

Section 809 Panel Volume 3

Written by Nick Sanders
Monday, 21 January 2019 00:00

Two years in the making. 1,140 pages of analysis and recommendations spread across two large downloadable files. Eight pages of Executive Summary.

The Section 809 Panel's [Third Report](#) has dropped.

But before we discuss the third volume let's recap the story so far:

Section 809 of the 2016 National Defense Authorization Act (NDAA) (Version 2, as the first version was vetoed by then-President Obama) directed the Under Secretary of Defense (AT&L) to establish "an advisory panel on streamlining acquisition regulations." And lo, it was done!

In May, 2017, the Section 809 Panel issued its First Interim Report, along with a Supplemental Report. We wrote about it [here](#).

A few months later, the first Volume (of three) was issued. We wrote about Volume 1 in [this article](#)

. Short version: we liked it. We liked it a lot. There were 24 recommendations in Volume 1 and they were in line with the Panel's self-proclaimed mission to boldly go into acquisition reform. (Excuse the split infinitive.) Eleven of the 24 recommendations were directed at DCAA. We wrote, "if implemented as drafted, the recommendations in Section 2 would significantly improve contract audit and oversight in the defense acquisition environment." Unfortunately, though several recommendations were picked up and added to draft legislation, very few made it all the through the legislative cycle and into public law.

In June, 2018, the Panel issued the second Volume. We [wrote](#) about Volume 2. We were less thrilled with Volume 2, not because of the recommendations—which were all good—but because of the format and the way the recommendations were hidden. We wrote, "Volume 1 was marked by really concrete, actionable, recommendations that were supported by lots of detail. In contrast, Volume 2 seems to be marked by a higher-level discussion and more summary recommendations. That's not to say there is a lack of meaty, important, recommendations in Volume 2; but they are harder to find (and presumably take action upon) than they were in Volume 1."

Which brings us to Volume 3.

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Volume 3 seems to be a return to the actionable recommendations of Volume 1. It contains 58 new recommendations proffered in 13 Sections. The recommendations cover such areas as: changing how DoD looks at the marketplace (and jettisoning a lot of the FAR Part 12 through 14 framework), rejiggering budget management processes and controls, acquisition workforce training and development, limiting bid protests, limiting mandatory flowdown clauses, and creating a Center for Acquisition Innovation (CAI). Oh, and there was a section about streamlining and improving compliance, as well.

Naturally, we want to talk about Section 6, Streamlining and Improving Compliance. Section 6 had 12 recommendations, but we only want to talk about three of them.

Rec. 71: Adopt the professional practice guide to support the contract audit practice of DoD and the independent public accountants DoD may use to meet its contract audit needs, and direct DoD to establish a working group to maintain and update the guide.

Rec. 72: Replace 18 system criteria from DFARS 252.242-7006, Accounting System Administration, with an internal control audit to assess the adequacy of contractors' accounting systems based on seven system criteria.

Rec. 73: Revise the definition of business system deficiencies to more closely align with generally accepted auditing standards.

Let's go backwards from 73 to 71. First (or last), nobody would argue with Recommendation 73. We've written several pieces about the problems created when DoD (and DCMA and DCAA) accepted a definition of "significant deficiency" that deviated from the common understanding of the term as it was used by public auditors.

Second, we've also written about the lack of objectivity in the current 18 Accounting System criteria used to assess system adequacy. If the Section 809 Panel's recommendation #72 is adopted, then—

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...auditors will evaluate whether key internal controls are in place and operating to provide reasonable assurance of the following:

1.

Direct costs and indirect costs are classified in accordance with contract terms, FAR, Cost Accounting Standards (CAS) and other regulations, as applicable.

1.

Direct costs are identified and accumulated by contract in accordance with contract terms, FAR, CAS and other regulations, as applicable.

1.

Methods are established to accumulate and allocate indirect costs to contracts in accordance with contract terms, FAR, CAS and other regulations, as applicable.

1.

General ledger control accounts accurately reflect all transactions recorded in subsidiary ledgers and/or other information systems that either integrate or interface with the general ledger including, but not limited to, timekeeping, labor cost distribution, fixed assets, accounts payable, project costs, and inventory.

1.

Adjustments to the general ledger, subsidiary ledgers, or other information systems bearing on the determination of contract costs (e.g. adjusting journal entries, reclassification journal entries, cost transfers, etc.) are done for reasons that do not violate contract terms, FAR, CAS, and other regulations, as applicable.

1.

Identification and treatment of unallowable costs are accomplished in accordance with contract terms, FAR, CAS, and other regulations, as applicable.

1.

Billings are prepared in accordance with contract terms, FAR, CAS, and other regulations, as applicable.

That would be nice, wouldn't it?

Finally (or first), let's discuss Recommendation #71. This is kind of a repeat from Volume 1, where the Panel recommended that DCAA adopt a professional practice guide (PPG) to help ensure audit consistency and quality. But in Volume 3, the Panel actually drafted the PPG and offered it for public comment. It's pretty dang good, in our opinion. The PPG can be found starting at Page 79 of Download #2 of Volume 3. We think you should read it.

The PPG includes a deep dive into the concept of materiality. As readers may know, DCAA's seeming lack of ability to apply materiality standards to its audits has long been a concern of many government acquisition stakeholders, including Congress, which came close to implementing hard quantitative materiality standards in draft NDAA legislation. If adopted by DCAA, the Section 809 Panel's approach to determining materiality will go a long way to addressing those concerns.

The PPG also includes a discussion of "reasonable assurance" which, as anybody who's had a business system audit knows, is not a concept with which DCAA or DCMA seems to have much familiarity. Basically, it implements a Six Sigma (or cost/benefit) concept that nobody can afford a perfect system of internal controls; that the best you can do is design a system that will catch most of the deviations. Or, as the PPG states—

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The concept of 'reasonable assurance' recognizes that the cost of achieving greater assurance will, at some point, exceed the benefit of the higher assurance. This concept is acknowledged in the Federal Acquisition Regulation Guiding Principles. The concept of reasonable assurance as it relates to systems of internal control also recognizes that it is not possible to declare with absolute certainty that an error or misstatement will not occur.

(We'll let our readers decide who explained the concept more clearly....)

Okay, let's wrap this up. The Section 809 Panel has issued an Interim Report, a Supplemental Report, and three Volumes of Final Reports. It has made 92 Recommendations for action. It seems to have wrapped-up, though we aren't sure about that and we wouldn't be surprised if there was a Final Final Report issued sometime in 2019 that summarized everything.

Was the Section 809 Panel a success? Or was it simply a gathering of the "old boy's club" who identified the problems that they themselves were responsible for fixing back in the days when they were actually paid by the Federal government to manage the acquisition system?

The answers to those questions will be found in the implementation of the recommendations. If Congress doesn't implement them or if DoD won't implement them or if DCAA won't accept them, then the Section 809 Panel just wasted everybody's time.

In that sense, the Panel's work is absolutely not done. It needs to push and push and push to get its recommendations to the right ears.

But we will all have to wait and see, won't we?