Updates
September 18, 2020

DoD’s Revised Acquisition Policy Highlights Goals of Flexibility and Speed in Procurement

In a new directive, the U.S. Department of Defense (DoD) revised acquisition policies across the DoD to emphasize flexibility, competition, affordability, and performance as among the high-level objectives of a broader push for acquisition reform.

DoD's Directive 5000.01, which took effect on September 9, 2020, establishes 25 overarching policies across DoD and assigns responsibilities for acquisition policy within DoD. It follows the new DoD Instruction 5000.02, which was issued in January 2020, as part of a larger redesign of DoD acquisition policy. This update provides an overview of the directive in the context of DoD acquisition reforms.

Background

The directive is among the acquisition policies and guides that DoD has been revising to implement its "Adaptive Acquisition Framework" focusing on updating DoD's acquisition policies to enable execution at the "speed of relevance." DoD's January 2020 revisions to DoDI 5000.02 set forth policies to implement the Adaptive Acquisition Framework along six separate pathways: urgent capability acquisition; middle tier of acquisition; major capability acquisition; software; defense business systems; and services.

DoD's September 9, 2020, announcement of Directive 5000.01 reflects modest changes compared to the prior version of the directive and mostly reiterates broad themes that DoD has been advancing. Among the 25 policy objectives for the Defense Acquisition System identified in the directive is to deliver performance at the "speed of relevance" by, among other things, empowering program managers, simplifying acquisition policy, and conducting "data driven analysis[.]" Other objectives are to develop a culture of innovation; develop and deliver secure capabilities; and be responsive. How such principles will be applied by DoD program managers in individual procurements is the critical open question.

A few areas cited in the directive are worth noting.

Cybersecurity and AI

Two emerging issues cited in the directive are cybersecurity and artificial intelligence (AI).

The directive cites security, cybersecurity, and protection of critical technologies in acquisitions as foundational. The directive instructs acquisition managers, in coordination with security and counterintelligence (CI) professionals, to implement initiatives and processes for the identification, integration, and continual evaluation of security and CI requirements in acquisitions.

According to the directive, the acquisition system will leverage AI, machine learning, and deep learning capabilities to maximize efficiency. AI has significant long-term implications for the ways in which government agencies procure goods and services. Initiatives such as DoD's Joint Artificial Intelligence Center (JAIC)

highlight DoD's interest in advancing DoD's use of AI. Heavier reliance on AI in acquisition planning and source selection could result in more data-driven decision making.

Emphasizing Competition

The directive instructs DoD components to promote competition in acquisitions by considering alternative systems, data rights, and modular design to meet current and future mission needs. The policy emphasizes "[p]lanning and contracting for appropriate amounts of data rights, and incorporating a modular and open design to enable upgrades, technology refreshes, and future re-competes" to help promote competition.

The directive indicates DoD's emphasis on pursing a modular open systems approach (MOSA), which is in line with reforms implemented through the National Defense Authorization Act (NDAA) for Fiscal Year 2017. MOSA allows an agency to swap one contractor's components in a system with another contractor's hardware or software, maximizing affordability and adaptability of DoD systems. As codified, the 2017 NDAA requires major defense acquisition programs to be designed and developed with MOSA to the maximum extent possible to enable incremental development and to enhance competition, innovation, and interoperability. 10 U.S.C. § 2446a. Although DoD is interested in MOSA, the approach presents a challenge of balancing data sharing between contractors with protections of contractors' proprietary rights.

Focus on Affordability

Affordability is another area highlighted by the policy, which states that procurement officials "must recognize the impact of fiscal constraints and plan programs based on realistic projections of the funding available in future years." According to the policy, the key to affordability will be preparation of realistic life cycle cost estimates, prioritization of portfolio capability requirements, and projection of available funding.

Performance-Based Acquisition Strategies

The directive also instructs procurement officials to use "performance-based strategies," i.e., they should structure acquisitions around results rather than the manner by which work is to be performed. Taking aviation as an example, a performance-based strategy might structure a contract to compensate the contractor based on successful flight hours to disincentivize equipment breakdowns that would require future maintenance and repair work. Under the new policy, the approach will be applied to all new procurements and upgrades, as well as reprocurements of systems, subsystems, and spares that are procured beyond the initial production contract award.

As noted, the application of such principles by DoD program managers in individual procurements is the critical open question.

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