Time to Reform Acquisition Funding Rules?

Brian Schultz

THE SHORT ANSWER IS YES. AND WE SHOULD ACT VERY SOON IF WE WANT MORE EFFECTIVE AND rapid acquisition!

Department of Defense (DoD) acquisition oversight stakeholders continue searching for the silver bullet that will provide real reform and lead to better acquisition outcomes. We have seen reform efforts for decades, yet apparent dissatisfaction and continued reform actions occur every year. In addition to congressional action, recommendations come from multiple advisory groups, boards, and panels. Recently, the Section 809 Panel Report provided one of the more comprehensive studies recommending significant paradigm shifts in defense acquisition.

One of the big themes in the 809 Panel report is increased funding flexibility. This flexibility is necessary to support the portfolio-management acquisition model described in detail in the report. In fact, it is a prerequisite to the portfolio-management approach, which I wrote about ("A Portfolio Management Based Acquisition Model?") in the January-February 2020 issue of this magazine. The article highlighted the rationale for adopting this new acquisition model that could enable the most significant acquisition reform in decades. The article also identified the premise that the lack of funding flexibility is one of the biggest obstacles because present financial rules severely limit the rapid resource shifts needed to respond to new threats and opportunities.

Schultz *is a professor of Program Management and an executive coach in the Defense Acquisition University's Capital and Northeast Region at Fort Belvoir, Virginia.*

"If you do not change direction, you may end up where you are heading."
—Lao Tzu, Chinese Philosopher

Before getting into examples, we should clarify that any alternative approaches identified are not intended to reduce congressional oversight of the DoD. All of the proposed options would include appropriate oversight mechanisms. Some of the ideas already are gaining traction on Capitol Hill and generally are consistent with the Section 809 Panel report.

In order to amplify on the funding issues, we can review some examples. These challenges represent only a small sample of the rules and statutes that limit effective and rapid acquisition. Many of these rules have been in place for decades and may have been appropriate when first implemented. However, the acquisition environment has witnessed unprecedented change in recent years, and our rules and procedures also must change if we want to maintain a decisive edge on the battlefield.

Cost Estimating

The current program-centric model requires a system life-cycle cost estimate and establishes affordability goals eventually locked in for tracking as part of the acquisition program baseline. Due to the importance and visibility, estimates receive significant attention at all levels to ensure accuracy and completeness.

However, given the current landscape of rapid technological and threat changes, several cost-estimating questions come to mind. How can we expect an accurate estimate for a system that invariably will undergo significant changes from the initial concept? Why should we hold program managers (PMs) accountable to these initial cost estimates when we are now encouraging discovery and acceptance of new requirements? How do we estimate unknown requirements based on new threats and new technologies? Given the new realities, what is the real utility of establishing an acquisition program baseline even before the system has a complete design?

These questions represent just a small sample of those that arise when we look to the future. Even the current software development pathway in the Adaptive Acquisition Framework (AAF) recognizes the continual trade-offs of capabilities, costs, and discovery of new requirements. Estimating costs for these programs is problematic for budgeting since it is difficult to predict the final configuration and when the software will be "done." Some agencies now perform estimations based on desired team capacity to develop and maintain the expected software backlog needed for desired capabilities. Depending on emerging needs, the teams focus could shift to other program priorities.

Funding Shifts

The next challenge example involves shifting funds to exploit new opportunities. One challenge of rapid acquisition is to find full funding for the program. While this challenge can be met through existing statutory and policy workarounds for Joint Urgent Operational Needs (JUONs), that flexibility is unavailable for traditional acquisition programs. The fallback approach for non-JUONs is a below-threshold reprogramming action, which is limited to relatively small transfers. The larger reprogramming actions, known as above-threshold reprogramming, require congressional approval. The DoD typically will bundle these above-threshold reprogramming actions into a single omnibus package

... the acquisition environment has witnessed unprecedented change in recent years, and our rules and procedures also must change if we want to maintain a decisive edge on the battlefield.

that may take several months to gain approval, assuming the proposed transfer even makes the cut list.

The Section 809 Panel report mentions reprogramming 153 times in Volume 3. The recommendations include a common theme of providing the DoD more flexibility to shift appropriated funds to where they can provide the greatest benefit. I often observed during my information technology industry experience that opportunities are fleeting and can evaporate very quickly without quick and decisive action. Unfortunately for those who favor the Section 809 Panel recommendations, it appears that we may be headed in the opposite direction. The Fiscal Year 2020 Defense Appropriations Act reduces below threshold reprogramming amounts from $20 million to $10 million for both procurement and operations and maintenance appropriations. This further limits the DoD's ability to move funding rapidly to support emerging opportunities, new requirements, and revised priorities.

Appropriation Categories

The next challenge involves the use of the proper funds appropriation category. The DoD receives annual appropriations from Congress, most of which can be grouped into the five major categories: Research, Development, Test, and Evaluation (RDT&E); Procurement; Operations and Maintenance (O&M); Military Personnel (MILPERS); and Military Construction (MILCON).

Each of these appropriation categories has various sub-elements and specific rules that also limit flexibility. Consider funding for software development and maintenance work. We start with the guidance that software development is funded with RDT&E, software maintenance is funded with O&M, and software production is funded with procurement funds. The problem is that it is often difficult to determine whether a software fix should be classified as development, production, or maintenance. This division of software into different appropriations can cause unnecessary delays, cost growth, and restrictions in the PM's ability to quickly react to changing needs.

PMs must also ensure use of the right sub-category of funding. For example, the RDT&E appropriation is subdivided into different Budget Activities (BAs). You could have RDT&E funds for development efforts, but if the funds are in the wrong BA, the funding cannot be used for that purpose. RDT&E has seven BAs, depending on the type of work involved.

The DoD is seeking approval to pilot several programs to use a new single appropriation category for software, designated as BA 08. This would allow funding of software as a single budget line item, with no separation between RDT&E, production, and sustainment. More importantly, it would enable effective PM allocation of work effort to new functions, sustainment, and upgrading existing software. This new software appropriation also supports the new software pathway in the AAF. It is great to finally see that this pilot program is moving forward; a new appropriation for information technology and software has been discussed for more than a decade.

Appropriation Life

Another challenge is the lifespan of the appropriation category. Each appropriation category is only available for obligations (awarding contracts) for a limited time. The timing of these obligations and subsequent expenditures receive robust monitoring by the DoD and the military departments to assess whether funds meet execution goals for each year of the funds' availability. Failure to meet these targets may lead to reductions of current and/or future funding. This risk of losing funds motivates PMs to award contracts to meet the goals, even if it means sacrificing value to the taxpayer or performance to the Warfighter. It also creates an end of the fiscal-year surge of contract awards to obligate the funds before they expire. Companies are well aware of these funding rules, so the time constraint also reduces the government's leverage in negotiating contracts.

To address this concern, the Section 809 Panel report identifies several alternatives, including no-year funds and carryover authority. No-year funds mean the appropriation availability for obligations is not subject to any specified period. This approach would provide the DoD with the greatest time flexibility but could prove tough to sell to Congress. The conditional or limited carryover authority would allow some flexibility for funds to extend beyond their normal appropriation life (e.g., no more than 15 percent of the annual appropriation). This seems like a good middle-of-the-road solution that enables both congressional oversight and some additional flexibility for programs that may need it.

Planning, Programming, Budgeting, and Execution (PPBE)

The PPBE is the decision-support system used in the DoD to obtain resources. It originated in the 1960s under former Secretary of Defense Robert McNamara. In a nutshell, planning involves strategy, programming aligns agency future resources with the strategy, budgeting builds defendable spending plans, and execution assesses resource-allocation effectiveness. This system is unique to and controlled by the DoD.

Flexibility and speed are challenges under the PPBE. The lead time for new program investments in PPBE, including large modifications to existing programs, typically is 18 to 24 months from the time the requirement is validated. The requirements validation process also can have a long lead time, especially for complex weapon systems. The lead time can then grow longer if Congress does not pass an appropriations bill in October, since new start programs may not be authorized under a continuing resolution authority. Add up all these durations and it may be several years before the DoD can begin responding to new technologies, threats, and requirements.

There are many ideas about PPBE reform. As indicated before, the PPBE depends on the requirements process; therefore, the two systems should be considered together in addressing proposed changes. If we accept the agile manifesto premise that we should welcome new requirements (even late in development), then investment funding should be programmed and budgeted each year for these new requirements. It may be difficult to predict precise amounts and capabilities, but we gain the flexibility and speed needed to respond effectively. One idea is to manage these annual investment funds centrally within a joint mission area; there, allocations could be prioritized and allocated based on operational needs and the ability to capitalize on the opportunity.

We could discuss many more financial challenges. As an Air Force PM, I experienced several situations where our program office wanted to pursue an opportunity but the funding rules would not allow it. Usually, my chief financial officer would ask a lot of questions in an effort to understand what we were trying to do before citing some rule that prevented it. While the rules can leave some room for interpretation, there is a broad wish to avoid potential violations of fiscal statutes and regulations. Therefore, the safe answer is always no. Finding the guidance is not always easy. The *DoD Financial Management Regulation* is 7,387 pages long. The *General Accounting Red Book* has 2,424 pages. And these regulations are based on appropriation law from multiple statutes in the United States Code, many of them written in another era.

Financial management reform must be an enabler of any real acquisition reform. The good news is that some change is beginning on many of the issues discussed. The rollout of the AAF provides PMs with greater flexibility and authority to plan and execute programs without excessive oversight and reporting requirements. Greater use of Other Transaction Agreements has increased innovation and nontraditional defense company participation. The Section 804 Middle Tier of Acquisition Authority provides greater flexibility for programs that can rapidly prototype or field capabilities, including use of the Rapid Prototype Fund. The new Software pathway enables continuous integration and delivery of software capability on timelines relevant to the Warfighter.

All of these initiatives highlight the rapidly evolving landscape of defense acquisition. The supporting decision-support systems also must evolve to keep up with this new environment's demands. Financial management flexibility in defense acquisition is a high-impact area that should rise up to the top of the priority list for reform. As Lao Tzu suggests, we will arrive at the same destination unless we change direction!

The author can be contacted at **brian.schultz@dau.edu**.

MDAP/MAIS Program Manager Changes

With the assistance of the Office of the Secretary of Defense, *Defense Acquisition* magazine publishes the names of incoming and outgoing program managers for major defense acquisition programs (MDAPs) and major automated information system (MAIS) programs. This announcement lists two such changes of leadership for both civilian and military program managers for May and June 2020.

Navy/Marine Corps

CAPT Catherine W. Boehme relieved **RDML Kurt J. Rothenhaus** as program manager of Tactical Networks (PMW 160) on June 8.

CAPT David W. Gast relieved **CAPT Allan R. Walters** as program manager of Navy Command and Control (PMW 150) on June 15.