

Leveraging Streamlined Acquisition Authorities to Deliver Innovation to the Warfighter

Recent Executive Orders and Directives require the Department of Defense to immediately leverage commercial acquisition authorities for all procurements. This is to drive the Department to prioritize commercial solutions to leverage innovation in the commercial marketplace and streamline processes to rapidly deliver solutions to our warfighters.

Many critics have been vocal for years about the Department's slow processes and inability to break from acquisition processes that served a bygone era. These Orders and Directives aim to redirect \$300+ billion annual DoD spend on defense capabilities using processes aimed at acquiring commercial solutions.

What does this mean for DoD organizations?

Buying commercial has long been a stated preference of the Federal Government. There are a number of existing statutes that call for the DoD to leverage commercial solutions before custom building DoD needs. Notably, [10 U.S.C. §3453](#) implements the Federal Acquisition Streamlining Act (FASA) of 1994 and establishes a preference for commercial products and commercial services. The [Directing Modern Software Acquisition to Maximize Lethality Secretary of Defense Memo](#) directs the Software Acquisition Pathway (SWP) for all software development components of business and weapons systems as well as default use of Commercial Solution Opening (CSO) procedures and Other Transaction (OT) awards for acquiring SWP capabilities. The [Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base](#) Executive Order directs use of commercial acquisition authorities to execute procurements for commercial solutions, including FAR 12/DFARS 212.2, CSO, and OT, as well as leveraging Rapid Capability Office (RCO) processes and other streamlined authorities that could include Simplified Acquisition Procedures under FAR 13.5, Challenge-Based Acquisition, Small Business Innovation Research (SBIR) Phase III awards, and Procurement for Experimental Purposes.

Quality market research, focused on identifying viable commercial solutions before determining a custom DoD solution is necessary, is critical for changing the DoD culture of writing overly prescriptive requirements that preclude innovative solutioning. The DoD must embrace emerging technologies and expand the Defense Industrial Base (DIB) to deliver cutting-edge solutions to warfighters.

Key Objectives

- Warfighters need a continuous refresh of new technology solutions to meet the demands of today's evolving threat environment. DoD acquisition programs notoriously take years to define, acquire, develop, and deliver custom DoD solutions to the field.
- DoD programs need to pivot away from pre-determining solutions through overly prescriptive requirements and instead allow innovative providers to offer solutions leveraging existing capabilities and commercial solutions. Existing commercial solution technology is often a viable starting point to either acquire as-is or prototype/experiment to meet DoD needs.
- Custom DoD solutions may still be necessary when market research demonstrates the commercial marketplace doesn't support unique DoD needs (e.g., nuclear weapon technologies, aircraft carriers).
- DoD must address barriers to entry for new entrants but must also reduce internal barriers to leveraging commercial acquisition processes that will benefit all solution providers as well as DoD stakeholders and operational users.

What tensions must be addressed?

Requirements and Budgeting.

Joint Capabilities Integration and Development System (JCIDS) and Planning, Programming, Budgeting, and Execution (PPBE) reforms are addressing challenges with inflexible requirements and budgeting processes to enable the needed program flexibility to continuously pursue and insert new commercial solutions.

Architecture. Programs need to be structured for flexibility to enable continuous infusion of new tech by leveraging architectures supported by open standards, interfaces, and boundaries (e.g., Application Programming Interfaces (APIs)).

Cybersecurity. Commercial solutions for DoD use must be survivable against an evolving or changing threat over the lifetime of the system. DoD must develop an approach to lower the barrier to entry for commercial innovators and not place this resource intensive burden solely on them.

Test. DoD needs a modeling and simulation, operational analysis and test environment where commercial solution providers can understand what is needed based on operational scenarios, current threats, and existing U.S. and allied systems, and that lowers the barrier to entry, similar to cybersecurity.

Artificial Intelligence. DoD needs to get its arms around data strategies to ensure commercial solutions provide necessary insight and access into data and models while still enabling commercial terms and conditions in contracts and agreements.

Cleared Personnel and Facilities.

DoD must establish processes for commercial new entrants to access classified DoD information necessary

to enable them to compete for DoD contract opportunities. Requirements for cleared personnel and facilities as a pre-requisite for contract award are a major barrier to entry for innovators in particular. SCIF-as-a-Service is a promising model to address access, space, and cleared personnel requirements. DoD must pursue solutions enabling new entrants/nontraditional contractors/commercial solution providers to support classified DoD programs and projects.

Commercial Determination (CD)

Requirements. CDs are a pain point for DoD contracting officers and industry alike. Despite the established preference for the DoD to buy commercial, the requirements to obtain a new CD are arduous enough to require a guidebook and a dedicated Commercial Item Group. This can provide a barrier to using what are intended to be streamlined procedures for acquiring commercial products and services under FAR 12/DFARS 212. Inconsistencies across the DoD regarding the CD process and information required to support CDs cause frustrations for industry. CSO procedures and acquiring commercial products and services from nontraditional defense contractors in accordance with DFARS 212.102(a) (iv) do not require CDs. DoD should consider methods to streamline CD procedures across the Department.

What does this mean for commercial innovators?

The aforementioned acquisition and contracting strategies are specifically designed to enable the DoD to leverage streamlined processes for solicitation, evaluation, and selection, as well as award terms and conditions that more closely align with the commercial market than “traditional” DoD acquisition processes and awards

that lean heavily on one-size-fits-all regulations and compliance. The objective is to lower barriers to entry for commercial innovators and expand opportunities for the DoD to leverage commercial solutions either as-is, with modifications, or through prototyping and experimentation leveraging viable commercial solutions for DoD application from new entrants as well as existing DIB solution providers.

What resources exist?

For more information on executing commercial and streamlined strategies to acquire commercial solutions, visit MITRE’s Acquiring Commercial Solutions page: <https://aida.mitre.org/acquiring-commercial/>

Appendix: How to find commercial innovators

Understanding the commercial marketplace (beyond the DIB) is a two way street, and the DoD cannot place the burden on innovators to find DoD needs and opportunities. The DoD must do better than relying on Requests for Information (RFIs) posted to Sam.gov. The following resources provide capabilities to improve market research and discover and evaluate existing commercial technologies for DoD application:

- [DoD Innovation Ecosystem Organizations](#)
- [SOCOM Vulcan](#)
- [CDAO Tradewinds Marketplace](#) (AI/ML, Digital, and Data Analytics solutions)
- [Defense Innovation Unit Solutions Catalog](#) (Successful Prototype OT projects available for award)
- [Other Transaction Consortia](#)
- Social media (e.g., LinkedIn)

Commercial Acquisition Authorities

FAR 12/DFARS 212.2. Authorizes procedures for streamlined evaluations for existing commercial products and services, including commercial off-the-shelf (COTS) and non-developmental (NDI) items. [DFARS 212.102\(a\)\(iv\)](#) authorizes supplies and services provided by [nontraditional defense contractors](#) to be treated as commercial products or commercial services, without requiring a commercial item determination.

Commercial Solutions Opening (CSO) (DFARS 212.70). Authorizes streamlined processes to acquire innovative commercial solutions by requesting solutions to a specific problem or challenge and allowing industry to solve it. Programs can create new CSOs or leverage existing CSOs and can award FAR contracts or agreements (e.g., OTs).

Other Transaction (OT) Authority (10 U.S.C. §4021 and 4022). Authorizes Research OTs to pursue development and application of dual-use technology and Prototype OTs for prototyping activities to enhance mission effectiveness of military personnel and supporting platforms, systems, components, or materials. Prototyping projects include novel application of commercial technologies for defense purposes. Prototype OTs provide a path to directly award a follow-on Production OT or contract without having to re-compete the effort.

Rapid Capability Office (RCO) Procedures. RCO offices exist to expedite contract awards and capability delivery to warfighters. While some authorities are unique to RCOs, key principles such as early and continuous warfighter engagement, collaborative integrated functional teams, and identifying innovative technologies to rapidly prototype/experiment/demonstrate in operational environments may be leveraged by programs to continuously procure relevant commercial technologies for program integration.

The Modernizing Defense Acquisitions Executive Order also directs use of other streamlined authorities. The following may be considered by programs to acquire or adapt innovative solutions from commercial providers:

FAR 13.5. Authorizes use of simplified procedures for commercial products and services up to \$7.5 million (\$15 million for contingency, emergency, and defense/recovery from attacks). BPAs can also be established for competitive streamlined ordering of commercial products and services within established thresholds.

Challenge-Based Acquisition (ChBA). ChBA is a process for Government agencies to present the solution to be acquired as a challenge to allow potential solution providers to propose innovative solutions that meet the need. ChBA strategies are structured as part of a source selection framework and streamlining is achieved by developing

the challenge strategy in parallel with a follow-on acquisition strategy. A ChBA strategy can be stacked with CSO procedures and/or OT authorities to provide a path to a follow-on award to transition to procurement.

SBIR Phase III Awards (15 U.S.C. 638). Authorizes a sole source award to any Phase I or II SBIR vendor at any time, even if the vendor has exceeded the small business size standard, without limitations on contract duration, contract type, or dollar value. SBIR Phase III awards may extend or complete effort begun under Phase I or Phase II awards, including commercial application of products, services, research and development, or any combination thereof.

Procurement for Experiments (10 U.S.C. §4023). Authorizes acquisition of quantities necessary for experimentation, technical evaluation, assessment of operational utility, or to maintain a residual operating capability for ordnance, signal, chemical activity, transportation, energy, medical, space-flight, aeronautical supplies, and telecommunications. Potential uses include rapid prototyping with transition to Prototype OT for additional prototyping and follow-on production awards.

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