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Is the Acquisition Reform Racket About to Be Disrupted?

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Don't look now, but the annual rite of passing a national defense authorization bill is coming. It's a little late this year due to the presidential transition, but by the end of June, we'll have an idea of what the National Defense Authorization Act (NDAA) for Fiscal Year 2018 (FY18) is starting to look like. One thing is for sure: acquisition reform will remain a major issue in the bill and an important item on Congress's agenda.

The continued push for acquisition reform will give rise to the usual comments that "acquisition reform never works." There is no doubt that some past reforms have failed, but this knee-jerk cynicism overlooks the fact that the content of acquisition reform has varied greatly from year to year. Tarring all acquisition reform efforts with the same brush misses critical distinctions in how successful different policies have been. In fact, there is solid evidence that the acquisition reforms of the past decade have led to improvement in acquisition both in the performance of major weapon systems programs and more broadly across the acquisition system. And while it is too early to predict the outcome of the major changes adopted by Congress in the last two NDAA's, it is likely that they will produce significant alterations in the operation of the acquisition system.

Avoiding knee-jerk cynicism about acquisition reform is particularly important this year because it appears likely that the FY18 NDAA will bring with it a significant shift in the focus of acquisition reform. It is far from clear where Senator John McCain, chairman of the Senate Armed Services Committee (SASC), is planning to head on the issue, but we do know several things about this year's push for acquisition reform because Representative Mac Thornberry, chairman of the House Armed Services Committee, has continued his annual practice of releasing a stand-alone acquisition reform bill. The

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Thornberry bill begins to shift away from the heavily scrutinized world of major weapons system acquisition and toward issues involving the use of online marketplaces for commercial purchases, improving the acquisition of services, focusing on life-cycle sustainment, and improving acquisition enablers like the acquisition workforce, auditing, and the collection of business management data. While the last decade's focus on weapon system acquisition has been valuable, it has overlooked the fact that the vast majority of Department of Defense (DoD) contract spending goes for services or for the sustainment of existing systems. The Thornberry bill may be the start of an acquisition reform market correction that focuses more on where the money is.

The Thornberry bill's most groundbreaking proposal involves giving DoD the authority to use online marketplaces for the kind of business-to-business purchases that are increasingly prevalent in the private sector. For example, a DoD buyer would potentially be able to use such an online marketplace to purchase a commercially available machine tool for the repair of military aircraft. More broadly, this approach is designed to ease DoD's access to commercial products and commercial technology, a long-standing goal of acquisition reform since the 1990s that has been hard to accomplish in practice. Once an online marketplace has been certified for the program, buying from that marketplace satisfies the requirement for competition, meets the definition of a commercial item, and eases the process of determining fair and reasonable pricing, domestic content, and small business standards. If used effectively, these marketplaces can streamline much of the paperwork associated with the acquisition of commercial items.

DoD's focus on the acquisition of services has grown in the last few years in recognition of the fact that it actually spends more on services than it does buying products (although only when including research and development [R&D] in the category of services as DoD traditionally does). DoD put out a dedicated guidebook for the acquisition of services in 2012, and an instruction relating to the acquisition of services in January 2016. Congress began to focus more on contracted services in DoD around the same time, creating the requirement for annual services contract inventories in 2008, requiring DoD to establish processes for validating requirements for services in 2010, and establishing a statutory limitation on contracted services in Fiscal Year 2012. The Thornberry bill seeks to extend these previous efforts by requiring more detailed planning for and analysis of the acquisition of services during the annual budget process. It would also limit the use of so-called bridge contracts, which extend the term of existing services contracts when DoD has failed to put in place a new contract at the end of their period of performance.

The Thornberry bill's sustainment effort builds on several years of increasing DoD focus on sustainment costs in the acquisition process, which have included adopting affordability targets for operation and support (O&S) costs; pursuing more effective use of performance-based logistics (PBL); and expanding use of modular open systems architecture (MOSA) as part of its Better Buying Power initiative. Each of these initiatives has been important and positive—it has been estimated that about 70 percent of the cost of a weapon system comes after it has begun operating and begins its sustainment phase—but each of them also raises complications. Frequently, the large O&S estimates developed for major systems shed more heat than light, as with the F-35s 50-year O&S cost. Successful PBL contracting requires high degrees of knowledge and trust on both sides of the relationship to achieve improved performance. And MOSA can address vendor lock, but it also

enables frequent upgrades that could increase the share of spending that occurs in the sustainment phase. The Thornberry bill tackles sustainment by requiring the military to set clear reliability and maintainability requirements up front and by encouraging DoD to consider using contract incentives, both positive and negative, to achieve high levels of reliability and maintainability in new systems. It would also require program managers to acquire the intellectual property (IP) data rights required for the product support strategy at the time of initial contract award and establish a new director of intellectual property at DoD to develop a cadre of IP experts.

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Finally, the Thornberry bill works to improve structural elements of the acquisition system. It requires DoD to establish a program to develop civilian program and project managers. Today, civilians in the acquisition workforce don't have clear career paths that train them for key leadership positions, and many program management positions are filled by military officers as a result. The bill also seeks to improve the management and effectiveness of the Defense Acquisition Workforce Development Fund by allowing monies in the fund to be used for management purposes, and extends the civilian acquisition workforce personnel demonstration project, which allows for more flexible hiring, firing, and management of the acquisition workforce. On auditing, the bill would require DoD to establish and use clear materiality standards in performing contract audits, ensuring that government resources are focused on identifying significant discrepancies, and it allows DoD to hire private-sector audit firms to reduce the existing backlog in contract audits. Finally, the bill requires DoD to collect and begin to analyze the vast quantity of management data from across its business systems to inform policymaking. While by no means a reversal of the last several years of congressional efforts toward acquisition reform, the Thornberry bill's provisions suggest that a new chapter is beginning, more focused on the major drivers of acquisition costs outside of the traditional focus on weapon systems acquisition.

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Where might SASC chairman John McCain, who has had a decades-long focus on acquisition reform, head in his bill this year? He hasn't offered many clues. However, there have been a few strains of thought circulating around Washington that may be relevant. The first is a literal shift to focusing on the

money, in other words, the rules surrounding the use of the different appropriations accounts that fund acquisition. The rules around the use of the procurement and the research, development, test, and evaluation appropriations have been kept mostly static while acquisition regulations have undergone significant change in recent years. Without flexibility in the financing of acquisition,

however, it may be unreasonable to expect different outcomes from the acquisition system. It is also notable that some of McCain's staff were closely associated with a study done by the Center for a New American Security called *Future Foundry: A New Strategic Approach to Military-Technical Advantage*. This study called for a significantly greater effort to leverage commercial technology for military systems and an effort to shape defense industrial policy in this direction. Lastly, there is significant interest in the idea of "deregulating" defense acquisition. Congress created a commission to investigate this approach, commonly called the 809 Panel after the section of the FY16 NDAA that established it. The panel issued an interim report in May. The panel is reserving most of its recommendations for its final report, but its interim report emphasizes the need to make the

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acquisition process agile in the face of rapidly evolving threats, leveraging the commercial marketplace, simplifying and streamlining the acquisition rule set, and empowering the acquisition workforce to make decisions.

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