

FEDERAL CONTRACTING REVIEW SECTION 809 PANEL

NCMA-WI

2017-YEAR END UPDATE

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PURPOSE: SECTION 809 PANEL

- THE 18-PERSON PANEL, CREATED IN SECTION 809 OF THE FY 2016 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) AND AMENDED BY SECTION 863(D) OF THE NDAA FOR FY 2017 AND SECTIONS 803(C) & 883 OF THE NDAA FOR FISCAL YEAR 2018, IS TASKED WITH FINDING WAYS TO STREAMLINE AND IMPROVE THE DEFENSE ACQUISITION PROCESS. THE PANEL HAS 2 YEARS TO DEVELOP RECOMMENDATIONS FOR CHANGES IN THE REGULATION AND ASSOCIATED STATUTE TO ACHIEVE THOSE ENDS.
- THE PANEL IS CHARGED WITH MAKING RECOMMENDATIONS THAT WILL SHAPE DOD'S ACQUISITION SYSTEM INTO ONE THAT IS BOLD, SIMPLE, AND EFFECTIVE.

INITIAL CHARTER

- REVIEW THE ACQUISITION REGULATIONS APPLICABLE TO THE DEPARTMENT OF DEFENSE WITH A VIEW TOWARD STREAMLINING AND IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF THE DEFENSE ACQUISITION PROCESS AND MAINTAIN DEFENSE TECHNOLOGY ADVANTAGE AND
- MAKE RECOMMENDATIONS FOR THE AMENDMENT OR REPEAL OF SUCH REGULATIONS THAT THE PANEL CONSIDERS NECESSARY TO
 - ESTABLISH AND ADMINISTER APPROPRIATE BUYER AND SELLER RELATIONSHIP 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 DEPARTMENT OF DEFENSE, AND
 - ELIMINATE ANY REGULATIONS THAT ARE UNNECESSARY FOR THE ABOVE PURPOSES.

18 PERSON PANEL

Commissioners

Ms. Deidre A. Lee

Chair

- ★ Mr. David G. Ahern
- ★ Maj Gen Casey Blake, USAF
- ★ Mr. Elliott B. Branch
- ★ The Honorable Allan V. Burman
- ★ Mr. David A. Drabkin
- ★ VADM Joseph W. Dyer, USN (Ret.)
- ★ Ms. Cathleen D. Garman
- ★ Ms. Claire M. Grady
- ★ BG Michael D. Hoskin, USA
- ★ The Honorable William A. LaPlante
- ★ Maj Gen Kenneth D. Merchant, USAF (Ret.)
- ★ Mr. David P. Metzger
- ★ Dr. Terry L. Raney
- ★ Maj Gen Darryl A. Scott, USAF (Ret.)
- ★ LTG N. Ross Thompson III, USA (Ret.)
- ★ Mr. Laurence M. Trowel
- ★ Mr. Charlie E. Williams, Jr.

TEAM CONCEPT

- TO COVER EVERY ASPECT NEEDED TO IMPROVE THE DEFENSE ACQUISITION PROCESS, THE SECTION 809 PANEL IS BROKEN UP INTO TEAMS THAT ANALYZE SPECIFIC TOPICS.
- EACH TEAM HAS ITS OWN GOAL, AND EVERY TEAM WORKS COHESIVELY TO MEET THE END GOAL: TO STREAMLINE AND ENHANCE ACQUISITION AND PROCUREMENT OF DEFENSE EQUIPMENT IN THE DOD.

10 TEAMS



Review acquisition regulations and statutes and recommend changes or deletions for timely acquisition of systems, services and solutions. Focus on recommendations to maintain DoD's technological advantage and enhance access to emerging technologies.



Streamline noncomplex acquisitions less than \$15 million to enable DoD to meet its acquisition needs for smaller contracts.

10 TEAMS



Simplify DoD's commercial buying practices to be more adaptable and agile in acquisition and to have greater access to companies not currently selling to the department.



Evaluate and remove regulatory, cultural, or bureaucratic barriers to entry to the DoD marketplace. Attract companies interested in conducting business with DoD that have not previously entered the DoD marketplace.

10 TEAMS



Identify attributes and qualities common to successful programs that can be widely employed and provide recommendations for best practices, regulations, and statutes.



Streamline the information technology (IT) acquisition process with a specific focus on defense business systems and IT services. Increase use of commercial best practices and business processes, delivering capability faster and keeping DoD's technology current and supportable.

10 TEAMS



How DoD gets money and how it is spent. Optimize efficient flow of resources of the acquisition budgeting process in DoD.



Identify, then streamline or eliminate regulations pertaining to defense acquisition that are no longer necessary.

10 TEAMS



Modernize cost accounting standards.



Consider statutory and regulatory reform that would foster a culture of authority and accountability in the acquisition process, enabling the workforce to serve the mission free of unnecessary obstacles.

INTERIM REPORT ISSUED MAY 2017

- THE INTERIM REPORT
 - PANEL'S FRAMEWORK FOR THE NEED FOR ACQUISITION REFORM. THIS FRAMEWORK, ADDRESSED IN THE FIVE MAIN SECTIONS OF THE REPORT, WILL GUIDE THE PANEL'S FUTURE WORK AND RECOMMENDATIONS
 - ADAPT AT THE SPEED OF A CHANGING WORLD
 - LEVERAGE THE DYNAMIC DEFENSE MARKETPLACE
 - ALLOCATE RESOURCES EFFECTIVELY
 - SIMPLIFY ACQUISITION
 - ENABLE THE WORKFORCE

INTERIM REPORT – SUPPLEMENTAL

5/17

- SUPPLEMENTAL REPORT ISSUED TO PROVIDE 5 ACTIONABLE ITEMS FOR CONSIDERATION AS EXAMPLES OF WHAT ARE PROBLEMS:
 - AFFIRM AGENCY MISSION AS THE PRIMARY GOAL OF DOD ACQUISITION.
 - INCREASE CONTRACT TIME FOR FUEL STORAGE FROM 20 YEARS TO 30 YEARS
 - ELIMINATE THE REQUIREMENT FOR CONTRACTORS TO USE RECYCLED PAPER
 - ELIMINATE FAR SECTION ON TEXTING WHILE DRIVING.
 - ELIMINATE THE REQUIREMENT TO ACCEPT AND DISPENSE DOLLAR COINS AT GOVERNMENT BUSINESS OPERATIONS

SUPPLEMENTAL REPORT

- THE PANEL PROVIDED 5 CASE STUDY ISSUES FOLLOWING THE FORMAT OF:
 - PROBLEM STATEMENT
 - BACKGROUND OF HOW CURRENT SITUATION DEVELOPED
 - FINDINGS
 - CONCLUSIONS
 - RECOMMENDATIONS
 - INCLUDING THE “WHO” (EXECUTIVE OR LEGISLATIVE ACTION)
 - PROVIDED THE FAR REFERENCES/ EXECUTIVE ORDERS, ETC. THAT NEED UPDATE.

AFFIRM AGENCY MISSION-PRIMARY

- **PROBLEM:** A NUMBER OF STATUTES, EXECUTIVE ORDERS, AND REGULATIONS TO WHICH DOD IS SUBJECT PROMOTE PUBLIC POLICIES NOT DIRECTLY TIED TO MISSION. THE SECTION 809 PANEL BELIEVES IT IS IMPORTANT TO ESTABLISH THAT MISSION COMES FIRST
 - THE FAR SUBPART 1.1, PURPOSE, AUTHORITY, ISSUANCE, THE SYSTEM IS TO “DELIVER ON A TIMELY BASIS THE BEST VALUE PRODUCT OR SERVICE TO THE CUSTOMER, WHILE MAINTAINING THE PUBLIC’S TRUST AND FULFILLING PUBLIC POLICY OBJECTIVES.”
- **RECOMMENDATIONS:** ENACT A LAW REQUIRING THE FAR BE REVISED SO THAT REFERENCES TO FULFILLING PUBLIC POLICY OBJECTIVES ARE STATED AS BEING A SECONDARY OBJECTIVE OF THE FEDERAL ACQUISITION SYSTEM IN ANY STATEMENT OF THE VISION OR GUIDING PRINCIPLES FOR THE FEDERAL ACQUISITION SYSTEM OR ANY STATEMENT OF PURPOSES OF THE FAR.

INCREASE CONTRACT TIME: FUEL

- **PROBLEM:** THE 20-YEAR LIMITATION ON THE DURATION OF DOD FUEL STORAGE CONTRACTS, IN EFFECT UNDER TITLE 10 U.S. CODE (U.S.C.) SEC. 2922, CONTRACTS FOR ENERGY OR FUEL FOR MILITARY INSTALLATIONS, IS OUT OF DATE.
 - THE STATUTE AUTHORIZES A MAXIMUM CONTRACT OF 5 YEARS, WITH OPTIONS TO RENEW THE CONTRACT FOR ADDITIONAL 5-YEAR PERIODS UP TO 20 YEARS TOTAL. MODERN FUEL STORAGE INFRASTRUCTURE IS CAPABLE OF OPERATING FOR UP TO 30 YEARS WITHOUT ANY OPERATIONAL INTERRUPTION.
- **RECOMMENDATIONS**
 - EXTEND THE MAXIMUM LENGTH OF SECTION 2922 FUEL STORAGE CONTRACTS TO 30 YEARS.
 - ALLOW EXISTING CONTRACTS TO BE EXTENDED TO THE 30-YEAR MAXIMUM

ELIMINATE REQUIREMENT FOR RECYCLED PAPER

- **PROBLEM:** THE 1998 NDAA PUT IN PLACE THE 30 PERCENT POSTCONSUMER-WASTE REQUIREMENT FOR DOD. THE FY 2017 NDAA REPEALED THE REQUIREMENT IN STATUTE, YET EXECUTIVE ORDER (EO) 13693, AND THE RELATED FAR PARTS AND CLAUSE STILL STAND. THESE REGULATIONS CONSTITUTE UNNECESSARY CONTRACT CLAUSE REQUIREMENT.
- **RECOMMENDATIONS:**
 - REVISE THE PROVISION IN EO 1369321 AS IT APPLIES TO DOD, THAT MAINTAINS THE 30 PERCENT POSTCONSUMER-WASTE REQUIREMENT TO COMPORT WITH THE REPEAL OF THAT REQUIREMENT IN THE FY 2017 NDAA.
 - UPDATE THE FAR TO REFLECT THE CURRENT CONTROLLING EO.
 - MAKE CORRESPONDING CHANGES TO THE GUIDANCE AT FAR 4.3, FAR 11.303 AND THE CLAUSE AT 52.204- 4, PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER.
 - SUGGEST: MAKE THIS GOVERNMENT WIDE - BEYOND JUST DOD

ELIMINATE FAR SECTION ON TEXTING WHILE DRIVING

- **PROBLEM:** THE FAR ENCOURAGES POLICIES TO BAN TEXT MESSAGING BY GOVERNMENT CONTRACTOR EMPLOYEES WHILE DRIVING ON GOVERNMENT BUSINESS. THIS POLICY MAY NO LONGER BE NEEDED DUE TO CHANGES IN STATE LAWS AND MAY BE IMPLEMENTED BY AGENCIES THROUGH MEANS OTHER THAN CONTRACT CLAUSES, SUCH AS DOD INSTALLATION DRIVING RULES. THIS POLICY REQUIRES AN UNNECESSARY CONTRACT CLAUSE.
- **RECOMMENDATION:**
 - EXECUTIVE BRANCH: EXEMPT DOD FROM FAR SUBPART 23.11 AND FAR CLAUSE 52.223-18.
 - SUGGEST MAKING THIS GOVERNMENT WIDE BY DELETING FAR SUBPART 23.11 AND FAR CLAUSE 52.223-18.

ELIMINATE REGULATIONS - DOLLAR COINS

- **PROBLEM:** SECTION 5112(P)(1) OF TITLE 31, U.S.C., DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS, REQUIRES THAT BUSINESS OPERATIONS PERFORMED ON FEDERAL GOVERNMENT PREMISES PROVIDE FOR ACCEPTING AND DISPENSING OF EXISTING AND PROPOSED DOLLAR COINS. THIS POLICY REQUIRES AN UNNECESSARY CONTRACT CLAUSE.
- **RECOMMENDATION:**
 - LEGISLATIVE BRANCH-AMEND THE STATUTORY REQUIREMENT AT 31 U.S.C. § 5112(P)(1) TO PROVIDE AN EXCEPTION FOR BUSINESS OPERATIONS UNDER DOD CONTRACTS.
 - EXECUTIVE BRANCH - AMEND THE FAR AT 37.116, ACCEPTING AND DISPENSING OF \$1 COIN, AND ITS RELATED CLAUSE AT 52.237-11, ACCEPTING AND DISPENSING OF \$1 COIN, TO EXEMPT DOD.
 - SUGGEST: MAKE THIS GOVERNMENT WIDE ACTION.

809 PANEL: ONGOING

- PANEL SEEKING FEEDBACK FROM CONTRACTORS, OFFICIALS ON SMALL-BUT-PESKY ISSUES THAT SLOW ACQUISITION
 - TOP 50 RECOMMENDATIONS WILL APPEAR IN UPCOMING REPORT
- NEXT REPORT IS DUE JANUARY 30, 2018

THANK YOU.

- MORE DATA:
 - [HTTPS://SECTION809PANEL.ORG/](https://section809panel.org/)
- THANK YOU FOR YOUR ATTENTION.