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EO 14265: Navigating Defense Procurement Reforms

WRITTEN BY

Hilary S. Cairnie | Bonnie Gill

In keeping with President Donald Trump's affinity for issuing executive orders (EO) — 139 in total, Nos. 14147–14285, between Jan. 20, 2025, and April 24, 2025 — he recently issued EO 14265, "Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base." In a nutshell, the Department of Defense (DoD) is directed to take aggressive steps to deregulate the procurement process and to exploit existing reform initiatives to achieve a more efficient and nimble procurement process. The order focuses on four major deregulatory priorities, the collective effect of which will, in theory, constitute a "comprehensive overhaul" of the current defense acquisition system. In no particular order, the four priorities are:

Priority One: Acquisition Process Reform. DoD is to utilize existing authorities to expedite acquisitions, including a first preference for commercial solutions and a general preference for (i) Other Transactions Authority application, (ii) Rapid Capabilities Office policies, or (iii) any other authorities or pathways to promote streamlined acquisitions under the Adaptative Acquisition Framework.

Priority Two: Acquisition Workforce Reform, Right-sizing and Reeducation. DoD is to reduce the size of the workforce to reflect the greater efficiency and expediency under the reformed procurement process set forth in Priority One and to reeducate the remaining acquisition workforce (*i.e.*, contracting officers, specialists, technical representatives, agency attorneys, staff, and paralegals, among many others) needed to support those streamlined acquisition processes.

Priority Three: Deregulation. DoD is to conduct a review of existing DoD procurement regulations, akin to what is already taking place government-wide, to eliminate procurement-related regulations identified as unnecessary or supplemental.[1]

Priority Four: Program Review. DoD is to review existing major acquisition programs for potential cancellation.

EO 14265, like many others issued during 2025, is sparse on details while sweeping in its intended goals, objectives, and mandates. Nonetheless, as drafted EO 14265 puts a jackhammer to the entire DoD procurement process — not to mention its bedrock regulatory foundation.

In this commentary, we will address each of the four priorities, suggest where and how DoD might in fact deregulate the procurement process, and contemplate how contractors can plan ahead to leverage anticipated changes to their own benefit.

Priority One: Exploiting Existing Acquisition Streamlining Authorities

According to the EO, the current defense acquisition system "does not provide the speed and flexibility our Armed Forces need to have decisive advantages in the future."[2] The EO instructs DoD contracting personnel to focus efforts on expanding the use of several already-existing and arguably more streamlined contracting methods: Other Transaction Authority (OTAs), Adaptive Acquisition Framework (AAF), Rapid Capabilities Office (RCO) policies and procedures, and a preference for commercial solutions (CSOs). Each of these is briefly described below.

Other Transaction Authority

Although OTAs have been around since 1958, DoD has historically used OTAs in connection with research and development (R&D). In the 2016 National Defense Authorization Act (NDAA), Congress expanded DoD's authorization to allow it to use OTAs not only for research purposes, but also for prototype and production purposes. So, instead of using a FAR-based procurement contract, DoD can avoid entirely the FAR (and DFARS) to obtain prototype solutions and thereafter, production of same. *See* 10 USC §§ 4021 and 4022. Neither the FAR nor the Competition in Contracting Act (CICA) apply to OTAs — although the statute does require some degree of competition.

Even though OTAs are not governed by the FAR, DoD buying activities will nonetheless include selected FAR provisions as terms and conditions of performance. Accepting a FAR clause in an OTA, however, does not subject the OTA as a whole to the FAR. There is a difference between having to "comply" with a FAR-mandated clause, versus satisfying a term or condition that is contractually implemented through an established FAR clause. The good news for contractors is that the OTA awardee at least has some opportunity to negotiate terms and conditions, unlike the typical FAR-covered procurement contract. DoD's draft form of OTA, however, may require more time and effort for the contractor to negotiate the final form of agreement while ensuring appropriate and equitable protections.

Commercial Solutions

CSOs, first established in 2017, provide another avenue for streamlining DoD's procurement process, usually in connection with fixed-price contracts. Under 10 USC § 3458, DoD may use CSO procedures only for innovative commercial products, technologies, and services. Contracts can be awarded either as an OTA agreement or a more traditional FAR-covered contract.[3]

The EO also refers to a preference for "industry solutions funded by private investment that meet military needs." It may be that DoD will seek more partnerships with privately funded entities that can front the costs of development without need for significant government funding. Not unexpectedly, any time that DoD contracts for supplies, services, and technology developed exclusively at private expense, it likely will be saddled with higher prices precisely because the end product or service is proprietary. Similarly, as between a small business and a large business, the latter is far more likely to have access to the financial resources needed to privately fund these types of development efforts. Should DoD pivot more heavily toward acquisition of industry solutions, smaller government contractors may find fewer viable opportunities in which they can compete.

Adaptive Acquisitions Framework

DoD officially adopted the Adaptive Acquisition Framework (AAF) in January 2020, the details of which are outlined in DoD Instruction 5000.02. The primary objective of AAF is to provide a more flexible and agile approach to acquiring goods and services, thereby realizing more expedient delivery of end products and services to the warfighter. AAF is one of several initiatives developed to implement DoD's broader acquisition reforms aimed at streamlining processes and enhancing DoD's ability to acquire innovative technologies. AAF establishes six acquisition pathways to enable acquisition personnel to tailor strategies to deliver better solutions faster. The six pathways are: (1) urgent capabilities acquisition, (2) middle tier acquisition, (3) major capability acquisition, (4) software acquisition, (5) defense business systems acquisition, and (6) services acquisition. To illustrate, procuring a prototype end product via the middle tier acquisition pathway could be the optimal pathway if the targeted time frame for delivery is less than five years. Depending on the chosen pathway, the procurement team may be subject to a reduced level of regulatory oversight. According to the GAO, as of December 2024, the Army, Navy, and Air Force had each developed at least some AAF policies. Even so, the pace of policy development arguably suggests that the branches have been pre-occupied with higher priority objectives. EO 14265 may cause DoD to reshuffle its priorities and move AAF closer to the top of the stack.

Rapid Capabilities Offices and Configuration Steering Board

The EO also mentions streamlining via increased utilization of the Rapid Capabilities Offices (RCOs) of the various DoD branches, and the Configuration Steering Board. The RCOs have been operating within the branches for more than a few years already. For example, the Air Force RCO was first activated in April 2003, and the Army's RCO has been operational since August 2016. With its establishment, the Army's RCO's primary focus areas were (and still are) cyber, electronic warfare, survivability and positioning, and navigation and timing and although it is flexible in its capability, the RCO is directed at high-priority, threat-based projects with the objective to deliver an operational effect within one to five years.

In short, without explicitly saying so, the EO seems to be suggesting that DOD has not done enough to exploit the procurement reform initiatives adopted by DoD long before the current Administration issued the EO. The administration clearly expects and requires DoD to get busy figuring out how to migrate planned and even pending acquisitions to one of the existing streamlining mechanisms already available to DoD.

Priority Two: Reform, Right-size, and Re-train the Acquisition Workforce

Section 3(b) of the EO requires DoD to conduct various reviews and evaluations of contracting personnel and tasks to "eliminate unnecessary tasks, reduce duplicative approvals, and centralize decision-making." These objectives are much easier said than done, especially regarding centralization of decision-making. For many years, DoD's warranted contracting officers have operated in a very decentralized environment with considerable autonomy in conducting procurements and awarding contracts. Additionally, Section 5 directs DoD to develop and submit a plan to "reform, right-size, and train the acquisition workforce" including restructuring of performance evaluation metrics, analysis of required workforce, establishment of field training teams, and other policies to incentivize acquisitions personnel to "in good faith, utilize innovative acquisition authorities and take measured and calculated risks." Taken literally, DoD's procurement workforce will soon be getting smaller, perhaps alarmingly smaller.

While light on details, Sections 3(b) and 5 are directed at creating a need for retraining of acquisition personnel

following a reduction in workforce and a rewrite of the acquisition process, which will likely include mandates to utilize the existing streamlining authorities described above.

Priority Three: Deregulation Through Elimination

The EO next calls for elimination or revision of procurement regulations, along with a requirement that no new regulation may be proposed unless **10** regulations are identified for elimination (the "ten-for-one" mandate). DoD instructions, implementation guides, and manuals related to acquisition are also subject to review. This comprehensive and extensive review aligns with one of the administration's principal objectives: deregulation. *See, e.g.*, EO 14219 and EO 14192. The administration has signaled that it intends to simply cancel or stop enforcing regulations rather than seeking to formally repeal through the traditional regulatory process. By way of example, contracts already awarded may include clauses and associated compliance obligations which will be the subject of nonenforcement, whereas future contracts will simply not include those same provisions. Whether the informality of such an approach will withstand legal scrutiny if and when challenged is a big question.

Along with EO 14275, which separately calls for a systematic overhaul of the FAR, this priority facially aligns with the Office of Management and Budget's (OMB) recent announcement that it would rewrite the FAR to create what is often referred to as FAR 2.0, with the overarching goal of simplifying and easing the compliance burden. While OMB has authority to influence revisions to the FAR, however, it does not actually revise it; its role is limited to ensuring consistency and alignment of the FAR with broader federal procurement policies. The FAR is primarily maintained by the FAR Council, which is consists of representatives from General Services Administration (GSA), DoD, and the National Aeronautics and Space Administration (NASA).

Nonetheless, when one marries up the deregulation objectives set forth in EO 14265 and 14275, the key takeaway is that the FAR and all of its agency supplements are on the verge of being purged of any "nonessential" regulations. What is nonessential? EO 14275 instructs that "the FAR should contain only provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed." Translation: any regulation that is promulgated on the basis of a statutory mandate is probably safe, but may still be subject to revision. If a regulation is not the product of a statute, it is a candidate for elimination, subject to a collateral judgment by some unnamed agency official (whether OMB, DOGE, or some other agency altogether) as to whether such regulation is "essential" to sound procurement.

Priority Four: Major Defense Acquisition Program Review

Finally, the EO calls for a comprehensive review of all Major Defense Acquisition Programs (MDAPs) by July 8, 2025, with a review of all other major systems to follow. MDAPs are essentially large-scale procurement programs intended for military projects of significant importance to national security and military success. MDAPs are already subject to significant oversight due to the high costs involved, complexity of the programs, and the often-innovative nature of the technology at issue.

MDAPs that have not met specific milestones specified in the EO (fifteen percent behind schedule, fifteen percent over cost, unable to meet "key performance parameters," or "unaligned" with current mission priorities) will be included on a list to OMB for review and possible cancellation. While the timing and scope of DoD's review of "all remaining major systems" likely will not take shape for a while, progress and decisions made with regard to

MDAPs will provide a decent road map as to what to expect once other major systems programs come under review.

Contractor Considerations and Planning

Contractors have plenty to keep in mind while awaiting further guidance from the defense agencies in response to EO 14265 and any related executive orders or other presidential actions. Among these, consider the following:

- Refamiliarize yourself with the various acquisition authorities — OTAs, CSOs, AAFs — and when they might be appropriate for use.
- Confirm agency contact information for existing contracts, including an alternate or designee should your primary point of contact become unavailable.
- When solicited under an OTA, recognize that FAR and DFARS provisions may be included as arms-length terms and conditions — be prepared to negotiate these provisions and any others to achieve equitable treatment of intellectual property, disputes, changes, termination, remedies, flow-downs, accounting system requirements, reporting obligations, and flow-down requirements — all of which will have a material impact on performance.
- Plan ahead for disputes — evaluation, selection, and award decisions, as well as performance disputes. Know the filing deadlines, and forum jurisdictions, for each kind of legal challenge.
- MDAP contractors — monitor cost overruns and be vigilant in tracking your performance against the 15% cut-off limit. Do not wait until the end of the contract or the performance period to assert and submit claims and requests for equitable adjustment in order to increase the approved budget and raise the cost overrun threshold.
- Prepare proposals to focus on efficiency and innovation, and to leverage state-of-the-art commercial solutions.
- While deregulation often reduces government oversight of contractor performance, it also spawns additional certification and self-policing obligations by the contractor. And, of course, contractors should not lightly submit certifications to upstream customers — invest the necessary due diligence to make sure the certifications are being executed and submitted in good faith. Contractors should be particularly attentive to the risks of false certification.

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[1] On April 15, 2025, President Trump issued EO 14275, “Restoring Common Sense to Federal Procurement,” which provides further direction as to revision and streamlining of the Federal Acquisition Regulation (FAR). That order, ostensibly, is expected to impact the procurement processes adopted by civilian agencies and is viewed as the counterpart to the instant EO which is directed solely at DoD.

[2] No mention is made of the March 2024 PALT Report issued by the Government Accountability Office (GAO) reflecting therein GAO’s findings and recommendations concerning DoD’s “procurement administrative lead time” as measured from solicitation to contract award.

[3] Trump’s subsequent order, EO 14271, “Ensuring Commercial, Cost-Effective Solutions in Federal Contracts,” mandates a similar preference for commercial solutions across all federal agencies.

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