

Swamped by Regulations

Perils of an Ever-Increasing Burden

Allen Friar

The Department of Defense (DoD) acquisition process is too complicated, too slow, too expensive and includes too many competing objectives. The ever-increasing new laws, regulations and policies are adversely affecting the federal acquisition process and the ability of federal agencies to provide services and perform their missions.

The regulatory burden has been growing for a long time, but the pace of new regulations has increased at an unprecedented rate in the last few years. According to a May 2013 Congressional Research Service report,

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published regulations have been at historic numbers for the last decade. Contrary to the intended effect, this tsunami of regulations prevents many small businesses from participating in the federal procurement process. In some cases, small firms are withdrawing from participation.

Today, largely because of constantly increasing regulations, many small business contractors are unwilling to compete for federal contracts. Last year, the National Federation of Independent Business randomly surveyed 1,615 small businesses and found their top concerns were health-care costs, regulations, tax complexity and economic uncertainty. The ever-growing regulatory burden raises the cost of doing business and prevents many small firms from entering the market—reducing competition, job growth and innovation.

Tinkering with acquisition regulations or issuing policy directives to emphasize this or that regulation does not resolve the matter. Many of our senior leaders have recognized the problem of overregulation for some time. Frank Kendall, Under Secretary of Defense Acquisition, Technology, and Logistics, in July 2014 testimony

before the House Committee on Armed Services said of the DoD acquisition process, “Our system over time accumulated excessive levels of complex regulatory requirements that are imposed on our program managers and other acquisition professionals.” He added, “One thing I hope we can all agree on is the need to simplify and rationalize the bureaucratic burdens we place on our acquisition professionals.”

Indeed what is needed is comprehensive acquisition reform that concentrates on lean and efficient management, clearly identified requirements and true competition in the marketplace. Constantly expanding regulations, often with competing objectives and declining revenues, imperil the federal acquisition process and the DoD’s ability to accomplish its primary mission of deterring war and protecting U.S. security interests. To remain viable, DoD must get back to its core mission. And reforming the contracting and acquisition process is a vital first step.

An old Chinese proverb states that “The man who chases two chickens catches neither.” Trying to accomplish too many, often competing, objectives



during the acquisition process makes it nearly impossible to buy an airplane, a tank or a battleship. The Air Force refueling tanker contract, ostensibly the Service's top priority, took 10 years to award and is a classic example of the many problems plaguing the acquisition system and the military-industrial complex.

Any student of government knows that the first goal of bureaucratic organizations, usually unstated, is to perpetuate the organization. This is done largely for selfish reasons such as providing opportunities for promotion, protecting and expanding turf and increasing the bureaucracy's importance and thereby getting more resources. The DoD is no stranger to this practice, and the contracting and acquisition community is especially adept at growing the bureaucracy. One way organizations grow is to acquire more responsibilities, and this often involves passage of legislation and the writing of regulations to implement the legislation. This in and of itself has been a growth industry for more than 30 years.

After the end of World War II, the Armed Services Procurement Regulation (ASPR) in 1947 had 125 pages. It continued to grow rapidly and was replaced in 1984 by the Federal Acquisition Regulation (FAR), which was 1,953 pages long. In July 2014, the FAR had 2,193 pages and the DoD FAR Supplement (DFARS) was 1,554 pages long. In addition, each Service—Army, Navy and Air Force—and some other federal agencies have their own FAR supplements and countless policy directives, instructions, guidebooks and memorandums.

On top of all these contracting regulations, we have the DoD Directive 5000.01, "The Defense Acquisition System" and its companion, DoD Instruction 5000.02, "Operation of the Defense Acquisition System," the Integrated Defense Acquisition, Technology, and Logistics Life Cycle Management System made up of the Joint Capabilities Integration and Development System (JCIDS) and the Planning, Programming, Budgeting and Execution Process (PPBE). None of these is static or unchanging, especially the last one. The 5000.02 recently was revised, almost doubling in size—and other revisions are planned or under way.

The Integrated Defense Acquisition, Technology, and Logistics Life Cycle

Management System process is often called the "Big A" acquisition process and has three parts: the requirement generation part or JCIDS; the Defense Acquisition System or "Little A"; and the PPBE. These three processes originally were designed to be linked and streamlined but over the years have evolved into a system that is anything but streamlined—some would say it is dysfunctional. As former Secretary of Defense Robert Gates said of procurement in 2008 remarks before the Heritage Foundation, "The DoD procurement cycle of adding layer upon layer of cost and complexity onto fewer and fewer platforms that take longer and longer to build must come to an end." In Gates' opinion, this process is unsustainable. It remains to be seen if his warning will be heeded.

Recent DoD acquisition initiatives have addressed some problem areas by allowing urgent responses to wartime needs, bypassing many existing regulations and implementing some Better Buying Power Initiatives to incentivize productivity and industry innovation and to improve tradecraft in the acquisition of services.

The latest initiatives focus on controlling costs and improving workforce leadership and training to change the acquisition culture. And the Joint Requirement Oversight Council (JROC) has cut paperwork requirements and accelerated decision making for new systems development. These changes have been positive, and more are coming. But much more drastic action is needed.

The Defense Business Board in its Fiscal Year 2012 report to the Secretary of Defense found that the "Big A" acquisition

Figure 1. Number of Pages Published Annually in the Federal Register, 1937–2011



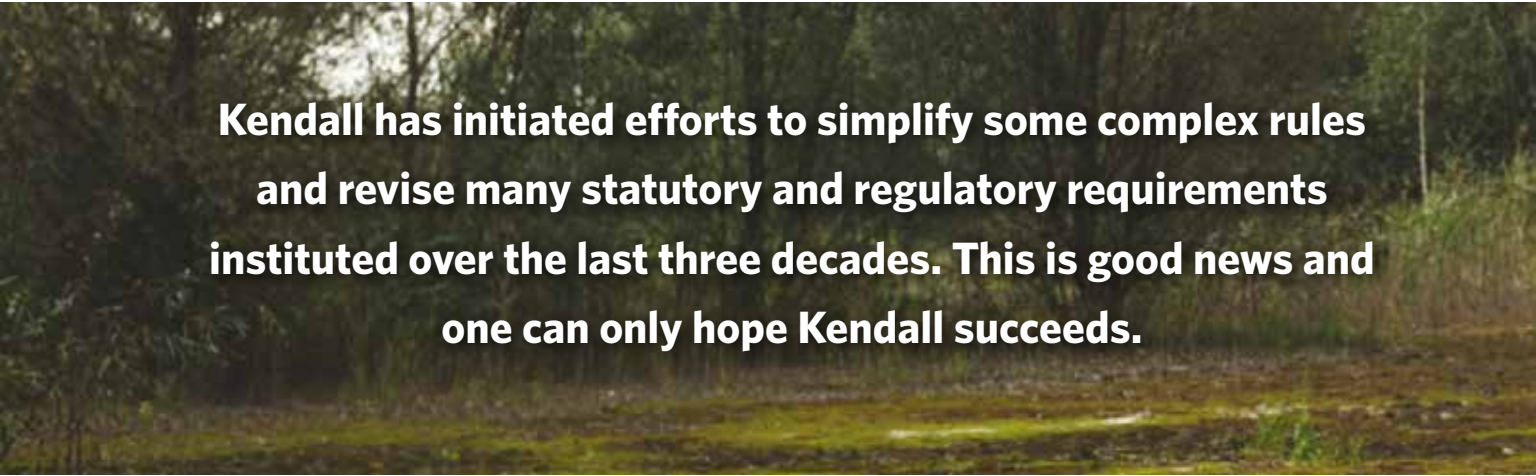
Source: Office of the Federal Register, National Archives and Records Administration, and United States Government Printing Office. Data are not yet available (as of April 10, 2013) for 2012. Chart from a May 2013 Congressional Research Service (Library of Congress) report, "Counting Regulations," by analyst Maeve P. Carey.

system is too complex. Its No. 1 recommendation was to “zero-base” the entire system, including all directives and regulations. The goal was to start over and reduce all three bureaucratic procedures in order to simplify the process.

Kendall has initiated efforts to simplify some complex rules and revise many statutory and regulatory requirements instituted over the last three decades. This is good news, and one can only hope Kendall succeeds. But the DoD has been trying to “fix” its weapon systems procurement process for many

one certainty is that big changes are necessary if the system is to survive and function. It is vital that DoD determine how to equip the acquisition workforce with the tools to navigate the heavily regulated federal acquisition process in a time of upheaval.

Noted author and futurist Alvin Toffler has said that in the 21st century, “the illiterate will not be those who cannot read or write but those who cannot learn, unlearn and relearn.” Currently, the DoD emphasizes training but also recognizes



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years without much success. Past efforts have produced a piecemeal approach, piling one new regulation or policy on top of another, and have led to the current dysfunctional system. Change, however, will not come easy. Stiff resistance to meaningful change can be expected from industry lobbyists and others who benefit from the current system.


The prospect for reduced regulations is remote. In fact, given the proposed changes to the acquisition system and the number of new laws out there that have not been fully implemented, it is much likelier that the deluge of new regulations, not to mention policy directives, will continue for some time. So how can we keep the acquisition process afloat? The answer may lie in the acquisition workforce itself.

Another perhaps equally important and necessary approach to changing the DoD acquisition process and increasing its efficiency is to change the culture of the acquisition organization and its workforce. This will require leadership commitment to bringing institutional change in acquisition workforce behavior. Again, as Under Secretary Kendall has said, there is renewed focus on the acquisition workforce and on streamlining decision making and increasing professionalism.

Education, training and experience all will play a role in transforming the workforce. The Secretary of the Army recently said that Army leaders must be trained to deal with uncertainty and must know “how to think, not just what to think.” He summed up a key difference between training and education, but both are necessary in the acquisition workforce. The

that education and experience are keys to successful performance in the acquisition career field. The challenge of the future will be to educate the acquisition workforce in a way that will prepare its members to think, do research and make ethical decisions in a rapidly changing regulatory environment. Training them to use the available resources and tools for doing their jobs is important. But training them to perform rarely used processes or arcane tasks is of little value in today’s rapidly changing environment.

Many changes are planned for the federal acquisition system, and the DoD acquisition workforce must be prepared to meet this challenge. The DoD is the world’s largest purchaser of goods and services, and what it does will be felt both within the United States and around the globe. The acquisition workforce will bear the brunt of the coming changes. Workforce members are a vital component for change management and must know how to think, not just what to think, in order to respond to rapid changes.

The mission hasn’t changed, but the workforce culture must change to accomplish the mission. That is the message from our senior leaders. Training is important, but workforce members must become lifelong learners—to do research and use the many online resources available to them. As the poet William Yeats said, “Education is not filling a pail but lighting a fire.” Perhaps if we can light the fire and help change the culture, we won’t be overwhelmed. 

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