothing but focus on that legislative effort day-to-day.” The resulting bill, FASA, was unveiled in October 1993 and enacted in 1994; it was another three years before FARA was drafted and passed.

In comparison with the Section 800 Panel, the Section 809 Panel’s scope is broader and may take longer to implement since it addresses all three parts of the “Big A” acquisition system. Other factors may complicate or delay implementation of the recommendations. These include a massive backlog of changes to acquisition legislation over the last four years that are still being absorbed, a recent changeover in House leadership and a lack of consensus about which recommendations should in fact be implemented.

Other challenges include general resistance to change of this magnitude, especially when it comes from outside the Pentagon. Commissioner N. Ross Thompson III explained that “many still believe changes must occur within the system and discount objective review by recognized experts that are not constrained by the existing processes, leadership and organizational structures.”

Should the panel’s recommendations be implemented, Chair David Drabkin is confident about what the future of acquisition could hold: “I would look for greater diversity in our marketplace, faster times from identifying a need to delivering it, overall better risk management – instead of risk avoidance – and an ongoing dialogue with industry that would allow DoD to communicate its needs, gather intelligence on capabilities, share that intelligence better with the warfighter, and provide the warfighter with capabilities before adversaries get them.”

The panel’s overall objective was to better position the United States to obtain and maintain technological superiority and deliver capability to the warfighter inside the turn of

near-peer competitors and nonstate actors. All of its recommendations should be viewed through that lens, and we must hope our policymakers are looking in the same direction.

Nick Tsiopanas currently supports the Section 809 Panel. He is the president of ZYGOS Consulting LLC, which specializes in providing acquisition support to government clients.

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