

# Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations

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**Volume 2 of 3**  
**June 2018**



**Summary of Recommendations**





## SUMMARY

The introductory paper on the defense acquisition system identifies five key elements that drive the acquisition process and provide a framework for change:

- **Strategy:** the mission and goals of defense acquisition.
- **Structure:** how the defense acquisition enterprise is organized and the roles of stakeholders within the enterprise.
- **Processes and Procedures:** the means by which requirements, resources, procurement, and processes are used to deliver warfighting systems.
- **Resources:** the people, funding, data, and time that serve as the means for defense acquisition to execute against its mission and goals.
- **Culture:** the values and behaviors that shape the environment and practices of defense acquisition.

The Section 809 Panel's recommendations, including those contained in the *Interim Report*, the *Volume 1 Report*, this *Volume 2 Report*, and the upcoming *Volume 3 report*, address issues related to each of these five elements in an effort to create a cohesive system that optimally serves warfighters.

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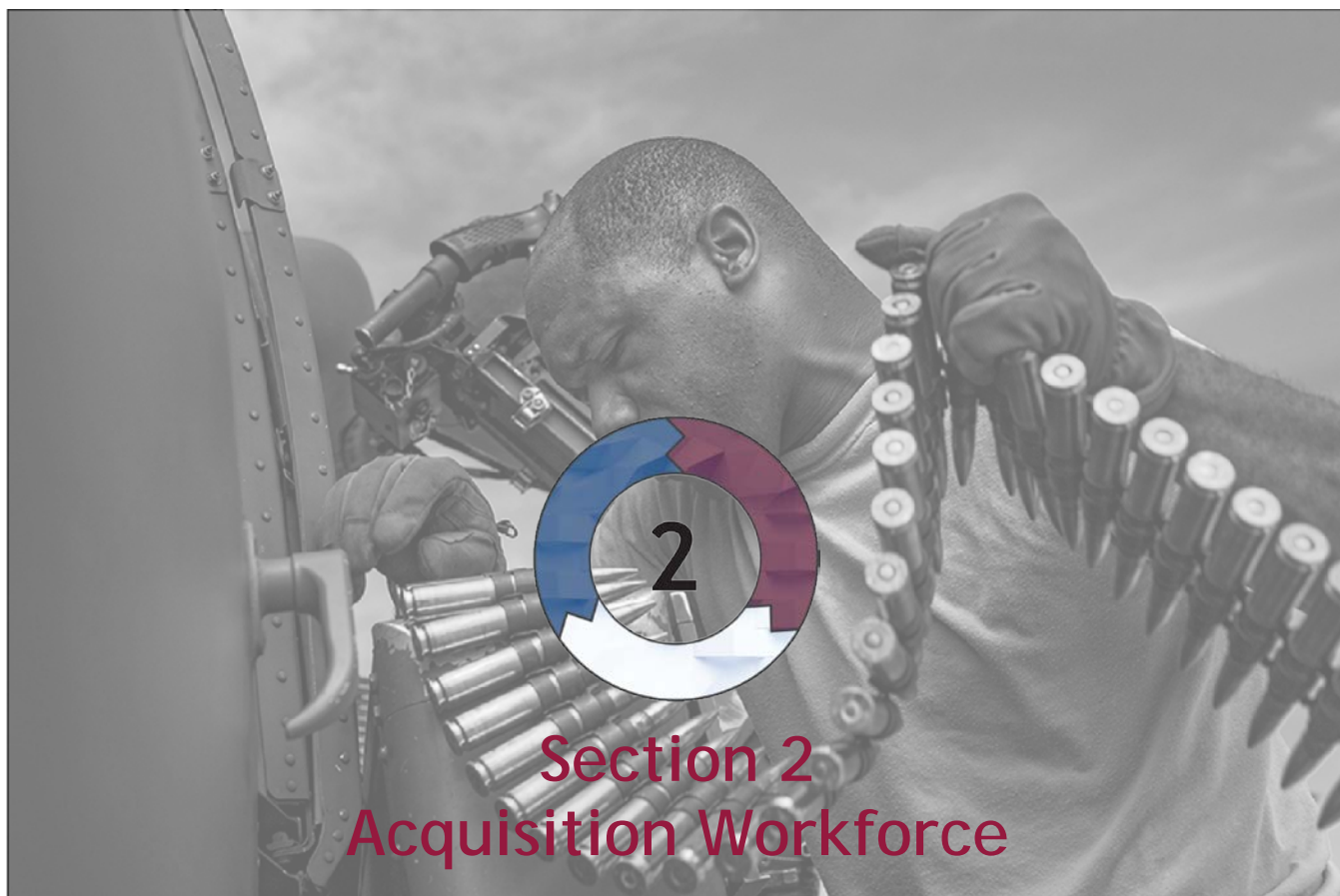
*Moving from program-centric to portfolio-driven management acquisition will facilitate meeting warfighter needs in a rapidly changing threat environment.*

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The Defense Acquisition System requires greater speed and ability to be responsive in a dynamic environment. Changing from a program-centric management structure to a portfolio management structure would enable timely delivery of integrated capabilities. Shifting to an effective portfolio capability structure would allow for tighter alignment of acquisition, requirements, and budget processes. It would also provide flexibility and potentially increased warfighter capability. Introducing Capability Portfolio Management would enable analysis and integration of cross-cutting data and create an enterprise view that would support better-informed decision making. Realigning the acquisition system to place appropriate emphasis on sustainment would bring renewed focus on the overall state of readiness. The requirements system needs to focus on capabilities needed to achieve strategic objectives instead of predefined materiel solutions. The Section 809 Panel will provide specific recommendations related to enterprise capability portfolio management, portfolio execution, sustainment, and requirements in its January 2019 Volume 3 Report.

**There are no recommendations associated with this section.**

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*DoD must address limitations of the acquisition workforce head-on to ensure implementation of much-needed reforms to safeguard U.S. warfighting dominance.*

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## RECOMMENDATIONS

**Rec. 25:** Streamline and adapt hiring authorities to support the acquisition workforce.

**Rec. 26:** Convert the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) from an indefinite demonstration project to a permanent personnel system.

**Rec. 27:** Improve resourcing, allocation, and management of the Defense Acquisition Workforce Development Fund (DAWDF).

## SUMMARY

The acquisition workforce (AWF) faces challenges that must be overcome to ensure it is capable of implementing needed acquisition reforms. The existing framework of hiring authorities for the AWF fails to support DoD's efforts to address critical skill gaps through the hiring process. The hiring

authorities must be streamlined and adapted to support the acquisition workforce. The Acquisition Workforce Personnel Demonstration Project (AcqDemo) to date has been administered under a temporary authority. The program has been successful for the DoD AWF members covered by the authority, and the program should be made permanent and applied to the entire DoD AWF. The Defense Acquisition Workforce Development Fund (DAWDF) has supported DoD's ability to recruit and retain qualified acquisition personnel, yet faces three key challenges: (a) determining the most efficient approach to operational funding, (b) determining the proper allocation method, and (c) addressing ongoing management by Human Capital Initiatives. DAWDF should be resourced and managed as a multiyear fund from expiring-year, unobligated dollars at no less than \$450 million annually.

## RECOMMENDATIONS

### Recommendation 25: Streamline and adapt hiring authorities to support the acquisition workforce.

#### Implementation

##### *Legislative Branch*

- Consolidate six hiring authorities—Technical Acquisition Experts DHA; Financial Management Experts DHA; Post-Secondary Students and Recent Graduates DHA; Domestic Defense Industrial Base Facilities, Major Range and Test Facilities Base, and Office of DOT&E DHA; Business Transformation and Management Innovation DHA; and Enhanced Personnel Management System for Cybersecurity and Legal Professionals Pilot Program into a single Super-DHA statutory hiring authority at 10 U.S.C. XXX and repeal restrictions on Super-DHA hiring flexibilities.
  - Technical Acquisition Experts DHA (10 U.S.C. § 1701 note): Lift 5 percent annual hiring cap and repeal December 31, 2020 sunset date.
  - Financial Management Experts DHA (10 U.S.C. Ch. 81): Lift 10 percent annual hiring cap and repeal December 31, 2022 sunset date.
  - Post-Secondary Students and Recent Graduates DHA (10 U.S.C. Ch. 81): Lift 15 percent annual hiring cap, extend statutory exemption to encompass all of Subchapter I of Chapter 33 of Title 5, and repeal September 30, 2021 sunset date.
  - Domestic Defense Industrial Base Facilities, Major Range and Test Facilities Base, and Office of DOT&E DHA (10 U.S.C. Ch. 81): Extend statutory exemption to encompass all of Subchapter I of Chapter 33 of Title 5 and repeal sunset date at the end of FY 2021.
  - Business Transformation and Management Innovation DHA (10 U.S.C. Ch. 81): Lift 10-employee hiring cap and repeal September 30, 2021 sunset date.
  - Enhanced Personnel Management System for Cybersecurity and Legal Professionals Pilot Program (10 U.S.C. Ch. 81): Convert into a permanent DHA for cyber and information technology positions in civilian AWF, exempt from Subchapter I of Chapter 33 of Title 5 and without a hiring cap.

- Create a DoD-unique Scientific and Professional Positions (ST) hiring authority, based in Title 10, under the authority of the Secretary of Defense.
  - Limit the number of DoD ST positions to the corresponding number of traditional ST positions that are allocated to DoD by OPM at the date of enactment
- Amend Expedited Hiring Authority at 10 U.S.C. § 1705(f) to add critical skill deficiency category of positions, alongside existing shortage of candidates and critical hiring need categories.
  - Authorize DoD to designate 10 critical skill deficiencies annually within each of the Military Services and the 4th Estate
  - Allow each critical skill deficiency designation to permit use of EHA for AWF positions in need of the critical skill.
  - Provide the Military Services and the 4th Estate 10 critical skill deficiency designations each year, regardless of whether they used all 10 during the previous year.

### ***Executive Branch***

- Create a master list of seven primary AWF hiring authorities within 6 months: Expedited Hiring Authority (10 U.S.C. § 1705(f)); Super-DHA (10 U.S.C. XXX); DoD Scientific and Professional Positions (10 U.S.C. XXX); Pathways Program (EO 13562 and 5 CFR Part 362); Science, Mathematics and Research for Transformation (SMART) Defense Education Program (10 U.S.C. § 2192a); Cyber Scholarship Program (10 U.S.C. § 2200a); AcqDemo (10 U.S.C. § 1762).
  - Promulgate the master list throughout Military Services and the 4th Estate
  - Direct human resources personnel and hiring managers to prioritize master list primary hiring authorities for all civilian AWF external hires.
  - Instruct human resources personnel and hiring managers that non-master-list hiring authorities should only be utilized as a last resort for all civilian AWF external hires.

**Note:** Explanatory report language and draft legislative text can be found in the Implementation Details subsection at the end of Section 2.

### ***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.

**Recommendation 26: Convert the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) from an indefinite demonstration project to a permanent personnel system.**

### **Implementation**

#### ***Legislative Branch***

- Repeal 10 U.S.C. § 1762, Demonstration Project Relating to Certain Acquisition Personnel Management Policies and Procedures.

- Replace 10 U.S.C. § 1762 with 10 U.S.C. § 1763 Personnel System for the Acquisition Workforce.
  - Make the personnel system established pursuant to 10 U.S.C. § 1763 the sole, mandatory personnel system for the DoD AWF.
    - Do not include an expiration date.
    - Do not include a limitation on the number of AWF participants.
  - Allow a 5-year phase-in period from the effective date of enactment of the new AWF personnel system, to transition all DoD AWF employees into the new system.
    - Allow collective bargaining agreements between labor unions and participating organizations that are in place prior to the effective date to continue for the duration of their existence without options to extend.
    - Limit new collective bargaining agreements entered into between labor unions and participating organizations after the date of enactment to participation under the new AWF personnel system.

#### ***Executive Branch***

- There are no Executive Branch changes required for this recommendation.

**Note:** Explanatory report language and draft legislative text can be found in the Implementation Details subsection at the end of Section 2.

#### ***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.

### **Recommendation 27: Improve resourcing, allocation, and management of the Defense Acquisition Workforce Development Fund (DAWDF).**

#### **Implementation**

##### ***Legislative Branch***

- Establish DAWDF as a permanent, multiyear fund and require it be resourced by expiring, unobligated funds at a level of no less than \$450 million.

##### ***Executive Branch***

- Provide HCI with additional personnel who possess financial management qualifications and experience.
  - Require the HCI director and/or the deputy director (a new billet would be required for this position) to have financial management qualifications and experience.
  - Require that midyear and biweekly DAWDF execution reviews be led by someone with financial management qualifications and experience.



- Rewrite the *DoD Strategic Workforce Plan FY 2016–FY 2012* to clearly align AWF goals with how DAWDF should be used, applying a bottom-up approach similar to that used as the basis of the *DoD 2008 Strategic Workforce Plan*.
- Require the USD(AS) and USD(RE) to serve as the SSB cochair.
  - Issue strategic guidance on the uses of DAWDF consistent with the SSB approved Strategic Workforce Plan.
  - Require SSB to approve and review the annual DAWDF budget.
- Structure WMG to be led at the OSD level by both the Assistant Secretary for Acquisition and the Assistant Secretary for Research and Engineering and with the director of HCI serving as executive secretary.
  - Require each Military Service to provide a principal military or civilian acquisition deputy to represent the respective Military Service on WMG.
- Implement federal internal control standards for data collected to inform HCI's annual review.
- Allocate 100 percent of DAWDF monies to Military Services and DoD agencies once HCI receives them from the Comptroller.
- Improve and standardize DAWDF initiative management at HCI level.
  - Provide transparent access to DAWDF financial status for major DAWDF recipients including, for example, total funds received, total funds distributed by component, and total funds distributed by line item. These data should be presented as of a report DAWDF users can easily access.
  - Formalize the DAWDF initiative approval process *decision framework* to align with DoD acquisition workforce strategic goals.
- Improve and standardize management of DAWDF initiatives at the Military Service and Defense Agency level.
  - Develop a framework for comparing potential effect of DAWDF proposals to goals set forth in the *DoD Acquisition Workforce Strategic Plan*.
  - Develop metrics to measure return on investment of DAWDF proposals against DoD *Acquisition Workforce Strategic Plan* goals.
  - Formalize and document DAWDF fund manager processes across the Military Services and Defense Agencies using the Army's model of initiative progress as a standard for best practice.

**Note:** Explanatory report language and draft legislative text can be found in the Implementation Details subsection at the end of Section 2.

### ***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.

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# Section 2

## Acquisition Workforce

### Implementation Details



Recommendations 25, 26, and 27



## RECOMMENDED REPORT LANGUAGE

### SEC. 1001. Consolidation, Codification and Revision of Certain Direct Hire Authorities

This section would amend title 10, United States Code, by inserting a new section 1590 to consolidate and streamline several direct-hire authorities applicable to the defense acquisition workforce. This section also would lift restrictions on their use.

Currently, the defense acquisition workforce is authorized to utilize a large number of hiring authorities to support its hiring process. The committee is aware that the complexity of the numerous hiring authorities may hinder the ability of hiring managers and human resources personnel to use the flexibilities provided, undermining the authorities' impact. Consolidating and streamlining the varying direct-hire authorities into a single hiring authority will facilitate its use for the benefit of the defense acquisition workforce.

The committee also notes that the scope of the direct-hire authorities is limited by statutory restrictions, such as sunset dates and ceilings on the number of individuals who can be hired annually. The committee acknowledges that these restrictions constrain the direct-hire authorities and limit the extent to which they can be exploited by the defense acquisition workforce. Elimination of the restrictions would allow the full potential of the underlying direct-hire authorities to be realized.

This section would make several conforming repeals to legislative provisions associated with hiring authorities in title 10, United States Code.

## RECOMMENDED REPORT LANGUAGE

### SEC. 1002. Employment by Department of Defense of Specially Qualified Scientific and Professional Personnel

This section would amend title 10, United States Code, by inserting a new section 1599i to provide the Department of Defense with special authority to hire individuals to positions in scientific and engineering research and development.

The committee is aware that the Department confronts a highly competitive environment in its attempts to hire skilled researchers in scientific and engineering fields. Currently, the government-wide Scientific and Professional Positions hiring authority at section 3104, title 5, United States Code, includes the Department of Defense. The committee recognizes that the Department's unique workforce requirements necessitate a hiring approach managed directly by the Department, providing greater flexibility in the Department's pursuit of qualified individuals. The committee notes the status quo regarding the number of covered positions would remain unchanged.

This section would also make a conforming amendment to section 3104, title 5, United States Code, to exempt the Department of Defense from coverage under that section.

## RECOMMENDED REPORT LANGUAGE

### SEC. 1003. Expedited Hiring Authority for Certain Acquisition Workforce Positions

This section would create a new section 1765, title 10, United States Code, for Expedited Hiring Authority, and amend the current expedited hiring authority to add a new category of eligible candidates based upon critical skill deficiencies in the defense acquisition workforce.

The committee recognizes that eliminating critical skill deficiencies is an important objective for the defense acquisition workforce hiring process. The committee acknowledges that the expedited hiring authority, while successful at accelerating the overall rate of hiring, has not targeted specific critical skill deficiencies. This section would authorize a process designed to support the use of the expedited hiring authority for individuals in possession of skills that the defense acquisition workforce requires to ameliorate its skill gaps. Authority would be given to the Secretary of Defense, each military department and the defense agencies to identify its own critical skill deficiencies and to utilize the expedited hiring authority accordingly.

This section would make a conforming amendment to section 1705, title 10, United States Code.

## RECOMMENDED REPORT LANGUAGE

### SEC. 1004. Personnel System for Civilian Acquisition Workforce

This section would amend title 10, United States Code, by inserting a new section 1763 that would authorize the Secretary of Defense to establish a single mandatory personnel system for the Department of Defense acquisition workforce.

The committee is aware that, since 1999, the Department has been conducting a personnel demonstration project for its acquisition workforce, allowing the Department greater managerial control over personnel processes and functions. The committee acknowledges the demonstration project has yielded successful mission outcomes. This section would make permanent the existing defense acquisition workforce demonstration project. This section also would allow a five-year phase-in period to transition the entire acquisition workforce into the new personnel system and for any existing collective bargaining agreements to expire.

This section would also make a conforming amendment to repeal section 1762, title 10, United States Code, the defense acquisition workforce personnel demonstration project.



## RECOMMENDED REPORT LANGUAGE

### SEC. 1005. Department of Defense Acquisition Workforce Development Fund

This section would amend section 1705, title 10, United States Code, to provide multi-year funding for the Defense Acquisition Workforce Development Fund (DAWDF), resourced by expiring, unobligated dollars.

The committee notes that DAWDF was established for the recruitment, training, and retention of acquisition personnel in the Department of Defense with the purpose of ensuring the defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives best value for the expenditure of public resources. The committee is aware that the funding structure for DAWDF has undergone three changes since its inception in 2008, which has undermined the Fund's ability to fully execute its funding. The committee acknowledges that multi-year funding with expiring, unobligated dollars as opposed to a one year appropriated funding source would allow DAWDF the flexibility of crossing over fiscal years to achieve its strategic objective of improving the acquisition workforce. The committee further notes that multi-year funding provides DAWDF resiliency against issues such as sequestrations, continuing resolutions, and other budget constraints. The committee acknowledges multi-year funding with expired, unobligated funds provides greater stability for the fund and increases confidence of the fund's users.

## RECOMMENDED REPORT LANGUAGE

### SEC. 1006. Codification of Certain Acquisition Workforce-related Provisions of Law

This section would codify several statutory provisions currently included as legislative “note” sections under Chapter 87 of title 10, United States Code. This section also would repeal obsolete or otherwise expired legislative “note” sections in Chapter 87.

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

**[NOTE: The draft legislative text below is followed by a “Sections Affected” display, showing in “redline” form how the text of current provisions of law would be affected by the draft legislative text.]**

### 1                                   **TITLE X—ACQUISITION WORKFORCE**

Sec. 1001. Consolidation, codification, and revision of certain direct hiring authorities.  
Sec. 1002. Employment by Department of Defense of specially qualified scientific and professional personnel.  
Sec. 1003. Expedited hiring authority for certain acquisition workforce positions.  
Sec. 1004. Personnel system for civilian acquisition workforce.  
Sec. 1005. Department of Defense Acquisition Workforce Development Fund.  
Sec. 1006. Codification of certain acquisition workforce-related provisions of law.

### 2           **SEC. 1001. CONSOLIDATION, CODIFICATION, AND REVISION OF CERTAIN**

#### 3                                   **DIRECT HIRING AUTHORITIES.**

#### 4                   (a) NEW TITLE 10 SECTIONS.—

5                                   (1) CONSOLIDATION, ETC.—Chapter 81 of title 10, United States Code, is amended  
6                   by inserting after section 1589 the following new sections:

#### 7           **“§1590. Direct hiring authorities**

#### 8                   “(a) AUTHORITY.—

9                                   “(1) SECRETARY OF DEFENSE.—The Secretary of Defense may make appointments  
10                   without regard to the provisions of subchapter I of chapter 33 of title 5 as follows:

11                                   “(A) Appointment of qualified candidates to positions specified in  
12                   paragraphs (2) through (5) of subsection (b).

13                                   “(B) Appointment of individuals described in subsection (d) for the  
14                   purpose of assisting and facilitating the efforts of the Department in business  
15                   transformation and management innovation.

## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

“(C) Appointment in the Defense Agencies, under the program carried out under section 1590a of this title, of cybersecurity and legal professionals described in subsection (b) of that section.

“(2) SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments may make appointments of qualified candidates in their respective military departments without regard to the provisions of subchapter I of chapter 33 of title 5 as follows:

“(A) Appointment to positions specified in paragraphs (1) and (2) of subsection (b).

“(B) Appointment, under the program carried out under section 1590a of this title, of cybersecurity and legal professionals described in subsection (b) of such section.

“(b) POSITIONS.—Positions specified in this subsection are the following:

“(1) Scientific and engineering positions within the defense acquisition workforce of the military departments.

“(2) The following positions within the Department of Defense workforce:

“(A) Financial management positions.

“(B) Accounting positions.

“(C) Auditing positions.

“(D) Actuarial positions.

“(E) Cost estimation positions.

“(F) Operational research positions.

“(G) Business and business administration positions.

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

1           “(3) Competitive service positions in professional and administrative occupations  
2           within the Department of Defense.

3           “(4) Positions in the competitive service at any defense industrial base facility or  
4           the Major Range and Test Facilities Base.

5           “(5) Scientific and engineering positions within the Office of the Director of  
6           Operational Test and Evaluation.

7           “(c) QUALIFICATIONS.—For appointment under subsection (a) to positions specified in  
8           subsection (b) (other than paragraph (4)), an individual must possess qualifications as follows:

9           “(1) For appointment to a position specified in subsection (b)(1), an individual  
10          must possess a scientific or engineering degree.

11          “(2) For appointment to a position specified in subsection (b)(2), an individual  
12          must possess a finance, accounting, management, or actuarial science degree, or a related  
13          degree or equivalent experience.

14          “(3) For appointment to a position specified in subsection (b)(3), an individual  
15          must be a recent graduate or a current post-secondary student.

16          “(4) For appointment to a position specified in subsection (b)(5), an individual  
17          must possess an advanced degree.

18          “(d) COVERED INDIVIDUALS FOR BUSINESS TRANSFORMATION AND MANAGEMENT  
19          INNOVATION APPOINTMENTS.—The individuals described in this subsection are individuals who  
20          have all of the following:

21               “(1) A management or business background.

22               “(2) Experience working with large or complex organizations.

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

1           “(3) Expertise in management and organizational change, data analytics, or  
2           business process design.

3           “(e) SECRETARY OF DEFENSE APPOINTMENTS.—The authority of the Secretary of Defense  
4           under subsection (a) with respect to appointments to positions specified in subsection (b)(2) may  
5           be exercised only for positions in the following components of the Department of Defense:

6           “(1) A Defense Agency.

7           “(2) The Office of the Chairman of the Joint Chiefs of Staff.

8           “(3) The Joint Staff.

9           “(4) A combatant command.

10          “(5) The Office of the Inspector General of the Department of Defense.

11          “(6) A Field Activity of the Department of Defense.

12          “(f) NATURE OF APPOINTMENT.—

13               “(1) An appointment under this section to a position specified in paragraph (1) or  
14               (2) of subsection (b) shall be treated as an appointment on a full-time equivalent basis,  
15               unless the appointment is made on a term or temporary basis.

16               “(2) An appointment under subsection (a)(1)(B) of an individual described in  
17               subsection (d) shall be on a term basis and shall be subject to the term appointment  
18               regulations in part 316 of title 5, Code of Federal Regulations (other than requirements in  
19               such regulations relating to competitive hiring). The term of any such appointment shall  
20               be specified by the Secretary at the time of the appointment.

21          “(g) PUBLIC NOTICE AND ADVERTISING FOR POSITIONS FOR RECENT AND POST-  
22          GRADUATES.—To the extent practical, as determined by the Secretary, the Secretary shall  
23          publicly advertise positions specified in subsection (b)(3) to which an appointment may be made

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

under this section and which are available for appointment under this section. In carrying out the preceding sentence, the Secretary shall—

“(1) take into account merit system principles, mission requirements, costs, and organizational benefits of any advertising of positions; and

“(2) advertise such positions in the manner the Secretary determines is most likely to provide diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available.

“(h) DEFINITIONS.—In this section:

“(1) The term ‘recent graduate’, with respect to appointment of a person under this section to a position specified in subsection (b)(3), means a person who was awarded a degree by an institution of higher education not more than two years before the date of the appointment of such person, except that in the case of a person who has completed a period of obligated service in a uniformed service of more than four years, such term means a person who was awarded a degree by an institution of higher education not more than four years before the date of the appointment of such person.

“(2) The term ‘current post-secondary student’ means a person who—

“(A) is currently enrolled in, and in good academic standing at, a full-time program at an institution of higher education;

“(B) is making satisfactory progress toward receipt of a baccalaureate or graduate degree; and

“(C) has completed at least one year of the program.

“(3) The term ‘institution of higher education’ has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

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“(4) The term 'defense industrial base facility' means any Department of Defense depot, arsenal, or shipyard located within the United States.

### “§1590a. Enhanced personnel management system for cybersecurity and legal professionals: pilot program

“(a) PILOT PROGRAM.—The Secretary of Defense shall carry out within the Department of Defense a pilot program to assess the feasibility and advisability of an enhanced personnel management system in accordance with this section for cybersecurity and legal professionals described in subsection (b) who enter civilian service with the Department on or after the date of the enactment of this section.

#### “(b) CYBERSECURITY AND LEGAL PROFESSIONALS.—

“(1) IN GENERAL.—The cybersecurity and legal professionals described in this subsection are the following:

“(A) CIVILIAN CYBERSECURITY PROFESSIONALS.—Civilian personnel engaged in or directly supporting planning, commanding and controlling, training, developing, acquiring, modifying, and operating systems and capabilities, and military units and intelligence organizations (other than those funded by the National Intelligence Program) that are directly engaged in or used for offensive and defensive cyber and information warfare or intelligence activities in support thereof.

“(B) CIVILIAN LEGAL PROFESSIONALS.—Civilian personnel occupying legal or similar positions, as determined by the Secretary of Defense for purposes of the pilot program, that require eligibility to practice law in a State or territory



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of the United States, the District of Colombia, or the Commonwealth of Puerto Rico.

"(2) INAPPLICABILITY TO SES POSITIONS.—The pilot program does not apply to positions within the Senior Executive Service under subchapter VIII of chapter 53 of title 5.

“(c) APPOINTMENT ON A DIRECT-HIRE BASIS.—An appointment of an individual as a cybersecurity or legal professional under the program under this section shall be made as provided in section 1590 of this title.

“(d) TERM APPOINTMENTS.—

“(1) RENEWABLE TERM APPOINTMENTS.—Each individual shall serve with the Department of Defense as a cybersecurity or legal professional under the pilot program pursuant to an initial appointment to service with the Department for a term of not less than two years nor more than eight years. Any term of appointment under the pilot program may be renewed for one or more additional terms of not less than two years nor more than eight years as provided in subsection (f).

"(2) LENGTH OF TERMS.—The length of the term of appointment to a position under the pilot program shall be prescribed by the Secretary of Defense taking into account the national security, mission, and other applicable requirements of the position. Positions having identical or similar requirements or terms may be grouped into categories for purposes of the pilot program. The authority of the Secretary under this paragraph may not be delegated to an officer or employee in the Department who is not appointed by the President or in the Senior Executive Service or to a commissioned

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officer of the armed forces in a grade below the grade of brigadier general or rear admiral (lower half).

“(j) REGULATIONS.—The Secretary of Defense shall administer the pilot program under regulations prescribed by the Secretary. The regulations shall ensure flexibility and expedited appointment of cybersecurity and legal professionals in the Department of Defense under the pilot program.

“(k) TERMINATION.—The provisions of subsections (e), (g), (h), and (i) of this section do not apply with respect to an individual appointed after December 31, 2029, as a cybersecurity or legal professional as provided in section 1590 of this title.

“(l) REPORTS.—

“(1) REPORTS REQUIRED.—Not later than January 30 of each of 2022, 2025, and 2028, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the carrying out of the pilot program. Each report shall include the following:

“(A) A description and assessment of the carrying out of the pilot program during the period since the commencement of the pilot program or the previous submittal of a report under this subsection, as applicable.

“(B) A description and assessment of the successes in and impediments to carrying out the pilot program system during such period.

“(C) Such recommendations as the Secretary considers appropriate for legislative action to improve the pilot program and to otherwise improve civilian personnel management of cybersecurity and legal professionals by the Department of Defense.

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"(D) In the case of the report submitted in 2028, an assessment and recommendations by the Secretary on whether to make the pilot program permanent.

“(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

“(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(B) the Committee on Armed Services and the Committee on Oversight and Government Reform of the House of Representatives.”.

(2) TRANSFER OF PROVISIONS.—Subsections (g), (h), (f), (i), and (j) of section 1110 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1580 note prec.) are transferred to section 1590a of title 10, United States Code, as added by paragraph (1), inserted (in that order) after subsection (d), and redesignated as subsections (e), (f), (g), (h), and (i), respectively.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by inserting after the item relating to section 1589 the following new items:

“1590. Direct hiring authorities.

“1590a. Enhanced personnel management system for cybersecurity and legal professionals: pilot program.”.

(b) CONFORMING REPEALS.—The following provisions of law are repealed:

(1) Section 1113 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 1701 note).

(2) Section 1110 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1580 note prec.).

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(3) Section 1106 of the National Defense Authorization Act for Fiscal Year 2017  
(Public Law 114-328; 10 U.S.C. 1580 note prec.).

(4) Section 1125 of the National Defense Authorization Act for Fiscal Year 2017  
(Public Law 114-328; 10 U.S.C. 1580 note prec.).

(5) Section 1101 of the National Defense Authorization Act for Fiscal Year 2018  
(Public Law 115-91; 10 U.S.C. 1580 note prec.).

(6) Section 1110 of the National Defense Authorization Act for Fiscal Year 2018  
(Public Law 115-91; 10 U.S.C. 1580 note prec.).

### **SEC. 1002. EMPLOYMENT BY DEPARTMENT OF DEFENSE OF SPECIALLY QUALIFIED SCIENTIFIC AND PROFESSIONAL PERSONNEL.**

(a) DEPARTMENT OF DEFENSE TITLE 10 AUTHORITY.—

(1) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by  
adding at the end of subchapter V the following new section:

#### **“§1599i. Employment of specially qualified scientific and professional personnel**

“(a) AUTHORITY.—(1) The Secretary of Defense may establish, and from time to time  
revise, the maximum number of covered scientific or professional positions which may be  
established in the Department of Defense outside of the General Schedule. Such number may not  
exceed the number of positions in effect under section 3104(a) of title 5 with respect to the  
Department of Defense as of the date of the enactment of this section.

“(2) Paragraph (1) does not apply to a Senior Executive Service position (as defined in  
section 3132(a) of title 5).

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“(3) In this subsection, the term ‘covered scientific or professional positions’ means scientific or professional positions for carrying out research and development functions of the Department of Defense which require the services of specially qualified personnel.

“(b) APPOINTMENTS.—(1) Positions established under subsection (a) are in the competitive service. However, appointments to those positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Secretary of Defense on the basis of standards developed by the Secretary.

“(c) PRIOR APPOINTMENTS.—Any individual serving in the Department of Defense on the day before the date of the enactment of this section in a position established under section 3104 of title 5 shall be considered as of the date of the enactment of this section to have been appointed to a position established under this section.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:  
“1599i. Employment of specially qualified scientific and professional personnel.”.

(b) REMOVAL OF DEPARTMENT OF DEFENSE FROM TITLE 5 AUTHORITY.—Section 3104(b) of title 5, United States Code, is amended by inserting “or to any position in the Department of Defense” before the period at the end.

### **SEC. 1003. EXPEDITED HIRING AUTHORITY FOR CERTAIN ACQUISITION WORKFORCE POSITIONS.**

(a) POSITIONS FOR WHICH THERE IS A CRITICAL SKILLS DEFICIENCY.—

(1) IN GENERAL.—Chapter 87 of title 10, United States Code, is amended by adding at the end of subchapter V the following new section:

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1    **“§1765. Expedited hiring authority: positions for which there is a shortage of candidates, a**  
2                   **critical hiring need, or a critical skills deficiency**

3           “(a) **AUTHORITY.**—(1) The Secretary of Defense may use the authorities in sections 3304,  
4    5333, and 5753 of title 5 to recruit and appoint qualified persons directly to positions in a  
5    category of positions designated by the Secretary under paragraph (2).

6           “(2) The Secretary of Defense may designate for purposes of paragraph (1) any category  
7    of positions in the acquisition workforce as positions for which there is —

8                   “(A) a shortage of candidates;

9                   “(B) a critical hiring need; or

10                  “(C) a critical skills deficiency.

11          “(b) **CRITICAL SKILLS DEFICIENCY DESIGNATIONS.**—(1) The Secretary of Defense shall  
12    designate critical skills for which there is a deficiency in the acquisition workforce. Such  
13    designations shall be made separately for each of the military departments and for the elements  
14    of the Department of Defense outside the military departments. For each fiscal year, there may  
15    be in effect—

16                  “(A) no more than 10 such designations for each military department; and

17                  “(B) no more than 10 such designations for the elements of the Department of  
18    Defense outside the military departments.

19          “(2) If a designation under paragraph (1) in effect for a fiscal year is terminated before  
20    the end of that fiscal year, the applicable number of designations that may be in effect for the  
21    remainder of the fiscal year is reduced by one.

22          “(3) For each skill which the Secretary identifies as a critical skill for which there is a  
23    deficiency in the acquisition workforce, the Secretary—

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“(A) shall establish criteria related to such critical skill (such as educational credentials or professional experience) in order to evaluate whether an applicant has the critical skill; and

“(B) shall apply the designation across different occupational series, position categories, and career fields in which the critical skill is lacking.

“(4) The Secretary shall periodically evaluate the number of designations of critical skill deficiencies under this subsection to determine whether an increase in the number would benefit the acquisition workforce.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“1765. Expedited hiring authority: positions for which there is a shortage of candidates, a critical hiring need, or a critical skills deficiency.”.

(b) CONFORMING AMENDMENT.—Section 1705 of title 10, United States Code, is amended by striking subsection (f).

### **SEC. 1004. PERSONNEL SYSTEM FOR CIVILIAN ACQUISITION WORKFORCE.**

(a) REPLACEMENT FOR ACQUISITION DEMONSTRATION PROJECT.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1762 the following new section:

#### **“§ 1763. Personnel system for civilian acquisition workforce**

“(a) PERSONNEL SYSTEM FOR CIVILIAN ACQUISITION WORKFORCE.—The Secretary of Defense shall manage the employees in the civilian acquisition workforce of the Department of Defense in accordance with the personnel system established pursuant to this section.

“(b) AUTHORITY.—

“(1) AUTHORITIES.—The Secretary shall establish a personnel system for purposes of this section. In establishing and carrying out such system, the Secretary may exercise

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1 any of the authorities under section 4703 of title 5 that the Secretary was authorized to  
2 exercise with respect to the demonstration project under section 1762 of this title as of the  
3 day before the effective date of this section.

4 “(2) LIMITATIONS.—The provisions of subsection (c) of section 4703 of title 5  
5 shall apply to the personnel system under this section in the same manner as such  
6 provisions applied to the demonstration project under section 1762 of this title as of the  
7 day before the effective date of this section.

8 “(c) IMPLEMENTATION.—

9 “(1) INITIAL IMPLEMENTATION.— The system established under the demonstration  
10 project authority under section 1762 of title 10, United States Code, as in effect on the  
11 day before the effective date of this section, shall be considered to be established under  
12 this section and shall apply as of that effective date to any employee in the civilian  
13 acquisition workforce who on the day before that date was covered by the demonstration  
14 project under section 1762 of this title.

15 “(2) DEADLINE FOR FULL IMPLEMENTATION.—The Secretary shall carry out the  
16 implementation of the personnel system established under this section so that all  
17 employees in the civilian acquisition workforce are covered by that system not later than  
18 the end of the five-year period beginning on the effective date of this section.

19 “(d) COLLECTIVE BARGAINING AGREEMENTS.—

20 “(1) Nothing in this section, or the personnel system established under this  
21 section, may be construed to impair the continued effectiveness of a collective bargaining  
22 agreement in effect on the day before the effective date of this section, except that any



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1 extension, or exercise of an option, under such an agreement after such date is subject to  
2 paragraph (2).

3 “(2) Any collective bargaining agreement entered into after the date of the  
4 enactment of this section that covers employees in the civilian acquisition workforce is  
5 subject to the provisions of the personnel system established under this section with  
6 respect to those employees.

7 “(3) In this subsection, the term ‘collective bargaining agreement’ has the  
8 meaning given that term in section 7103(a)(8) of title 5.

9 “(e) REGULATIONS.—

10 “(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to carry  
11 out the personnel system established under this section.

12 “(2) TRANSITION.—Until revised by the Secretary under paragraph (1), the  
13 regulations of the Secretary of Defense prescribed under section 1762 of this title, as in  
14 effect on the day before the effective date of this section, shall be considered to be  
15 prescribed by the Secretary of Defense under this subsection and to be applicable to the  
16 personnel system established under this section.

17 “(f) CIVILIAN ACQUISITION WORKFORCE.— In this section, the term ‘civilian acquisition  
18 workforce’ means the following:

19 “(1) Employees of the Department of Defense in positions designated under  
20 section 1721 of this title as acquisition positions for purposes of this chapter.

21 “(2) Other employees of the Department of Defense who are designated as  
22 members of the acquisition workforce—

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“(A) in the case of positions not in one of the military departments, by the  
Under Secretary of Defense for Acquisition and Sustainment; and

“(B) in the case of positions in one of the military departments, by the  
senior acquisition executive of that military department.”.

(b) REPEAL OF ACQDEMO STATUTE.—Section 1762 of such title is repealed.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of  
such chapter is amended by striking the item relating to section 1762 and inserting the following:  
“1763. Personnel system for civilian acquisition workforce.”.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take  
effect on the first day of the first month after the date of the enactment of this Act.

### **SEC. 1005. DEPARTMENT OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.**

(a) FUND MANAGEMENT.—Subsection (c) of section 1705 of title 10, United States Code,  
is amended by adding at the end the following new sentence: “In addition, the designated senior  
official, or the principal deputy of that official, shall have both qualifications in financial  
management and an extensive background in financial management.”.

(b) REPLACEMENT OF REMITTANCES FUNDING WITH FUNDING FROM UNOBLIGATED  
BALANCES.—

(1) IN GENERAL.—Subsection (d) of such section is amended to read as follows:

“(d) SOURCE OF FUNDS.—

“(1) ELEMENTS OF THE FUND.—The Fund shall consist of amounts as follows:

“(A) Amounts transferred to the Fund pursuant to paragraph (2).

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1 “(B) Any other amounts appropriated to, credited to, or deposited into the  
2 Fund by law.

3 “(2) TRANSFER OF CERTAIN UNOBLIGATED BALANCES.—(A) The Secretary of  
4 Defense shall transfer to the Fund each fiscal year from unobligated balances of  
5 appropriations described in subparagraph (B) a total amount of not less than  
6 \$450,000,000.

7 “(B) Subparagraph (A) applies to unobligated balances of appropriations made to  
8 the Department of Defense for which the period of availability for obligation expired at  
9 the end of one of the three fiscal years preceding the fiscal year during which the transfer  
10 under subparagraph (A) is made, but only in the case of an appropriation made to the  
11 Department of Defense—

12 “(i) for procurement;

13 “(ii) for research, development, test, and evaluation; or

14 “(iii) for operation and maintenance,

15 “(C) Any amount transferred to the Fund pursuant to subparagraph (A) shall be  
16 credited to the Fund.”.

17 (2) CONFORMING AMENDMENT.—Subsection (e)(6) of such section is amended by  
18 striking “Amounts credited” and all that follows through “subsection (d)(3),” and  
19 inserting “Amounts transferred to the Fund pursuant to subsection (d)(2),”.

20 (c) REFERENCES TO UNDER SECRETARY FOR ACQUISITION, TECHNOLOGY, AND  
21 LOGISTICS.—Such section is further amended by striking “Under Secretary of Defense for  
22 Acquisition, Technology, and Logistics” in subsections (c), (e)(3), and (g)(2)(B) and inserting  
23 “Secretary of Defense”.

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### SEC. 1006. CODIFICATION OF CERTAIN ACQUISITION WORKFORCE-RELATED PROVISIONS OF LAW.

#### (a) POST-EMPLOYMENT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter I of chapter 87 of title 10, United States Code, is amended by adding at the end a new section 1708 consisting of—

(A) a heading as follows:

**“§1708. Certain senior Department of Defense officials and former officials seeking employment with defense contractors: requirements”; and**

(B) a text consisting of the text of section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 1701 note).

(2) AMENDMENTS IN CONNECTION WITH CODIFICATION.—Section 1708 of title 10, United States Code, as added by paragraph (1), is amended—

(A) by striking “, United States Code” each place it appears; and

(B) by striking the second sentence of subsection (b)(2).

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“1708. Certain senior Department of Defense officials and former officials seeking employment with defense contractors: requirements.”.

(4) CONFORMING REPEAL.—Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 1701 note) is repealed.

#### (b) AWARD PROGRAM.—

(1) IN GENERAL.—Subchapter I of chapter 87 of title 10, United States Code, is amended by inserting after section 1701a a new section 1701b consisting of—

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1 (A) a heading as follows:

2 **“§1701b. Award program: programs and professionals making best use of authorized**  
3 **flexibility in contracting”;** and

4 (B) a text consisting of the text of section 834 of the National Defense  
5 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1701a  
6 note).

7 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
8 subchapter is amended by inserting after the item relating to section 1701a the following  
9 new item:

“1701b. Award program: programs and professionals making best use of authorized flexibility in contracting.”.

10 (3) CONFORMING REPEAL.—Section 834 of the National Defense Authorization  
11 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1701a note) is repealed.

12 (c) QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM.—

13 (1) IN GENERAL.—Subchapter I of chapter 87 of title 10, United States Code, is  
14 amended by inserting after section 1702 a new section 1703 consisting of—

15 (A) a heading as follows:

16 **“§1703. Quick-reaction special projects acquisition team”;** and

17 (B) a text consisting of the text of section 807 of the Bob Stump National  
18 Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C.  
19 1702 note).

20 (2) UPDATE TO REFERENCE.—Subsection (a) of section 1703 of title 10, United  
21 States Code, as added by paragraph (1), is amended by striking “Under Secretary of

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1 Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of  
2 Defense for Acquisition and Sustainment”.

3 (3) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
4 subchapter is amended by inserting after the item relating to section 1702 the following  
5 new item:

“1703. Quick-reaction special projects acquisition team.”.

6 (4) CONFORMING REPEAL.—Section 807 of the Bob Stump National Defense  
7 Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 1702 note) is  
8 repealed.

9 (d) DEVELOPMENT PROGRAM FOR CIVILIAN PROGRAM MANAGERS.—

10 (1) IN GENERAL.—Subchapter II of chapter 87 of title 10, United States Code, is  
11 amended by inserting after section 1722b the following new section:

12 **“§1722c. Civilian program managers: development program**

13 “(a) PROGRAM REQUIRED.—

14 “(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretaries  
15 of the military departments, shall implement a program manager development program to  
16 provide for the professional development of high-potential, experienced civilian  
17 personnel.

18 “(2) SELECTION OF PERSONNEL.—Personnel shall be competitively selected for the  
19 program based on their potential to become a program manager of a major defense  
20 acquisition program, as defined in section 2430 of this title.

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“(3) ADMINISTRATION, ETC.—The program shall be administered and overseen by the Secretary of each military department, acting through the service acquisition executive for the military department concerned.

“(b) COMPREHENSIVE IMPLEMENTATION PLAN.—

“(1) REQUIREMENT.—The program under subsection (a) shall be carried out in accordance with a comprehensive plan developed by the Secretary of Defense. In developing the plan, the Secretary shall seek the input of relevant external parties, including professional associations, other government entities, and industry.

“(2) ELEMENTS OF COMPREHENSIVE PLAN.—The plan shall include the following elements:”.

(2) ELEMENTS OF COMPREHENSIVE PLAN.—Subparagraphs (A) through (K) of paragraph (2) of section 841(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1722b note) are transferred to section 1722c of title 10, United States Code, as added by paragraph (1), and inserted at the end of paragraph (2) of subsection (b).

(3) USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Paragraph (3) of section 841(a) of such Act is transferred to the end of section 1722c of title 10, United States Code, as added by paragraph (1) and amended by paragraph (2), redesignated as subsection (c), and amended—

(A) by capitalizing the first letter of each word in the subsection heading other than the second;

(B) by striking “title 10, United States Code” and inserting “this title”; and

(C) by striking “paragraph (1)” and inserting “subsection (a)”.

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1           (4) IMPLEMENTATION.—The program required to be established under section  
2           1722c of title 10, United States Code, as added by paragraph (1), shall be implemented  
3           not later than September 30, 2019. The comprehensive implementation plan required by  
4           subsection (b) of that section shall be submitted by the Secretary of Defense to the  
5           Committees on Armed Services of the Senate and House of Representatives not later than  
6           December 12, 2018.

7           (5) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
8           subchapter is amended by inserting after the item relating to section 1722b the following  
9           new item:

“1722c. Civilian program managers: development program.”.

10           (6) CONFORMING REPEAL.—Section 841(a) of the National Defense  
11           Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1722b note) is  
12           repealed.

### 13           (e) INFORMATION TECHNOLOGY ACQUISITION WORKFORCE.—

14           (1) IN GENERAL.—Subchapter II of chapter 87 of title 10, United States Code, is  
15           amended by inserting after section 1723 the following new section:

#### 16           “§1723a. Information technology acquisition workforce

17           “(a) PLAN REQUIRED.—The Secretary of Defense shall carry out a plan to strengthen the  
18           part of the acquisition workforce that specializes in information technology. The plan shall  
19           include the following:

20                   “(1) Defined targets for billets devoted to information technology acquisition.

21                   “(2) Specific certification requirements for individuals in the acquisition  
22           workforce who specialize in information technology acquisition.



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“(3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘information technology’ has the meaning provided that term in section 11101 of title 40 and includes information technology incorporated into a major weapon system.

“(2) The term ‘major weapon system’ has the meaning provided that term in section 2379(f) of this title.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 1723 the following new item:

“1723a. Information technology acquisition workforce.”.

(3) CONFORMING REPEAL.—Section 875 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011(Public Law 111-383; 10 U.S.C. 1723 note) is repealed.

(f) CREDIT FOR EXPERIENCE IN CERTAIN POSITIONS.—

(1) IN GENERAL.—Subchapter II of chapter 87 of title 10, United States Code, is amended by inserting after section 1724 the following new section:

### “§1724a. Credit for experience in certain positions

“For purposes of meeting any requirement under this chapter for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of this title, any period of time spent serving in a position later designated as an

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acquisition position or a critical acquisition position under this chapter may be counted as experience in such a position for such purposes.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 1724 the following new item:

“1724a. Credit for experience in certain positions.”.

(3) CONFORMING REPEAL.—Section 1209(i) of the Defense Acquisition Workforce Improvement Act (title XII of Public Law 101-510; 10 U.S.C. 1724 note) is repealed.

(g) GUIDANCE REGARDING TRAINING AND DEVELOPMENT OF THE ACQUISITION WORKFORCE.—

(1) IN GENERAL.—Subchapter IV of chapter 87 of title 10, United States Code, is amended by inserting after section 1742 the following new section:

**“§1743. Guidance regarding training and development of the acquisition workforce**

“(a) IN GENERAL.—The Secretary of Defense shall issue guidance addressing the training and development of the Department of Defense workforce engaged in the procurement of services, including those personnel not designated as members of the acquisition workforce.

“(b) IDENTIFICATION OF TRAINING AND PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND ALTERNATIVES.—The guidance required under subsection (a) shall identify training and professional development opportunities and alternatives, not limited to existing Department of Defense institutions, that focus on and provide relevant training and professional development in commercial business models and contracting.

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1 “(c) TREATMENT OF TRAINING AND PROFESSIONAL DEVELOPMENT.—Any training and  
2 professional development provided pursuant to this section outside Department of Defense  
3 institutions shall be deemed to be equivalent to similar training certified or provided by the  
4 Defense Acquisition University.”.

5 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
6 subchapter is amended by inserting after the item relating to section 1742 the following  
7 new item:

“1743. Guidance regarding training and development of the acquisition workforce.”.

8 (3) CONFORMING REPEAL.—Section 803(b) of the National Defense Authorization  
9 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1741 note) is repealed.

10 (h) TRAINING IN COMMERCIAL ITEMS PROCUREMENT.—

11 (1) IN GENERAL.—Subchapter IV of chapter 87 of title 10, United States Code, is  
12 amended by adding at the end a new section 1749 consisting of—

13 (A) a heading as follows:

14 “§1749. Training in commercial items procurement”; and

15 (B) a text consisting of the text of section 850 of the National Defense  
16 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1746  
17 note).

18 (2) AMENDMENTS IN CONNECTION WITH CODIFICATION.—Section 1749 of title 10,  
19 United States Code, as added by paragraph (1), is amended—

20 (A) in subsection (a), by striking “Not later than” and all that follows  
21 through “the President” and inserting “The President”; and

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(B) in subsection (d), by striking “title 10, United States Code,” and inserting “this title”.

(3) IMPLEMENTATION.—The comprehensive training program required by section 1749 of title 10, United States Code, as added by paragraph (1), shall be established not later than December 12, 2018.

(4) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:  
“1749. Training in commercial items procurement.”.

(5) CONFORMING REPEAL.—Section 850 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1746 note) is repealed.

(i) TRAINING ON AGILE OR ITERATIVE DEVELOPMENT METHODS.—

(1) IN GENERAL.—Subchapter IV of chapter 87 of title 10, United States Code, is amended by adding after section 1749, as added by subsection (h), a new section 1750 consisting of—

(A) a heading as follows:

**“§1750. Training on agile or iterative development methods”;** and

(B) a text consisting of the text of section 891 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1746 note).

(2) AMENDMENTS IN CONNECTION WITH CODIFICATION.—Section 1750 of title 10, United States Code, as added by paragraph (1), is amended—

(A) in subsection (a)—

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(i) by striking “Not later than” and all that follows through “the Secretary” and inserting “(1) The Secretary”; and

(ii) by adding at the end the following new paragraph:

“(2) In this section, the term ‘specified pilot programs’ means—

“(A) the pilot program required by section 873 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2223a note), relating to use of agile or iterative development methods to tailor major software-intensive warfighting systems and defense business systems; and

“(B) the pilot program required by section 874 of such Act (Public Law 115-91; 10 U.S.C. 2302 note), relating to software development using agile best practices.”; and

(B) by striking “the pilot programs required by sections 873 and 874 of this Act” each place it appears and inserting “the specified pilot programs”.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding after the item relating to section 1749, as added by subsection (h), the following new item:

“1750. Training on agile or iterative development methods.”.

(4) CONFORMING REPEAL.—Section 891 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1746 note) is repealed.

**(j) CONTRACTOR INCENTIVES TO ACHIEVE SAVINGS AND IMPROVE MISSION PERFORMANCE.**—

(1) IN GENERAL.—Subchapter IV of chapter 87 of title 10, United States Code, is amended by adding after section 1750, as added by subsection (i), a new section 1751 consisting of—

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(A) a heading as follows:

**“§1751. Contractor incentives to achieve savings and improve mission performance”; and**

(B) a text consisting of the text of section 832 of the National Defense

Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1746

note).

(2) AMENDMENT IN CONNECTION WITH CODIFICATION.—Section 1751 of title 10,

United States Code, as added by paragraph (1), is amended by striking “Not later than”

and all that follows through “and implement” and inserting “The President of the

Defense Acquisition University shall implement”.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of such

subchapter is amended by adding after the item relating to section 1750, as added by

subsection (i), the following new item:

“1751. Contractor incentives to achieve savings and improve mission performance.”.

(4) CONFORMING REPEAL.—Section 832 of the National Defense Authorization

Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1746 note) is repealed.

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## SECTIONS AFFECTED BY THE PROPOSAL

[Provisions of current law would be affected by the amendments in the legislative text above as follows: matter proposed to be deleted is shown in ~~stricken through~~ text; matter to be inserted is shown in *bold italic*.]

### National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 1701 note)

~~SEC. 1113. DIRECT HIRE AUTHORITY FOR TECHNICAL EXPERTS INTO THE  
DEFENSE ACQUISITION WORKFORCE.~~

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~~(a) AUTHORITY. Each Secretary of a military department may appoint qualified candidates possessing a scientific or engineering degree to positions described in subsection (b) for that military department without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.~~

~~(b) APPLICABILITY. Positions described in this subsection are scientific and engineering positions within the defense acquisition workforce.~~

~~(c) LIMITATION. Authority under this section may not, in any calendar year and with respect to any military department, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering positions within the acquisition workforce of that military department that are filled as of the close of the fiscal year last ending before the start of such calendar year.~~

~~(d) NATURE OF APPOINTMENT. Any appointment under this section shall be treated as an appointment on a full-time equivalent basis, unless such appointment is made on a term or temporary basis.~~

~~(e) EMPLOYEE DEFINED. In this section, the term “employee” has the meaning given that term in section 2105 of title 5, United States Code.~~

~~(f) TERMINATION. The authority to make appointments under this section shall not be available after December 31, 2020.~~

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### National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1580 note prec.)

#### ~~SEC. 1110. DIRECT HIRE AUTHORITY FOR FINANCIAL MANAGEMENT EXPERTS IN THE DEPARTMENT OF DEFENSE WORKFORCE.~~

~~(a) AUTHORITY. — Each Secretary concerned may appoint qualified candidates possessing a finance, accounting, management, or actuarial science degree, or a related degree or equivalent experience, to positions specified in subsection (c) for a Department of Defense component without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.~~

~~(b) SECRETARY CONCERNED. — For purposes of this section, the Secretary concerned is as follows:~~

~~(1) The Secretary of Defense with respect to each Department of Defense component listed in subsection (f) other than the Department of the Army, the Department of the Navy, and the Department of the Air Force.~~

~~(2) The Secretary of a military department with respect to such military department.~~

~~(c) POSITIONS. — The positions specified in this subsection are the positions within the Department of Defense workforce as follows:~~

~~(1) Financial management positions.~~

~~(2) Accounting positions.~~

~~(3) Auditing positions.~~

~~(4) Actuarial positions.~~

~~(5) Cost estimation positions.~~

~~(6) Operational research positions.~~

~~(7) Business and business administration positions.~~

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

~~(d) LIMITATION.— Authority under this section may not, in any calendar year and with respect to any Department of Defense component, be exercised with respect to a number of candidates greater than the number equal to 10 percent of the total number of the financial management, accounting, auditing, and actuarial positions within the financial management workforce of such Department of Defense component that are filled as of the close of the fiscal year last ending before the start of such calendar year.~~

~~(e) NATURE OF APPOINTMENT.— Any appointment under this section shall be treated as an appointment on a full-time equivalent basis, unless such appointment is made on a term or temporary basis.~~

~~(f) DEPARTMENT OF DEFENSE COMPONENT DEFINED.— In this section, the term “Department of Defense component” means the following:~~

- ~~(1) A Defense Agency.~~
- ~~(2) The Office of the Chairman of the Joint Chiefs of Staff.~~
- ~~(3) The Joint Staff.~~
- ~~(4) A combatant command.~~
- ~~(5) The Office of the Inspector General of the Department of Defense.~~
- ~~(6) A Field Activity of the Department of Defense.~~
- ~~(7) The Department of the Army.~~
- ~~(8) The Department of the Navy.~~
- ~~(9) The Department of the Air Force.~~

~~(g) TERMINATION.— The authority to make appointments under this section shall not be available after December 31, 2022.~~

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### National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1580 note prec.)

#### ~~SEC. 1106. DIRECT HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR POST-SECONDARY STUDENTS AND RECENT GRADUATES.~~

~~(a) HIRING AUTHORITY.— Without regard to sections 3309 through 3318, 3327, and 3330 of title 5, United States Code, the Secretary of Defense may recruit and appoint qualified recent graduates and current post-secondary students to competitive service positions in professional and administrative occupations within the Department of Defense.~~

~~(b) LIMITATION ON APPOINTMENTS.— Subject to subsection (c)(2), the total number of employees appointed by the Secretary under subsection (a) during a fiscal year may not exceed the number equal to 15 percent of the number of hires made into professional and administrative occupations of the Department at the GS-11 level and below (or equivalent) under competitive examining procedures during the previous fiscal year.~~

~~(c) REGULATIONS.—~~

~~(1) IN GENERAL.— The Secretary shall administer this section in accordance with regulations prescribed by the Secretary for purposes of this section.~~

~~(2) LOWER LIMIT ON APPOINTMENTS.— The regulations may establish a lower limit on the number of individuals appointable under subsection (a) during a fiscal year than is otherwise provided for under subsection (b), based on such factors as the Secretary considers appropriate.~~



## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

~~(3) PUBLIC NOTICE AND ADVERTISING.—To the extent practical, as determined by the Secretary, the Secretary shall publicly advertise positions available under this section. In carrying out the preceding sentence, the Secretary shall—~~

~~(A) take into account merit system principles, mission requirements, costs, and organizational benefits of any advertising of positions; and~~

~~(B) advertise such positions in the manner the Secretary determines is most likely to provide diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available.~~

~~(d) SUNSET.—The authority provided under this section shall terminate on September 30, 2021.~~

~~(e) DEFINITIONS.—In this section:~~

~~(1) The term “current post-secondary student” means a person who—~~

~~(A) is currently enrolled in, and in good academic standing at, a full-time program at an institution of higher education;~~

~~(B) is making satisfactory progress toward receipt of a baccalaureate or graduate degree; and~~

~~(C) has completed at least one year of the program.~~

~~(2) The term ‘institution of higher education’ has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).~~

~~(3) The term ‘recent graduate’, with respect to appointment of a person under this section, means a person who was awarded a degree by an institution of higher education not more than two years before the date of the appointment of such person, except that in the case of a person who has completed a period of obligated service in a uniformed service of more than four years, such term means a person who was awarded a degree by an institution of higher education not more than four years before the date of the appointment of such person.~~

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### National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1580 note prec.)

#### **~~SEC. 1125. TEMPORARY DIRECT HIRE AUTHORITY FOR DOMESTIC DEFENSE INDUSTRIAL BASE FACILITIES, THE MAJOR RANGE AND TEST FACILITIES BASE, AND THE OFFICE OF THE DIRECTOR OF OPERATIONAL TEST AND EVALUATION.~~**

~~(a) DEFENSE INDUSTRIAL BASE FACILITY AND MRTFB.—During each of fiscal years 2017 through 2021, the Secretary of Defense may appoint, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title, qualified candidates to positions in the competitive service at any defense industrial base facility or the Major Range and Test Facilities Base.~~

~~(b) OFFICE OF THE DIRECTOR OF OPERATIONAL TEST AND EVALUATION.—During fiscal years 2017 through 2021, the Secretary of Defense may, acting through the Director of Operational Test and Evaluation, appoint qualified candidates possessing an advanced degree to scientific and engineering positions within the Office of the Director of Operational Test and Evaluation~~

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title.

~~(e) DEFINITION OF DEFENSE INDUSTRIAL BASE FACILITY. — In this section, the term “defense industrial base facility” means any Department of Defense depot, arsenal, or shipyard located within the United States.~~

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### National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1580 note prec.)

#### ~~SEC. 1101. DIRECT HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR PERSONNEL TO ASSIST IN BUSINESS TRANSFORMATION AND MANAGEMENT INNOVATION.~~

~~(a) AUTHORITY. — The Secretary of Defense may appoint in the Department of Defense individuals described in subsection (b) without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, for the purpose of assisting and facilitating the efforts of the Department in business transformation and management innovation.~~

~~(b) COVERED INDIVIDUALS. — The individuals described in this subsection are individuals who have all of the following:~~

- ~~(1) A management or business background.~~
- ~~(2) Experience working with large or complex organizations.~~
- ~~(3) Expertise in management and organizational change, data analytics, or business process design.~~

~~(c) LIMITATION ON NUMBER. — The number of individuals appointed pursuant to this section at any one time may not exceed 10 individuals.~~

~~(d) NATURE OF APPOINTMENT. — Any appointment under this section shall be on a term basis, and shall be subject to the term appointment regulations in part 316 of title 5, Code of Federal Regulations (other than requirements in such regulations relating to competitive hiring). The term of any such appointment shall be specified by the Secretary at the time of the appointment.~~

~~(e) BRIEFINGS. —~~

~~(1) IN GENERAL. — Not later than September 30, 2019, and September 30, 2021, the Secretary shall brief the appropriate committees of Congress on the exercise of the authority in this section.~~

~~(2) ELEMENTS. — Each briefing under this subsection shall include the following:~~

~~(A) A description and assessment of the results of the use of such authority as of the date of such briefing.~~

~~(B) Such recommendations as the Secretary considers appropriate for extension or modification of such authority.~~

~~(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED. — In this subsection, the term “appropriate committees of Congress” means —~~

~~(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate; and~~

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

- ~~(B) the Committee on Armed Services and the Committee on Government Oversight and Reform of the House of Representatives.~~
- ~~(f) Sunset.—~~
- ~~(1) IN GENERAL.—The authority to appoint individuals in this section shall expire on September 30, 2021.~~
- ~~(2) CONSTRUCTION WITH EXISTING APPOINTMENTS.—The expiration in paragraph (1) of the authority in this section shall not be construed to terminate any appointment made under this section before the date of expiration that continues according to its term as of the date of expiration.~~

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### National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1580 note prec.)

#### ~~SEC. 1110 PILOT PROGRAM ON ENHANCED PERSONNEL MANAGEMENT SYSTEM FOR CYBERSECURITY AND LEGAL PROFESSIONALS IN THE DEPARTMENT OF DEFENSE.~~

~~(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall carry out within the Department of Defense a pilot program to assess the feasibility and advisability of an enhanced personnel management system in accordance with this section for cybersecurity and legal professionals in the Department described in subsection (b) who enter civilian service with the Department on or after January 1, 2020.~~

~~(b) CYBERSECURITY AND LEGAL PROFESSIONALS.—~~

~~(1) IN GENERAL.—The cybersecurity and legal professionals described in this subsection are the following:~~

~~(A) Civilian cybersecurity professionals in the Department of Defense consisting of civilian personnel engaged in or directly supporting planning, commanding and controlling, training, developing, acquiring, modifying, and operating systems and capabilities, and military units and intelligence organizations (other than those funded by the National Intelligence Program) that are directly engaged in or used for offensive and defensive cyber and information warfare or intelligence activities in support thereof.~~

~~(B) Civilian legal professionals in the Department occupying legal or similar positions, as determined by the Secretary of Defense for purposes of the pilot program, that require eligibility to practice law in a State or territory of the United States.~~

~~(2) INAPPLICABILITY TO SES POSITIONS.—The pilot program shall not apply to positions within the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code.~~

~~(c) DIRECT APPOINTMENT AUTHORITY.—~~

~~(1) Inapplicability of GENERAL CIVIL SERVICE APPOINTMENT AUTHORITIES TO APPOINTMENTS.—Under the pilot program, the Secretary of Defense, with respect to the Defense Agencies, and the Secretary of the military department concerned, with respect to the military departments, may appoint qualified candidates as cybersecurity and legal~~

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professionals without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

~~(2) APPOINTMENT ON DIRECT HIRE BASIS.—~~ Appointments under the pilot program shall be made on a direct hire basis.

~~(d) TERM APPOINTMENTS.—~~

~~(1) RENEWABLE TERM APPOINTMENTS.—~~ Each individual shall serve with the Department of Defense as a cybersecurity or legal professional under the pilot program pursuant to an initial appointment to service with the Department for a term of not less than 2 years nor more than 8 years. Any term of appointment under the pilot program may be renewed for one or more additional terms of not less than 2 years nor more than 8 years as provided in subsection (h).

~~(2) LENGTH OF TERMS.—~~ The length of the term of appointment to a position under the pilot program shall be prescribed by the Secretary of Defense taking into account the national security, mission, and other applicable requirements of the position. Positions having identical or similar requirements or terms may be grouped into categories for purposes of the pilot program. The Secretary may delegate any authority in this paragraph to a commissioned officer of the Armed Forces in pay grade O-7 or above or an employee in the Department in the Senior Executive Service.

~~(e) NATURE OF SERVICE UNDER APPOINTMENTS.—~~

~~(1) TREATMENT OF PERSONNEL APPOINTED AS EMPLOYEES.—~~ Except as otherwise provided by this section, individuals serving with the Department of Defense as cybersecurity or legal professionals under the pilot program pursuant to appointments under this section shall be considered employees (as specified in section 2105 of title 5, United States Code) for purposes of the provisions of title 5, United States Code, and other applicable provisions of law, including, in particular, for purposes as follows:

~~(A) Eligibility for participation in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code, subject to the provisions of section 8402 of such title and the regulations prescribed pursuant to such section.~~

~~(B) Eligibility for enrollment in a health benefits plan under chapter 89 of title 5, United States Code (commonly referred as the 'Federal Employees Health Benefits Program').~~

~~(C) Eligibility for and subject to the employment protections of subpart F of part III of title 5, United States Code, relating to merit principles and protections.~~

~~(D) Eligibility for the protections of chapter 81, of title 5, United States Code, relating to workers compensation.~~

~~(2) SCOPE OF RIGHTS AND BENEFITS.—~~ In administering the pilot program, the Secretary of Defense shall specify, and from time to time update, a comprehensive description of the rights and benefits of individuals serving with the Department under the pilot program pursuant to this subsection and of the provisions of law under which such rights and benefits arise.

~~(f)~~ **(g)** COMPENSATION.—

**(1) BASIC PAY.—** Individuals serving with the Department of Defense as cybersecurity or legal professionals under the pilot program shall be paid basic pay for

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

such service in accordance with a schedule of pay prescribed by the Secretary of Defense for purposes of the pilot program.

(2) **TREATMENT AS BASIC PAY.**—Basic pay payable under the pilot program shall be treated for all purposes as basic pay paid under the provisions of title 5, United States Code.

(3) **PERFORMANCE AWARDS.**—Individuals serving with the Department as cybersecurity or legal professionals under the pilot program may be awarded such performance awards for outstanding performance as the Secretary shall prescribe for purposes of the pilot program. The performance awards may include a monetary bonus, time off with pay, or such other awards as the Secretary considers appropriate for purposes of the pilot program. The award of performance awards under the pilot program shall be based in accordance with such policies and requirements as the Secretary shall prescribe for purposes of the pilot program.

(4) **ADDITIONAL COMPENSATION.**—Individuals serving with the Department as cybersecurity or legal professionals under the pilot program may be awarded such additional compensation above basic pay as the Secretary (or the designees of the Secretary) consider appropriate in order to promote the recruitment and retention of highly skilled and productive cybersecurity and legal professionals to and with the Department.

~~(g)~~ **(e) PROBATIONARY PERIOD.**—The following terms of appointment shall be treated as a probationary period under the pilot program:

(1) The first term of appointment of an individual to service with the Department of Defense as a cybersecurity or legal professional, regardless of length.

(2) The first term of appointment of an individual to a supervisory position in the Department as a cybersecurity or legal professional, regardless of length and regardless of whether or not such term of appointment to a supervisory position is the first term of appointment of the individual concerned to service with the Department as a cybersecurity or legal professional.

~~(h)~~ **(f) RENEWAL OF APPOINTMENTS.**—

(1) **IN GENERAL.**—The Secretary of Defense shall prescribe the conditions for the renewal of appointments under the pilot program. The conditions may apply to one or more categories of positions, positions on a case-by-case basis, or both.

(2) **PARTICULAR CONDITIONS.**—In prescribing conditions for the renewal of appointments under the pilot program, the Secretary shall take into account the following (in the order specified):

(A) The necessity for the continuation of the position concerned based on mission requirements and other applicable justifications for the position.

(B) The service performance of the individual serving in the position concerned, with individuals with satisfactory or better performance afforded preference in renewal.

(C) Input from employees on conditions for renewal.

(D) Applicable private and public sector labor market conditions.

(3) **SERVICE PERFORMANCE.**—The assessment of the service performance of an individual under the pilot program for purposes of paragraph (2)(B) shall consist of an assessment of the ability of the individual to effectively accomplish mission goals for the



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position concerned as determined by the supervisor or manager of the individual based on the individual's performance evaluations and the knowledge of and review by such supervisor or manager (developed in consultation with the individual) of the individual's performance in the position. An individual's tenure of service in a position or the Department of Defense may not be the primary element of the assessment.

(+) **(h) PROFESSIONAL DEVELOPMENT.**—The pilot program shall provide for the professional development of individuals serving with the Department of Defense as cybersecurity and legal professionals under the pilot program in a manner that—

(1) creates opportunities for education, training, and career-broadening experiences, and for experimental opportunities in other organizations within and outside the Federal Government; and

(2) reflects the differentiated needs of personnel at different stages of their careers.

(+) **(i) SABBATICALS.**—

(1) **IN GENERAL.**—The pilot program shall provide for an individual who is in a successive term after the first 8 years with the Department of Defense as a cybersecurity or legal professional under the pilot program to take, at the election of the individual, a paid or unpaid sabbatical from service with the Department for professional development or education purposes. The length of a sabbatical shall be any length not less than 6 months nor more than 1 year (unless a different period is approved by the Secretary of the military department or head of the organization or element of the Department concerned for purposes of this subsection). The purpose of any sabbatical shall be subject to advance approval by the organization or element in the Department in which the individual is currently performing service. The taking of a sabbatical shall be contingent on the written agreement of the individual concerned to serve with the Department for an appropriate length of time at the conclusion of the term of appointment in which the sabbatical commences, with the period of such service to be in addition to the period of such term of appointment.

(2) **NUMBER OF SABBATICALS.**—An individual may take more than one sabbatical under this subsection.

(3) **REPAYMENT.**—Except as provided in paragraph (4), an individual who fails to satisfy a written agreement executed under paragraph (1) with respect to a sabbatical shall repay the Department an amount equal to any pay, allowances, and other benefits received by the individual from the Department during the period of the sabbatical.

(4) **WAIVER OF REPAYMENT.**—An agreement under paragraph (1) may include such conditions for the waiver of repayment otherwise required under paragraph (3) for failure to satisfy such agreement as the Secretary specifies in such agreement.

~~(k) **REGULATIONS.**—The Secretary of Defense shall administer the pilot program under regulations prescribed by the Secretary for purposes of the pilot program.~~

~~(l) **TERMINATION.**—~~

~~(1) **IN GENERAL.**—The authority of the Secretary of Defense to appoint individuals for service with the Department of Defense as cybersecurity or legal professionals under the pilot program shall expire on December 31, 2029.~~

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

~~(2) EFFECT ON EXISTING APPOINTMENTS.—The termination of authority in paragraph (1) shall not be construed to terminate or otherwise affect any appointment made under this section before December 31, 2029, that remains valid as of that date.~~

~~(m) IMPLEMENTATION.—~~

~~(1) INTERIM FINAL RULE.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall prescribe an interim final rule to implement the pilot program.~~

~~(2) FINAL RULE.—Not later than 180 days after prescribing the interim final rule under paragraph (1) and considering public comments with respect to such interim final rule, the Secretary shall prescribe a final rule to implement the pilot program.~~

~~(3) OBJECTIVES.—The regulations prescribed under paragraphs (1) and (2) shall accomplish the objectives set forth in subsections (a) through (j) and otherwise ensure flexibility and expedited appointment of cybersecurity and legal professionals in the Department of Defense under the pilot program.~~

~~(n) REPORTS.—~~

~~(1) REPORTS REQUIRED.—Not later than January 30 of each of 2022, 2025, and 2028, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the carrying out of the pilot program. Each report shall include the following:~~

~~(A) A description and assessment of the carrying out of the pilot program during the period since the commencement of the pilot program or the previous submittal of a report under this subsection, as applicable.~~

~~(B) A description and assessment of the successes in and impediments to carrying out the pilot program system during such period.~~

~~(C) Such recommendations as the Secretary considers appropriate for legislative action to improve the pilot program and to otherwise improve civilian personnel management of cybersecurity and legal professionals by the Department of Defense.~~

~~(D) In the case of the report submitted in 2028, an assessment and recommendations by the Secretary on whether to make the pilot program permanent.~~

~~(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—~~

~~(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate; and~~

~~(B) the Committee on Armed Services and the Committee on Oversight and Government Reform of the House of Representatives.~~

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## TITLE 5, UNITED STATES CODE

### §3104. Employment of specially qualified scientific and professional personnel

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions for carrying out research

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established by action of the Director or, under such standards and procedures as the Office prescribes and publishes in such form as the Director may determine (including procedures under which the prior approval of the Director may be required), by agency action.

(b) The provisions of subsection (a) of this section shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title) *or to any position in the Department of Defense.*

(c) In addition to the number of positions authorized by subsection (a) of this section, the Librarian of Congress may establish, without regard to the second sentence of subsection (a) of this section, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel.

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## TITLE 10, UNITED STATES CODE

### §1705. Defense Acquisition Workforce Development Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a fund to be known as the "Department of Defense Acquisition Workforce Development Fund" (in this section referred to as the "Fund") to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense.

(b) PURPOSE.—The purpose of the Fund is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) MANAGEMENT.—The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for that purpose, from among persons with an extensive background in management relating to acquisition and personnel. *In addition, the designated senior official, or the principal deputy of that official, shall have both qualifications in financial management and an extensive background in financial management.*

(d) ~~ELEMENTS~~ *SOURCE OF FUNDS.*—

(1) ~~IN GENERAL~~ *ELEMENTS OF THE FUND.*—The Fund shall consist of amounts as follows:

~~(A) Amounts credited to the Fund under paragraph (2).~~

~~(B) (A)~~ Amounts transferred to the Fund pursuant to paragraph (3) ~~(2)~~.

~~(C) (B)~~ Any other amounts appropriated to, credited to, or deposited into the Fund by law.



## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

~~(2) CREDITS TO THE FUND.—(A) There shall be credited to the Fund an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance.~~

~~(B) Subject to paragraph (4), not later than 30 days after the end of the first quarter of each fiscal year, the head of each military department and Defense Agency shall remit to the Secretary of Defense, from amounts available to such military department or Defense Agency, as the case may be, for contract services for operation and maintenance, an amount equal to the applicable percentage for such fiscal year of the amount expended by such military department or Defense Agency, as the case may be, during such fiscal year for services covered by subparagraph (A). Any amount so remitted shall be credited to the Fund under subparagraph (A).~~

~~(C) For purposes of this paragraph, the applicable percentage for a fiscal year is the percentage that results in the credit to the Fund of \$500,000,000 in such fiscal year.~~

~~(D) The Secretary of Defense may adjust the amount specified in subparagraph (C) for a fiscal year if the Secretary determines that the amount is greater or less than reasonably needed for purposes of the Fund for such fiscal year. The Secretary may not adjust the amount for a fiscal year to an amount that is more than \$600,000,000 or less than \$400,000,000.~~

~~(3) TRANSFER OF CERTAIN UNOBLIGATED BALANCES.—To the extent provided in appropriations Acts, the Secretary of Defense may, during the 36-month period following the expiration of availability for obligation of any appropriations made to the Department of Defense for procurement, research, development, test, and evaluation, or operation and maintenance, transfer to the Fund any unobligated balance of such appropriations.~~

**(2) TRANSFER OF CERTAIN UNOBLIGATED BALANCES.—(A) The Secretary of Defense shall transfer to the Fund each fiscal year from unobligated balances of appropriations described in subparagraph (B) a total amount of not less than \$400,500,000.**

**(B) Subparagraph (A) applies to unobligated balances of appropriations made to the Department of Defense for which the period of availability for obligation expired at the end of one of the three fiscal years preceding the fiscal year during which the transfer under subparagraph (A) is made, but only in the case of an appropriation made to the Department of Defense —**

**(i) for procurement;**

**(ii) for research, development, test, and evaluation; or**

**(iii) for operation and maintenance.**

**(C) Any amount so transferred to the Fund pursuant to subparagraph (A) shall be credited to the Fund.**

~~(4) ADDITIONAL REQUIREMENTS AND LIMITATIONS ON REMITTANCES.—(A) In the event amounts are transferred to the Fund during a fiscal year pursuant to paragraph (1)(B) or appropriated to the Fund for a fiscal year pursuant to paragraph (1)(C), the aggregate amount otherwise required to be remitted to the Fund for that fiscal year pursuant to paragraph (2)(B) shall be reduced by the amount equal to the amounts so transferred or appropriated to the Fund during or for that fiscal year. Any reduction in the~~

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

~~aggregate amount required to be remitted to the Fund for a fiscal year under this subparagraph shall be allocated as provided in applicable provisions of appropriations Acts or, absent such provisions, on a pro rata basis among the military departments and Defense Agencies required to make remittances to the Fund for that fiscal year under paragraph (2)(B), subject to any exclusions the Secretary of Defense determines to be necessary in the best interests of the Department of Defense.~~

~~(B) Any remittance of amounts to the Fund for a fiscal year under paragraph (2) shall be subject to the availability of appropriations for that purpose.~~

### (e) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—(A) Subject to the provisions of this subsection, amounts in the Fund shall be available to the Secretary of Defense for expenditure, or for transfer to a military department or Defense Agency, for the recruitment, training, and retention of acquisition personnel of the Department of Defense for the purpose of the Fund, including for the provision of training and retention incentives to the acquisition workforce of the Department and to develop acquisition tools and methodologies, and undertake research and development activities, leading to acquisition policies and practices that will improve the efficiency and effectiveness of defense acquisition efforts. In the case of temporary members of the acquisition workforce designated pursuant to subsection (g)(2), such funds shall be available only for the limited purpose of providing training in the performance of acquisition-related functions and duties.

(B) Amounts in the Fund also may be used to pay salaries of personnel at the Office of the Secretary of Defense, military departments, and Defense Agencies to manage the Fund.

(2) PROHIBITION.—Amounts in the Fund may not be obligated for any purpose other than purposes described in paragraph (1) or otherwise in accordance with this subsection.

(3) GUIDANCE.—~~The Under Secretary of Defense for Acquisition, Technology, and Logistics,~~ acting through the senior official designated to manage the Fund, shall issue guidance for the administration of the Fund. Such guidance shall include provisions—

(A) identifying areas of need in the acquisition workforce for which amounts in the Fund may be used, including—

(i) changes to the types of skills needed in the acquisition workforce;

(ii) incentives to retain in the acquisition workforce qualified, experienced acquisition workforce personnel; and

(iii) incentives for attracting new, high-quality personnel to the acquisition workforce;

(B) describing the manner and timing for applications for amounts in the Fund to be submitted;

(C) describing the evaluation criteria to be used for approving or prioritizing applications for amounts in the Fund in any fiscal year;

(D) describing measurable objectives of performance for determining whether amounts in the Fund are being used in compliance with this section; and

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

(E) describing the amount from the Fund that may be used to pay salaries of personnel at the Office of the Secretary of Defense, military departments, and Defense Agencies to manage the Fund and the circumstances under which such amounts may be used for such purpose.

(4) LIMITATION ON PAYMENTS TO OR FOR CONTRACTORS.—Amounts in the Fund shall not be available for payments to contractors or contractor employees, other than for the purposes of—

(A) providing advanced training to Department of Defense employees;

(B) developing acquisition tools and methodologies and performing research on acquisition policies and best practices that will improve the efficiency and effectiveness of defense acquisition efforts; and

(C) supporting human capital and talent management of the acquisition workforce, including benchmarking studies, assessments, and requirements planning.

(5) PROHIBITION ON PAYMENT OF BASE SALARY OF CURRENT EMPLOYEES.—

Amounts in the Fund may not be used to pay the base salary of any person who was an employee of the Department serving in a position in the acquisition workforce as of January 28, 2008, and who has continued in the employment of the Department since such time without a break in such employment of more than a year.

(6) DURATION OF AVAILABILITY.—Amounts ~~credited to the Fund in accordance with subsection (d)(2)~~, transferred to the Fund pursuant to subsection (d)(3)(2), appropriated to the Fund, or deposited to the Fund shall remain available for obligation in the fiscal year for which ~~credited~~, transferred, appropriated, or deposited and the two succeeding fiscal years.

~~(f) EXPEDITED HIRING AUTHORITY.—For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—~~

~~(1) designate any category of positions in the acquisition workforce as positions for which there exists a shortage of candidates or there is a critical hiring need; and~~

~~(2) utilize the authorities in such sections to recruit and appoint qualified persons directly to positions so designated.~~

(g) ACQUISITION WORKFORCE DEFINED.—In this section, the term "acquisition workforce" means the following:

(1) Personnel in positions designated under section 1721 of this title as acquisition positions for purposes of this chapter.

(2) Other military personnel or civilian employees of the Department of Defense who—

(A)(i) contribute significantly to the acquisition process by virtue of their assigned duties; or

(ii) contribute significantly to the acquisition or development of systems relating to cybersecurity; and

(B) are designated as temporary members of the acquisition workforce by the Under Secretary of Defense for Acquisition, Technology, and Logistics, or by the senior acquisition executive of a military department, for the limited purpose

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

of receiving training for the performance of acquisition-related functions and duties.

### ~~§1762. Demonstration project relating to certain acquisition personnel management policies and procedures~~

~~(a) COMMENCEMENT.—The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.~~

~~(b) TERMS AND CONDITIONS.—(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to [section 4703 of title 5](#) and all other provisions of such title that apply with respect to any demonstration project under such section.~~

~~(2) Subject to paragraph (3), in applying [section 4703 of title 5](#) with respect to a demonstration project described in subsection (a) —~~

~~(A) "180 days" in subsection (b)(4) of such section shall be deemed to read "120 days";~~

~~(B) "90 days" in subsection (b)(6) of such section shall be deemed to read "30 days"; and~~

~~(C) subsection (d)(1) of such section shall be disregarded.~~

~~(3) Paragraph (2) shall not apply with respect to a demonstration project unless —~~

~~(A) for each organization or team participating in the demonstration project —~~

~~(i) at least one third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and~~

~~(ii) at least two thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and~~

~~(B) the demonstration project commences before October 1, 2007.~~

~~(4) The Secretary of Defense shall exercise the authorities granted to the Office of Personnel Management under [section 4703 of title 5](#) for purposes of the demonstration project authorized under this section.~~

~~(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in at any one time the demonstration project under this section may not exceed 130,000.~~

~~(d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.~~

~~(e) ASSESSMENTS.—(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).~~

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

~~(2) Each such assessment shall include the following:~~

~~(A) A description of the workforce included in the project.~~

~~(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.~~

~~(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.~~

~~(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.~~

~~(E) How the project allows the organization to better meet mission needs.~~

~~(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.~~

~~(G) Whether there is a process for—~~

~~(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and~~

~~(ii) setting timetables for performance appraisals.~~

~~(H) The project's impact on career progression.~~

~~(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.~~

~~(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.~~

~~(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.~~

~~(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.~~

~~(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.~~

~~(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term "covered congressional committees" means—~~

~~(1) the Committees on Armed Services of the Senate and the House of Representatives;~~

~~(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and~~

~~(3) the Committee on Oversight and Government Reform of the House of Representatives.~~

~~(g) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration project under this section shall terminate on December 31, 2023.~~

~~(h) CONVERSION.—Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to [section 9902 of title 5](#).~~



## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

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### **Below are the sections of law that would be repealed by the codification provisions in section 1006**

[The letter designators at the beginning of each citation below  
correspond to the subsection designations in section 1006]

#### **A. National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 1701 note)**

##### **SEC. 847. REQUIREMENTS FOR SENIOR DEPARTMENT OF DEFENSE OFFICIALS SEEKING EMPLOYMENT WITH DEFENSE CONTRACTORS.**

(a) REQUIREMENT TO SEEK AND OBTAIN WRITTEN OPINION.—

(1) REQUEST.—An official or former official of the Department of Defense described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(2) SUBMISSION OF REQUEST.—A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

(3) WRITTEN OPINION.—Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(4) CONTRACTOR REQUIREMENT.—A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

(5) ADMINISTRATIVE ACTIONS.—In the event that an official or former official of the Department of Defense described in subsection (c), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 2105

## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

of title 41, United States Code[,], that the Secretary of Defense determines to be appropriate.

(b) **RECORDKEEPING REQUIREMENT.**—

(1) **DATABASE.**—Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years beginning on the date on which the written opinion was provided.

(2) **INSPECTOR GENERAL REVIEW.**—The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act [Jan. 28, 2008].

(c) **COVERED DEPARTMENT OF DEFENSE OFFICIALS.**—An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official—

(1) participated personally and substantially in an acquisition as defined in section 131 of title 41, United States Code[,], with a value in excess of \$10,000,000 and serves or served—

(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

(C) in a general or flag officer position compensated at a rate of pay for grade O–7 or above under section 201 of title 37, United States Code; or

(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10,000,000.

(d) **DEFINITION.**—In this section, the term “post-employment restrictions” includes—

(1) chapter 21 of title 41, United States Code;

(2) section 207 of title 18, United States Code; and

(3) any other statute or regulation restricting the employment or activities of individuals who leave government service in the Department of Defense.

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### **B. National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1701a note)**

#### **SEC. 834. FLEXIBILITY IN CONTRACTING AWARD PROGRAM.**

(a) **ESTABLISHMENT OF AWARD PROGRAM.**—The Secretary of Defense shall create an award to recognize those acquisition programs and professionals that make the best use of the flexibilities and authorities granted by the Federal Acquisition Regulation and Department of Defense Instruction 5000.02 (Operation of the Defense Acquisition System).

## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

(b) **PURPOSE OF AWARD.**—The award established under subsection (a) shall recognize outstanding performers whose approach to program management emphasizes innovation and local adaptation, including the use of—

- (1) simplified acquisition procedures;
- (2) inherent flexibilities within the Federal Acquisition Regulation;
- (3) commercial contracting approaches;
- (4) public-private partnership agreements and practices;
- (5) cost-sharing arrangements;
- (6) innovative contractor incentive practices; and
- (7) other innovative implementations of acquisition flexibilities.

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### **C. Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 1702 note)**

#### **SEC. 807. QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM.**

(a) **ESTABLISHMENT.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall establish a team of highly qualified acquisition professionals who shall be available to advise the Under Secretary on actions that can be taken to expedite the acquisition of urgently needed systems.

(b) **DUTIES.**—The issues on which the team may provide advice shall include the following:

- (1) Industrial base issues, including the limited availability of suppliers.
- (2) Technology development and technology transition issues.
- (3) Issues of acquisition policy, including the length of the acquisition cycle.
- (4) Issues of testing policy and ensuring that weapon systems perform properly in combat situations.
- (5) Issues of procurement policy, including the impact of socio-economic requirements.
- (6) Issues relating to compliance with environmental requirements.

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### **D. National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1722b note)**

#### **SEC. 841. ENHANCEMENTS TO THE CIVILIAN PROGRAM MANAGEMENT WORKFORCE.**

(a) **ESTABLISHMENT OF PROGRAM MANAGER DEVELOPMENT PROGRAM.**—

(1) **IN GENERAL.**—The Secretary of Defense, in consultation with the Secretaries of the military departments, shall implement a program manager development program to provide for the professional development of high-potential, experienced civilian personnel. Personnel shall be competitively selected for the program based on their potential to become a program manager of a major defense acquisition program, as



## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

defined in section 2430 of title 10, United States Code. The program shall be administered and overseen by the Secretary of each military department, acting through the service acquisition executive for the department concerned.

(2) **PLAN REQUIRED.**—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a comprehensive plan to implement the program established under paragraph (1). In developing the plan, the Secretary of Defense shall seek the input of relevant external parties, including professional associations, other government entities, and industry. The plan shall include the following elements:

(A) An assessment of the minimum level of subject matter experience, education, years of experience, certifications, and other qualifications required to be selected into the program, set forth separately for current Department of Defense employees and for personnel hired into the program from outside the Department of Defense.

(B) A description of hiring flexibilities to be used to recruit qualified personnel from outside the Department of Defense.

(C) A description of the extent to which mobility agreements will be required to be signed by personnel selected for the program during their participation in the program and after their completion of the program. The use of mobility agreements shall be applied to help maximize the flexibility of the Department of Defense in assigning personnel, while not inhibiting the participation of the most capable candidates.

(D) A description of the tenure obligation required of personnel selected for the program.

(E) A plan for training during the course of the program, including training in leadership, program management, engineering, finance and budgeting, market research, business acumen, contracting, supplier management, requirement setting and tradeoffs, intellectual property matters, and software.

(F) A description of career paths to be followed by personnel in the program in order to ensure that personnel in the program gain expertise in the program management functional career field competencies identified by the Department in existing guidance and the topics listed in subparagraph (E), including—

(i) a determination of the types of advanced educational degrees that enhance program management skills and the mechanisms available to the Department of Defense to facilitate the attainment of those degrees by personnel in the program;

(ii) a determination of required assignments to positions within acquisition programs, including position type and acquisition category of the program office;

(iii) a determination of required or encouraged rotations to career broadening positions outside of acquisition programs; and

(iv) a determination of how the program will ensure the opportunity for a required rotation to industry of at least six months to

## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

develop an understanding of industry motivation and business acumen, such as by developing an industry exchange program for civilian program managers, similar to the Corporate Fellows Program of the Secretary of Defense.

(G) A general description of the number of personnel anticipated to be selected into the program, how frequently selections will occur, how long personnel selected into the program will participate in the program, and how personnel will be placed into an assignment at the completion of the program.

(H) A description of benefits that will be offered under the program using existing human capital flexibilities to retain qualified employees, such as student loan repayments, bonuses, or pay banding.

(I) An assessment of personnel flexibilities needed to allow the military departments and the Defense Agencies to reassign or remove program managers that do not perform effectively.

(J) A description of how the program will be administered and overseen by the Secretaries of each military department, acting through the service acquisition executive for the department concerned.

(K) A description of how the program will be integrated with existing program manager development efforts at each military department.

(3) **USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.**—Amounts in the Department of Defense Acquisition Workforce Development Fund (established under section 1705 of title 10, United States Code) may be used to pay the base salary of personnel in the program established under paragraph (1) during the period of time such personnel are temporarily assigned to a developmental rotation or training program anticipated to last at least six months.

(4) **IMPLEMENTATION.**—The program established under paragraph (1) shall be implemented not later than September 30, 2019.

(b) **INDEPENDENT STUDY OF INCENTIVES FOR PROGRAM MANAGERS.**—\*\*\*

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### **E. Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 1723 note)**

#### **SEC. 875. INFORMATION TECHNOLOGY ACQUISITION WORKFORCE.**

(a) **PLAN REQUIRED.**—The Secretary of Defense shall develop and carry out a plan to strengthen the part of the acquisition workforce that specializes in information technology. The plan shall include the following:

(1) Defined targets for billets devoted to information technology acquisition.

(2) Specific certification requirements for individuals in the acquisition workforce who specialize in information technology acquisition.

(3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

(b) **DEFINITIONS.**—In this section:

## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

(1) The term “information technology” has the meaning provided such term in section 11101 of title 40, United States Code, and includes information technology incorporated into a major weapon system.

(2) The term “major weapon system” has the meaning provided such term in section 2379(f) of title 10, United States Code.

(c) DEADLINE.—The Secretary of Defense shall develop the plan required under this section not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011].

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### **F. Defense Acquisition Workforce Improvement Act (title XII of Public Law 101-510; 10 U.S.C. 1724 note)**

#### **SEC. 1209. TRANSITION PROVISIONS.**

(a) \*\*\*

\*\*\*\*\*

(i) CREDIT FOR EXPERIENCE FOR CERTAIN POSITIONS.—For purposes of meeting any requirement under chapter 87 of title 10, United States Code (as added by section 1202), for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of such title, any period of time spent serving in a position later designated as an acquisition position or a critical acquisition position under such chapter may be counted as experience in such a position for such purposes.

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### **G. National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1741 note)**

#### **SEC. 803. MODERNIZATION OF SERVICES ACQUISITION.**

(a) \*\*\*

(b) GUIDANCE REGARDING TRAINING AND DEVELOPMENT OF THE ACQUISITION WORKFORCE.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall issue guidance addressing the training and development of the Department of Defense workforce engaged in the procurement of services, including those personnel not designated as members of the acquisition workforce.

(2) IDENTIFICATION OF TRAINING AND PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND ALTERNATIVES.—The guidance required under paragraph (1) shall identify training and professional development opportunities and alternatives, not limited to existing Department of Defense institutions, that focus on and provide relevant training and professional development in commercial business models and contracting.

(3) TREATMENT OF TRAINING AND PROFESSIONAL DEVELOPMENT.—Any training and professional development provided pursuant to this subsection outside Department of

## **ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS**

Defense institutions shall be deemed to be equivalent to similar training certified or provided by the Defense Acquisition University.

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### **H. National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1746 note)**

#### **SEC. 850. TRAINING IN COMMERCIAL ITEMS PROCUREMENT.**

(a) TRAINING.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the President of the Defense Acquisition University shall establish a comprehensive training program on part 12 of the Federal Acquisition Regulation. The training shall cover, at a minimum, the following topics:

(1) The origin of part 12 and the congressional mandate to prefer commercial procurements.

(2) The definition of a commercial item, with a particular focus on the “of a type” concept.

(3) Price analysis and negotiations.

(4) Market research and analysis.

(5) Independent cost estimates.

(6) Parametric estimating methods.

(7) Value analysis.

(8) Best practices in pricing from commercial sector organizations, foreign government organizations, and other Federal, State, and local public sectors organizations.

(9) Other topics on commercial procurements necessary to ensure a well-educated acquisition workforce.

(b) ENROLLMENTS GOALS.—The President of the Defense Acquisition University shall set goals for student enrollment for the comprehensive training program established under subsection (a).

(c) SUPPORTING ACTIVITIES.—The Secretary of Defense shall, in support of the achievement of the goals of this section—

(1) engage academic experts on research topics of interest to improve commercial item identification and pricing methodologies; and

(2) facilitate exchange and interface opportunities between government personnel to increase awareness of best practices and challenges in commercial item identification and pricing.

(d) FUNDING.—The Secretary of Defense shall use amounts available in the Department of Defense Acquisition Workforce Development Fund established under section 1705 of title 10, United States Code, to fund the comprehensive training program established under subsection (a).

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### **I. National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 1746 note)**

## ACQUISITION WORKFORCE — LEGISLATIVE PROVISIONS

### SEC. 891. TRAINING ON AGILE OR ITERATIVE DEVELOPMENT METHODS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense, in consultation with the President of the Defense Acquisition University, shall establish a training course at the Defense Acquisition University on agile or iterative development methods to provide training for personnel implementing and supporting the pilot programs required by sections 873 and 874 of this Act [10 U.S.C. 2223a note, 10 U.S.C. 2302 note].

#### (b) COURSE ELEMENTS.—

(1) IN GENERAL.—The course shall be taught in residence at the Defense Acquisition University and shall include the following elements:

(A) Training designed to instill a common understanding of all functional roles and dependencies involved in developing and producing a capability using agile or iterative development methods.

(B) An exercise involving teams composed of personnel from pertinent functions and functional organizations engaged in developing an integrated agile or iterative development method for a specific program.

(C) Instructors and content from non-governmental entities, as appropriate, to highlight commercial best practices in using an agile or iterative development method.

(2) COURSE UPDATES.—The Secretary shall ensure that the course is updated as needed, including through incorporating lessons learned from the implementation of the pilot programs required by sections 873 and 874 of this Act in subsequent versions of the course.

#### (c) COURSE ATTENDANCE.—The course shall be—

(1) available for certified acquisition personnel working on programs or projects using agile or iterative development methods; and

(2) mandatory for personnel participating in the pilot programs required by sections 873 and 874 of this Act from the relevant organizations in each of the military departments and Defense Agencies, including organizations responsible for engineering, budgeting, contracting, test and evaluation, requirements validation, and certification and accreditation.

(d) AGILE ACQUISITION SUPPORT.—The Secretary and the senior acquisition executives in each of the military departments and Defense Agencies, in coordination with the Director of the Defense Digital Service, shall assign to offices supporting systems selected for participation in the pilot programs required by sections 873 and 874 of this Act a subject matter expert with knowledge of commercial agile acquisition methods and Department of Defense acquisition processes to provide assistance and to advise appropriate acquisition authorities of the expert's observations.

(e) AGILE RESEARCH PROGRAM.—The President of the Defense Acquisition University shall establish a research program to conduct research on and development of agile acquisition practices and tools best tailored to meet the mission needs of the Department of Defense.

(f) AGILE OR ITERATIVE DEVELOPMENT DEFINED.—The term “agile or iterative development”, with respect to software—

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(1) means acquisition pursuant to a method for delivering multiple, rapid, incremental capabilities to the user for operational use, evaluation, and feedback not exclusively linked to any single, proprietary method or process; and

(2) involves—

(A) the incremental development and fielding of capabilities, commonly called “spirals”, “spins”, or “sprints”, which can be measured in a few weeks or months; and

(B) continuous participation and collaboration by users, testers, and requirements authorities.

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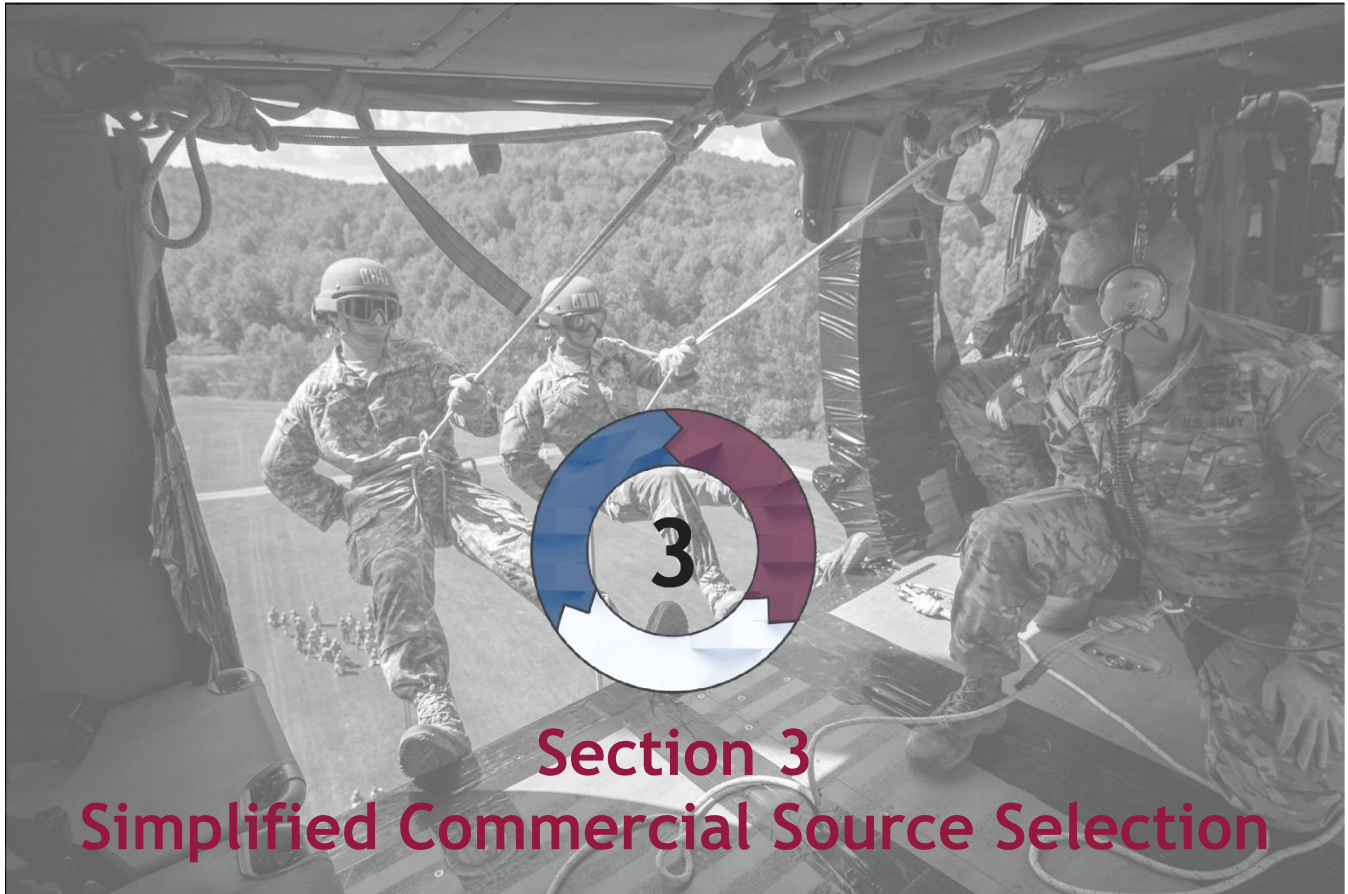
### **J. National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 1746 note)**

#### **SEC. 832. CONTRACTOR INCENTIVES TO ACHIEVE SAVINGS AND IMPROVE MISSION PERFORMANCE.**

Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Acquisition University shall develop and implement a training program for Department of Defense acquisition personnel on fixed-priced incentive fee contracts, public-private partnerships, performance-based contracting, and other authorities in law and regulation designed to give incentives to contractors to achieve long-term savings and improve administrative practices and mission performance.

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*Much of the authority needed to further simplify procurements of commercial products and services is already in place but appears not to have been widely used.*

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## RECOMMENDATION

**Rec. 28:** Simplify the selection of sources for commercial products and services.

## SUMMARY

Despite numerous revisions to statutes and regulations, selecting sources for commercial products and services continues to take too long and involve unnecessarily complex procedures for buyers and sellers. Statutory changes aimed at expanding the applicability of the special streamlined acquisition procedures and updating the requirement to publish notices to reflect current technology would simplify selection of sources for commercial products and services. Improving guidance in the FAR, emphasizing the use of simplified acquisition procedures, revising the FAR to make it easier to locate procedures for using simplified acquisition procedures for commercial products and services, and defining streamlining-related terms in the FAR would also simplify commercial selection.

## RECOMMENDATION

### Recommendation 28: Simplify the selection of sources for commercial products and services.

#### Implementation

##### **Legislative Branch**

- Revise 15 U.S.C. § 637(g) and 41 U.S.C. § 1708(b) to extend the exemption to the requirement to publish notices of contract actions to procurements using *simplified acquisition procedures*. The current exemption has an upper limit of the Simplified Acquisition Threshold. By revising the statute's threshold from the *simplified acquisition threshold* to the use of *simplified acquisition procedures*, procurements under the special simplified acquisition procedures under 41 U.S.C. § 1901 and 10 U.S.C. § 2304(g) will be included.
- Revise 15 U.S.C. § 637(e) and 41 U.S.C. § 1708(a) to eliminate the requirement to post solicitation documents in a public place and to increase the threshold for the requirement to publish notice of a proposed contract action on the GPE from \$25,000 to \$75,000. This revision eliminates the obsolete posting requirement and raises the 30 old synopsis threshold.
- Revise 41 U.S.C. § 1901(a), 41 U.S.C. § 3305 (a), and 10 U.S.C. § 2304(g) to remove the word *only*. This change will make the authority provided by these statutes consistent with the preference for commercial products and services in 41 U.S.C. § 3307(b) and 10 U.S.C. § 2377.

##### **Executive Branch**

- Revise FAR 2.101 and 11.103 to define the term *market acceptance*; revise FAR 2.101 and 13.103 to define the term *standing price quotation*. These terms are already contained in the FAR but are undefined. Both terms represent techniques that may offer contracting officers the opportunity to streamline the procurement of commercial products and services.
- Revise FAR 5.202(b)(13) and 5.301(b)(6) to conform to the statutory changes at 15 U.S.C. § 637 and 41 U.S.C. § 1708.
- Revise 12.102 and 13.000 to clarify the relationship between Part 12 and Part 13. Contracting officers are required to use Part 12 when acquiring commercial products and services with an expected value greater than the MPT; Part 13 would focus on all purchases below the MPT, and purchases of noncommercial products and services between the MPT and SAT.
- Revise the FAR to move the authority to use simplified acquisition procedures for commercial products and services in FAR 13.5, Simplified Procedures for Certain Commercial Items, to FAR 12.6, Selection of Sources for Commercial Products and Services. This change makes the simplified procedures for procuring commercial products and services available in the logical part of the FAR that primarily focuses on procurements of commercial products and services.



- Revise FAR 12.203 and 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items, to focus more broadly on the *selection of sources for commercial products and services*. The existing language implies a more complex process for selecting sources. With the clarification of the relationship between Parts 12 and 13, and the incorporation in 12.6 of special streamlined procedures for acquiring commercial products and services, the revised Subpart 12.6 would focus on using simplified procedures for selecting sources first, and using more complex procedures only when procuring products and services over the SAT.
- Revise FAR 12.602 (d) to require contracting officers to use simplified acquisition procedures when acquiring commercial products and services with an expected value between the MPT and the thresholds provided by 41 U.S.C. §§ 1901 and 1903 implemented in FAR 12.602(c). Require contracting officers to obtain approval to use the complex policies and procedures in Part 14 or Part 15 to acquire commercial products or services below the threshold in FAR 12.602(c).
- Revise FAR 12.6 to organize in one location the simplified acquisition procedures available to contracting officers under the authority of 41 U.S.C. §§ 1901 and 1903. This change gives contracting officers more clarity, direction, and confidence in using simplified procedures rather than more familiar, but possibly inappropriate, complex procedures for procuring commercial products and services.
- Revise FAR 12.604, Combined Synopsis/Solicitation, to reflect the statutory revisions at 15 U.S.C. § 637 and 41 U.S.C. § 1708 that would limit the need to a synopsis to paper solicitations.

**Note: Explanatory report language, draft legislative text, and regulatory revisions can be found in the Implementation Details subsection at the end of Section 3.**

### ***Implications for Other Agencies***

- The recommended changes to statute and the FAR would apply to DoD and the civilian agencies that use the FAR. Both DoD and the civilian agencies will benefit from these recommendations.

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Section 3  
Simplified Commercial Source Selection  
Implementation Details



## Recommendation 28



## RECOMMENDED REPORT LANGUAGE

### SEC. 304. Revision to Source Selection Requirements for Acquisition of Commercial Products and Services.

This section would amend section 1708(a), title 41, United States Code, and section 637(e), title 15, United States Code, to increase the threshold for requiring procurement notices to be published from \$25,000 to \$75,000, and expand the use of combined synopsis and solicitations to all commercial product and service procurements made using simplified acquisition procedures. This section would also remove the requirement to post procurement opportunities valued above the micro-purchase threshold, but below \$25,000, from being posted in a public place in the contracting office, and remove the limitation on the use of simplified acquisition procedures for commercial products and services to procurements made up of only commercial products and services.

The committee notes that while the threshold for using simplified acquisition procedures is currently \$7 million (\$13 million for products or services procured in support of a contingency or recovery from a nuclear, chemical, or biological attack), the simplified procedure for using a combined synopsis and solicitation has remained limited to only those procurements below the simplified acquisition threshold. The committee is aware that this threshold has not been increased in over 30 years despite the micro-purchase and simplified acquisition thresholds being raised multiple times. The committee expects these amendments would advance efforts to further simplify the simplified acquisition procedures for the purpose of increasing agencies' ability to access commercially viable technologies and solutions from innovative and non-traditional sources.

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**[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]**  
**COMMERCIAL ITEMS #2**

**[NOTE: The draft legislative text below is followed by a “Sections Affected” display, showing the text of each provision of law affected by the draft legislative text.]**

**SEC. 304. REVISION TO SOURCE SELECTION REQUIREMENTS FOR**  
**ACQUISITION OF COMMERCIAL PRODUCTS AND SERVICES.**

(a) THRESHOLD FOR REQUIRED PUBLICATION OF NOTICE.—

(1) SMALL BUSINESS ACT.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(A) in subsection (e)(1)—

(i) by striking “\$25,000” in clauses (i) and (ii) of subparagraph (A)

and inserting “\$75,000”;

(ii) by inserting “and” at the end of subparagraph (A);

(iii) by striking subparagraph (B); and

(iv) by redesignating subparagraph (C) as subparagraph (B); and

(B) in subsection (g)(1)(A)—

(i) by striking “for an amount not greater than the simplified acquisition threshold and is” in the matter preceding clause (i);

(ii) by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively;

(iii) by inserting before clause (ii), as so redesignated, the following new clause (i):

“(i) using simplified acquisition procedures;”; and

**[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]**  
**COMMERCIAL ITEMS #2**

(iv) by striking the period at the end of clause (iii), as so

redesignated, and inserting a semicolon.

(2) TITLE 41, UNITED STATES CODE.—Section 1708 of title 41, United States Code,

is amended—

(A) in subsection (a)—

(i) by striking paragraph (1);

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and

(2), respectively;

(iii) by striking “\$25,000” in subparagraphs (A) and (B) of

paragraph (1), as so redesignated, and inserting “\$75,000”; and

(iv) by striking “\$25,000” both places it appears in paragraph (2),

as so redesignated, and inserting “\$75,000”; and

(B) in subsection (b)(1)(A)—

(i) by striking “for an amount not greater than the simplified

acquisition threshold and is” in the matter preceding clause (i);

(ii) by redesignating clauses (i) and (ii) as clauses (ii) and (iii),

respectively; and

(iii) by inserting before clause (ii), as so redesignated, the

following new clause (i):

“(i) using simplified acquisition procedures;”.

(b) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES FOR CERTAIN ABOVE-

THRESHOLD PURCHASES WHEN OFFERS ARE EXPECTED TO INCLUDE COMMERCIAL PRODUCTS OR

SERVICES.—

**[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]**  
**COMMERCIAL ITEMS #2**

(1) TITLE 41, UNITED STATES CODE.—Sections 1901(a)(2) and 3305(a)(2) of title 41, United States Code, are amended by striking “only”.

(2) TITLE 10, UNITED STATES CODE.—Section 2304(g)(1)(B) of title 10, United States Code, is amended by striking “only”.

## **SECTIONS AFFECTED BY THE PROPOSAL**

**[The material below shows changes proposed to be made by the legislative text above to the text of existing statutes. Matter proposed to be deleted is shown in ~~stricken through~~ text; matter proposed to be inserted is shown in *bold italic*.]**

### **Section 8 of the Small Business Act (15 U.S.C. 637)**

SEC. 8. (a) \*\*\*

\*\*\*\*\*

(e)(1) Except as provided in subsection (g)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed ~~\$25,000~~ *\$75,000*; or

(ii) place an order, expected to exceed ~~\$25,000~~ *\$75,000*, under a basic agreement, basis ordering agreement, or similar arrangement, shall publish a notice described in subsection (f); *and*

~~(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—~~

~~(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and~~

~~(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000; and~~

~~(C)~~ *(B)* an executive agency awarding a contract for property or services for a price exceeding \$100,000, or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

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**COMMERCIAL ITEMS #2**

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)); or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) \*\*\*

\* \* \* \* \*

(g)(1) A notice is not required under subsection (e)(1) if—

(A) the proposed procurement is ~~for an amount not greater than the simplified acquisition threshold and is to be conducted by—~~

*(i) using simplified acquisition procedures;*

~~(i)~~ **(ii)** using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

~~(ii)~~ **(iii)** permitting the public to respond to the solicitation notice electronically;

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of this Act;

**[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]**  
**COMMERCIAL ITEMS #2**

- (D) the procurement is made against an order placed under a requirements contract;
- (E) the procurement is made for perishable subsistence supplies;
- (F) the procurement is for utility services, other than telecommunication services, and only one source is available; or
- (G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

**TITLE 41, UNITED STATES CODE**

**§1708. Procurement notice**

- (a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—
- ~~(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);~~
- ~~(2)~~ (1) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—
- (A) solicit bids or proposals for a contract for property or services for a price expected to exceed ~~\$25,000~~ **\$75,000**; or
- (B) place an order, expected to exceed ~~\$25,000~~ **\$75,000**, under a basic agreement, basic ordering agreement, or similar arrangement; and
- ~~(3)~~ (2) an executive agency awarding a contract for property or services for a price exceeding ~~\$25,000~~ **\$75,000**, or placing an order exceeding ~~\$25,000~~ **\$75,000** under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.
- (b) EXEMPTIONS.—
- (1) IN GENERAL.—A notice is not required under subsection (a) if—
- (A) the proposed procurement is ~~for an amount not greater than the simplified acquisition threshold and is~~ to be conducted by—
- (i) using simplified acquisition procedures;*
- ~~(ii)~~ (ii) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and
- ~~(iii)~~ (iii) permitting the public to respond to the solicitation electronically;
- (B) \*\*\*

\* \* \* \* \*

**[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]**

**COMMERCIAL ITEMS #2**

**§1901. Simplified acquisition procedures**

(a) **WHEN PROCEDURES ARE TO BE USED.**—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include **only** commercial items.

\* \* \* \* \*

**§3305. Simplified procedures for small purchases**

(a) **AUTHORIZATION.**—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include **only** commercial items.

\* \* \* \* \*

**TITLE 10, UNITED STATES CODE**

**§2304 Contracts: competition requirements**

(a) \*\*\*

\* \* \* \* \*

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include **only** commercial items.

## Section 809

### Commercial Buying Committee

#### Draft and Regulatory Revisions

#### Selecting Sources for Commercial Products and Services

### **FAR Subpart 2.101 - Definitions**

*Market Acceptance* means that a product has an established record of performance in the commercial market place for a sufficiently large consumer base that warrants the product's continued production and availability in the market place.

*Standing price quotation* means an offer from a potential supplier to the general public to provide goods and/or services at prearranged prices under established terms and conditions. A standing price quotation is not a contract. The Government has no obligation to acquisition under the standing price quotation. No contract exists until the government issues an order against the standing price quotation. Commercial products and services offered to the public in widely available catalogs or the internet are examples of standing price quotations.

#### **5.101 Methods of disseminating information.**

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 1708), contracting officers must disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed \$2575,000, by synopsisizing in the GPE (see 5.201).

~~(2) For proposed contract actions expected to exceed \$15,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.~~

### **FAR Subpart 5.2 -- Synopses of Proposed Contract Actions**

### **5.201 -- General.**

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and 41 U.S.C. 1708, agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b) (1) For acquisitions of supplies and services, other than those covered by the exceptions in [5.202](#), and the special situations in [5.205](#), the contracting officer must transmit a notice to the GPE, for each proposed --

----

### **5.202 -- Exceptions.**

The contracting officer need not submit the notice required by [5.201](#) when --

(a) The contracting officer determines that --

(13) The proposed contract action--

(i) ~~Is for an amount not expected to exceed the simplified acquisition threshold to~~ be conducted by using simplified acquisition procedures;

(ii) ~~Will be made through a means that provides access to the notice of proposed contract action through the GPE~~ Using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry (GPE); and

(iii) Permits the public to respond to the solicitation electronically;

### **5.203 – Publicizing and response time.**

Whenever agencies are required to publicize notice of proposed contract actions under [5.201](#), they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE (see 5.201). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation, or a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.302, except that, for acquisitions of commercial items, the contracting officer may --

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis and solicitation procedure (see 12.603).



(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions where the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$7525,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$7525,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

## 5.205 Special situations.

(d) Architect-engineering services. Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed \$2575,000.

~~(2) When the total fee is expected to exceed \$15,000 but not exceed \$25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b). —~~

## Subpart 5.3 -- Synopses of Contract Awards

### 5.301 -- General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in [5.003](#), contracting officers must synopsize through the GPE the following:

(b) A notice is not required under paragraph (a)(1) of this section if –

(6) The contract action –

(i) ~~Is~~ Was conducted using simplified acquisition procedures ~~for an amount not greater than the simplified acquisition threshold;~~

(ii) Using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide

point of entry (GPE); ~~Was made through a means where access to the notice of proposed contract action was provided through the GPE;~~ and

(iii) Permitted the public to respond to the solicitation electronically; or

## **FAR Part 11 – Describing Agency Needs**

### **11.103 -- Market Acceptance.**

(a) 41 U.S.C. 3307(e) provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered --

(1) Have either --

(i) Achieved commercial market acceptance as defined in 2.101; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation --

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;

(2) Relate to an item's performance and intended use, not an offeror's capability;

(3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to --

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

## **FAR Part 12 – Acquisition of Commercial Items Products and Services**

### **Subpart 12.1 – Acquisition of Commercial Items Products and Services -- General**

#### **12.102 -- Applicability.**

(a) This part shall be used for the acquisition of ~~supplies~~ products or services that meet the definition of commercial ~~items~~ products and commercial services at [2.101](#).

(b) ~~Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.~~

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

### **Subpart 12.2 – Special Requirements for the Acquisition of Commercial Items Products and Services**

#### **12.203 – Procedures for Solicitation, Evaluation, and Award Selection of Sources for Commercial Products and Services.**

Contracting officers shall use the policies ~~unique to~~ for the acquisition of commercial ~~items~~ products and services prescribed in ~~subpart 12.6. this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.~~ The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in [12.603](#). ~~For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$7 million (\$13 million for~~

acquisitions as described in [13.500\(c\)](#)), including options, contracting activities may use any of the simplified procedures authorized by [Subpart 13.5](#).

## **Subpart 12.6 -- Streamlined Procedures for Evaluation and Solicitation Selection of Sources for Commercial Items Products and Services**

### **12.601 -- General.**

This subpart provides optional procedures for

- (a) streamlined evaluation of offers for commercial items; and
- (b) streamlined solicitation of offers for commercial items for use where appropriate. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

This subpart provides streamlined procedures for selecting sources for commercial products or services.

- (a) Part 12 shall be used for acquiring commercial products or services where the contract action is expected to exceed the micro-purchase threshold.
- (b) The policies and procedures in this subpart include the authority provided by Section 4202, P.L. 104-106 for acquiring certain commercial products or services exceeding the simplified acquisition threshold using the simplified acquisition procedures contained in Part 13.

### **12.602 -- Streamlined Evaluation of Offers.**

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at [52.212-2](#), Evaluation Commercial Items, in solicitations for commercial items or comply with the procedures in [13.106](#) if the acquisition is being made using simplified acquisition procedures. When the provision at [52.212-2](#) is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in Part 13, contracting officers are not required to describe the relative importance of evaluation factors.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be

~~evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in [13.106](#) or [Subpart 15.3](#), as applicable. The contracting officer shall ensure the instructions provided in the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at [52.212-2](#), Evaluation—Commercial Items, are in agreement.~~

~~(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.~~

#### **12.602 – Taking advantage of the commercial marketplace.**

(a) By definition, commercial products and commercial services are available or will be available in time to satisfy the government's requirement. As a result, ample information should be readily available with regard to product specifications and features, service plans, capabilities, past performance and other information relevant to the seller's conduct of business in the commercial marketplace.

(b) If, after conducting appropriate market research, the contracting officer determines the government's requirement can be satisfied by a commercial product or commercial service, the contracting officer should proceed to identify and select a source(s) using the simplest, most efficient and expeditious methods.

(c) To simplify purchases and avoid unnecessary costs and administrative burdens for agencies and contractors, contracting officer shall use the procedures in this subpart to acquire commercial products or services. This subpart includes the authority to use simplified acquisition procedures (Part 13) when –

- 1) acquiring commercial products or services with a value not greater than \$7,000,000 (including options) for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include commercial items (See 10 U.S.C §2304(g); 41 U.S.C. §1901 and §3305); and
- 2) acquiring commercial products or services with a value not greater than \$13,000,000 (including options) that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack, international disaster assistance, or an emergency or major disaster. (See 41 U.S.C. 1903)

(d) Contracting Officers may use the more complex selection techniques, such as those in Part 14 or Part 15, if the value of the acquisition exceeds or is expected to exceed the thresholds in

12.602 (c). The justification for use of procedures in Part 14 or Part 15 to select a source for a commercial product or commercial service with an expected value below the thresholds in 12.602(c) shall be approved by a level above the contracting officer.

**12.603 Selecting sources for commercial products and services below the threshold in 12.602(c)**

(a) The GPC is the preferred method for acquiring commercial products and services below the micro purchase threshold.

(b) For acquisitions of commercial products or services above the micro purchase threshold, the use of the simplified acquisition procedures for acquiring commercial products or services gives contracting officers significant flexibility to adapt selection procedures specifically to the commercial product or service being acquired. The contracting officer is also given considerable discretion in the conduct of the solicitation, evaluation and award consistent with the nature of the products or services and their availability in the commercial marketplace.

(c) The key flexibilities available when acquiring commercial products or commercial services (including construction) below the thresholds in 12.602 are summarized below –

**(1) Market research.** Information regarding commercial products or services should be readily available from a variety of public sources. Contracting officers should conduct market research for products or services acquired under this subpart to an extent consistent with the relative complexity and value of the proposed acquisition, and the intent of the simplified acquisition procedures. (See Subpart 10.002.)

**(2) Competition.** Acquisitions under this subpart are exempt from the requirements of Part 6. (See 41 USC §1901(c); FAR 6.001(a)) The contracting officer shall solicit from a reasonable number of sources to promote competition to the maximum extent practicable.

**(3) Soliciting from only one source.**

(i) For acquisitions not exceeding the simplified acquisition threshold, the contracting officers may solicit from only one source (including brand name) if the contracting officer determines that the circumstances of the acquisition deem only one source is reasonably available. (See 13.106-1(b))

(ii) For acquisitions exceeding the simplified acquisition threshold but not exceeding the threshold in 12.602, Contracting officers shall –

(A) Prepare and obtain approval of a justifications for a sole source (including brand name) acquisition or portions of an acquisition requiring brand name using the format at [6.303-2](#), modified to reflect that the procedures in FAR subpart 12.6 were used in accordance with the authority of 41 U.S.C. §1901 or 41 U.S.C §1903;

(B) For acquisitions exceeding the simplified acquisition threshold, but not exceeding \$700,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(C) For acquisitions exceeding \$700,000, but not exceeding the threshold in 12.602, the advocate for competition for the procuring activity must approve the justification and approval. This authority may not be redelegated.

(iii) Make brand name justifications publicly available with the solicitation. (See 5.102 (a)(6) and 6.302-1 (c)); and

(iv) Make justifications (other than brand name) publicly available within 14 days after contract award, or in the case of unusual and compelling urgency, within 30 days after contract award.

**(4) Small business set-asides.** Small Business set-asides remain applicable at the threshold in 19.502-2(a).

#### **(5) Synopsis of proposed contract actions**

(i) Oral solicitations do not need to be synopsisized and may be used up to the WTO GPA threshold (see Subpart 25.4).

(ii) Electronic solicitations do not need to be synopsisized if the solicitation will be available through the GPE at FedBizOpps and it permits the public to respond to the solicitation electronically. (See 5.202 (a)(13)).

(iii) Written (paper) solicitations shall be synopsisize when the proposed contract action is expected to exceed \$75,000. Synopsis may be published less than 15 days prior to issuance of the solicitation (See 5.203(a)), or a combined synopsis and solicitation may be used. (See 12.604)

**(6) Terms and conditions.** Contracting officers shall use the terms and conditions prescribed in 12.3 when acquiring commercial products or services under this subpart. Indicate in Block 27 of the DD 1449 if additional terms beyond 52.212-4, Contract Terms and Conditions - Commercial Products and Services, are included.

#### **(7) Solicitation method**

(i) Contracting officers may solicit quotations using an oral solicitation, a request for quotation (RFQ), or proposals using a request for proposal (RFP), as appropriate for the particular circumstance.

(ii) The contracting officer shall solicit quotations orally to the maximum extent practicable for acquisitions under \$75,000, or if covered by an exception in 5.202. (See 13.106-



1(c)) When using oral solicitation, the contracting officer should consider soliciting at least three sources. (See 13.104(b))

(iii) When an oral solicitation is not practicable, the preferred method of soliciting commercial products or services is an electronic solicitation available through the GPE at FedBizOpps permitting the public to respond to the solicitation electronically. Solicitations may also be distributed electronically directly to potential offerors in addition to posting them to the GPE.

(iv) A written (paper) solicitation should be used only if obtaining electronic or oral quotations is deemed to be uneconomical or impracticable and the acquisition will exceed \$25,000. (See 13.106-1(d))

(v) Solicitations for construction exceeding \$2000 (where Wage Rate Requirements apply) and solicitations for services exceeding \$2500 (where the Service Contract Labor Standards apply) shall be electronic or written (paper).

(vi) The solicitation shall include a statement that all responsible sources may submit a proposal or quotation (as appropriate) that the agency shall consider. (See 41 USC §1708 (c)(4))

(vii) Standing price quotations, as defined in 2.101, may be used (See 13.103).

**(8) Offeror response time:** The contracting officer must establish a solicitation response time for each acquisition in an amount expected to be greater than \$25,000. When acquiring commercial products or services, the contracting officer has the flexibility to establish response times that consider the circumstances of the acquisition such as complexity, commerciality, availability, and urgency when establishing the response time. (See 5.203(b)).

**(9) Basis of award:** The contracting office has broad discretion in fashioning suitable evaluation procedures under this subpart.

(i) The solicitation should make it clear to potential offerors that the selection process is being conducted under this subpart and not Part 14 or Part 15. Conduct of the selection process must be consistent with that statement.

(ii) Use of best value is encouraged.

(iii) Submission of detailed technical and management plans, the use of formal evaluation plans, use of a competitive range, conducting discussions or exchanges to make an offer acceptable, scoring quotations and offers, and final price revisions are not required and are generally discouraged as inconsistent with the objective of simplification under the subpart. (see 41 USC §3306 and 10 U.S.C. §2305(a)(2))

(iv) Contracting officers shall state the evaluation factor(s) to be used as the basis for award. Use of sub factors is not required. Solicitations under this subpart are not required to establish the relative importance of each evaluation factor or sub factor (thereby making them of equal importance). For many commercial products or services, for example, the evaluation factors need not be more detailed than price and past performance, or technical (e.g., how well the propose product meets the agency need, technical features, warranty provisions), price and past performance.

(v) If market research indicates the government's need can be met by commercial products with demonstrated performance in the market place, the contracting officer may



require offerors to demonstrate the commercial market's acceptance of their product, as defined in 2.101, as one criterion in a selecting source. (See 11.103)

(vi) When evaluating past performance, use of a formal data base is not required. The evaluation may be based on the contracting officer's knowledge and prior experience with acquiring the commercial product or commercial service, customer surveys, PPIRS, or any reasonable basis. (See 13.106-2) There is no obligation to discuss adverse past performance.

(vii) The contracting officer must make an affirmative determination of responsibility for the selected offeror. Simplified procedures could include determining that the offeror has adequate financial resources to do the job, can comply with the delivery or performance schedule, has a satisfactory performance record, and is not listed in the EPLS. (See 9.104)

**(10) Award:** Quotations or offers shall be evaluated on the basis of award established in the solicitation. For acquisitions that permit offerors to provide an electronic response to the solicitation, the contracting officer may –

(i) After preliminary consideration of all quotations or offers, select one that will satisfy the government's requirement, and then screen all other lower price offers on readily discernable value indicators. When evaluation is based only on price and past performance, make an award based on whether the lowest price quotation or offer with the highest past performance represents the best value. (See 13.106-2 (b))

(iii) The contracting officer must determine that the proposed price is fair and reasonable based on competition, or if only one response is received, a statement that the price is reasonable. (See 13.106-3 (a))

(iv) The contracting officer shall consider offers or proposals received from any responsible source. (See 41 USC§1901(e); 41 USC§1708 (c)(4))

**(11) Forms for solicitation and award.** For acquisitions above the micro-purchase threshold, contracting officers shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Products or Services, for awards under this subpart.

**(12) Debrief and Notification:**

(i) Debriefings of unsuccessful offerors shall be provided, if requested. If the award was based on price alone, no further explanation should be necessary. If the award was based on factors other than price alone, provide a brief explanation of the basis for the contract award.

(ii) Notification of contract award is not required where access to the notice of proposed contract action and solicitation was made available through the GPE at FedBizOpps and the notice permitted the public to respond to the solicitation electronically. (See 5.301(b)(6)).

**(14) File documentation.** Consistent with the objective of this subpart, file documentation should be kept to a minimum with due consideration for the size and complexity of the award. (See 13.106-3(b))

(i) Oral solicitation – keep records to reflect clearly the propriety of placing the order at the price paid with the supplier concerned.

(ii) Electronic and written (paper) solicitations – Limit records of solicitations or offers to notes or abstracts to show the number of suppliers contacted, offers received, prices, references to printed price lists used, delivery, the fact that the procedures in FAR 12.6 were used, and other pertinent data.

(A) For acquisitions not exceeding the simplified acquisition threshold, if only one source was solicited (including brand name), explain the absence of competition.

(B) For acquisitions exceeding the simplified acquisition threshold but not exceeding the threshold in 12.602, if only one source was solicited or it is a brand name acquisition, include the approved justification and approval.

(iii) Include a brief description of the procedures used to make the award and support for the award decision if other than price-related factors were considered.

(iv) Include the contracting officer's determination of price reasonableness (See 13.106-3) and affirmative determination of responsibility (See 9.104)

### **12.6034 -- Streamlined Solicitation for Commercial Items Combined Synopsis/Solicitation**

(a) 5.202 provides an exception to the 5.201 requirement to synopsise proposed contract actions if the proposed contract action is for an amount not expected to exceed the simplified acquisition threshold, it will be available through the GPE at FedBizOpps, and it permits the public to respond to the solicitation electronically. When a written (paper) solicitation will be issued and a synopsis is required, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the synopsis required by [5.203](#) and the issuance of the solicitation into a single document.

(b) When using the combined synopsis/solicitation procedure, the SF 1449 is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall --

(1) Prepare the synopsis as described at [5.207](#).

(2) In the, Description, include the following additional information:

(i) The following statement:

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in [Subpart 12.6](#), as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

- (ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).
- (iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular \_\_\_\_.
- (iv) A notice regarding any set-aside and the associated NAICS code and small business size standard.
- (v) A list of line item number(s) and items, quantities, and units of measure, (including option(s), if applicable).
- (vi) Description of requirements for the items to be acquired.
- (vii) Date(s) and place(s) of delivery and acceptance and FOB point.
- (viii) A statement that the provision at [52.212-1](#), Instructions to Offerors -- Commercial, applies to this acquisition and a statement regarding any addenda to the provision.
- (ix) A statement regarding the applicability of the provision at [52.212-2](#), Evaluation -- Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.
- (x) A statement advising offerors to include a completed copy of the provision at [52.212-3](#), Offeror Representations and Certifications -- Commercial Items, with its offer.
- (xi) A statement that the clause at [52.212-4](#), Contract Terms and Conditions -- Commercial Items, applies to this acquisition and a statement regarding any addenda to the clause.
- (xii) A statement that the clause at [52.212-5](#), Contract Terms and Conditions Required To Implement Statutes Or Executive Orders -- Commercial Items, applies to this acquisition and a statement regarding which, if any, of the additional FAR clauses cited in the clause are applicable to the acquisition.
- (xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.

(xv) The date, time and place offers are due.

(xvi) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis and solicitation, contracting officers must establish a response time in accordance with [5.203](#)(b) (but see [5.203](#)(h)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.

## **FAR Part 13 – Simplified Acquisition Procedures**

### **13.000 -- Scope of Part.**

This part prescribes policies and procedures for the acquisition of –

- (i) Products and services below the micro purchase threshold;
- (ii) Products ~~supplies~~ and services, including construction and research and development, ~~and commercial items~~, the aggregate amount of which does not exceed the simplified acquisition threshold (see [2.101](#)). ~~Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$7 million (\$13 million for acquisitions as described in [13.500](#)(c)), including options.~~

Use Part 12 for policies applicable to the streamlined acquisition of commercial products or services, including construction, exceeding the micro-purchase threshold.

See [36.602-5](#) for simplified procedures to be used when acquiring architect-engineer services.

### **13.103 -- Use of Standing Price Quotations.**

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations, as defined in 2.101, may be used if --

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

## **Subpart 13.5—Simplified Procedures for Certain Commercial Items**

### **13.500 -- General.**

~~(a) This subpart authorizes the use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$7 million (\$13 million for acquisitions as described in 13.500(c)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of these simplified procedures is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 3305, 3306, and chapter 37, Awarding of Contracts).~~

~~(b) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at [12.102\(c\)](#). This includes use of the provisions and clauses in [Subpart 12.3](#).~~

~~(c) Under 41 U.S.C. 1903, the simplified acquisition procedures authorized in this subpart may be used for acquisitions that do not exceed \$13 million when—~~

- ~~(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or;~~
- ~~(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).~~

### **13.501 -- Special Documentation Requirements.**

~~(a) Sole source (including brand name) acquisitions.~~

~~(1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in [Part 6](#). However, contracting officers must —~~

~~(i) Conduct sole source acquisitions, as defined in [2.101](#), (including brand name) under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section;~~

~~(ii) Prepare sole source (including brand name) justifications using the format at [6.303-2](#), modified to reflect that the procedures in FAR subpart 13.5 were used in accordance with 41 U.S.C. 1901 or the authority of 41 U.S.C. 1903.~~

~~(iii) Make publicly available the justifications (excluding brand name) required by [6.305](#)(a) within 14 days after contract award or in the case of unusual and compelling urgency within 30 days after contract award, in accordance with [6.305](#) procedures at paragraphs (b), (d), (e), and (f); and~~

~~(iv) Make publicly available brand name justifications with the solicitation, in accordance with [5.102](#)(a)(6).~~

~~(2) Justifications and approvals are required under this subpart only for sole source (including brand name) acquisitions or portions of an acquisition requiring a brand name. If the justification is to cover only the portion of the acquisition which is brand name, then it should so state; the approval level requirements will then only apply to that portion.~~

~~(i) For a proposed contract exceeding \$150,000, but not exceeding \$700,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.~~

~~(ii) For a proposed contract exceeding \$700,000, but not exceeding \$13.5 million, the advocate for competition for the procuring activity, designated pursuant to [6.501](#); or an official described in [6.304](#)(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.~~

~~(iii) For a proposed contract exceeding \$13.5 million but not exceeding \$68 million, or for DoD, NASA, and the Coast Guard, not exceeding \$93 million, the head of the procuring activity or the official described in [6.304](#)(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.~~

(iv) For a proposed contract exceeding \$68 million, or, for DoD, NASA, and the Coast Guard, \$93 million, the official described in [6.304\(a\)\(4\)](#) must approve the justification and approval. This authority is not delegable except as provided in [6.304\(a\)\(4\)](#).

~~(b) *Contract file documentation.* The contract file must include—~~

~~(1) A brief written description of the procedures used in awarding the contract, including the fact that the procedures in FAR [Subpart 13.5](#) were used;~~

~~(2) The number of offers received;~~

~~(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and~~

~~(4) Any justification approved under paragraph (a) of this section.~~

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## Section 4 Cost Accounting Standards

*Reinvigorating the Cost Accounting Standards Board and updating Cost Accounting Standards would ease compliance burden, yet retain appropriate oversight for cost accounting.*

### RECOMMENDATIONS

**Rec. 29:** Revise 41 U.S.C. §§ 1501-1506 to designate the Cost Accounting Standards Board as an independent federal organization within the executive branch.

**Rec. 30:** Reshape CAS program requirements to function better in a changed acquisition environment.

### SUMMARY

The Cost Accounting Standards Board (CASB) and cost accounting standards (CAS) need to be restructured to provide necessary guidance and minimize the burden for government and contractors. The CASB should be reinvigorated by extracting it from the Office of Federal Procurement Policy and making it an independent Executive branch organization. The CAS program requirements should be

modified to include raising the thresholds for full CAS coverage and the disclosure statement and adding guidance for CAS applicability to hybrid contracts and indefinite delivery contract vehicles.

## RECOMMENDATIONS

**Recommendation 29: Revise 41 U.S.C. § 1501-1506 to designate the Cost Accounting Standards Board as an independent federal organization within the executive branch.**

### Implementation

#### *Legislative Branch*

- Modify the 41 U.S.C. § 1501–1506 as described above.
- Modify 48 C.F.R. chapter 99.

#### *Executive Branch*

- Make administrative arrangements to house and support CASB operations.

**Note: Explanatory report language, draft legislative text, and regulatory revisions can be found in the Implementation Details subsection at the end of Section 4.**

#### *Implications for Other Agencies*

- CAS is applicable to all federal agencies, and all agencies would be affected by the recommended statutory revisions.

**Recommendation 30: Reshape CAS program requirements to function better in a changed acquisition environment.**

### Implementation

#### *Legislative Branch*

- Modify 41 U.S.C. § 1502 to accomplish the following:
  - Decouple monetary threshold for a CAS-covered contract from the TINA monetary threshold and set at \$25 million.
  - Eliminate the trigger contract exemption.
  - Remove the CAS exemption for firm, fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data as a legislative exemption (it duplicates what is already stated at 48 CFR 9903.201-1(b)(15)).

#### *Executive Branch*

- CASB should revise 48 CFR Chapter 99 to accomplish the following:

- Raise CAS-covered contract threshold to \$25 million;
  - Eliminate trigger contract exemption;
  - Raise full CAS-coverage threshold to \$100 million;
  - Raise disclosure statement threshold to \$100 million and eliminate segment exemption;
  - Revise commercial item exemption;
  - Revise certified cost or pricing data exemption;
  - Provide guidance for hybrid contracts;
  - Provide guidance for indefinite delivery vehicles;
  - Prohibit placing CAS clause in contracts that are not CAS-covered; and
  - Remove self-deleting provision of the CAS clause.
- The FAR Council should harmonize all relevant sections of the FAR affected by CASB revisions to 48 CFR Chapter 99.

**Note:** Explanatory report language, draft legislative text, and regulatory revisions can be found in the Implementation Details subsection at the end of Section 4.

#### ***Implications for Other Agencies***

- CAS applies to all federal agencies, and they would be affected by all of the recommended revisions to 41 U.S.C. § 1502 and 48 CFR Chapter 99.

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Section 4  
Cost Accounting Standards  
Implementation Details



## Recommendations 29 and 30





## RECOMMENDED REPORT LANGUAGE

### SEC 901. Cost Accounting Standards Board

This section would disestablish the current Cost Accounting Standards Board (CASB) that resides at the Office of Federal Procurement Policy. It would re-establish the CASB as an independent organization within the executive branch and revise qualifications for CASB members. The committee notes the board has met only intermittently since its creation in 1988, which hinders its ability to respond to CAS matters in a timely and effective manner. In disestablishing the current CASB, this section would remove its charter from title 41, United States Code, and create a new independent board codified in title 31, United States Code.

This section also would repeal Section 820 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-238), which created the Defense Cost Accounting Standards Board, eliminating the potential confusion of having two competing CAS Boards.

### SEC. 902. Applicability of Cost Accounting Standards

This section would update program requirements for cost accounting standards (CAS). It would update various thresholds, exemptions, and types of coverage for CAS. The committee notes that these program requirements have not been significantly revised since the 1970s despite substantial changes in technology, pricing policies, and business practices.

The section would raise the thresholds for CAS coverage, full CAS coverage, and the disclosure statement of contractor cost accounting practices. This section also would clarify guidance for application of CAS to hybrid contracts and indefinite delivery vehicles, as well as ensure the CAS clause is included only in contracts or parts of contracts that require CAS coverage. The section would remove the requirement to submit cost or pricing data for fixed price contracts or subcontracts awarded with adequate price competition.

The committee is aware that reducing burdensome accounting requirements may improve the government's access to innovative non-traditional companies while retaining oversight for cost accounting on large contracts.

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## COST ACCOUNTING STANDARDS

**[(1) This draft assumes as current law the amendments effective as of Oct. 1, 2018, made by section 820 of the National Defense Authorization Act for Fiscal Year 2017 (P. L. 114-328; 130 Stat. 2273, 2276).**

**[(2) Section 901 generally has an effective date of four months after enactment. See subsection (f).**

**[(3) The draft legislative text below is followed by a “Sections Affected” display, showing the text of the provision of law affected by the draft legislative text.]**

### **TITLE IX—COST ACCOUNTING STANDARDS**

#### **SEC. 901. COST ACCOUNTING STANDARDS BOARD.**

##### **(a) DISESTABLISHMENT OF CURRENT BOARDS.—**

(1) TITLE 41 BOARD.—The Cost Accounting Standards Board provided for under section 1501 of title 41, United States Code, is disestablished.

(2) TITLE 10 BOARD.—The Defense Cost Accounting Standards Board provided for under section 190 of title 10, United States Code, is disestablished.

##### **(b) ESTABLISHMENT OF NEW BOARD OUTSIDE OF OFPP.—**

(1) ESTABLISHMENT; MEMBERSHIP.—Subtitle III of title 31, United States Code, is amended by adding at the end the following new chapter:

#### **“CHAPTER 41—COST ACCOUNTING STANDARDS**

“Sec.

“4101. Cost Accounting Standards Board.

“4102. Cost accounting standards.

“4103. Contract price adjustment.

“4104. Effect on other standards and regulations

“4105. Examinations.

“4106. Authorization of appropriations.

#### **“§ 4101. Cost Accounting Standards Board**

“(a) ORGANIZATION.—There is in the executive branch of the Government an independent board known as the Cost Accounting Standards Board.

“(b) MEMBERSHIP.—

## COST ACCOUNTING STANDARDS

1           “(1) APPOINTMENT.—The Board consists of five members who shall be appointed  
2           by the Director of the Office of Management and Budget from among persons  
3           experienced in Government contract cost accounting. The Director shall designate one of  
4           the members to serve as Chair of the Board.

5           “(2) QUALIFICATIONS.—

6                   “(A) IN GENERAL.—The members of the Board shall have qualifications as  
7           follows:

8                           “(i) CHAIR.—The member designated by the Director to serve as  
9           Chair of the Board—

10                                   “(I) shall be a full-time Government employee or a part-  
11                                   time special Government employee;

12                                   “(II) shall have extensive experience as a senior  
13                                   Government official in administering and managing contracts  
14                                   described in subparagraph (B); and

15                                   “(III) may not be the Administrator of the Office of Federal  
16                                   Procurement Policy or an employee of the Office of Federal  
17                                   Procurement Policy.

18                           “(ii) GOVERNMENT REPRESENTATIVES.—Two members of the  
19           Board shall be representatives of the Government who have experience in  
20           administering and managing contracts described in subparagraph (B), one  
21           of whom shall be an officer or employee of the Department of Defense  
22           (who may not be a Government auditor or investigator) and the other of

## COST ACCOUNTING STANDARDS

1                   whom shall be an officer or employee of a department or agency other  
2                   than the Department of Defense.

3                   “(iii) SENIOR CONTRACTOR EMPLOYEE.—One member of the Board  
4                   shall be an individual in the private sector who is a senior employee, or  
5                   retired senior employee, of a Government contractor with substantial  
6                   experience in the private sector involving administration and management  
7                   of contracts described in subparagraph (B).

8                   “(iv) MEMBER OF ACCOUNTING PROFESSION.—One member of the  
9                   Board shall be a member of the accounting profession with substantial  
10                  professional experience as an accountant with contracts described in  
11                  subparagraph (B).

12               “(B) CONTRACTS DESCRIBED.—For purposes of subparagraph (A),  
13               contracts described in this subparagraph are Government contracts negotiated on  
14               the basis of cost and awarded under Federal acquisition regulations governing  
15               negotiated procurements.

16               “(3) TERM OF OFFICE.—

17               “(A) LENGTH OF TERM.—The members of the Board shall serve for a term  
18               of four years.

19               “(B) REQUIREMENT RELATING TO DOD BOARD MEMBER.—A member  
20               serving on the Board under paragraph (2)(A)(ii) as a representative of the  
21               Department of Defense may not continue to serve after ceasing to be an officer or  
22               employee of the Department of Defense.

## COST ACCOUNTING STANDARDS

1 “(4) VACANCY.—A vacancy on the Board shall be filled in the same manner in  
2 which the original appointment was made. A member appointed to fill a vacancy serves  
3 for the remainder of the term for which that member's predecessor was appointed.

4 “(5) LIMITATION ON REMOVAL.—A member of the Board may be removed by the  
5 Director only for misconduct or failure to perform functions vested in the Board.

6 “(c) MEETINGS.—The Board shall meet not less than once each quarter and shall publish  
7 in the Federal Register notice of each meeting and its agenda before such meeting is held.”.

8 (2) DUTIES.—Section 4101 of title 31, United States Code, as added by paragraph  
9 (1), is amended by adding after subsection (c) the following new subsection:

10 “(d) DUTIES.—The Board shall have the following duties:

11 “(1) To ensure that the cost accounting standards used by Federal contractors rely,  
12 to the maximum extent practicable, on commercial standards and accounting practices  
13 and systems.

14 “(2) To review on an ongoing basis any cost accounting standards established  
15 under section 4102 of this title (or section 1502 of title 41) and to conform such  
16 standards, where practicable, to Generally Accepted Accounting Principles.

17 “(3) To annually review disputes involving such standards brought to the boards  
18 established in section 7105 of title 41 (relating to agency boards of contract appeals) or  
19 Federal courts and consider whether greater clarity in such standards could avoid such  
20 disputes.”.

21 (3) ANNUAL REPORT.—Section 4101 of title 31, United States Code, as added by  
22 paragraph (1), is amended by adding after subsection (d), as added by paragraph (2), the  
23 following new subsection:

## COST ACCOUNTING STANDARDS

1 “(e) ANNUAL REPORT.—

2 “(1) REPORT REQUIRED.—The Board shall submit to the specified congressional  
3 committees an annual report describing the actions taken during the prior year—

4 “(A) to conform the cost accounting standards established under section  
5 4102 of this title with Generally Accepted Accounting Principles, including  
6 actions to—

7 “(i) prescribe standards and regulations that have contributed to  
8 increasing consistency and uniformity of accounting practices on  
9 Government contracts; and

10 “(ii) identify regulatory changes made as a result of the review  
11 process in subsection (c)(3); and

12 “(B) to minimize the burden on contractors while protecting the interests  
13 of the Federal Government.

14 “(2) SPECIFIED CONGRESSIONAL COMMITTEES.—In this subsection, the term  
15 ‘specified congressional committees’ means—

16 “(A) the Committee on Armed Services, the Committee on Homeland  
17 Security and Governmental Affairs, and the Committee on Appropriations of the  
18 Senate; and

19 “(B) the Committee on Armed Services, the Committee on Oversight and  
20 Government Reform, and the Committee on Appropriations of the House of  
21 Representatives.”.

22 (4) ADMINISTRATIVE AND PERSONNEL MATTERS.—

## COST ACCOUNTING STANDARDS

(A) TRANSFERS.—Subsections (f), (g), (h), and (i) of section 1501 of title 41, United States Code, are transferred to section 4101 of title 31, United States Code, as added by paragraph (1), and added at the end.

(B) CHANGES TO REFERENCES TO ADMINISTRATOR OF OFPP.—Subsections (f), (g), (h)(2), and (i)(3) of such section, as so transferred, are amended by striking “Administrator” and inserting “Director”.

(5) OFFICES.—Section 4101 of title 31, United States Code, as added by paragraph (1), is further amended by adding at the end the following new subsection:

“(j) LOCATION OF OFFICE SPACE.—The Administrator of General Services, in providing office space for the Board, shall ensure that the Board is not co-located with the Office of Federal Procurement Policy.”.

(6) INITIAL APPOINTMENTS.—

(A) TIME LIMIT FOR INITIAL APPOINTMENTS.—The Director of the Office of Management and Budget shall make the initial appointment of members of the Board under section 4101(b) of title 31, United States Code, as added by paragraph (1), within 120 days after the date of the enactment of this Act.

(B) TERMS OF MEMBERS FIRST APPOINTED.—Notwithstanding the term length specified in paragraph (3) of such section, of the members first appointed to the Board—

(i) two (including the Chair) shall be appointed for a term of six years;

(ii) two shall be appointed for a term of four years; and



## COST ACCOUNTING STANDARDS

(iii) one, who shall be the member appointed under paragraph

(2)(A)(i) of such section as an officer or employee of the Department of

Defense, shall be appointed for a term of two years.

(B) The table of chapters at the beginning of subtitle III of such title is amended

by adding at the end the following new item:

**“41. Cost Accounting Standards .....4101”**

(b) TRANSFER OF OTHER SECTIONS OF TITLE 41 CHAPTER.—Sections 1502, 1503, 1504, 1505, and 1506 of title 41, United States Code, are transferred to chapter 41 of title 31, United States Code, as added by subsection (a), added at the end, and redesignated as sections 4102, 4103, 4104, 4105, and 4106, respectively.

(c) AMENDMENTS TO REVISED CHAPTER.—

(1) SECTION 4102.—Subsection (a)(2) of section 4102 of title 31, United States Code, as transferred and redesignated by subsection (b), is amended by striking the paragraph heading and the first sentence and inserting the following: “RULES AND PROCEDURES.—The Board shall prescribe rules and procedures governing actions of the Board under this chapter.”.

(2) SECTION 4103.—Section 4103 of such title, as transferred and redesignated by subsection (b), is amended—

(A) in subsection (a), by striking “of this title” and inserting “of title 41”;

and

(B) in subsection (b), by striking “section 1502(f)(2)” and inserting “section 4102(f)(2)”.

(3) SECTION 4104.—Section 4104 of such title, as transferred and redesignated by subsection (b), is amended—

## COST ACCOUNTING STANDARDS

(A) in subsection (a)—

(i) by inserting “by the Cost Accounting Standards Board under chapter 15 of title 41 or” after “regulations prescribed”; and

(ii) by striking “this division” both places it appears in paragraph (2) and inserting “this chapter”; and

(B) in subsection (b)—

(i) by inserting “of the Office of Federal Procurement Policy” after “Administrator”; and

(ii) by striking “of this title” and inserting “of title 41”.

(d) CONFORMING REPEALS.—

(1) TITLE 41.—Title 41, United States Code, is amended as follows:

(A) **Chapter 15 is repealed.**

(B) The table of chapters at the beginning of subtitle I is amended by striking the item relating to chapter 15.

(2) TITLE 10.—Title 10, United States Code, is amended as follows:

(A) **Section 190 is repealed.**

(B) The table of sections at the beginning of chapter 7 is amended by striking the item relating to section 190.

(e) COMPTROLLER GENERAL REPORT.—Section 820(c) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2276) is amended by striking “section 1501 of title 41” and inserting “section 4101 of title 31”.

(f) EFFECTIVE DATE.—

## COST ACCOUNTING STANDARDS

(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), this section and the amendments made by this section shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act.

(2) INITIAL APPOINTMENT OF MEMBERS OF NEW BOARD.—Subsection (a)(6) shall take effect on the date of the enactment of this Act.

(3) DOD BOARD.—Subsections (a)(2) and (d)(2) shall take effect on the date of the enactment of this Act.

### SEC. 902. APPLICABILITY OF COST ACCOUNTING STANDARDS.

(a) REVISION TO THRESHOLD FOR CONTRACTS COVERED BY COST ACCOUNTING STANDARDS.—Paragraph (1)(B) of subsection (b) of section 4102 of title 31, United States Code, as transferred and redesignated by section 901(b), is amended by striking “the amount set forth in” and all that follows and inserting “\$25,000,000.”.

(b) REPEAL OF CERTAIN STATUTORY EXEMPTIONS.—Paragraph (1)(C) of such subsection is amended—

(1) by inserting “or” at the end of clause (i);

(2) by striking the semicolon at the end of clause (ii) and inserting a period; and

(3) by striking clauses (iii) and (iv).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any contract awarded after the date of the enactment of this Act.

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[Showing proposed changes to Chapter 15 of title 41, United States Code, including transfer of that chapter to a new chapter 41 of title 31, United States Code. Matter to be omitted is shown in ~~strike thru~~; matter to be inserted is shown in **bold underlined**]

## CHAPTER ~~15~~ 41—COST ACCOUNTING STANDARDS

## COST ACCOUNTING STANDARDS

[Note: The proposal would transfer Chapter 15 of title 41, USC, to a new Chapter 41 of title 31, USC, WITH the amendments shown below]

Sec.

~~1501~~ **4101.** Cost Accounting Standards Board.

~~1502~~ **4102.** Cost accounting standards.

~~1503~~ **4103.** Contract price adjustment.

~~1504~~ **4104.** Effect on other standards and regulations.

~~1505~~ **4105.** Examinations.

~~1506~~ **4106.** Authorization of appropriations.

### **§1501 4101. Cost Accounting Standards Board**

~~(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.~~

**(a) ORGANIZATION.—There is in the executive branch of the Government an independent board known at the Cost Accounting Standards Board.**

~~(b) MEMBERSHIP.—~~

~~(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:~~

~~(A) 2 representatives of the Federal Government—~~

~~(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and~~

~~(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.~~

~~(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—~~

~~(i) one of whom is a representative of industry; and~~

~~(ii) one of whom is particularly knowledgeable about cost accounting problems and systems and, if possible, is a representative of a public accounting firm.~~

~~(2) TERM OF OFFICE.—~~

~~(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.~~

~~(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING agency.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.~~

~~(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.~~

**(b) MEMBERSHIP.—**

## COST ACCOUNTING STANDARDS

**(1) APPOINTMENT.—The Board consists of five members who shall be appointed by the Director of the Office of Management and Budget from among persons experienced in Government contract cost accounting. The Director shall designate one of the members to serve as Chair of the Board.**

**(2) QUALIFICATIONS.—**

**(A) IN GENERAL.—The members of the Board shall have qualifications as follows:**

**(i) CHAIR.—The member designated by the Director to serve as Chair of the Board—**

**(I) shall be a full-time Government employee or a part-time special Government employee;**

**(II) shall have extensive experience as a senior Government official in administering and managing contracts described in subparagraph (B); and**

**(III) may not be the Administrator of the Office of Federal Procurement Policy or an employee of the Office of Federal Procurement Policy.**

**(ii) GOVERNMENT REPRESENTATIVES.—Two members of the Board shall be representatives of the Government who have experience in administering and managing contracts described in subparagraph (B), one of whom shall be an officer or employee of the Department of Defense (who may not be a Government auditor or investigator) and the other of whom shall be an officer or employee of a department or agency other than the Department of Defense.**

**(iii) SENIOR CONTRACTOR EMPLOYEE.—One member of the Board shall be an individual in the private sector who is a senior employee, or retired senior employee, of a Government contractor with substantial experience in the private sector involving administration and management of contracts described in subparagraph (B).**

**(iv) MEMBER OF ACCOUNTING PROFESSION.—One member of the Board shall be a member of the accounting profession with substantial professional experience as an accountant with contracts described in subparagraph (B).**

**(B) CONTRACTS DESCRIBED.—For purposes of subparagraph (A), contracts described in this subparagraph are Government contracts negotiated on the basis of cost and awarded under Federal acquisition regulations governing negotiated procurements.**

**(3) TERM OF OFFICE.—**

**(A) LENGTH OF TERM.—The members of the Board shall serve for a term of four years.**

**(B) REQUIREMENT RELATING TO DOD BOARD MEMBER.—A member serving on the Board under paragraph (2)(A)(ii) as a representative of the Department of Defense may not continue to serve after ceasing to be an officer or employee of the Department of Defense.**

## COST ACCOUNTING STANDARDS

**(4) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.**

**(5) LIMITATION ON REMOVAL.—A member of the Board may be removed by the Director only for misconduct or failure to perform functions vested in the Board.**

**(c) MEETINGS.—The Board shall meet not less than once each quarter and shall publish in the Federal Register notice of each meeting and its agenda before such meeting is held.**

~~(c) DUTIES.—The Board shall—~~

~~(1) ensure that the cost accounting standards used by Federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems;~~

~~(2) within one year after the date of enactment of this subsection, and on an ongoing basis thereafter, review any cost accounting standards established under section 1502 of this title and conform such standards, where practicable, to Generally Accepted Accounting Principles; and~~

~~(3) annually review disputes involving such standards brought to the boards established in section 7105 of this title or Federal courts, and consider whether greater clarity in such standards could avoid such disputes.~~

**(d) DUTIES.—The Board shall have the following duties:**

**(1) To ensure that the cost accounting standards used by Federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems.**

**(2) To review on an ongoing basis any cost accounting standards established under section 4102 of this title (or section 1502 of title 41) and to conform such standards, where practicable, to Generally Accepted Accounting Principles.**

**(3) To annually review disputes involving such standards brought to the boards established in section 7105 of title 41 (relating to agency boards of contract appeals) or Federal courts and consider whether greater clarity in such standards could avoid such disputes.**

~~(d) MEETINGS.—The Board shall meet not less than once each quarter and shall publish in the Federal Register notice of each meeting and its agenda before such meeting is held.~~

~~(e) REPORT.—The Board shall annually submit a report to the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate describing the actions taken during the prior year—~~

~~(1) to conform the cost accounting standards established under section 1502 of this title with Generally Accepted Accounting Principles; and~~

~~(2) to minimize the burden on contractors while protecting the interests of the Federal Government.~~

## COST ACCOUNTING STANDARDS

### (e) ANNUAL REPORT.—

(1) REPORT REQUIRED.—The Board shall submit to the specified congressional committees an annual report describing the actions taken during the prior year—

(A) to conform the cost accounting standards established under section 4102 of this title with Generally Accepted Accounting Principles, including actions to—

(i) prescribe standards and regulations that have contributed to increasing consistency and uniformity of accounting practices on Government contracts; and

(ii) identify regulatory changes made as a result of the review process in subsection (c)(3); and

(B) to minimize the burden on contractors while protecting the interests of the Federal Government.

(2) SPECIFIED CONGRESSIONAL COMMITTEES.—In this subsection, the term “specified congressional committees” means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(f) SENIOR STAFF.—The ~~Administrator~~ **Director**, after consultation with the Board—

(1) without regard to the provisions of title 5 governing appointments in the competitive service—

(A) shall appoint an executive secretary; and

(B) may appoint, or detail pursuant to section 3341 of title 5, two additional staff members; and

(2) may pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.

(g) OTHER STAFF.—The ~~Administrator~~ **Director** may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(h) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the ~~Administrator~~ **Director**, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(i) COMPENSATION.—



## COST ACCOUNTING STANDARDS

(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (h)(1), shall not receive additional compensation for services but shall continue to be compensated by the employing department or agency of the officer or employee.

(2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board.

(3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual hired under subsection (h)(2) may receive compensation at a rate fixed by the ~~Administrator~~ **Director**, but not to exceed the daily equivalent of the rate for level V of the Executive Schedule for each day (including travel time) in which the individual is properly engaged in the actual performance of duties under this chapter.

(4) TRAVEL EXPENSES.—While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis under this chapter shall be allowed travel expenses in accordance with section 5703 of title 5.

**(j) LOCATION OF OFFICE SPACE.—The Administrator of General Services, in providing office space for the Board, shall ensure that the Board is not co-located with the Office of Federal Procurement Policy.**

### **§1502 4102. Cost accounting standards**

(a) AUTHORITY.—

(1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) ~~ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter.~~ **RULES AND PROCEDURES.—The Board shall prescribe rules and procedures governing actions of the Board under this chapter.** The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONTRACT.—

(A) DEFINITION.—In this paragraph, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs



## COST ACCOUNTING STANDARDS

in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is adjusted in accordance with applicable requirements of law \$25,000,000.

(C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial item; or

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;—

~~(iii) a firm, fixed price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or~~

~~(iv) a contract or subcontract with a value of less than \$7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than \$7,500,000 that is covered by the standards.~~

(2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than \$100,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

## COST ACCOUNTING STANDARDS

(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.—The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3)(A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—

## COST ACCOUNTING STANDARDS

(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

### **§1503 4103. Contract price adjustment**

(a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under chapter 71 ~~of this title~~ **of title 41**.

(b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under ~~section 1502(f)(2)~~ **section 4102(f)(2)** of this title shall be made, where applicable, on relevant contracts between the Federal Government and the contractor that are subject to the cost accounting standards so as to protect the Federal Government from payment, in the aggregate, of increased costs, as defined by the Cost Accounting Standards Board. The Federal Government may not recover costs greater than the aggregate increased cost to the Federal Government, as defined by the Board, on the relevant contracts subject to the price adjustment unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Federal Government.

(c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased costs were made to the contractor or subcontractor to the time the Federal Government receives full compensation for the price adjustment.

### **§1504 4104. Effect on other standards and regulations**

(a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations prescribed **by the Cost Accounting Standards Board under chapter 15 of title 41 or** by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)—

(1) remain in effect until amended, superseded, or rescinded by the Board under this chapter; and

(2) are subject to the provisions of ~~this division~~ **this chapter** in the same manner as if prescribed by the Board under ~~this division~~ **this chapter**.

## COST ACCOUNTING STANDARDS

(b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation or proposed regulation of an executive agency is not inconsistent with a cost accounting standard prescribed or amended under this chapter, the Administrator **of the Office of Federal Procurement Policy**, under the authority in sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 ~~of this title~~ **of title 41** shall rescind or deny the promulgation of the inconsistent regulation or proposed regulation and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305.

(c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are the subject of cost accounting standards prescribed under this chapter are not subject to regulations established by another executive agency that differ from those standards with respect to the measurement, assignment, and allocation of those costs.

### **§1505 4105. Examinations**

To determine whether a contractor or subcontractor has complied with cost accounting standards prescribed under this chapter and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, an authorized representative of the head of the agency concerned, of the offices of inspector general established under the Inspector General Act of 1978 (5 U.S.C. App.), or of the Comptroller General shall have the right to examine and copy documents, papers, or records of the contractor or subcontractor relating to compliance with the standards.

### **§1506 4106. Authorization of appropriations**

Necessary amounts may be appropriated to carry out this chapter.

## Recommended Changes to 48 CFR Chapter 99

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### Chapter 99 - Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget

- Part 9900 - Scope of Chapter (§ 9900.000)
- Subchapter A - Administration (Parts 9901 - 9902)
- Subchapter B - Procurement Practices and Cost Accounting Standards (Parts 9903 - 9906-9999)

#### Part 9900 - Scope of Chapter

This chapter describes policies and procedures for applying the Cost Accounting Standards (CAS) to negotiated contracts and subcontracts. This chapter does not apply to sealed bid contracts or to any contract with a small business concern (see 9903.201-1(b) for these and other exemptions).

#### Chapter 99, Subchapter A - Administration

- Part 9901 - Rules and Procedures (§§ 9901.301 - 9901.317)
- Part 9902 [Reserved]

#### Part 9901 - Rules and Procedures

##### 9901.301 thru 9901.305

##### No Changes

##### 9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of ~~\$500,000~~ **\$25 million**, other than contracts or subcontracts that have been exempted by the Board's regulations.

##### 9901.307 thru 9901.317

##### No Changes

##### Part 9902 [Reserved]

#### Part 9903 - Contract Coverage

##### Part 9903, Subpart 9903.1 - General

##### 9903.101 Cost Accounting Standards.

Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

#### **9903.102 OMB approval under the Paperwork Reduction Act.**

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. OMB has assigned Control Numbers 0348-0051 and 0348-0055 to the paperwork, recordkeeping and forms associated with this regulation.

#### **Part 9903, Subpart 9903.2 - CAS Program Requirements**

- 9903.201 Contract requirements.
- 9903.201-1 CAS applicability.
- 9903.201-2 Types of CAS coverage.
- 9903.201-3 Solicitation provisions.
- 9903.201-4 Contract clauses.
- 9903.201-5 Waiver.
- 9903.201-6 Findings.
- 9903.201-7 Cognizant Federal agency responsibilities.
- 9903.201-8 Compliant accounting changes due to external restructuring activities.
- 9903.202 Disclosure requirements.
- 9903.202-1 General requirements.
- 9903.202-2 Impracticality of submission.
- 9903.202-3 Amendments and revisions.
- 9903.202-4 Privileged and confidential information.
- 9903.202-5 Filing Disclosure Statements.
- 9903.202-6 Adequacy of Disclosure Statement.
- 9903.202-7 [Reserved]
- 9903.202-8 Subcontractor Disclosure Statements.
- 9903.202-9 Illustration of Disclosure Statement Form, CASB-DS-1.
- 9903.202-10 Illustration of Disclosure Statement Form, CASB DS-2.

## 9903.201 Contract requirements.

### 9903.201-1 CAS applicability.

(a)(1) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage. The rules for determining the applicable type of CAS coverage are in 9903.201-2.

**(2) For purposes of determining CAS applicability, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.**

**(3) For hybrid contracts (see definition at 9903.301), the exemptions at 9903.201-1(b) shall be applied to any portion of a contract or subcontract where CAS would not apply if that portion were awarded as a separate contract or subcontract. The dollar value of the portion exempted shall not be considered in applying any dollar threshold set forth in 9903.**

**(4) For indefinite delivery vehicles (see definition at 9903.301), the CAS applicability determination shall be made separately for each order placed under the indefinite delivery vehicle.**

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Sealed bid contracts.

~~(2) Negotiated contracts and subcontracts not in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)). For purposes of this paragraph (b)(2), an order issued by one segment to another segment shall be treated as a subcontract.~~  
**[Reserved]**

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

~~(6) Firm fixed priced, fixed priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time and materials, and labor hour contracts.~~  
Contracts and subcontracts for the acquisition of commercial items.

~~(7) Contracts or subcontracts of less than \$7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS covered contracts or subcontracts valued at \$7.5 million or greater.~~ **[Reserved]**



(8) - (12) [Reserved]

(13) Subcontractors under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) [Reserved]

(15) ~~Firm-fixed-price~~ **Any portion of a negotiated fixed-price type** contracts or subcontracts (**see definition at 9903.301**) awarded on the basis of ~~adequate price competition~~ **price analysis** without submission of **certified** cost or pricing data.

#### **9903.201-2 Types of CAS coverage.**

(a) Full coverage. Full coverage requires that the business unit comply with all of the CAS specified in part 9904 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. Full coverage applies to contractor business units that -

(1) Receive a single CAS-covered contract award of ~~\$50~~ **\$100** million or more; or

(2) Received ~~\$50~~ **\$100** million or more in net CAS-covered awards during its preceding cost accounting period.

(b) Modified coverage.

(1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard - Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than ~~\$50~~ **\$100** million awarded to a business unit that received less than ~~\$50~~ **\$100** million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of ~~\$50~~ **\$100** million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) Coverage for educational institutions -

**Not addressed here**



(d) Subcontracts. Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

(e) Foreign concerns.

**Not addressed here**

### **9903.201-3 Solicitation provisions.**

(a) Cost Accounting Standards Notices and Certification.

(1) The contracting officer shall insert the provision set forth below, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts **that are likely to be** subject to CAS as specified in 9903.201.

**(2) When a hybrid contract is contemplated (see definition at 9903.301), the contracting officer shall, to the maximum extent practicable, identify the portions of the proposed contract that are likely to be exempted from CAS pursuant to 9903.201-1(a)(3).**

**(3) For indefinite delivery vehicles (see definition at 9903.301), the CAS Disclosure Statement shall be deferred until an order will meet the criteria specified in the solicitation provision.**

**(4)** The provision allows offerors to -

(i) Certify their Disclosure Statement status;

(ii) [Reserved]

(iii) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(iv) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

**(25)** If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

**Not addressed here**

### **Cost Accounting Standards Notices and Certification (~~JUL 2011~~ TBD)**

Note:

This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS-coverage pursuant to 9903.201-2(c)(5) or 9903.201-2(c)(6).

### **Not addressed here**

#### **I. Disclosure Statement - Cost Accounting Practices and Certifications**

(a) Any contract in excess of ~~the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))~~ **\$25 million**, resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to-practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or cognizant Federal agency official acting in that capacity and/or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO or Federal Official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO or Federal Official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling ~~\$50~~ \$100 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted.

The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of ~~\$50~~ \$100 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. Cost Accounting Standards - Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than ~~\$50~~ **\$100** million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of ~~\$50~~ **\$100** million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of ~~\$50~~ **\$100** million or more.

### III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

(End of provision)

Alternate I (OCT 1994). Insert the following subparagraph (5) at the end of Part I of the basic clause:

**Not addressed here**

#### **9903.201-4 Contract clauses.**

(a) Cost Accounting Standards.

(1) **Upon the contracting officer's affirmative written determination that the awarded contract will be CAS-covered, pursuant to 9903.201,** ~~the contracting officer shall insert as full text the clause set forth below, Cost Accounting Standards,~~ **only in negotiated CAS-covered contracts, unless the contract is exempted (see 9903.201-1);** the contract is subject to modified coverage (see 9903.201-2); or the clause prescribed in paragraph (e) of this section is used.

(2) **When a hybrid contract is contemplated (see definition at 9903.301), the contracting officer shall, to the maximum extent practicable, identify the portions of the proposed contract that are exempted from CAS pursuant to 9903.201-1(a)(3).**

(23) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

#### **Cost Accounting Standards (~~JUL 2011~~ TBD)**

~~(a) Unless the contract is exempt under 9903.201-1 and 9903.201-2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall -~~

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclosed in writing the Contractor's cost accounting practices as required by 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability of such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together

with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904 or a CAS rule or regulation in part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)) **\$25 million**, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

**(e) For indefinite delivery vehicles (see definition at 9903.301), the CAS applicability determination shall be made separately for each order at the time of order placement.**

**(f) If subsequent to award of this contract, it is established that the contract, or portions thereof, should not have been determined to be CAS-covered at the time of award under the provisions of 9903.201, this clause, or portions thereof, will be deemed as inapplicable to the contract.**

(End of clause)

(b) [Reserved]

(c) Disclosure and Consistency of Cost Accounting Practices.

**(1) Upon the contracting officer's affirmative written determination that the awarded contract will be subject to modified CAS-coverage, pursuant to 9903.201-2, the contracting officer shall insert as full text the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, only in**



~~negotiated~~ **CAS-covered** contracts when the contract amount is over the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)) **\$25 million**, but less than ~~\$50~~ **\$100** million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

**(2) When a hybrid contract is contemplated (see definition at 9903.301), the contracting officer shall, to the maximum extent practicable, identify the portions of the proposed contract that are exempted from CAS pursuant to 9903.201-1(a)(3).**

~~(23)~~ The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

#### **Disclosure and Consistency of Cost Accounting Practices (~~JUL 2011~~ TBD)**

(a) The Contractor, in connection with this contract, shall -

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard - Cost Accounting Period, in effect on the date of award of this contract, as indicated in part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201-6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the

annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that -

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of ~~the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))~~ **\$25 million**.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

(d) [Reserved]

(e) Cost Accounting Standards - Educational Institutions.

**Not addressed here**

(f) Disclosure and Consistency of Cost Accounting Practices - Foreign Concerns.

**Not addressed here**

#### **9903.201-5 Waiver.**

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than ~~\$15~~ \$100 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work -

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.



(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policymaking level in the agency.

(d) The head of each executive agency shall report the waivers granted under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201-4(a), Cost Accounting Standards, or 9903.201-4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain -

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

#### **9903.201-6 Findings.**

(a) Required change -

(1) Finding. Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(i) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(i) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the practice change was required to comply with a CAS, modification or interpretation thereof, that subsequently became applicable to the contract; or, for planned changes being made in order to remain CAS compliant, that the former practice was in compliance with applicable CAS and the planned change is necessary for the contractor to remain in compliance.

(2) Required change means a change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications, or interpretations thereto, that subsequently become applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract. It also includes a prospective change to a disclosed or established cost accounting practice when the cognizant Federal agency official determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

(b) Unilateral change -

(1) Findings. Prior to making any contract price or cost adjustment(s) under the change provisions of paragraph (a)(4)(ii) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs.

(2) Unilateral change by a contractor means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no aggregate increased costs.

(3) Action to preclude the payment of aggregate increased costs by the Government. In the absence of a finding pursuant to paragraph (c) of this subsection that a compliant change is desirable, no agreement may be made with regard to a change to a cost accounting practice that will result in the payment of aggregate increased costs by the United States. For these changes, the cognizant Federal agency official shall limit upward contract price adjustments to affected contracts to the amount of downward contract price adjustments of other affected contracts, i.e., no net upward contract price adjustment shall be permitted.

(c) Desirable change -

(1) Finding. Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201-4(c), the cognizant Federal agency official shall make a finding that the change to a cost accounting practice is desirable and not detrimental to the interests of the Government.

(2) Desirable change means a compliant change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official finds is desirable and not detrimental to the Government and is therefore not subject to the no increased cost prohibition provisions of CAS-covered contracts affected by the change. The cognizant Federal agency official's finding need not be based solely on the cost impact that a proposed practice change will have on a contractor's or subcontractor's current CAS-covered contracts. The change to a cost accounting practice may be determined to be desirable even though existing contract prices and/or cost allowances may increase. The determination that the change to a cost accounting practice is desirable, should be made on a case-by-case basis.

(3) Once a determination has been made that a compliant change to a cost accounting practice is a desirable change, associated management actions that also have an impact on contract costs should be considered when negotiating contract price or cost adjustments that may be needed to equitably resolve the overall cost impact of the aggregated actions.

(4) Until the cognizant Federal agency official has determined that a change to a cost accounting practice is deemed to be a desirable change, the change shall be considered to be a change for which the Government will not pay increased costs, in the aggregate.

(d) Noncompliant cost accounting practices -

(1) Findings. Prior to making any contract price or cost adjustment(s) under the provisions of paragraph (a)(5) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(4) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs. While individual contract prices, including cost ceilings or target costs, as applicable, may be increased as well as decreased to resolve an estimating noncompliance, the aggregate value of all contracts affected by the estimating noncompliance shall not be increased.

#### **9903.201-7 Cognizant Federal agency responsibilities.**

(a) The requirements of part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

#### **9903.201-8 Compliant accounting changes due to external restructuring activities.**

The contract price and cost adjustment requirements of this part 9903 are not applicable to compliant cost accounting practice changes directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325.

#### **9903.202 Disclosure requirements.**

##### **9903.202-1 General requirements.**

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Disclosure Statement is not required for any non-CAS-covered contract or from any small business concern.

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of ~~\$50~~ **\$100** million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling ~~\$50~~ **\$100** million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed ~~the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))~~ **\$25 million** unless (i) ~~The contract or subcontract is of the type or value exempted by 9903.201-1, or~~

~~(ii) In the most recently completed cost accounting period the segment's CAS covered awards are less than 30 percent of total segment sales for the period and less than \$10 million.~~

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VIII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in lieu of filing a Form No CASB-DS-1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the Cost Accounting Standards Board determines that the information disclosed by that means will satisfy the objectives of Public Law 100-679. The use of alternative forms has been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

(3) United Kingdom.

(f) Educational institutions - disclosure requirements.

**Not addressed here**

**9903.202-2 Impracticality of submission.**

**9903.202-3 Amendments and revisions.**

**9903.202-4 Privileged and confidential information.**

**9903.202-5 Filing Disclosure Statements.**

**9903.202-6 Adequacy of Disclosure Statement.**

**9903.202-7 [Reserved]**

**9903.202-8 Subcontractor Disclosure Statements.**

**9903.202-9 Illustration of Disclosure Statement Form, CASB-DS-1.**

**No changes to the sections noted above**

**9903.202-10 Illustration of Disclosure Statement Form, CASB DS-2.**

**Not addressed here**

## **Part 9903, Subpart 9903.3 - CAS Rules and Regulations**

- 9903.301 Definitions.
- 9903.302 Definitions, explanations, and illustrations of the terms, “cost accounting practice” and “change to a cost accounting practice.”
- 9903.302-1 Cost accounting practice.
- 9903.302-2 Change to a cost accounting practice.
- 9903.302-3 Illustrations of changes which meet the definition of “change to a cost accounting practice.”
- 9903.302-4 Illustrations of changes which do not meet the definition of “Change to a cost accounting practice.”
- 9903.303 Effect of filing Disclosure Statement.
- 9903.304 Concurrent full and modified coverage.
- 9903.305 Materiality.
- 9903.306 Interpretations.
- 9903.307 Cost Accounting Standards Preambles.

### **9903.301 Definitions.**

(a) The definitions set forth below apply to this chapter 99.

Accrued benefit cost method. See 9904.412-30.

Accumulating costs. See 9904.401-30.

Actual cash value. See 9904.416-30.

Actual cost. See 9904.401-30 for the broader definition and 9904.407-30 for a more restricted definition applicable only to the standard on the use of standard costs for direct material and direct labor.

Actuarial assumption. See 9904.412-30 or 9904.413-30.

Actuarial cost method. See 9904.412-30 or 9904.413-30.

Actuarial gain and loss. See 9904.412-30 or 9904.413-30.

Actuarial liability. See 9904.412-30 or 9904.413-30.

Actuarial valuation. See 9904.412-30 or 9904.413-30.

Allocate. See 9904.402-30, 9904.403-30, 9904.406-30, 9904.410-30, 9904.411-30, 9904.418-30 or 9904.420-30.

Asset accountability unit. See 9904.404-30.

Assignment of cost to cost accounting periods. See 9903.302-1(b).

Bid and proposal (B&P) cost. See 9904.420-30.

Business unit. See 9904.410-30, 9904.411-30 or 9904.414-30.

CAS-covered contract, as used in this part, means any negotiated contract or subcontract in which a CAS clause is required to be included.

Category of material. See 9904.411-30.

Change to a cost accounting practice. See 9903.302-2.

Compensated personal absence. See 9904.408-30.

Cost accounting practice. See 9903.302-1.

Cost input. See 9904.410-30.

Cost objective. See 9904.402-30, 9904.406-30, 9904.410-30 or 9904.411-30.

Cost of capital committed to facilities. See 9904.414-30.

Currently performing, as used in this part, means that a contractor has been awarded a contract, but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

Deferred compensation. See 9904.415-30.

Defined-benefit pension plan. See 9904.412-30.

Defined-contribution pension plan. See 9904.412-30.

Direct cost. See 9904.402-30 or 9904.418-30.

Directly associated cost. See 9904.405-30.

Disclosure statement, as used in this part, means the Disclosure Statement required by 9903.202-1.

Entitlement. See 9904.408-30.

Estimating costs. See 9904.401-30.

Expressly unallowable cost. See 9904.405-30.

Facilities capital. See 9904.414-30.

Final cost objective. See 9904.402-30 or 9904.410-30.



Fiscal year. See 9904.406-30.

**Fixed-price type contract, as used in 9903.201-1(b)(15), means any contract of the type described in 48 CFR Subpart 16.2.**

Funded pension cost. See 9904.412-30.

Funding agency. See 9904.412-30.

General and administrative (G&A) expense. See 9904.410-30 or 9904.420-30.

Home office. See 9904.403-30 or 9904.420-30.

**Hybrid contract means a contract or subcontract that contains multiple contract types within its overall structure.**

Immediate-gain actuarial cost method. See 9904.413-30.

**Indefinite delivery vehicle means an indefinite delivery contract or agreement that has one or more of the following clauses:**

**(1) 48 CFR 52.216-18, "Ordering"**

**(2) 48 CFR 52.216-19, "Order Limitations"**

**(3) 48 CFR 52.216-20, "Definite Quantity"**

**(4) 48 CFR 52.216-21, "Requirements"**

**(5) 48 CFR 52.216-22, "Indefinite Quantity"**

**(6) Any other clause allowing ordering.**

Independent research and development (IR&D) cost. See 9904.420-30.

Indirect cost. See 9904.402-30, 9904.405-30, 9904.418-30 or 9904.420-30.

Indirect cost pool. See 9904.401-30, 9904.402-30, 9904.406-30 or 9904.418-30.

Insurance administration expenses. See 9904.416-30.

Intangible capital asset. See 9904.414-30 or 9904.417-30.

Labor cost at standard. See 9904.407-30.

Labor-rate standard. See 9904.407-30.



Labor-time standard. See 9904.407-30.

Material cost at standard. See 9904.407-30.

Material inventory record. See 9904.411-30.

Material-price standard. See 9904.407-30.

Material-quantity standard. See 9904.407-30.

Measurement of cost. See 9904.302-1(c).

Moving average cost. See 9904.411-30.

Multiemployer pension plan. See 9904.412-30.

Negotiated subcontract, as used in this part, means any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such contractor or subcontractor, providing

- (1) The solicitation to all competitors is identical,
- (2) Price is the only consideration in selecting the subcontractor from among the competitors solicited, and
- (3) The lowest offer received in compliance with the solicitation from among those solicited is accepted.

Net awards, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

Normal cost. See 9904.412-30 or 9904.413-30.

Operating revenue. See 9904.403-30.

Original complement of low cost equipment. See 9904.404-30.

Pay-as-you-go cost method. See 9904.412-30.

Pension plan. See 9904.412-30 or 9904.413-30.

Pension plan participant. See 9904.413-30.

Pricing. See 9904.401-30.

Production unit. See 9904.407-30.

Projected average loss. See 9904.416-30.

Projected benefit cost method. See 9904.412-30 or 9904.413-30.

Proposal. See 9904.401-30.

Repairs and maintenance. See 9904.404-30.

Reporting costs. See 9904.401-30.

Residual value. See 9904.409-30.

Segment. See 9904.403-30, 9904.410-30, 9904.413-30 or 9904.420-30.

Self-insurance. See 9904.416-30.

Self-insurance charge. See 9904.416-30.

Service life. See 9904.409-30.

Small business, as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in part 121 of title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

Spread-gain actuarial cost method. See 9904.413-30.

Standard cost. See 9904.407-30.

Tangible capital asset. See 9904.403-30, 9904.404-30, 9904.409-30, 9904.414-30 or 9904.417-30.

Termination gain or loss. See 9904.413-30.

Unallowable cost. See 9904.405-30.

Variance. See 9904.407-30.

Weighted average cost. See 9904.411-30.

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

**Not addressed here**

**9903.302 Definitions, explanations, and illustrations of the terms, “cost accounting practice” and “change to a cost accounting practice.”**

**9903.302-1 Cost accounting practice.**

Cost accounting practice, as used in this part, means any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.

(a) Measurement of cost, as used in this part, encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are

- (1) The use of either historical cost, market value, or present value;
- (2) The use of standard cost or actual cost; or
- (3) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

(b) Assignment of cost to cost accounting periods, as used in this part, refers to a method or technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(c) Allocation of cost to cost objectives, as used in this part, includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

**9903.302-2 Change to a cost accounting practice.**

Change to a cost accounting practice, as used in this part, means any alteration in a cost accounting practice, as defined in 9903.302-1, whether or not such practices are covered by a Disclosure Statement, except for the following:

(a) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(b) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

**9903.302-3 Illustrations of changes which meet the definition of “change to a cost accounting practice.”**

(a) The method or technique used for measuring costs has been changed.

(b) The method or technique used for assignment of cost to cost accounting periods has been changed.

(c) The method or technique used for allocating costs has been changed.

**9903.302-4 Illustrations of changes which do not meet the definition of “Change to a cost accounting practice.”**

**9903.303 Effect of filing Disclosure Statement.**

(a) A disclosure of a cost accounting practice by a contractor does not determine the allowability of particular items of cost. Irrespective of the practices disclosed by a contractor, the question of whether or not, or the extent to which, a specific element of cost is allowed under a contract remains for consideration in each specific instance. Contractors are cautioned that the determination of the allowability of cost items will remain a responsibility of the contracting officers pursuant to the provisions of the applicable procurement regulations.

(b) The individual Disclosure Statement may be used in audits of contracts or in negotiation of prices leading to contracts. The authority of the audit agencies and the contracting officers is in no way abrogated by the material presented by the contractor in his Disclosure Statement. Contractors are cautioned that their disclosures must be complete and accurate; the practices disclosed may have a significant impact on ways in which contractors will be required to comply with Cost Accounting Standards.

**9903.304 Concurrent full and modified coverage.**

Contracts subject to full coverage may be performed during a period in which a previously awarded contract subject to modified coverage is being performed. Compliance with full coverage may compel the use of cost accounting practices that are not required under modified coverage. Under these circumstances the cost accounting practices applicable to contracts subject to modified coverage need not be changed. Any resulting differences in practices between contracts subject to full coverage and those subject to modified coverage shall not constitute a violation of 9904.401 and 9904.402. This principle also applies to contracts subject to modified coverage being performed during a period in which a previously awarded contract subject to full coverage is being performed.

**9903.305 Materiality.**

In determining whether amounts of cost are material or immaterial, the following criteria shall be considered where appropriate; no one criterion is necessarily determinative:

- (a) The absolute dollar amount involved. The larger the dollar amount, the more likely that it will be material.
- (b) The amount of contract cost compared with the amount under consideration. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.
- (c) The relationship between a cost item and a cost objective. Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.
- (d) The impact on Government funding. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.
- (e) The cumulative impact of individually immaterial items. It is appropriate to consider whether such impacts:
  - (1) Tend to offset one another, or
  - (2) Tend to be in the same direction and hence to accumulate into a material amount.
- (f) The cost of administrative processing of the price adjustment modification shall be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

#### **9903.306 Interpretations.**

In determining amounts of increased costs in the clauses at 9903.201-4(a), Cost Accounting Standards, 9903.201- 4(c), Disclosure and Consistency of Cost Accounting Practices, and 9903.201-4(d), Consistency in Cost Accounting, the following considerations apply:

- (a) Increased costs shall be deemed to have resulted whenever the cost paid by the Government results from a change in a contractor's cost accounting practices or from failure to comply with applicable Cost Accounting Standards, and such cost is higher than it would have been had the practices not been changed or applicable Cost Accounting Standards complied with.
- (b) If the contractor under any fixed-price contract, including a firm fixed-price contract, fails during contract performance to follow its cost accounting practices or to comply with applicable Cost Accounting Standards, increased costs are measured by the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance. The determination of the contract price that would have been agreed to will be left to the contracting parties and will depend on the circumstances of each case.

(c) The statutory requirement underlying this interpretation is that the United States not pay increased costs, including a profit enlarged beyond that in the contemplation of the parties to the contract when the contract costs, price, or profit is negotiated, by reason of a contractor's failure to use applicable Cost Accounting Standards, or to follow consistently its cost accounting practices. In making price adjustments under the Cost Accounting Standards clause at 9903.201-4(a) in fixed price or cost reimbursement incentive contracts, or contracts providing for prospective or retroactive price redetermination, the Federal agency shall apply this requirement appropriately in the circumstances.

(d) The contractor and the contracting officer may enter into an agreement as contemplated by subdivision (a)(4)(ii) of the Cost Accounting Standards clause at 9903.201-4(a), covering a change in practice proposed by the Government or the contractor for all of the contractor's contracts for which the contracting officer is responsible, provided that the agreement does not permit any increase in the cost paid by the Government. Such agreement may be made final and binding, notwithstanding the fact that experience may subsequently establish that the actual impact of the change differed from that agreed to.

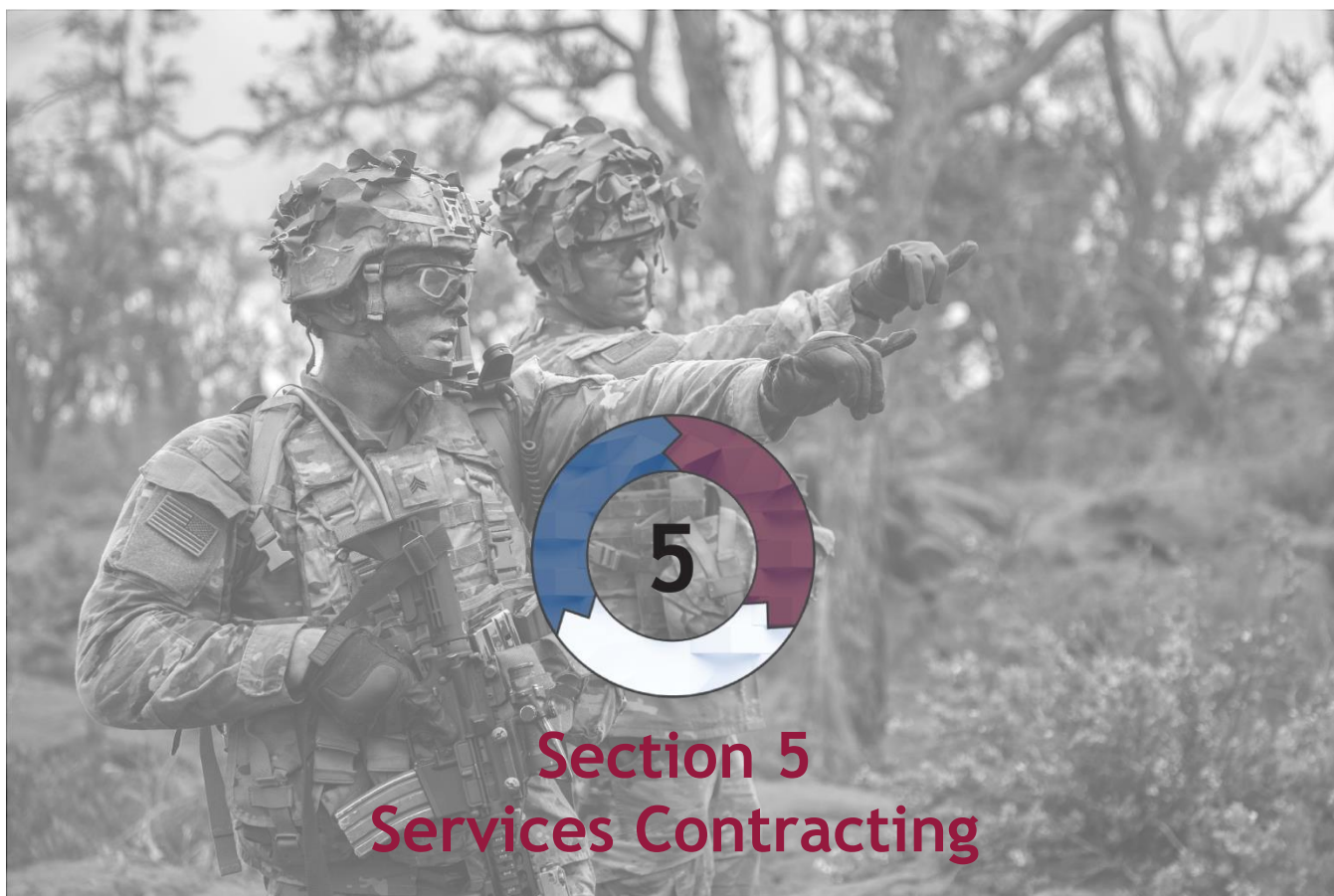
(e) An adjustment to the contract price or of cost allowances pursuant to the Cost Accounting Standards clause at 9903.201-4(a) may not be required when a change in cost accounting practices or a failure to follow Standards or cost accounting practices is estimated to result in increased costs being paid under a particular contract by the United States. This circumstance may arise when a contractor is performing two or more covered contracts, and the change or failure affects all such contracts. The change or failure may increase the cost paid under one or more of the contracts, while decreasing the cost paid under one or more of the contracts. In such case, the Government will not require price adjustment for any increased costs paid by the United States, so long as the cost decreases under one or more contracts are at least equal to the increased cost under the other affected contracts, provided that the contractor and the affected contracting officers agree on the method by which the price adjustments are to be made for all affected contracts. In this situation, the contracting agencies would, of course, require an adjustment of the contract price or cost allowances, as appropriate, to the extent that the increases under certain contracts were not offset by the decreases under the remaining contracts.

(f) Whether cost impact is recognized by modifying a single contract, several but not all contracts, or all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards rules do not in any way restrict the capacity of the parties to select the method by which the cost impact attributable to a change in cost accounting practice is recognized.

#### **9903.307 Cost Accounting Standards Preambles.**

##### **No changes**





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*Eliminating the distinction between personal and nonpersonal services would enable DoD to acquire contracted mission support services efficiently and effectively.*

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## RECOMMENDATION

**Rec. 31:** Eliminate the statutory and regulatory distinction between personal services contracts (PSC) and nonpersonal services (NPS) contracts.

## SUMMARY

The regulatory and statutory distinctions between personal and nonpersonal services are outdated and inconsistent with the multisector workforce management approaches used by DoD and other federal agencies. Eliminating the statutory and regulatory distinctions between personal services contracts and nonpersonal services contracts will facilitate a multisector workforce needed to achieve and maintain national, strategic, and operational objectives and provide for managerial flexibility in determining how to fulfill service requirements.

## RECOMMENDATION

**Recommendation 31: Eliminate the statutory and regulatory distinction between personal services contracts (PSC) and nonpersonal services (NPS) contracts.**

### Implementation

#### *Legislative Branch*

- Amend 5 U.S.C. § 3109, Employment of Experts and Consultants; Temporary or Intermittent.
- Repeal 10 U.S.C. § 129b, Authority to Procure Personal Services.
- Amend 10 U.S.C. § 1091, Personal Services Contracts.
- Add a new section to Title 41 for contracts for services.
- Amend 10 USC §1089, Defense of Certain Suits arising out of Medical Malpractice.
- Amend 10 USC §1094, Licensure Requirement for Healthcare Professionals.

#### *Executive Branch*

- Amend DoDI 1100.22, Policy and Procedures for Determining Workforce Mix, to delete references to personal services.
- Cancel DoDI 6025.5, Personal Services Contracts for Health Care Providers.
- Make substantial changes to FAR Part 37 and DFARS Part 237, as required.

**Note: Explanatory report language, draft legislative text, and regulatory revisions can be found in the Implementation Details subsection at the end of Section 5.**

#### *Implications for Other Agencies*

- Other federal agencies face the same challenges concerning the management of the multisector workforce.



Section 5  
Services Contracting  
Implementation Details



## Recommendation 31



## RECOMMENDED REPORT LANGUAGE

### SEC. XXX. Elimination of Distinction between Personal Services Contracts and Other Types of Services Contracts.

This section would eliminate the statutory distinction between personal services contracts and other types of contracts for services to remove confusion between such contracts and simplify bureaucracy.

Currently section 3109 of title 5, United States Code, authorizes an agency to “procure by contract” temporary or intermittent services of experts and consultants authorized by appropriation or other statute. The committee is aware that “procure by contract” has caused confusion in the potential creation of employer-employee relationships. However, the committee notes that removing the distinction will reinforce the supervisory relationship between the contractor and its employees, and that contractual terms and conditions will define the legal relationship between the government and its contractors. The committee notes that prohibitions on contractor performance of inherently governmental functions will remain in place as well as requirements on organizational conflicts of interest and personal conflicts of interest, and the need for agencies to identify and fully resource the performance of critical functions by government employees.

This section also would add a corresponding new section 3907 to title 41, United States Code, to state expressly that contracts for services similar to those covered by section 3109 or other contracts previously known as personal services contracts may be made on the same basis as other contracts for services.

This section would make several conforming amendments to titles 10 and 41, United States Code, including repeal of section 129b, title 10, United States Code, and revisions to section 1091, title 10, United States Code, since separate authority to enter into contracts would not be needed.

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## DRAFT — PERSONAL SERVICES CONTRACTS

**[NOTE: The draft legislative text below is followed by a “Sections Affected” display, showing in “redline” form how the text of current provisions of law would be affected by the draft legislative text.]**

1    **SEC. \_\_\_\_ . ELIMINATION OF DISTINCTION BETWEEN PERSONAL SERVICES**

2                    **CONTRACTS AND OTHER TYPES OF SERVICES CONTRACTS.**

3            **(a) New TITLE 41 SECTION.—**

4                    (1) IN GENERAL.—Chapter 39 of **title 41**, United States Code, is amended by  
5            adding at the end the following new section:

6    **“§ 3907. Contracts for services**

7            “(a) GENERAL RULE.—A contract for services of experts or consultants, including  
8    stenographic services, and any other contract for services that is of a type that on the day before  
9    the date of the enactment of this section was considered to be a ‘personal services contract’—

10            “(1) may be entered into on the same basis as any other contract for services; and

11            “(2) is not subject to any requirement for specific authorization in an  
12            appropriation or other statute.

13            “(b) REFERENCES IN OTHER LAWS.—Any provision of law in effect on the date of the  
14    enactment of this section that refers to authority to procure services, or to enter into a contract,  
15    under section 3109 of title 5 is superseded by this section.”.

16            (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
17            chapter is amended by adding at the end the following new item:

“3907. Contracts for services.”.

18            **(b) REPEAL OF APPLICABILITY OF SECTION 3109 OF TITLE 5 TO CONTRACTS.—**

## DRAFT — PERSONAL SERVICES CONTRACTS

(1) APPLICABILITY TO EMPLOYMENT ONLY.—Section **3109(b) of title 5**, United States Code, is amended—

(A) in the first sentence—

(i) by striking “may procure by contract the” and inserting “may employ experts or consultants to provide”; and

(ii) by striking “experts or consultants or an organization thereof”;

(B) in the second sentence—

(i) by striking “Services procured under this section are” and inserting “Employment under this section is”;

(ii) by inserting “and” at the end of paragraph (1);

(iii) by striking “; and” at the end of paragraph (2) and inserting a period; and

(iv) by striking paragraph (3); and

(C) in the last sentence, by striking “the procurement of the services” and inserting “such employment”.

(2) CONFORMING REPEALS OF TITLE 5 “NOTE” SECTIONS.—The following provisions of law are **repealed**:

(A) Section 401 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2014 (division G of Public Law 113–76; **5 U.S.C. 3109 note**).

(B) Section 501 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1993 (Public Law 102–394; **5 U.S.C. 3109 note**).



## DRAFT — PERSONAL SERVICES CONTRACTS

(C) Section 504 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377; **5 U.S.C. 3109 note**).

**(c) TITLE 10 GENERALLY.** —

(1) REPEAL OF GENERAL PERSONAL SERVICES CONTRACT AUTHORITY.—Section **129b** of title 10, United States Code, is **repealed**.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by striking the item relating to section 129b.

**(d) TITLE 10 HEALTH SERVICES PROVIDERS.** —

(1) REPEAL OF SEPARATE CONTRACTING AUTHORITY.—Section **1091** of title 10, United States Code, is **amended to read as follows**:

**“§1091. Services contracts for health care responsibilities**

“For purposes of sections 1089 and 1094 of this title (and any other provision of law referring to a contract under this section), a services contract described in this section is a services contract entered into by the Secretary of Defense or the Secretary of Homeland Security, with respect to the Coast Guard when the Coast Guard is not operating as a service in the Navy, to —

“(1) carry out health care responsibilities in medical treatment facilities under the jurisdiction of that Secretary, as determined to be necessary by the Secretary; or

“(2) carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.”.

## DRAFT — PERSONAL SERVICES CONTRACTS

### (2) CONFORMING AMENDMENTS RELATING TO TITLE 10 HEALTH CARE

#### AUTHORITIES.—

(A) Section **1072(4)** of title 10, United States Code, is amended by striking “contracts entered into under section 1091 or 1097 of this title” and inserting “contracts described in section 1091 of this title or entered into under section 1097 of this title”.

(B) Section **1089(a)** of such title is amended in the last sentence—

(i) by striking “personal services contract entered into under” and inserting “services contract described in”; and

(ii) by striking “that is authorized in accordance with the requirements of such section 1091”.

(C) Section **1094(d)(2)** of such title is amended by striking “personal services contractor under” and inserting “health-care professional serving under a services contract described in”.

(D) Section 704(c) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; **10 U.S.C. 1091 note**) is **repealed**.

(e) Section 1601(e) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; **10 U.S.C. 2358 note**) is **repealed**.

(e) OTHER AMENDMENTS TO TITLE 10.—Title 10, United States Code, is amended as follows:

(1) Section **2207(a)** is amended by striking “other than a contract for personal services”.

(2) Section **2209(b)** is amended by striking “, personal services,”.

## DRAFT — PERSONAL SERVICES CONTRACTS

(3) Section **2324(k)** is amended—

(A) by striking “, or personal services contractor” each place it appears;

and

(B) by striking “, subcontract, or personal services contract” each place it appears and inserting “or subcontract”.

(4) Section **2330a** is amended—

(A) in subsection (c)(2), by striking subparagraph (F);

(B) in subsection (d)(2)—

(i) by striking subparagraph (A); and

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs

(A) and (B), respectively;

(C) by striking subsection (g); and

(D) in subsection (h)—

(i) by striking paragraph (4); and

(ii) in paragraph (6), by striking “, including” and all the follows in that paragraph and inserting a period.

(5) Section **2409(a)(1)** is amended by striking “or personal services contractor” and inserting “or an individual who is a services contractor”.

(6) Sections **9446(a)(1)** and **9448(b)(3)** are amended by striking “personal”.

**(f) OTHER AMENDMENTS TO TITLE 41.**—Title 41, United States Code, is amended as follows:

(1) Section **4304(a)(15)** is amended by striking “, or personal service contractor”.

(2) Section **4310** is amended—

## DRAFT — PERSONAL SERVICES CONTRACTS

(A) by striking “, subcontractor, or personal services contractor” each place it appears and inserting “or subcontractor”; and

(B) by striking “, subcontract, or personal services contract” each place it appears and inserting “or subcontract”.

(5) Section 4712(a)(1) is amended by striking “or personal services contractor” and inserting “or an individual who is a services contractor”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contracts entered into after the date of the enactment of this Act.

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## SECTIONS AFFECTED BY THE PROPOSAL

[Matter proposed to be deleted is shown in ~~stricken through~~ text; matter to be inserted is shown in *bold italic*.]

### Title 5, United States Code

#### §3109. Employment of experts and consultants; temporary or intermittent

(a) For the purpose of this section—

(1) "agency" has the meaning given it by section 5721 of this title; and

(2) "appropriation" includes funds made available by statute under section 9104 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may ~~procure by contract the~~ ***employ experts or consultants to provide*** temporary (not in excess of 1 year) or intermittent services ~~of experts or consultants or an organization thereof, including stenographic reporting services. Services procured~~ ***Employment*** under this section ~~are~~ ***is*** without regard to—

(1) the provisions of this title governing appointment in the competitive service; ***and***

(2) chapter 51 and subchapter III of chapter 53 of this title; ~~and~~.

(3) ~~section 6101(b) to (d) of title 41, except in the case of stenographic reporting services by an organization.~~

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing ~~the procurement of the services~~ ***such employment***.

(c) Positions in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service may not be filled under the authority of subsection (b) of this section.

(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include-

## DRAFT — PERSONAL SERVICES CONTRACTS

- (1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;
  - (2) criteria for setting the pay of experts and consultants under this section; and
  - (3) provisions to ensure compliance with such regulations.
- (e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to—
- (1) the number of days each expert or consultant employed by the agency during the period was so employed; and
  - (2) the total amount paid by the agency to each expert and consultant for such work during the period.

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### Title 10, United States Code

#### **~~§129b. Authority to procure personal services~~**

~~(a) AUTHORITY. Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—~~

- ~~(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with [section 3109 of title 5](#); and~~
- ~~(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.~~

~~(b) CONDITIONS. The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—~~

- ~~(1) the procurement of such services is advantageous to the United States; and~~
- ~~(2) such services cannot adequately be provided by the Department of Defense.~~

~~(c) REGULATIONS. Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.~~

~~(d) ADDITIONAL AUTHORITY FOR PERSONAL SERVICES CONTRACTS. (1) In addition to the authority provided under subsection (a), the Secretary of Defense may enter into personal services contracts if the personal services—~~

~~(A) are to be provided by individuals outside the United States, regardless of their nationality, and are determined by the Secretary to be necessary and appropriate for supporting the activities and programs of the Department of Defense outside the United States;~~

~~(B) directly support the mission of a defense intelligence component or counter-intelligence organization of the Department of Defense; or~~

~~(C) directly support the mission of the special operations command of the Department of Defense.~~

~~(2) The contracting officer for a personal services contract under this subsection shall be responsible for ensuring that—~~

~~(A) the services to be procured are urgent or unique; and~~

~~(B) it would not be practicable for the Department to obtain such services by other means.~~

~~(3) The requirements of [section 3109 of title 5](#) shall not apply to a contract entered into under this subsection.~~

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## DRAFT — PERSONAL SERVICES CONTRACTS

### §1072. Definitions

In this chapter:

(1) \*\*\*

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(4) The term “Civilian Health and Medical Program of the Uniformed Services” means the program authorized under sections 1079 and 1086 of this title and includes contracts ~~entered into under~~ *described in* section 1091 *of this title* or *entered into under section 1097 of this title* and demonstration projects under section 1092 of this title.

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### §1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply to such a physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) serving under a **personal** services contract ~~entered into under~~ *described in* section 1091 of this title or a subcontract at any tier under such a contract ~~that is authorized in accordance with the requirements of such section 1091.~~

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the

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proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney's fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term “head of the agency concerned” means—

(1) the Director of the Central Intelligence Agency, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Homeland Security, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Chief Operating Officer of the Armed Forces Retirement Home, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

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### **~~§1091. Personal services contracts~~ *Services contracts for health care responsibilities***

*For purposes of sections 1089 and 1094 of this title (and any other provision of law referring to a contract under this section), a services contract described in this section is a services contract entered into by the Secretary of Defense or the Secretary of Homeland Security, with respect to the Coast Guard when the Coast Guard is not operating as a service in the Navy, to —*

*(1) carry out health care responsibilities in medical treatment facilities under the jurisdiction of that Secretary, as determined to be necessary by the Secretary; or*

*(2) carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations)*



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*at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.*

~~(a) AUTHORITY. — (1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Homeland Security, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.~~

~~(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.~~

~~(b) LIMITATION ON AMOUNT OF COMPENSATION. — In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.~~

~~(c) PROCEDURES. — (1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure —~~

~~(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and~~

~~(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.~~

~~(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.~~

~~(3) The procedures established under paragraph (1) may provide for a contracting officer to authorize a contractor to enter into a subcontract for personal services on behalf of the agency upon a determination that the subcontract is —~~

~~(A) consistent with the requirements of this section and the procedures established under paragraph (1); and~~

~~(B) in the best interests of the agency.~~

~~(d) EXCEPTIONS. — The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).~~

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### §1094. Licensure requirement for health-care professionals



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(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than \$5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) or (3) may practice the health profession or professions of the health-care professional at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such health-care professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties.

(2) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the armed forces, civilian employee of the Department of Defense, **personal services contractor under health-care professional serving under a services contract described in** section 1091 of this title, or other health-care professional credentialed and privileged at a Federal health care institution or location specially designated by the Secretary for this purpose who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing training or duty under section 502(f) of title 32 in response to an actual or potential disaster.

(e) In this section:

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(1) The term “license”—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term “health-care professional” means a physician, dentist, clinical psychologist, marriage and family therapist certified as such by a certification recognized by the Secretary of Defense, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

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### §2207. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract ~~other than a contract for personal services~~ unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

### §2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of \$1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

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(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), ~~personal services~~, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced.

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### §2324. Allowable costs under defense contracts

(a) \*\*\*

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(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor or subcontractor, ~~or personal services contractor~~ in connection with any criminal, civil, or administrative proceeding commenced by the United States, by a State, or by a contractor or subcontractor, ~~or personal services contractor~~ employee submitting a complaint under section 2409 of this title are not allowable as reimbursable costs under a covered contract; *or* subcontract, ~~or personal services contract~~ if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation or to any other activity described in subparagraphs (A) through (C) of section 2409(a)(1) of this title, and (B) results in a disposition described in paragraph (2).

(2) A disposition referred to in paragraph (1)(B) is any of the following:

(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor or subcontractor, ~~or personal services contractor~~ liability on the basis of the violation or failure referred to in paragraph (1).

(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 2409 of this title by reason of the violation or failure referred to in paragraph (1).

(D) A final decision-

(i) to debar or suspend the contractor or subcontractor, ~~or personal services contractor~~;

(ii) to rescind or void the contract, ~~subcontract, or personal services contract~~ *or subcontract*; or

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(iii) to terminate the contract, ~~subcontract, or personal services contract~~ **or subcontract** for default;

by reason of the violation or failure referred to in paragraph (1).

(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor or subcontractor, ~~or personal services contractor~~ and the United States, the costs incurred by the contractor or subcontractor, ~~or personal services contractor~~ in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency or Secretary of the military department concerned that awarded the covered contract, ~~subcontract, or personal services contract~~ **or subcontract** involved in the proceeding may allow the costs incurred by the contractor or subcontractor, ~~or personal services contractor~~ in connection with such proceeding as reimbursable costs if the agency head or Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (A) a specific term or condition of the contract, ~~subcontract, or personal services contract~~ **or subcontract**, or (B) specific written instructions of the agency or military department.

(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor or subcontractor, ~~or personal services contractor~~ in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract, ~~subcontract, or personal services contract~~ **or subcontract** may be allowed as reimbursable costs under the contract, ~~subcontract, or personal services contract~~ **or subcontract** if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

(C) In the case of a proceeding referred to in subparagraph (A), contractor or subcontractor, ~~or personal services contractor~~ costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor or subcontractor, ~~or personal services contractor~~ misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

(6) In this subsection:

(A) The term "proceeding" includes an investigation.

(B) The term "costs", with respect to a proceeding-

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(i) means all costs incurred by a contractor or subcontractor, ~~or personal services contractor~~, whether before or after the commencement of any such proceeding; and

(ii) includes-

(I) administrative and clerical expenses;

(II) the cost of legal services, including legal services performed by an employee of the contractor or subcontractor, ~~or personal services contractor~~;

(III) the cost of the services of accountants and consultants retained by the contractor or subcontractor, ~~or personal services contractor~~; and

(IV) the pay of directors, officers, and employees of the contractor or subcontractor, ~~or personal services contractor~~ for time devoted by such directors, officers, and employees to such proceeding.

(C) The term "penalty" does not include restitution, reimbursement, or compensatory damages.

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### **§2330a. Procurement of services: tracking of purchases**

(a) DATA COLLECTION REQUIRED.—The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of \$3,000,000, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement, for services in the following service acquisition portfolio groups:

- (1) Logistics management services.
- (2) Equipment related services.
- (3) Knowledge-based services.
- (4) Electronics and communications services.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

- (1) The services purchased.
- (2) The total dollar amount of the purchase.
- (3) The form of contracting action used to make the purchase.
- (4) Whether the purchase was made through—
  - (A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;
  - (B) any other performance-based contract, performance-based task order, or performance-based arrangement; or
  - (C) any contract, task order, or other arrangement that is not performance based.
- (5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.
- (6) The extent of competition provided in making the purchase and whether there was more than one offer.

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(7) Whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(c) Inventory Summary.—(1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall prepare an annual inventory, and submit to Congress a summary of the inventory, of activities performed during the preceding fiscal year pursuant to staff augmentation contracts on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—

(i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees;

(ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and

(iii) the conduct and completion of the annual review required under subsection (e)(1).

(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.

(2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:

(A) The functions and missions performed by the contractor.

(B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

(C) The funding source for the contract under which the function is performed by appropriation and operating agency.

(D) The fiscal year for which the activity first appeared on an inventory under this section.

(E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).

~~(F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.~~

(G) A summary of the data required to be collected for the activity under subsection (a).



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(3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) Review and Planning Requirements.—Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—

(1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible, with particular focus and attention on the following categories of high-risk product service codes (also referred to as Federal supply codes):

(A) Special studies or analysis that is not research and development.

(B) Information technology and telecommunications.

(C) Support, including professional, administrative, and management;

(2) ensure that—

~~(A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;~~

~~(B)~~ (A) the activities on the list do not include any inherently governmental functions; and

~~(C)~~ (B) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and

(3) identify activities that should be considered for conversion—

(A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or

(B) to an acquisition approach that would be more advantageous to the Department of Defense.

(e) Development of Plan and Enforcement and Approval Mechanisms.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—

(1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;

(2) ensure the inventory is used to inform strategic workforce planning;

(3) facilitate use of the inventory for compliance with section 235 of this title; and

(4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.

(f) Comptroller General Report.—Not later than March 31, 2018, the Comptroller General of the United States shall submit to the congressional defense committees a report on the status of the data collection required in subsection (a) and an assessment of the efforts by the Department of Defense to implement subsection (e).

~~(g) Rule of Construction.—Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.~~

(h) Definitions.—In this section:

(1) Performance-based.—The term "performance-based", with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement,

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respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) Function closely associated with inherently governmental functions.—The term "function closely associated with inherently governmental functions" has the meaning given that term in section 2383(b)(3) of this title.

(3) Inherently governmental functions.—The term "inherently governmental functions" has the meaning given that term in section 2383(b)(2) of this title.

~~(4) Personal services contract.—The term "personal services contract" means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.~~

(5) Service acquisition portfolio groups.—The term "service acquisition portfolio groups" means the groups identified in Department of Defense Instruction 5000.74, Defense Acquisition of Services (January 5, 2016) or successor guidance.

(6) Staff augmentation contracts.—The term "staff augmentation contracts" means services contracts for personnel who are physically present in a Government work space on a full-time or permanent part-time basis, for the purpose of advising on, providing support to, or assisting a Government agency in the performance of the agency's missions, ~~including authorized personal services contracts (as that term is defined in section 2330a(g)(5) of this title).~~

(7) Simplified acquisition threshold.—The term "simplified acquisition threshold" has the meaning given the term in section 134 of title 41.

(8) Small business act definitions.—

(A) The term "small business concern" has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

(B) The terms "small business concern owned and controlled by socially and economically disadvantaged individuals" and "small business concern owned and controlled by women" have the meanings given such terms, respectively, in section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)).

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### **§2409. Contractor employees: protection from reprisal for disclosure of certain information**

(a) PROHIBITION OF REPRISALS.—(1) An employee of a contractor, subcontractor, grantee, or subgrantee ~~or personal services contractor~~ **or an individual who is a services contractor** may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

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### **§9446. Miscellaneous personnel authorities**



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(a) **USE OF RETIRED AIR FORCE PERSONNEL.**—(1) Upon the request of a person retired from service in the Air Force, the Secretary of the Air Force may enter into a ~~personal~~ services contract with that person providing for the person to serve as an administrator or liaison officer for the Civil Air Patrol. The qualifications of a person to provide the services shall be determined and approved in accordance with regulations prescribed under section 9448 of this title.

(2) To the extent provided in a contract under paragraph (1), a person providing services under the contract may accept services on behalf of the Air Force.

(3) A person, while providing services under a contract authorized under paragraph (1), may not be considered to be on active duty or inactive-duty training for any purpose.

(b) **USE OF CIVIL AIR PATROL CHAPLAINS.**—The Secretary of the Air Force may use the services of Civil Air Patrol chaplains in support of the Air Force active duty and reserve component forces to the extent and under conditions that the Secretary determines appropriate.

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### §9448. Regulations

(a) **AUTHORITY.**—The Secretary of the Air Force shall prescribe regulations for the administration of this chapter.

(b) **REQUIRED REGULATIONS.**—The regulations shall include the following:

(1) Regulations governing the conduct of the activities of the Civil Air Patrol when it is performing its duties as a volunteer civilian auxiliary of the Air Force under section 9442 of this title.

(2) Regulations for providing support by the Air Force and for arranging assistance by other agencies under section 9444 of this title.

(3) Regulations governing the qualifications of retired Air Force personnel to serve as an administrator or liaison officer for the Civil Air Patrol under a ~~personal~~ services contract entered into under section 9446(a) of this title.

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## Title 41, United States Code

### § 3907. *Contracts for services*

(a) **GENERAL RULE.**—*A contract for services of experts or consultants, including stenographic services, and any other contract for services that is of a type that on the day before the date of the enactment of this section was considered to be a ‘personal services contract’—*

*(1) may be entered into on the same basis as any other contract for services; and*

*(2) is not subject to any requirement for specific authorization in an appropriation or other statute.*

(b) **REFERENCES IN OTHER LAWS.**—*Any provision of law in effect on the date of the enactment of this section that refers to authority to procure services, or to enter into a contract, under section 3109 of title 5 is superseded by this section.*

\*\*\*\*\*

## DRAFT — PERSONAL SERVICES CONTRACTS

### §4304. Specific costs not allowable

(a) SPECIFIC COSTS.—The following costs are not allowable under a covered contract:

(1) \*\*\*

\*\*\*\*\*

(15) Costs incurred by a contractor or subcontractor, ~~or personal services contractor~~ in connection with any criminal, civil, or administrative proceeding commenced by the Federal Government or a State, to the extent provided in section 4310 of this title.

\*\*\*\*\*

### §4310. Proceeding costs not allowable

(a) Definitions.—In this section:

(1) Costs.—The term "costs", with respect to a proceeding, means all costs incurred by a contractor, ~~subcontractor, or personal services contractor~~ **or subcontractor**, whether before or after the commencement of the proceeding, including-

(A) administrative and clerical expenses;

(B) the cost of legal services, including legal services performed by an employee of the contractor, ~~subcontractor, or personal services contractor~~ **or subcontractor**;

(C) the cost of the services of accountants and consultants retained by the contractor, ~~subcontractor, or personal services contractor~~ **or subcontractor**; and

(D) the pay of directors, officers, and employees of the contractor, ~~subcontractor, or personal services contractor~~ **or subcontractor** for time devoted by those directors, officers, and employees to the proceeding.

(2) Penalty.—The term "penalty" does not include restitution, reimbursement, or compensatory damages.

(3) Proceeding.—The term "proceeding" includes an investigation.

(b) In General.—Except as otherwise provided in this section, costs incurred by a contractor, ~~subcontractor, or personal services contractor~~ **or subcontractor** in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government, by a State, or by a contractor, ~~subcontractor, or personal services contractor~~ **or subcontractor** or grantee employee submitting a complaint under section 4712 of this title are not allowable as reimbursable costs under a covered contract, ~~subcontract, or personal services contract~~ **or subcontract** if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation or to any other activity described in section 4712(a)(1) of this title; and

(2) results in a disposition described in subsection (c).

(c) Covered Dispositions.—A disposition referred to in subsection (b)(2) is any of the following:

(1) In a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor, ~~subcontractor, or personal services~~

## DRAFT — PERSONAL SERVICES CONTRACTS

~~contractor~~ **or subcontractor** liability on the basis of the violation or failure referred to in subsection (b).

(3) In any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 4712 of this title by reason of the violation or failure referred to in subsection (b).

(4) A final decision to do any of the following, by reason of the violation or failure referred to in subsection (b):

(A) Debar or suspend the contractor, ~~subcontractor, or personal services contract~~ **or subcontractor**.

(B) Rescind or void the contract, ~~subcontract, or personal services contract~~ **or subcontract**.

(C) Terminate the contract, ~~subcontract, or personal services contract~~ **or subcontract** for default.

(5) A disposition of the proceeding by consent or compromise if the disposition could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

(d) Costs Allowed by Settlement Agreement in Proceeding Commenced by Federal Government.—In the case of a proceeding referred to in subsection (b) that is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by a contractor, ~~subcontractor, or personal services contract~~ **or subcontractor** and the Federal Government, the costs incurred by the contractor, ~~subcontractor, or personal services contract~~ **or subcontractor** in connection with the proceeding that are otherwise not allowable as reimbursable costs under subsection (b) may be allowed to the extent specifically provided in that agreement.

(e) Costs Specifically Authorized by Executive Agency in Proceeding Commenced by State.—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the executive agency that awarded the covered contract, ~~subcontract, or personal services contract~~ **or subcontract** involved in the proceeding may allow the costs incurred by the contractor, ~~subcontractor, or personal services contract~~ **or subcontractor** in connection with the proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of—

(1) a specific term or condition of the contract, ~~subcontract, or personal services contract~~ **or subcontract**; or

(2) specific written instructions of the executive agency.

(f) Other Allowable Costs.—

(1) In general.—Except as provided in paragraph (3), costs incurred by a contractor, ~~subcontractor, or personal services contract~~ **or subcontractor** in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State in connection with a covered contract, ~~subcontract, or personal services contract~~ **or subcontract** may be allowed as reimbursable costs under the contract, ~~subcontract, or personal services contract~~ **or subcontract** if the costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) Amount of allowable costs.—

(A) Maximum amount allowed.—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the

## DRAFT — PERSONAL SERVICES CONTRACTS

amount of the costs incurred, to the extent that the costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) Content of regulations.—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the Federal Government as a party, and other factors as may be appropriate.

(3) When otherwise allowable costs are not allowable.—In the case of a proceeding referred to in paragraph (1), ~~contractor, subcontractor, or personal services contractor~~ **or subcontractor** costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

(A) the proceeding involves the same ~~contractor, subcontractor, or personal services contractor~~ **or subcontractor** misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and

(B) the costs of the other proceeding are not allowable under subsection (b).

\*\*\*\*\*

### §4712. Enhancement of contractor protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—

(1) IN GENERAL.—An employee of a contractor, subcontractor, grantee, or subgrantee ~~or personal services contractor~~ **or an individual who is a services contractor** may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

\*\*\*\*\*

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## Other Provisions of Law

### National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337; 10 U.S.C. 1091 note)

SEC. 704. \*\*\*

(a) \*\*\*

\*\*\*\*\*

## DRAFT — PERSONAL SERVICES CONTRACTS

~~(c) PERSONAL SERVICE CONTRACTS TO PROVIDE CARE.—(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.~~

~~(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, marriage and family therapists certified as such by a certification recognized by the Secretary of Defense, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.~~

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### National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136; 10 U.S.C. 2358 note)

#### SEC. 1601. RESEARCH AND DEVELOPMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES.

(a) IN GENERAL.—The Secretary of Defense (in this section referred to as the “Secretary”) shall carry out a program to accelerate the research, development and procurement of biomedical countermeasures, including but not limited to therapeutics and vaccines, for the protection of the Armed Forces from attack by one or more biological, chemical, radiological, or nuclear agents.

(b) INTERAGENCY COOPERATION.—\*\*\*

(c) EXPEDITED PROCUREMENT AUTHORITY.—(1) For any procurement of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasures research and development, the Secretary may, when appropriate, use streamlined acquisition procedures and other expedited procurement procedures authorized in—

(A) section 1903 of title 41, United States Code; and

(B) sections 2371 and 2371b of title 10, United States Code.

(2) Notwithstanding paragraph (1) and the provisions of law referred to in such paragraph, each of the following provisions shall apply to the procurements described in this subsection to the same extent that such provisions would apply to such procurements in the absence of paragraph (1):

(A) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

(B) Section 8703(a) of title 41, United States Code.

(C) Section 2313 of title 10, United States Code (relating to the examination of contractor records).

(3) The Secretary shall institute appropriate internal controls for use of the authority under paragraph (1), including requirements for documenting the justification for each use of such authority.

(d) DEPARTMENT OF DEFENSE FACILITIES AUTHORITY.—\*\*\*

\*\*\*\*\*

~~(e) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) Subject to paragraph (2), the authority provided by section 1091 of title 10, United States Code, for personal services contracts to carry out health care responsibilities in medical treatment facilities of the Department of Defense shall~~

## DRAFT — PERSONAL SERVICES CONTRACTS

~~also be available, subject to the same terms and conditions, for personal services contracts to carry out research and development activities under this section. The number of individuals whose personal services are obtained under this subsection may not exceed 30 at any time.~~

~~(2) The authority provided by such section 1091 may not be used for a personal services contract unless the contracting officer for the contract ensures that —~~

~~(A) the services to be procured are urgent or unique; and~~

~~(B) it would not be practicable for the Department of Defense to obtain such services by other measures.~~

(f) STREAMLINED PERSONNEL AUTHORITY.—(1) The Secretary may appoint highly qualified experts, including scientific and technical personnel, to carry out research and development under this section in accordance with the authorities provided in section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), [former] section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261 [5 U.S.C. 3104 note]), and section 1101 of this Act [enacting chapter 99 of Title 5, Government Organization and Employees, and provisions set out as a note under section 9901 of Title 5].

(2) The Secretary may use the authority under paragraph (1) only upon a determination by the Secretary that use of such authority is necessary to accelerate the research and development under the program.

(3) The Secretary shall institute appropriate internal controls for each use of the authority under paragraph (1).

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### **Section 401 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2014 (division G of Public Law 113–76; 5 U.S.C. 3109 note)**

~~SEC. 401. In fiscal year 2014 and thereafter, the expenditure of any appropriation under this Act [div. G of Pub. L. 113–76] or any subsequent Act appropriating funds for departments and agencies funded in this Act, for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.~~

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### **Section 501 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1993 (Public Law 102-394; 5 U.S.C. 3109 note)**

~~SEC. 501. The expenditure of any appropriation under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.~~

## DRAFT — PERSONAL SERVICES CONTRACTS

### Section 504 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377; **5 U.S.C. 3109 note**)

~~SEC. 504. The expenditure of any appropriation under this Act or subsequent Energy and Water Development Appropriations Acts for any consulting service through procurement contract, pursuant to [section 3109 of title 5, United States Code](#), hereafter shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.~~

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## DRAFT — PERSONAL SERVICES CONTRACTS





## Section 6

# Additional Streamlining Recommendations

*Eliminating passthrough taxes and updating assignment of claims regulations to reflect modern technology will help streamline acquisition.*

### RECOMMENDATIONS

**Rec. 32:** Exempt DoD from paying the Federal Retail Excise Tax.

**Rec. 33:** Update the Assignment of Claims processes under FAR Part 32.805.

### SUMMARY

The Federal Retail Excise Tax (FRET) distorts DoD vehicle-buying decisions, increases administrative costs, and conflicts with current contract-pricing policy and governmentwide regulations limiting passthrough charges. DoD should be exempt from paying FRET. FAR Part 32.805, Procedures specifies outdated procedures for the assignment of claims to contract payment that require a physical impress of the corporate seal of the assignor as well as original documentation related to corporate authority to execute assignment. The FAR should be updated to reflect the use of modern technology.

## RECOMMENDATIONS

### Recommendation 32: Exempt DoD from paying the Federal Retail Excise Tax.

#### Implementation

##### *Legislative Branch*

- Amend Section 4051(a) of the Internal Revenue Code of 1986, adding a paragraph indicating that the tax imposed by paragraph (1) will not apply to items purchased for the exclusive use of the Department of Defense, or if Congress is interested in furthering the reach of the amendment, the United States, effective on the date of enactment.

##### *Executive Branch*

- There are no Executive Branch changes required for this recommendation.

**Note:** Explanatory report language and draft legislative text can be found in the Implementation Details subsection at the end of Section 6.

##### *Implications for Other Agencies*

- IRS will need to adjust required instructions and forms.
- HTF will need to address the loss of revenue.

### Recommendation 33: Update the Assignment of Claims processes under FAR Part 32.805.

#### Implementation

##### *Legislative Branch*

- There are no statutory changes required for this recommendation.

##### *Executive Branch*

- Update the assignment of claims procedures in the FAR to reflect modern business practices.

**Note:** Regulatory revisions can be found in the Implementation Details subsection at the end of Section 6.

##### *Implications for Other Agencies*

- This change to the FAR would affect the entire government.

**Section 6**  
**Additional Streamlining Recommendations**  
**Implementation Details**



## Recommendation 32



## RECOMMENDED REPORT LANGUAGE

### Sec. XXX. Exemption for Department of Defense from Federal Retail Excise Tax.

This section would amend section 4051(a) of the Internal Revenue Code of 1986 to exempt the Department of Defense from application of the Federal Retail Excise Tax (FRET) if the purchased vehicle is for the exclusive use of the Department.

The committee is aware that the greatest burden for collecting FRET is on the Army as the primary purchaser of covered vehicles. The Marine Corps is the second largest user of covered vehicles. This section would address the Department's role in the collection of the FRET and the associated pass through costs.

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## DRAFT — FRET EXCLUSION

[NOTE: The draft legislative text below is followed by a “Sections Affected” display, showing the text of the provision of law affected by the draft legislative text.]

1 **SEC. \_\_\_\_.** EXEMPTION FOR [DEPARTMENT OF DEFENSE]/[FEDERAL  
2 **GOVERNMENT] FROM FEDERAL RETAIL EXCISE TAX.**

3 (a) IN GENERAL.—Section 4051(a) of the Internal Revenue Code of 1986 is amended by  
4 adding at the end the following new paragraph:

5 “(6) The tax imposed by paragraph (1) shall not apply to any article to be  
6 purchased for the exclusive use of the [Department of Defense]/[United States].”.

7 (b) EFFECTIVE DATE.—Paragraph (6) of section 4051(a) of the Internal Revenue Code of  
8 1986, as added by subsection (a), shall apply to any retail sale after the date of the enactment of  
9 this Act.

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### **§4051. Imposition of tax on heavy trucks and trailers sold at retail**

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—There is hereby imposed on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is so sold:

- (A) Automobile truck chassis.
- (B) Automobile truck bodies.
- (C) Truck trailer and semitrailer chassis.
- (D) Truck trailer and semitrailer bodies.
- (E) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

(2) EXCLUSION FOR TRUCKS WEIGHING 33,000 POUNDS OR LESS.—The tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less (as determined under regulations prescribed by the Secretary).

(3) EXCLUSION FOR TRAILERS WEIGHING 26,000 POUNDS OR LESS.—The tax imposed by paragraph (1) shall not apply to truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of

## DRAFT — FRET EXCLUSION

26,000 pounds or less (as determined under regulations prescribed by the Secretary).

(4) EXCLUSION FOR TRACTORS WEIGHING 19,500 POUNDS OR LESS.—The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if—

(A) such tractor has a gross vehicle weight of 19,500 pounds or less (as determined by the Secretary), and

(B) such tractor, in combination with a trailer or semitrailer, has a gross combined weight of 33,000 pounds or less (as determined by the Secretary).

(5) SALE OF TRUCKS, ETC., TREATED AS SALE OF CHASSIS AND BODY.—For purposes of this subsection, a sale of an automobile truck or truck trailer or semitrailer shall be considered to be a sale of a chassis and of a body described in paragraph (1).

***(6) The tax imposed by paragraph (1) shall not apply to any article to be purchased for the exclusive use of the [Department of Defense]/[United States].***

(b) SEPARATE PURCHASE OF TRUCK OR TRAILER AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

(1) IN GENERAL.—If—

(A) the owner, lessee, or operator of any vehicle which contains an article taxable under subsection (a) installs (or causes to be installed) any part or accessory on such vehicle, and

(B) such installation is not later than the date 6 months after the date such vehicle (as it contains such article) was first placed in service, then there is hereby imposed on such installation a tax equal to 12 percent of the price of such part or accessory and its installation.

(2) EXCEPTIONS.—Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory, or

(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to any vehicle does not exceed \$1,000 (or such other amount or amounts as the Secretary may by regulations prescribe).

(3) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1).

(c) TERMINATION.—On and after October 1, 2022, the taxes imposed by this section shall not apply.

(d) CREDIT AGAINST TAX FOR TIRE TAX.—If—

(1) tires are sold on or in connection with the sale of any article, and

(2) tax is imposed by this subchapter on the sale of such tires,

there shall be allowed as a credit against the tax imposed by this subchapter an amount equal to the tax (if any) imposed by section 4071 on such tires.

## Recommendation 33



## Draft Regulatory Revision

### FAR Part 32 – Contract Financing FAR Subpart 32.805 – Assignment of Claims

32.805 Procedure.

(a) Assignments.

(1) Assignments by corporations shall be—

(i) Executed by an authorized representative;

(ii) Attested by the secretary or the assistant secretary of the corporation; and

~~(iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment.~~

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

(b) Filing. The assignee shall forward to each party specified in 32.802(e) ~~an original and three copies of~~ the notice of assignment together with ~~one a true copy of the instrument of assignment, submitted electronically or certified copy. The true copy shall be a certified duplicate or photostat copy of the original assignment.~~

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*In the more than 60 years since enactment of Title 10 of the U.S. Code, the volume of amendments creating new chapters, sections, and note sections has overwhelmed the current structure of the Code. The abundant note sections have rendered Title 10 difficult to navigate even for experienced acquisition personnel.*

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## RECOMMENDATION

**Rec. 34:** Repeal certain Title 10 sections and note sections, create a new Part V under Subtitle A of Title 10, and redesignate sections in Subtitles B–D to make room for Part V to support a more logical organization and greater ease of use.

## SUMMARY

In the 60 years since Title 10 was enacted, the acquisition-related part of the Code has expanded and the once organized structure now contains myriad note sections, making acquisition law challenging to navigate. Repealing certain Title 10 sections and note sections, creating a new Part V under Subtitle A

of Title 10, and redesignating sections in Subtitles B-D to make room for Part V will support a more logical organization of Title 10 and facilitate greater ease of use.

## RECOMMENDATION

**Recommendation 34:** Repeal certain Title 10 sections and note sections, create a new Part V under Subtitle A of Title 10, and redesignate sections in Subtitles B-D to make room for Part V to support a more logical organization and greater ease of use.

### Implementation

#### *Legislative Branch*

- Repeal certain Title 10 sections and *notes* as described in the Section 809 Panel's recommendations (submitted on February 26, 2018, and March 23, 2018) and codify the remaining *notes* in the new Part V.
- Create a new Part V under Subtitle A of Title 10, and redesignate sections in Subtitles B-D to make room for Part V.

#### *Executive Branch*

- There are no Executive Branch changes required for this recommendation.

**Note:** Copies of the panel's recommendations, including draft legislative text (submitted on February 26, 2018, and March 23, 2018) can be found in the Implementation Details subsection at the end of Section 7.

#### *Implications for Other Agencies*

- There are no cross-agency implications for this recommendation.



Section 7  
Title 10 Reorganization  
Implementation Details



## Recommendation 34

Recommendation Packages  
Previously Submitted on  
February 26, 2018  
and  
March 23, 2018



# **Advisory Panel on Streamlining and Codifying Acquisition Regulations**

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## **Section 809 Panel Recommendations for Repeal of Certain Title 10 “Note” Sections**

**February 26, 2018**







February 26, 2018

The Honorable Mac Thornberry  
Chairman  
Committee on Armed Services  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Section 809 panel, as part of its “streamlining” mandate, recommends that the attached list of 71 provisions of law be repealed. These provisions relate to defense acquisition and are carried in the U.S. Code as “note” sections under various provisions of title 10. Also attached is draft legislation to carry out these repeals and a document with the text of the provisions of law proposed for repeal.

The bulk of these provisions are sections from annual National Defense Authorization Acts (NDAAs), but a few are from other laws, such as the Federal Acquisition Streamlining Act of 1994 (FASA) and the Weapon Systems Acquisition Reform Act of 2009 (WSARA).

These provisions either (1) required the Department to issue regulations (directives or guidance, etc.); (2) have now expired by their own terms; or (3) are otherwise obsolete.

The panel shared its list with the Department of Defense (DoD) to ensure that repealing these provisions would do “no harm.” Those items with which DoD had concerns are noted in the attached chart.

The panel would like to note that, with respect to any recommendation in the attachment for repeal of a statutory requirement for issuance of a regulation, the panel is not expressing a view on the merits of the policies covered by the required regulation. Rather, in recommending repeal of the statutory requirement for the regulation, the panel is recommending that the Secretary of Defense be allowed to revise the regulation as circumstances warrant. Repeal of the statutory requirement for the regulation would allow the Secretary to revise, or rescind, the regulation, but would not require it. The decision to retain, or not retain, the regulation would be up to the Secretary.

The panel is continuing to review title 10 “note” provisions with the expectation of recommending repeal of additional items in the future.

The panel is submitting these recommendations at this time, rather than waiting to include them in Volume 2 of the panel's report in June of this year, in order to provide the committees the fullest opportunity to consider them for inclusion in the NDAA for Fiscal Year 2019.

Sincerely,

Michael D. Madsen, Colonel, USAF (ret)  
Executive Director  
Section 809 Panel

Enclosures:  
As stated

cc:  
The Honorable Adam Smith  
Ranking Member



## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|   | A                 | B  | C   | D   | E     |
|---|-------------------|--|---|---|-------|
|   | USC Section       | NDAAs Cite                                   | Title   | Description   | NOTES |
| 1 | 10 USC 195 note   | FY98 NDAA, PL 105-85, §387(c), Nov. 18, 1997 | Authority to Procure Services From Government Publishing Office | Enacted in 1997 – allowed DOD to obtain printing services directly from GPO rather than the Defense Automated Printing Service  |       |
| 2 | 10 USC 2223a note | FY15 NDAA, PL 113-291, §801, Dec 19, 2014    | Modular Open Systems Approaches in Acquisition Programs         | Enacted in Dec 2014 – required DOD to develop a plan on standards and architectures for open systems; required submission of plan to Congress by 2016. All deadlines have passed.   |       |
| 3 | 10 USC 2223a note | FY14 NDAA, PL 113-66, §938, Dec 26, 2013     | Supervision of the Acquisition of Cloud Computing Capabilities  | Enacted in Dec 2013 – required the SecDef (through AT&L) to supervise and review certain elements of the acquisition of cloud computing capabilities. Implementation deadline has passed.   |       |
| 4 | 10 USC 2223a note | FY13 NDAA, PL 112-239, §934, Jan 2, 2013     | Competition in Connection with DOD Tactical Datalink systems    | Enacted in Jan 2013 – required an inventory (by 2013) of tactical datalinks in use and development, along with an assessment of vulnerabilities; required submission of plan for competition of the datalinks (if feasible) to congressional defense committees in the FY2015 budget submission. All deadlines have passed. |       |
| 5 | 10 USC 2223a note | FY12 NDAA, PL 112-81, §2867, Dec 31, 2011    | Data Servers and Centers  | Enacted in Dec 2011 – prohibited use of funds for a data server farm or data server centers unless approved by CIO and performance plan was in place; by 2012, required submission of a defense wide plan to congressional defense committees   |       |
| 6 | 10 USC 2223a note | FY11 NDAA, PL 111-383, §215, Jan 7, 2011     | Demonstration & Pilot Projects on Cybersecurity                 | Enacted in Jan 2011 – authorized demonstration projects to assess feasibility and advisability of using various business models to identify innovative commercial technologies to address cybersecurity requirements; required annual reports to be submitted to Congress with budget submission                            |       |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                 | B  | C  | D   | E   |
|----|-------------------|--|--|---|---|
|    | USC Section       | NDAAs Cite                                   | Title  | Description   | NOTES   |
| 1  |                   |  |  |   |   |
| 8  | 10 USC 2223a note | FY10 NDAA, PL 111-84, §804, Oct 28, 2009     | Implementation of New Acquisition Process for IT Systems   | Enacted in Oct 2009 – required development & implementation of a new acquisition process for IT systems (based on recommendations of DSB Task Force March 2009 report); required submission of report to SASC/HASC within 270 days  |   |
| 9  | 10 2223a note     | FY08 NDAA, PL 110-181, §881, Jan 28, 2008    | Clearinghouse for Rapid Identification & Dissemination of Commercial Info Technologies   | Enacted in Jan 2008 – required establishment of a clearinghouse (within 180 days) to assess and set priorities for significant IT needs of DOD using readily available IT (with emphasis on commercial-of-the-shelf); required submission of report to congressional defense committees by 2008 |   |
| 10 | 10 USC 2302 note  | FY17 NDAA, PL 114-328, §814(a), Dec 23, 2016 | Procurement of Personal Protective Equipment   | Enacted in Dec 2016 – required revision of DFARS (within 90 days) to prohibit reverse auctions and LPTA if quality level would result in casualties; established preference for best value contracting methods  |   |
| 11 | 10 USC 2302 note  | FY16 NDAA, PL 114-92, §881, Nov 25, 2015     | Consideration of Potential Program Cost Increases and Schedule Delays Resulting from Oversight of Defense Acquisition Programs | Enacted in Nov 2015 – broad statement to ensure that policies, procedures & activities of defense acquisition oversight do not result in unnecessary increased costs or schedule delays   |   |
| 12 | 10 USC 2302 note  | FY13 NDAA, PL 112-239, §804, Jan 2, 2013     | DOD Policy on Contractor Profits   | Enacted in Jan 2013 – required review of DFARS profit guidelines to ensure appropriate link between contractor profit and contractor performance, and modify such guidelines (if necessary) within 180 days   | DoD says, "Bears further scrutiny" (01-11-2018) |
| 13 | 10 USC 2302 note  | FY13 NDAA, PL 112-239, §843, Jan. 2, 2013    | Responsibility Within Department of Defense for Operational Contract Support   | Enacted in Jan 2013 – required development and issuance of guidance (within one year) regarding chain of authority for policy, planning & execution of operational contract support   |   |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                | B  | C  | D  | E   |
|----|------------------|--|--|--|---|
|    | USC Section      | NDAAs Cite                                     | Title  | Description  | NOTES                                     |
| 1  | 10 USC 2302 note | FY13 NDAA, PL 112-239, §844, Jan. 2, 2013      | Data Collection on Contract Support for Future Overseas Contingency Operations Involving Combat Operations | Enacted in Jan 2013 – required DOD, State & USAID to issue guidance (within one year) on data collection of contract support (including total number and value of contracts) for future operations outside the US that involve combat operations; GAO report required and submitted to relevant committees within 2 years  |   |
| 14 |                  |  |  |  |   |
| 15 | 10 USC 2302 note | FY12 NDAA, PL 112-81, §818(g), Dec. 31, 2011   | Detection and Avoidance of Counterfeit Electronic Parts: Information Sharing                               | Enacted in Dec 2011 – required an assessment of DOD acquisition systems and policies to detect and avoid counterfeit electronic parts; required issuance or revision of guidance (within 180 days) after assessment; also required DFARS revision (within 270 days), including contractor and supplier responsibilities. (This section was terminated by P. L. 114-125, §302(b), Feb. 24, 2016, 130 Stat. 150) |   |
| 16 | 10 USC 2302 note | FY11 NDAA, PL 111-383, §127, Jan. 7, 2011      | Contracts for Commercial Imaging Satellite Capacities  | Enacted in Jan 2011 – required that commercial imaging contracts (after Dec 31, 2010) have an imaging telescope with an aperture not less than 1.5 meters  |   |
| 17 | 10 USC 2302 note | FY08 NDAA, P L 110-181, §815(b), Jan. 28, 2008 | Sales of Commercial Items to Nongovernmental Entities  | Enacted in Jan 2008 – required modification of DFARS (within 180 days) to clarify that terms 'general public' & 'nongovernmental entities' do not include Federal, State, local, or foreign governments  | DoD says, "needs more study" (01-11-2018) |
| 18 | 10 USC 2302 note | FY07 NDAA, PL 109-364, §812, Oct. 17, 2006     | Pilot Program on Time-Certain Development in Acquisition of Major Weapon Systems                           | Enacted in Oct 2006 – allowed DOD to conduct pilot program for selected major weapons systems (focused on disciplined decision making, emphasizing technological maturity & appropriate trade-offs); required submission of annual report to congressional defense committees. Pgm expired 9/30/12   |   |
| 19 | 10 USC 2302 note | FY06 NDAA, PL 109-163, §806, Jan. 6, 2006      | Congressional Notification of Cancellation of Major Automated Information Systems                          | Enacted in Jan 2006 – required notification to congressional defense committees not less than 60 days before cancelling (or making a change to) a fielded (or approved to be fielded) major automated information system.  |   |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                | B   | C   | D  | E     |
|----|------------------|---|---|--|-------|
| 1  | USC Section      | NDAA Cite                                     | Title   | Description  | NOTES |
| 20 | 10 USC 2302 note | FY06 NDAA, PL 109–163, §817, Jan. 6, 2006     | Joint Policy on Contingency Contracting   | Enacted in Jan 2006 – required development of joint policy (within one year) for contingency contracting during combat operations and post operations; required submission of interim and final reports to SASC/HASC                             |       |
| 21 | 10 USC 2302 note | FY05 NDAA, PL 108–375, §141, Oct. 28, 2004    | Development Of Deployable Systems To Include Consideration Of Force Protection In Asymmetric Threat Environments        | Enacted in Oct 2004 – required revision of DOD regulations, directives and guidance (within 120 days) to assess warfighter survivability and system suitability against asymmetric threats   |       |
| 22 | 10 USC 2302 note | FY05 NDAA, PL 108–375, §802, Oct. 28, 2004    | Internal Controls for Department of Defense Procurements Through GSA Client Support Centers                             | Enacted in Oct 28, 2004 – required DOD IG and GSA IG joint review (by March 2005) of policies, procedures and internal controls of GSA client support centers to ensure compliance with DOD procurement requirements                             |       |
| 23 | 10 USC 2302 note | FY04 NDAA, PL 108–136, §801(b), Nov. 24, 2003 | Data Review [Consolidation of Contract Requirements]  | Enacted in Nov 2003 – required revision of data collection systems to ensure identification of procurement involving contract consolidations over \$5million   |       |
| 24 | 10 USC 2302 note | FY04 NDAA, PL 108–136, §805(a), Nov. 24, 2003 | Competitive Award of Contracts for Reconstruction Activities in Iraq  | Enacted in Nov 2003 – broad statement requiring DOD to comply with chapter 137 and other applicable procurement laws (including full and open competition) and regulations in awarding contracts for reconstruction activities in Iraq           |       |
| 25 | 10 USC 2302 note | FY03 NDAA, PL 107-314, §352, Dec. 2, 2002     | Policy Regarding Acquisition Of Information Assurance And Information Assurance-Enabled Information Technology Products | Enacted in Dec 2002 – required SecDef to develop policy (and implement uniformly throughout DOD) to limit acquisition of information assurance technology products to those products that have been evaluated & validated using certain criteria |       |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                | B   | C   | D  | E     |
|----|------------------|---|---|--|-------|
|    | USC Section      | NDAAs Cite  | Title   | Description  | NOTES |
| 1  |                  |   |   |  |       |
| 26 | 10 USC 2302 note | FY93 NDAA, PL 102-484, §326, Oct. 23, 1992        | Elimination of Use of Class I Ozone-Depleting Substances in Certain Military Procurement Contracts              | Enacted in Oct 1992 – prohibited inclusion in any contract (after June 1993) of any specification requiring use of Class I Ozone depleting substances; required submission of reports to SASC/HASC for a specified period  |       |
| 27 | 10 USC 2302 note | FY90 DOD APPROP, PL 101-165, §9004, Nov. 21, 1989 | Equitable Participation of American Small and Minority-Owned Business in Furnishing Of Commodities and Services | Enacted in Nov 1989 – beginning in 1989 (and every year thereafter), required DOD to assist American small and minority businesses furnishing commodities and services (partly by increasing internal resources and making information available)  |       |
| 28 | 10 USC 2302 note | FY86 DoD Auth, PL 99-145, §913, Nov. 8, 1985      | Minimum Percentage Of Competitive Procurements  | Enacted in Nov 1985 – required SecDef to establish a goal for a certain percentage of competitive procurements   |       |
| 29 | 10 USC 2304 note | FY09 NDAA, PL 110-417, §802, Oct. 14, 2008        | Implementation of Statutory Requirements Regarding the National Technology And Industrial Base                  | Enacted in Oct 2008 – required SecDef to issue guidance (within 270 days) regarding the national technology and industrial base in the development and implementation of plans for major weapons acquisition programs  |       |
| 30 | 10 USC 2304 note | FY08 NDAA, PL 110-181, §821, Jan. 28, 2008        | Plan for Restricting Government-Unique Contract Clauses on Commercial Contracts                                 | Enacted in Oct 2008 – required AT&L to develop & implement plan to minimize govt.-unique clauses in commercial contracts   |       |
| 31 | 10 USC 2304 note | FY07 NDAA, PL 109-364, §813, Oct. 17, 2006        | Panel on Contracting Integrity  | Enacted in Oct 2006 – required SecDef to establish a contracting integrity panel & recommend changes to laws, regulations to eliminate areas of vulnerability for waste, fraud & abuse; required submission of annual report to cong. defense committees. Panel ceased operations on 12/31/2011. |       |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                 | B  | C   | D  | E     |
|----|-------------------|--|---|--|-------|
| 1  | USC Section       | NDAA Cite  | Title   | Description  | NOTES |
| 32 | 10 USC 2304 note  | FY98 NDAA, PL 105-85, §391, Nov 18, 1997                     | Warranty Claims Recovery Pilot Program                                      | Enacted in Nov 1997 – authorized SecDef to conduct a pilot program to use commercial sources to improve claims collection under aircraft engine warranties; required report to Congress by 2006 (with recommendation on whether program should be permanent). Expired 9/30/2006            |       |
| 33 | 10 USC 2304 note  | PL 99-500, §927(b), Oct. 18, 1986 (and PL 99-591; PL 99-661) | Deadline for Prescribing Regulations  | Enacted in Oct 1986 – required SecDef to issue regulations (within 180 days) to implement 2304(i), which required regs on negotiation of prices using other than competitive procedures  |       |
| 34 | 10 USC 2304 note  | FY87 NDAA, PL 99-661, §1222, Nov 14, 1986                    | One-year Security Guard Prohibition   | Enacted in Nov 1986 – prohibited expenditure of funds (before Oct 1987) for security guard functions at any US military installation or facility (with certain exceptions). This was a one-year prohibition. A permanent provision was enacted in 10 USC 2465.                             |       |
| 35 | 10 USC 2304a note | FY10 NDAA, PL 111-84, §814(b), Oct. 28, 2009                 | Congressional Intelligence Committees [Task or Delivery Order Contracts]    | Enacted in Oct 2009 – required notification to congressional intelligence committees of task or delivery order contracts for intelligence activities (at same time as that provided to SASC/HASC). The requirement for the report to SASC/HASC was repealed by sec. 809(b) of P.L. 112-81. |       |
| 36 | 10 USC 2304b note | FY07 NDAA, PL 109-364, §834, Oct. 17, 2006                   | Waivers to Extend Task Order Contracts for Advisory and Assistance Services | Enacted in Oct 2006 – allowed extension of task order contracts for technical or engineering services for no more than 10 years (in 5 year options); required submission of report (by April 2007) to SASC/HASC, and a GAO review. Expired 12/31/2011.                                     |       |
| 37 | 10 USC 2306a note | FY99 NDAA, PL 105-261, §803, Oct. 17, 1998                   | Defense Commercial Pricing Management Improvement                           | Enacted in Oct 1998 – required revision of FAR to clarify methods and procedures used for determining price reasonableness; also required SecDef to implement procedures on commercial price trend analysis; and exempt commercial items   |       |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                | B   | C   | D   | E   |
|----|------------------|---|---|---|---|
|    | USC Section      | NDAAs Cite  | Title   | Description   | NOTES   |
| 1  |                  |   |   |   |   |
| 38 | 10 USC 2315 note | FY95 NDAA, PL 103-337, §1075, Oct. 5, 1994                | Limitation Regarding Telecommunications Requirements  | Enacted in Oct 1994 – prohibited expenditure of funds to meet DOD telecommunication requirements through FTS-2000   | DoD says, "further scrutiny needed" (01-11-2018). |
| 39 | 10 USC 2320 note | FY11 NDAA, PL 111-383, §824(a), Jan. 17, 2011             | Guidance Relating to Rights in Technical Data   | Enacted in Jan 2011 – required SecDef to review (within 180 days) guidance of military departments to ensure consistency with AT&L technical data guidance  |   |
| 40 | 10 USC 2324 note | FY95 NDAA, PL 103-337, §818, Oct. 5, 1994                 | Payment of Restructuring Costs Under Defense Contracts  | Enacted in Oct 1994 – required SecDef to prescribe regulations (by Jan 1, 1995) on allowability of restructuring costs; required submission of reports to Congress (in 1995, 1996 & 1997), and a GAO review   |   |
| 41 | 10 USC 2326 note | FY10 NDAA, PL 111-84, §812, Oct. 28, 2009                 | Revision of Defense Supplement Relating to Payment of Costs Prior to Definitization                         | Enacted in Oct 2009 – required SecDef to revise DFARS (within 180 days) on limitations related to undefinitized contract actions  |   |
| 42 | 10 USC 2326 note | PL 99-500, §908, Oct. 18, 1986 (and PL 99-591; PL 99-661) | Limitation on funds for Undefinitized Contractual Actions; Oversight by Inspector General; Waiver Authority | Enacted in Oct 1986 – required SecDef and Secretaries of military departments to determine total funds obligated for contractual actions and undefinitized contractual actions for specified 6-month periods (ending March 31, 1989); required periodic audit by IG (with submission of audit report to Congress) |   |
| 43 | 10 USC 2330 note | FY08 NDAA, PL 110-181, §805, Jan. 28, 2008                | Procurement of Commercial Services  | Enacted in Jan 2008 – required SecDef to modify DFARS (within 180 days) for procurement of commercial services; modifications would address treatment regarding "of a type" and "time and material" for commercial item acquisitions  |   |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                | B   | C   | D  | E     |
|----|------------------|---|---|--|-------|
| 1  | USC Section      | NDAA Cite   | Title   | Description  | NOTES |
| 44 | 10 USC 2330 note | FY02 NDAA, PL 107-107, §801(d)-(f), Dec. 28, 2001 | Requirement for Program Review Structure; Comp Gen Review   | Enacted in Dec 2001 – required SecDef to issue and implement policy (within 180 days) on procurement of services and a program review structure similar to procurement of weapons systems; required GAO review   |       |
| 45 | 10 USC 2330 note | FY02 NDAA, PL 107-107, §802, Dec. 28, 2001        | Performance Goals for Procurement of Services   | Enacted in Dec 2001 – established objective for DOD to achieve efficiencies (through goals) in multiple award contracts for procurement of services; required submission of annual report (through 2011) to congressional committees   |       |
| 46 | 10 USC 2358 note | FY03 NDAA, PL 107-314, §1032, Dec 2, 2002         | Report on Weapons Capabilities of Defeat Hardened Targets   | Enacted in Dec 2002 – required a report (starting in 2009 and submitted every 2 years) by SecDef, SecEnergy & DNI to congressional committees on R&D/ procurement activities to develop weapons & capabilities to defeat hardened and buried targets. Expired in 2013.                                       |       |
| 47 | 10 USC 2358 note | FY03 NDAA, PL 107-314, §241, Dec 2, 2002          | Pilot Program for Revitalizing Labs & Test Centers of DOD   | Enacted in Dec 2002 – authorized SecDef to conduct pilot program (in coordination with a similar pilot program) to improve efficiency in performance of R&D, test & evaluation functions (including employing/retaining/shaping appropriate workforce); required submission of reports to Congress. Expired. |       |
| 48 | 10 USC 2358 note | FY73 DoD Auth, PL 92-436, §606, Sept. 29, 1972    | Campuses Barring Military Recruiters; Cessation of Payments; Notification of Secretary Of Defense | Enacted in Sept 1972 – prohibited use of funds at educational institutions that barred DOD from recruiting for the armed forces. Superseded by 10 USC 983  |       |
| 49 | 10 USC 2364 note | FY00 NDAA, PL 106-65, §913, Oct. 5, 1999          | Performance Review Process  | Enacted in Oct 1999 – required SecDef to develop (within 180 days) a performance review process for rating quality & relevance of work performed at DOD labs   |       |
| 50 | 10 USC 2364 note | FY87 NDAA, PL 99-661, §234, Nov 14, 1986          | Coordination of Research Activities of DOD  | Enacted in Nov 1986 – general statement of findings on need for centralized coordination among research facilities to ensure awareness of emerging technologies and avoid duplication  |       |



## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                 | B  | C   | D   | E                              |
|----|-------------------|--|---|---|--------------------------------|
|    | USC Section       | NDAAs Cite                                     | Title   | Description   | NOTES                          |
| 1  |                   |  |   |   |                                |
| 51 | 10 USC 2366a note | FY08 NDAA, PL 110-181, §943, Jan 28, 2008      | Review of DOD Acquisition Directives  | Enacted in Jan 2008 – required SecDef review (within 180 days) of DOD5000.1 & other guidance related to Milestone A approval  |                                |
| 52 | 10 USC 2366b note | FY09 NDAA, PL 110-417, §1047(d), Oct. 14, 2008 | Formal Review Process for Bandwidth Requirements                                  | Enacted in Oct 2008 – required SecDef & DNI to establish review process to ensure bandwidths will meet requirements of major acquisition programs; required annual report to SASC/HASC (ending in 2021) | DoD says, "Keep" (01-11-2018). |
| 53 | 10 USC 2377 note  | FY16 NDAA, PL 114-92, §844(b), Nov. 25, 2015   | Incorporation Into Management Certification Training Mandate                      | Enacted in Nov 2015 – required Joint Chiefs to ensure that market research training is part of management certification training for Joint Capabilities Integration Development System                  |                                |
| 54 | 10 USC 2399 note  | FY90 NDAA, PL 101-189, §801, Nov. 29, 1989     | Assessment of Risk in Concurrent Development of Major Defense Acquisition Systems | Enacted in Nov 1989 – required SecDef to develop guidelines for concurrency in MDAPs; required report to Congress by 1990   |                                |
| 55 | 10 USC 2410p note | FY07 NDAA, PL 109-364, §807, Oct 17, 2006      | Update of Regulations on Lead System Integrators                                  | Enacted in Oct 2006 – required SecDef to update acquisition regulations (by Dec 31, 2006) related to lead system integrators to conform with recent NDAA amendments                                     |                                |
| 56 | 10 USC 2430 note  | FY08 NDAA, PL 110-181, §908(d), Jan. 28, 2008  | Duties of Principal Military Deputies   | Enacted in Jan 2008 – described duties of principal deputies related to MDAPs (trade-offs in cost, schedule & performance)  | DoD says, "Keep" (01-11-2018). |
| 57 | 10 USC 2430 note  | FY94 NDAA, PL 103-160, §837, Nov 30, 1993      | Efficient Contracting Processes   | Enacted in Nov 1993 – required SecDef to waive regulations not required by statute that affect efficiency in contracting  |                                |
| 58 | 10 USC 2430 note  | FY94 NDAA, PL 103-160, §838, Nov 30, 1993      | Contract Admin – Performance Based Contract Management                            | Enacted in Nov 1993 – required SecDef to define payment milestones on basis of quantitative results   |                                |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                | B  | C   | D   | E     |
|----|------------------|--|---|---|-------|
|    | USC Section      | NDAAs Cite                                   | Title   | Description   | NOTES |
| 1  |                  |  |   |   |       |
| 59 | 10 USC 2458 note | FY10 NDAA, PL 111-84, §328, Oct. 28, 2009    | Improvement of Inventory Management Practices                     | Enacted in Oct 2009 – required SecDef to submit report (within 270 days) to congressional defense committees of a plan to improve inventory management practices within DLA & military departments (to reduce storage of items in excess of requirements)   |       |
| 60 | 10 USC 2461 note | FY05 NDAA, PL 108-375, §325, Oct 28, 2004    | Pilot Program for Purchase of Certain Municipal Services          | Enacted in Oct 2004 – authorized military department to conduct pilot program to purchase certain municipal services (e.g., library, refuse collection/disposal, facilities maintenance & repair); required congressional notification before start of any program. Expired on 9/30/2012  |       |
| 61 | 10 USC 2461 note | FY04 NDAA, PL 108-136, §336, Nov 24, 2003    | Pilot Program for Best Value Source Selection for IT Services     | Enacted in Nov 2003 – authorized SecDef to conduct pilot program using best value criterion for selection of IT services (allowing examination of performance by civilian & contractors); required GAO review. Expired on 9/30/2008   |       |
| 62 | 10 USC 2461note  | FY96 NDAA, PL 104-106, §353(a), Feb 10, 1996 | Private Sector Operation of Certain Payroll, Finance & Accounting | Enacted in Feb 1996 – required SecDef to submit to Congress (by Oct 1996) a plan for private sector performance of DOD payroll functions; required implementation of plan if costs would not exceed costs of performance by federal employees; required report to Congress on other accounting & finance services that could be performed by private sector |       |
| 63 | 10 USC 2461 note | FY96 NDAA, PL 104-106, §356, Feb 10, 1996    | Program for Improved Travel Process for Department of Defense     | Enacted in Feb 1996 – authorized SecDef to develop a plan & conduct a program to improve DOD travel processes; required report to SASC/HASC within one year. Expired in 1998  |       |
| 64 | 10 USC 2500 note | FY93 NDAA, PL 102-484, §4101, Oct 23, 1992   | Congressional Findings  | Enacted in Oct 1992 – general statement of findings related to collapse of communism & post-Cold War defense build down   |       |

## Title 10 "Note" Sections Recommended for Repeal by Section 809 Panel

|    | A                 | B  | C  | D   | E                                       |
|----|-------------------|--|--|---|---|
|    | USC Section       | NDAAs Cite                                   | Title  | Description   | NOTES                                   |
| 1  |                   |  |  |   |   |
| 65 | 10 USC 2501 note  | FY09 NDAA, PL 110-417, §256, Oct. 14, 2008   | Executive Agent for Printed Circuit Board Technology   | Enacted in Oct 2008 – requires SecDef to designate (within 90 days) a senior official to be executive agent for printed circuit board technology (including funding strategies & assessment of vulnerabilities)                           | DoD says, "may be needed" (01-11-2018). |
| 66 | 10 USC 2501 note  | FY95 NDAA, PL 103-337, §1118, Oct. 5, 1994   | Documentation for Awards for Cooperative Agreements or Other Transactions Under Defense Technology Reinvestment Programs | Enacted in Oct 1994 – required explanation (at time of award of cooperative agreement or other transaction) on how award advances & enhances a national security objective  |   |
| 67 | 10 USC 2521 note  | FY08 NDAA, PL 110-181, §238(b), Jan 28, 2008 | Initial Development and Submission of Plan   | Enacted in Jan 2008 – required SecDef to develop a 5-year strategic plan for manufacturing technology; required report to SASC/HASC (by 2010)   |   |
| 68 | 10 USCS 2521 note | FY04 NDAA, PL 108-136, §823, Nov. 24, 2003   | Technical Assistance Relating to Machine Tools   | Enacted in Nov 2003 – required SecDef to publish in Federal Register information on govt. contracting for machine tools   |   |
| 69 | 10 USC 2533b note | FY11 NDAA, PL 111-383, §823, Jan 7, 2011     | Review of Regulatory Definition of Specialty Metals  | Enacted in Jan 2011 – required SecDef to review DFARS (within 270 days) to ensure compliance with specialty metals statute  |   |
| 70 | 10 USC 2533b note | FY08 NDAA, PL 110-181, §804(h), Jan 28, 2008 | Revision of Domestic Nonavailability   | Enacted in Jan 2008 – required review (within 180 days) of any domestic nonavailability determination to ensure statutory compliance  |   |
| 71 | 10 USC 2533b note | FY07 NDAA, PL 109-364, §842(b), Oct 17, 2006 | One Time Waiver of Specialty Metal Domestic Requirement  | Enacted in Oct 2006 – allowed acceptance of specialty metal if incorporated into product before Oct 2006 (and contractor has a plan for future compliance); required publication of waiver in FedBizOps. Waiver authority expired in 2010 |   |
| 72 | 10 USC 4551 note  | FY01 NDAA, PL 106-398, §343, Oct 30, 2000    | Arsenal Support Program Initiative   | Enacted in Oct 2000 – requires SecArmy to conduct demonstration program to maintain viability of Army arsenals (allowed commercial use of arsenals and loan guarantees). Applies during FY01 thru FY12.                                   |   |



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**NDAA “Note” Sections for Possible Repeal**

**[This document sets out the current text of the title 10 “note” sections that are in the package of provisions approved by the Section 809 Panel to be recommended to Congress for repeal.]**

**[Provisions of law are set forth below by order of title 10 section numbers to which a provision is classified as a “note”. Within provisions classified as “notes” under a particular section of title 10, provisions are set forth in the same order they appear in the Code, in chronological order with the most recent first.]**

**[The number at the beginning of each item below is keyed to the accompanying spreadsheet and corresponds to the row number on the spreadsheet for that item. (Note that on the spreadsheet Row 1 is a header, so the first item is on Row 2 and accordingly the first item below is numbered as 2.)]**

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**2. Section 387(c) of the National Defense Authorization Act for Fiscal Year 1998, P.L. 105-85 (10 U.S.C. 195 note), provided:**

**“SEC. 387. COMPETITIVE PROCUREMENT OF PRINTING AND DUPLICATING SERVICES.**

(a) [amended sec. 351 of P. L. 104-106]

(b) [amended sec. 351 of P. L. 104-106]

“(c) AUTHORITY TO PROCURE SERVICES FROM GOVERNMENT PRINTING [NOW PUBLISHING] OFFICE.—

Consistent with section 501 of title 44, United States Code, the Secretary of a military department or head of a Defense Agency may contract directly with the Government Printing Office [now Government Publishing Office] for printing and duplication services otherwise available through the Defense Automated Printing Service.”

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**3. Section 801 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, P.L. 113–291, Dec. 19, 2014 (10 U.S.C. 2223a note), provided:**

**“SEC. 801. MODULAR OPEN SYSTEMS APPROACHES IN ACQUISITION PROGRAMS.**

“(a) PLAN FOR MODULAR OPEN SYSTEMS APPROACH THROUGH DEVELOPMENT AND ADOPTION OF STANDARDS AND ARCHITECTURES.—Not later than January 1, **2016**, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives detailing a plan to develop standards and define architectures necessary to enable open systems approaches in the key mission areas of the Department of Defense with respect to which the Under Secretary determines that such standards and architectures would be feasible and cost effective.

“(b) CONSIDERATION OF MODULAR OPEN SYSTEMS APPROACHES.—

“(1) REVIEW OF ACQUISITION GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall review current acquisition guidance, and modify such guidance as necessary, to-

“(A) ensure that acquisition programs include open systems approaches in the product design and acquisition of information technology systems to the maximum extent practicable; and

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(B) for any information technology system not using an open systems approach, ensure that written justification is provided in the contract file for the system detailing why an open systems approach was not used.

"(2) ELEMENTS.—The review required in paragraph (1) shall-

"(A) consider whether the guidance includes appropriate exceptions for the acquisition of-

"(i) commercial items; and

"(ii) solutions addressing urgent operational needs;

"(B) determine the extent to which open systems approaches should be addressed in analysis of alternatives, acquisition strategies, system engineering plans, and life cycle sustainment plans; and

"(C) ensure that increments of acquisition programs consider the extent to which the increment will implement open systems approaches as a whole.

"(3) DEADLINE FOR REVIEW.—The review required in this subsection shall be completed no later than 180 days after the date of the enactment of this Act [Dec. 19, 2014].

"(c) TREATMENT OF ONGOING AND LEGACY PROGRAMS.—

"(1) REPORT REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Dec. 19, 2014], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report covering the matters specified in paragraph (2).

"(2) MATTERS COVERED.—Subject to paragraph (3), the report required in this subsection shall-

"(A) identify all information technology systems that are in development, production, or deployed status as of the date of the enactment of this Act, that are or were major defense acquisition programs or major automated information systems, and that are not using an open systems approach;

"(B) identify gaps in standards and architectures necessary to enable open systems approaches in the key mission areas of the Department of Defense, as determined pursuant to the plan submitted under subsection (a); and

"(C) outline a process for potential conversion to an open systems approach for each information technology system identified under subparagraph (A).

"(3) LIMITATIONS.—The report required in this subsection shall not include information technology systems-

"(A) having a planned increment before fiscal year 2021 that will result in conversion to an open systems approach; and

"(B) that will be in operation for fewer than 15 years after the date of the enactment of this Act.

"(d) DEFINITIONS.—In this section:

"(1) INFORMATION TECHNOLOGY.—The term 'information technology' has the meaning given the term in [section 11101\(6\) of title 40, United States Code](#).

"(2) OPEN SYSTEMS APPROACH.—The term 'open systems approach' means, with respect to an information technology system, an integrated business and technical strategy that-

"(A) employs a modular design and uses widely supported and consensus-based standards for key interfaces;

"(B) is subjected to successful validation and verification tests to ensure key interfaces comply with widely supported and consensus-based standards; and

"(C) uses a system architecture that allows components to be added, modified, replaced, removed, or supported by different vendors throughout the lifecycle of the system to afford opportunities for enhanced competition and innovation while yielding-

"(i) significant cost and schedule savings; and

"(ii) increased interoperability."

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

4. Section 938 of the National Defense Authorization Act for Fiscal Year 2014, P. L. 113–66, Dec. 26, 2013 (**10 U.S.C. 2223a note**), provided:

**“SEC. 938. SUPERVISION OF THE ACQUISITION OF CLOUD COMPUTING CAPABILITIES.**

“(a) SUPERVISION.—

“(1) IN GENERAL.—The Secretary of Defense shall, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense for Intelligence, the Chief Information Officer of the Department of Defense, and the Chairman of the Joint Requirements Oversight Council, supervise the following:

“(A) Review, development, modification, and approval of requirements for cloud computing solutions for data analysis and storage by the Armed Forces and the Defense Agencies, including requirements for cross-domain, enterprise-wide discovery and correlation of data stored in cloud and non-cloud computing databases, relational and non-relational databases, and hybrid databases.

“(B) Review, development, modification, approval, and implementation of plans for the competitive acquisition of cloud computing systems or services to meet requirements described in subparagraph (A), including plans for the transition from current computing systems to systems or services acquired.

“(C) Development and implementation of plans to ensure that the cloud systems or services acquired pursuant to subparagraph (B) are interoperable and universally accessible and usable through attribute-based access controls.

“(D) Integration of plans under subparagraphs (B) and (C) with enterprise-wide plans of the Armed Forces and the Department of Defense for the Joint Information Environment and the Defense Intelligence Information Environment.

“(2) DIRECTION.—The Secretary shall provide direction to the Armed Forces and the Defense Agencies on the matters covered by paragraph (1) by not later than March 15, 2014.

“(b) INTEGRATION WITH INTELLIGENCE COMMUNITY EFFORTS.—The Secretary shall coordinate with the Director of National Intelligence to ensure that activities under this section are integrated with the Intelligence Community Information Technology Enterprise in order to achieve interoperability, information sharing, and other efficiencies.

“(c) LIMITATION.—The requirements of subparagraphs (B), (C), and (D) of subsection (a)(1) shall not apply to a contract for the acquisition of cloud computing capabilities in an amount less than \$1,000,000.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or affect the authorities or responsibilities of the Director of National Intelligence under section 102A of the National Security Act of 1947 (50 U.S.C. 3024).”

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5. Section 934 of the National Defense Authorization Act for Fiscal Year 2013, P.L. 112–239, Jan. 2, 2013, as amended (**10 U.S.C. 2223a note**), provided:

**“SEC. 934. COMPETITION IN CONNECTION WITH DEPARTMENT OF DEFENSE TACTICAL DATA LINK SYSTEMS.**

“(a) COMPETITION IN CONNECTION WITH TACTICAL DATA LINK SYSTEMS.—Not later than December 1, 2013, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall-

“(1) develop an inventory of all tactical data link systems in use and in development in the Department of Defense, including interfaces and waveforms and an assessment of vulnerabilities to such systems in anti-access or area-denial environments;

“(2) conduct an analysis of each data link system contained in the inventory under paragraph (1) to determine whether-

“(A) the upgrade, new deployment, or replacement of such system should be open to competition; or

“(B) the data link should be converted to an open architecture, or a different data link standard should be adopted to enable such competition;

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(3) for each data link system for which competition is determined advisable under subparagraph (A) or (B) of paragraph (2), develop a plan to achieve such competition, including a plan to address any policy, legal, programmatic, or technical barriers to such competition; and

"(4) for each data link system for which competition is determined not advisable under paragraph (2), prepare an explanation for such determination.

"(b) EARLIER ACTIONS.—If the Under Secretary completes any portion of the plan described in subsection (a)(3) before December 1, 2013, the Secretary may commence action on such portion of the plan upon completion of such portion, including publication of such portion of the plan.

"(c) REPORT.—At the same time the budget of the President for fiscal year 2015 is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Under Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the plans described in paragraph (3) of subsection (a), including any explanation prepared under paragraph (4) of such subsection."

**6. Section 2867 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, Dec. 31, 2011, as amended (10 U.S.C. 2223a note), provided:**

**“SEC. 2867. DATA SERVERS AND CENTERS.**

"(a) LIMITATIONS ON OBLIGATION OF FUNDS.—

"(1) LIMITATIONS.—

"(A) BEFORE PERFORMANCE PLAN.—During the period beginning on the date of the enactment of this Act [Dec. 31, 2011] and ending on May 1, 2012, a department, agency, or component of the Department of Defense may not obligate funds for a data server farm or data center unless approved by the Chief Information Officer of the Department of Defense or the Chief Information Officer of a component of the Department to whom the Chief Information Officer of the Department has specifically delegated such approval authority.

"(B) UNDER PERFORMANCE PLAN.—After May 1, 2012, a department, agency, or component of the Department may not obligate funds for a data center, or any information systems technology used therein, unless that obligation is in accordance with the performance plan required by subsection (b) and is approved as described in subparagraph (A).

"(2) REQUIREMENTS FOR APPROVALS.—

"(A) BEFORE PERFORMANCE PLAN.—An approval of the obligation of funds may not be granted under paragraph (1)(A) unless the official granting the approval determines, in writing, that existing resources of the agency, component, or element concerned cannot affordably or practically be used or modified to meet the requirements to be met through the obligation of funds.

"(B) UNDER PERFORMANCE PLAN.—An approval of the obligation of funds may not be granted under paragraph (1)(B) unless the official granting the approval determines that—

"(i) existing resources of the Department do not meet the operation requirements to be met through the obligation of funds; and

"(ii) the proposed obligation is in accordance with the performance standards and measures established by the Chief Information Officer of the Department under subsection (b).

"(3) REPORTS.—Not later than 30 days after the end of each calendar quarter, each Chief Information Officer of a component of the Department who grants an approval under paragraph (1) during such calendar quarter shall submit to the Chief Information Officer of the Department a report on the approval or approvals so granted during such calendar quarter.

"(b) PERFORMANCE PLAN FOR REDUCTION OF RESOURCES REQUIRED FOR DATA SERVERS AND CENTERS.—

"(1) COMPONENT PLANS.—

"(A) IN GENERAL.—Not later than January 15, 2012, the Secretaries of the military departments and the heads of the Defense Agencies shall each submit to the Chief Information Officer of the Department a plan for the department or agency concerned to achieve the following:

"(i) A reduction in the square feet of floor space devoted to information systems technologies, attendant support technologies, and operations within data centers.



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(ii) A reduction in the use of all utilities necessary to power and cool information systems technologies and data centers.

"(iii) An increase in multi-organizational utilization of data centers, information systems technologies, and associated resources.

"(iv) A reduction in the investment for capital infrastructure or equipment required to support data centers as measured in cost per megawatt of data storage.

"(v) A reduction in the number of commercial and government developed applications running on data servers and within data centers.

"(vi) A reduction in the number of government and vendor provided full-time equivalent personnel, and in the cost of labor, associated with the operation of data servers and data centers.

"(B) SPECIFICATION OF REQUIRED ELEMENTS.—The Chief Information Officer of the Department shall specify the particular performance standards and measures and implementation elements to be included in the plans submitted under this paragraph, including specific goals and schedules for achieving the matters specified in subparagraph (A).

"(2) DEFENSE-WIDE PLAN.—

"(A) IN GENERAL.—Not later than April 1, 2012, the Chief Information Officer of the Department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a performance plan for a reduction in the resources required for data centers and information systems technologies Department-wide. The plan shall be based upon and incorporate appropriate elements of the plans submitted under paragraph (1).

"(B) ELEMENTS.—The performance plan required under this paragraph shall include the following:

"(i) A Department-wide performance plan for achieving the matters specified in paragraph (1)(A), including performance standards and measures for data centers and information systems technologies, goals and schedules for achieving such matters, and an estimate of cost savings anticipated through implementation of the plan.

"(ii) A Department-wide strategy for each of the following:

"(I) Desktop, laptop, and mobile device virtualization.

"(II) Transitioning to cloud computing.

"(III) Migration of Defense data and government-provided services from Department-owned and operated data centers to cloud computing services generally available within the private sector that provide a better capability at a lower cost with the same or greater degree of security.

"(IV) Utilization of private sector-managed security services for data centers and cloud computing services.

"(V) A finite set of metrics to accurately and transparently report on data center infrastructure (space, power and cooling): age, cost, capacity, usage, energy efficiency and utilization, accompanied with the aggregate data for each data center site in use by the Department in excess of 100 kilowatts of information technology power demand.

"(VI) Transitioning to just-in-time delivery of Department-owned data center infrastructure (space, power and cooling) through use of modular data center technology and integrated data center infrastructure management software.

"(3) RESPONSIBILITY.—The Chief Information Officer of the Department shall discharge the responsibility for establishing performance standards and measures for data centers and information systems technologies for purposes of this subsection. Such responsibility may not be delegated.

"(c) EXCEPTIONS.—

"(1) INTELLIGENCE COMPONENTS.—The Chief Information Officer of the Department and the Chief Information Officer of the Intelligence Community may jointly exempt from the applicability of this section such intelligence components of the Department of Defense (and the programs and activities thereof) that are funded through the National Intelligence Program (NIP) as the Chief Information Officers consider appropriate.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(2) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION PROGRAMS.—The Chief Information Officer of the Department may exempt from the applicability of this section research, development, test, and evaluation programs that use authorization of appropriations for the High Performance Computing Modernization Program (Program Element 0603461A) if the Chief Information Officer determines that the exemption is in the best interest of national security."

**7. Section 215 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, P.L. 111–383, Jan. 7, 2011 (10 U.S.C. 2223a note), provided:**

**“SEC. 215. DEMONSTRATION AND PILOT PROJECTS ON CYBERSECURITY.**

**"(a) DEMONSTRATION PROJECTS ON PROCESSES FOR APPLICATION OF COMMERCIAL TECHNOLOGIES TO CYBERSECURITY REQUIREMENTS.—**

**"(1) PROJECTS REQUIRED.—**The Secretary of Defense and the Secretaries of the military departments shall jointly carry out demonstration projects to assess the feasibility and advisability of using various business models and processes to rapidly and effectively identify innovative commercial technologies and apply such technologies to Department of Defense and other cybersecurity requirements.

**"(2) SCOPE OF PROJECTS.—**Any demonstration project under paragraph (1) shall be carried out in such a manner as to contribute to the cyber policy review of the President and the Comprehensive National Cybersecurity Initiative.

**"(b) PILOT PROGRAMS ON CYBERSECURITY REQUIRED.—**The Secretary of Defense shall support or conduct pilot programs on cybersecurity with respect to the following areas:

**"(1) Threat sensing and warning for information networks worldwide.**

**"(2) Managed security services for cybersecurity within the defense industrial base, military departments, and combatant commands.**

**"(3) Use of private processes and infrastructure to address threats, problems, vulnerabilities, or opportunities in cybersecurity.**

**"(4) Processes for securing the global supply chain.**

**"(5) Processes for threat sensing and security of cloud computing infrastructure.**

**"(c) REPORTS.—**

**"(1) REPORTS REQUIRED.—**Not later than 240 days after the date of the enactment of this Act [Jan. 7, 2011], and annually thereafter at or about the time of the submittal to Congress of the budget of the President for a fiscal year (as submitted pursuant to [section 1105\(a\) of title 31, United States Code](#)), the Secretary of Defense shall, in coordination with the Secretary of Homeland Security, submit to Congress a report on any demonstration projects carried out under subsection (a), and on the pilot projects carried out under subsection (b), during the preceding year.

**"(2) ELEMENTS.—**Each report under this subsection shall include the following:

**"(A) A description and assessment of any activities under the demonstration projects and pilot projects referred to in paragraph (1) during the preceding year.**

**"(B) For the pilot projects supported or conducted under subsection (b)(2)–**

**"(i) a quantitative and qualitative assessment of the extent to which managed security services covered by the pilot project could provide effective and affordable cybersecurity capabilities for components of the Department of Defense and for entities in the defense industrial base, and an assessment whether such services could be expanded rapidly to a large scale without exceeding the ability of the Federal Government to manage such expansion; and**

**"(ii) an assessment of whether managed security services are compatible with the cybersecurity strategy of the Department of Defense with respect to conducting an active, in-depth defense under the direction of United States Cyber Command.**

**"(C) For the pilot projects supported or conducted under subsection (b)(3)–**

**"(i) a description of any performance metrics established for purposes of the pilot project, and a description of any processes developed for purposes of accountability and governance under any partnership under the pilot project; and**

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(ii) an assessment of the role a partnership such as a partnership under the pilot project would play in the acquisition of cyberspace capabilities by the Department of Defense, including a role with respect to the development and approval of requirements, approval and oversight of acquiring capabilities, test and evaluation of new capabilities, and budgeting for new capabilities.

"(D) For the pilot projects supported or conducted under subsection (b)(4)-

"(i) a framework and taxonomy for evaluating practices that secure the global supply chain, as well as practices for securely operating in an uncertain or compromised supply chain;

"(ii) an assessment of the viability of applying commercial practices for securing the global supply chain; and

"(iii) an assessment of the viability of applying commercial practices for securely operating in an uncertain or compromised supply chain.

"(E) For the pilot projects supported or conducted under subsection (b)(5)-

"(i) an assessment of the capabilities of Federal Government providers to offer secure cloud computing environments; and

"(ii) an assessment of the capabilities of commercial providers to offer secure cloud computing environments to the Federal Government.

"(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex."

**8. Section 804 of the National Defense Authorization Act for Fiscal Year 2010, P.L. 111–84, Oct. 28, 2009 (10 U.S.C. 2223a note), provided:**

**“SEC. 804. IMPLEMENTATION OF NEW ACQUISITION PROCESS FOR INFORMATION TECHNOLOGY SYSTEMS.**

"(a) NEW ACQUISITION PROCESS REQUIRED.—The Secretary of Defense shall develop and implement a new acquisition process for information technology systems. The acquisition process developed and implemented pursuant to this subsection shall, to the extent determined appropriate by the Secretary-

"(1) be based on the recommendations in [chapter 6](#) of the March 2009 report of the Defense Science Board Task Force on Department of Defense Policies and Procedures for the Acquisition of Information Technology; and

"(2) be designed to include-

"(A) early and continual involvement of the user;

"(B) multiple, rapidly executed increments or releases of capability;

"(C) early, successive prototyping to support an evolutionary approach; and

"(D) a modular, open-systems approach.

"(b) REPORT TO CONGRESS.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the new acquisition process developed pursuant to subsection (a). The report required by this subsection shall, at a minimum-

"(1) describe the new acquisition process;

"(2) provide an explanation for any decision by the Secretary to deviate from the criteria established for such process in paragraphs (1) and (2) of subsection (a);

"(3) provide a schedule for the implementation of the new acquisition process;

"(4) identify the categories of information technology acquisitions to which such process will apply; and

"(5) include the Secretary's recommendations for any legislation that may be required to implement the new acquisition process."

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**9. Section 881 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008 (10 U.S.C. 2223a note), provided:**

**“SEC. 881. CLEARINGHOUSE FOR RAPID IDENTIFICATION AND DISSEMINATION OF COMMERCIAL INFORMATION TECHNOLOGIES.**

"(a) REQUIREMENT TO ESTABLISH CLEARINGHOUSE.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall establish a clearinghouse for identifying, assessing, and disseminating knowledge about readily available information technologies (with an emphasis on commercial off-the-shelf information technologies) that could support the warfighting mission of the Department of Defense.

"(b) RESPONSIBILITIES.—The clearinghouse established pursuant to subsection (a) shall be responsible for the following:

"(1) Developing a process to rapidly assess and set priorities and needs for significant information technology needs of the Department of Defense that could be met by commercial technologies, including a process for-

"(A) aligning priorities and needs with the requirements of the commanders of the combatant command; and

"(B) proposing recommendations to the commanders of the combatant command of feasible technical solutions for further evaluation.

"(2) Identifying and assessing emerging commercial technologies (including commercial off-the-shelf technologies) that could support the warfighting mission of the Department of Defense, including the priorities and needs identified pursuant to paragraph (1).

"(3) Disseminating information about commercial technologies identified pursuant to paragraph (2) to commanders of combatant commands and other potential users of such technologies.

"(4) Identifying gaps in commercial technologies and working to stimulate investment in research and development in the public and private sectors to address those gaps.

"(5) Enhancing internal data and communications systems of the Department of Defense for sharing and retaining information regarding commercial technology priorities and needs, technologies available to meet such priorities and needs, and ongoing research and development directed toward gaps in such technologies.

"(6) Developing mechanisms, including web-based mechanisms, to facilitate communications with industry regarding the priorities and needs of the Department of Defense identified pursuant to paragraph (1) and commercial technologies available to address such priorities and needs.

"(7) Assisting in the development of guides to help small information technology companies with promising technologies to understand and navigate the funding and acquisition processes of the Department of Defense.

"(8) Developing methods to measure how well processes developed by the clearinghouse are being utilized and to collect data on an ongoing basis to assess the benefits of commercial technologies that are procured on the recommendation of the clearinghouse.

"(c) PERSONNEL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall provide for the hiring and support of employees (including detailees from other components of the Department of Defense and from other Federal departments or agencies) to assist in identifying, assessing, and disseminating information regarding commercial technologies under this section.

"(d) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of this section."

**10. Section 814(a) of the National Defense Authorization Act for Fiscal Year 2017, P.L. 114–328, Dec. 23, 2016 (10 U.S.C. 2302 note), provided:**

**“SEC. 814. PROCUREMENT OF PERSONAL PROTECTIVE EQUIPMENT.**

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(a) LIMITATION.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Federal Acquisition Regulation Supplement shall be revised--

"(1) to prohibit the use by the Department of Defense of reverse auctions or lowest price technically acceptable contracting methods for the procurement of personal protective equipment or an aviation critical safety item (as defined in section 2319(g) of this title) if the level of quality or failure of the equipment or item could result in combat casualties; and

"(2) to establish a preference for the use of best value contracting methods for the procurement of such equipment or item."

(b) CONFORMING AMENDMENT.—[repealed sec. 884 of the FY16 NDAA]

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**11. Section 881 of the National Defense Authorization Act for Fiscal Year 2016, P.L. 114–92, Nov. 25, 2015 (10 U.S.C. 2302 note), provided:**

**“SEC. 881. CONSIDERATION OF POTENTIAL PROGRAM COST INCREASES AND SCHEDULE DELAYS RESULTING FROM OVERSIGHT OF DEFENSE ACQUISITION PROGRAMS.**

"(a) AVOIDANCE OF UNNECESSARY COST INCREASES AND SCHEDULE DELAYS.—The Director of Operational Test and Evaluation, the Deputy Chief Management Officer, the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, the Inspector General of the Department of Defense, and the heads of other defense audit, testing, acquisition, and management agencies shall ensure that policies, procedures, and activities implemented by their offices and agencies in connection with defense acquisition program oversight do not result in unnecessary increases in program costs or cost estimates or delays in schedule or schedule estimates.

"(b) CONSIDERATION OF PRIVATE SECTOR BEST PRACTICES.—In considering potential cost increases and schedule delays as a result of oversight efforts pursuant to subsection (a), the officials described in such subsection shall consider private sector best practices with respect to oversight implementation."

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**12. Section 804 of the National Defense Authorization Act for Fiscal Year 2013, P.L. 112–239, Jan. 2, 2013 (10 U.S.C. 2302 note), provided:**

**“SEC. 804. DEPARTMENT OF DEFENSE POLICY ON CONTRACTOR PROFITS.**

"(a) REVIEW OF GUIDELINES ON PROFITS.—The Secretary of Defense shall review the profit guidelines in the Department of Defense Supplement to the Federal Acquisition Regulation in order to identify any modifications to such guidelines that are necessary to ensure an appropriate link between contractor profit and contractor performance. In conducting the review, the Secretary shall obtain the views of experts and interested parties in Government and the private sector.

"(b) MATTERS TO BE CONSIDERED.—In conducting the review required by subsection (a), the Secretary shall consider, at a minimum, the following:

"(1) Appropriate levels of profit needed to sustain competition in the defense industry, taking into account contractor investment and cash flow.

"(2) Appropriate adjustments to address contract and performance risk assumed by the contractor, taking into account the extent to which such risk is passed on to subcontractors.

"(3) Appropriate incentives for superior performance in delivering quality products and services in a timely and cost-effective manner, taking into account such factors as prime contractor cost reduction, control of overhead costs, subcontractor cost reduction, subcontractor management, and effective competition (including the use of small business) at the subcontract level.

"(c) MODIFICATION OF GUIDELINES.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary shall modify the profit guidelines described in subsection (a) to make such changes as the Secretary determines to be appropriate based on the review conducted pursuant to that subsection."



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**13. Section 843 of the National Defense Authorization Act for Fiscal Year 2013, P.L. 112–239, Jan. 2, 2013 (10 U.S.C. 2302 note), provided:**

**“SEC. 843. RESPONSIBILITY WITHIN DEPARTMENT OF DEFENSE FOR OPERATIONAL CONTRACT SUPPORT.**

"(a) GUIDANCE REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and issue guidance establishing the chain of authority and responsibility within the Department of Defense for policy, planning, and execution of operational contract support.

"(b) ELEMENTS.—The guidance under subsection (a) shall, at a minimum—

"(1) specify the officials, offices, and components of the Department within the chain of authority and responsibility described in subsection (a);

"(2) identify for each official, office, and component specified under paragraph (1)—

"(A) requirements for policy, planning, and execution of contract support for operational contract support, including, at a minimum, requirements in connection with-

"(i) coordination of functions, authorities, and responsibilities related to operational contract support, including coordination with relevant Federal agencies;

"(ii) assessments of total force data in support of Department force planning scenarios, including the appropriateness of and necessity for the use of contractors for identified functions;

"(iii) determinations of capability requirements for nonacquisition community operational contract support, and identification of resources required for planning, training, and execution to meet such requirements; and

"(iv) determinations of policy regarding the use of contractors by function, and identification of the training exercises that will be required for operational contract support (including an assessment [of] whether or not such exercises will include contractors); and

"(B) roles, authorities, responsibilities, and lines of supervision for the achievement of the requirements identified under subparagraph (A); and

"(3) ensure that the chain of authority and responsibility described in subsection (a) is appropriately aligned with, and appropriately integrated into, the structure of the Department for the conduct of overseas contingency operations, including the military departments, the Joint Staff, and the commanders of the unified combatant commands."

**14. Section 844 of the National Defense Authorization Act for Fiscal Year 2013, P.L. 112–239, Jan. 2, 2013 (10 U.S.C. 2302 note), provided:**

**“SEC. 844. DATA COLLECTION ON CONTRACT SUPPORT FOR FUTURE OVERSEAS CONTINGENCY OPERATIONS INVOLVING COMBAT OPERATIONS.**

"(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each issue guidance regarding data collection on contract support for future contingency operations outside the United States that involve combat operations.

"(b) ELEMENTS.—The guidance required by subsection (a) shall ensure that the Department of Defense, the Department of State, and the United States Agency for International Development take the steps necessary to ensure that each agency has the capability to collect and report, at a minimum, the following data regarding such contract support:

"(1) The total number of contracts entered into as of the date of any report.

"(2) The total number of such contracts that are active as of such date.

"(3) The total value of contracts entered into as of such date.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(4) The total value of such contracts that are active as of such date.

"(5) An identification of the extent to which the contracts entered into as of such date were entered into using competitive procedures.

"(6) The total number of contractor personnel working under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

"(7) The total number of contractor personnel performing security functions under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

"(8) The total number of contractor personnel killed or wounded under any contracts entered into.

"(c) COMPTROLLER GENERAL REVIEW AND REPORT.—

"(1) REVIEW.—The Comptroller General of the United States shall review the data system or systems established to track contractor data pursuant to subsections (a) and (b). The review shall, with respect to each such data system, at a minimum—

"(A) identify each such data system and assess the resources needed to sustain such system;

"(B) determine if all such data systems are interoperable, use compatible data standards, and meet the requirements of [section 2222 of title 10, United States Code](#); and

"(C) make recommendations on the steps that the Department of Defense, the Department of State, and the United States Agency for International Development should take to ensure that all such data systems—

"(i) meet the requirements of the guidance issued pursuant to subsections (a) and (b);

"(ii) are interoperable, use compatible data standards, and meet the requirements of section 2222 of such title; and

"(iii) are supported by appropriate business processes and rules to ensure the timeliness and reliability of data.

"(2) REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General shall submit a report on the review required by paragraph (1) to the following committees:

"(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

"(B) The Committee on Foreign Relations and the Committee on Homeland Security and Governmental Affairs of the Senate.

"(C) The Committee on Foreign Affairs and the Committee on Oversight and Government Reform of the House of Representatives."

**15. Section 818(g) of the National Defense Authorization Act for Fiscal Year 2012, P. L. 112–81 (10 U.S.C. 2302 note), as amended, provides:**

**“SEC. 818. DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.**

"(a) ASSESSMENT OF DEPARTMENT OF DEFENSE POLICIES AND SYSTEMS.—\*\*\*

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"(g) INFORMATION SHARING.—

"(1) IN GENERAL.—If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act [15 U.S.C. 1124], and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the rightholders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.

"(2) SUNSET.—This subsection shall expire on the date of the enactment of the Customs Facilitation and Trade Enforcement Reauthorization Act of 2012.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(3) LANHAM ACT DEFINED.—In this subsection, the term 'Lanham Act' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' or the 'Lanham Act') [15 U.S.C. 1051 et seq.]."

P. L. 114–125, §302(b), Feb. 24, 2016, 130 Stat. 150, provided that: "Notwithstanding paragraph (2) of section 818(g) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1496; 10 U.S.C. 2302 note) [set out above], paragraph (1) of that section shall have no force or effect on or after the date of the enactment of this Act [Feb. 24, 2016]."

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**16.** Section 127 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, P.L. 111–383, Jan. 7, 2011 (**10 U.S.C. 2302 note**), provided:

**“SEC. 127. CONTRACTS FOR COMMERCIAL IMAGING SATELLITE CAPACITIES.**

"(a) TELESCOPE REQUIREMENTS UNDER CONTRACTS AFTER 2010.—Except as provided in subsection (b), any contract for additional commercial imaging satellite capability or capacity entered into by the Department of Defense after December 31, 2010, shall require that the imaging telescope providing such capability or capacity under such contract has an aperture of not less than 1.5 meters.

"(b) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if-

"(1) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written certification that the waiver is in the national security interests of the United States; and

"(2) a period of 30 days has elapsed following the date on which the certification under paragraph (1) is submitted.

"(c) CONTINUATION OF CURRENT CONTRACTS.—The limitation in subsection (a) may not be construed to prohibit or prevent the Secretary of Defense from continuing or maintaining current commercial imaging satellite capability or capacity in orbit or under contract by December 31, 2010."

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**17.** Section 815(b) of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008 (**10 U.S.C. 2302 note**), provided:

**“SEC. 815. CLARIFICATION OF RULES REGARDING THE PROCUREMENT OF COMMERCIAL ITEMS.**

(a) [amended 10 U.S.C. 2379 & 2321(f)]

"(b) SALES OF COMMERCIAL ITEMS TO NONGOVERNMENTAL ENTITIES.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense on the procurement of commercial items in order to clarify that the terms 'general public' and 'nongovernmental entities' in such regulations do not include the Federal Government or a State, local, or foreign government."

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**18.** Section 812 of the John Warner National Defense Authorization Act for Fiscal Year 2007, P.L. 109-364, Oct. 17, 2006 (**10 U.S.C. 2302 note**), as amended, provides:

**“SEC. 812. PILOT PROGRAM ON TIME-CERTAIN DEVELOPMENT IN ACQUISITION OF MAJOR WEAPON SYSTEMS.**

"(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program on the use of time-certain development in the acquisition of major weapon systems.

"(b) PURPOSE OF PILOT PROGRAM.—The purpose of the pilot program authorized by subsection (a)



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

is to assess the feasibility and advisability of utilizing time-certain development in the acquisition of major weapon systems in order to deliver new capabilities to the warfighter more rapidly through—

- "(1) disciplined decision-making;
- "(2) emphasis on technological maturity; and
- "(3) appropriate trade-offs between—
  - "(A) cost and system performance; and
  - "(B) program schedule.

"(c) INCLUSION OF SYSTEMS IN PILOT PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense may include a major weapon system in the pilot program only if—

"(A) the major weapon system meets the criteria under paragraph (2) in accordance with that paragraph; and

"(B) the Milestone Decision Authority nominates such program to the Secretary of Defense for inclusion in the program.

"(2) CRITERIA.—For purposes of paragraph (1) a major weapon system meets the criteria under this paragraph only if the Milestone Decision Authority determines, in consultation with the service acquisition executive for the military department carrying out the acquisition program for the system and one or more combatant commanders responsible for fielding the system, that—

"(A) the certification requirements of section 2366b of title 10, United States Code (as amended by section 805 of this Act), have been met, and no waivers have been granted from such requirements;

"(B) a preliminary design has been reviewed using systems engineering, and the system, as so designed, will meet battlefield needs identified by the relevant combatant commanders after appropriate requirements analysis;

"(C) a representative model or prototype of the system, or key subsystems, has been demonstrated in a relevant environment, such as a well-simulated operational environment;

"(D) an independent cost estimate has been conducted and used as the basis for funding requirements for the acquisition program for the system;

"(E) the budget of the military department responsible for carrying out the acquisition program for the system provides the funding necessary to execute the product development and production plan consistent with the requirements identified pursuant to subparagraph (D);

"(F) an appropriately qualified program manager has entered into a performance agreement with the Milestone Decision Authority that establishes expected parameters for the cost, schedule, and performance of the acquisition program for the system, consistent with a business case for such acquisition program;

"(G) the service acquisition executive and the program manager have developed a strategy to ensure stability in program management until, at a minimum, the delivery of the initial operational capability under the acquisition program for the system has occurred;

"(H) the service acquisition executive, the relevant combatant commanders, and the program manager have agreed that no additional requirements that would be inconsistent with the agreed-upon program schedule will be added during the development phase of the acquisition program for the system; and

"(I) a planned initial operational capability will be delivered to the relevant combatant commanders within a defined period of time as prescribed in regulations by the Secretary of Defense.

"(3) TIMING OF DECISION.—The decision whether to include a major weapon system in the pilot program shall be made at the time of milestone approval for the acquisition program for the system.

"(d) LIMITATION ON NUMBER OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The number of major weapon systems included in the pilot program at any time may not exceed six major weapon systems.

"(e) LIMITATION ON COST OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The Secretary of Defense may include a major weapon system in the pilot program only if, at the time a major weapon system is proposed for inclusion, the total cost for system design and development of the weapon system, as set forth in the cost estimate referred to in subsection c)(2)(D), does not exceed \$1,000,000,000 during the period covered by the current future-years defense program.

"(f) SPECIAL FUNDING AUTHORITY.—

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(1) **AUTHORITY FOR RESERVE ACCOUNT.**—Notwithstanding any other provision of law, the Secretary of Defense may establish a special reserve account utilizing funds made available for the major weapon systems included in the pilot program.

"(2) **ELEMENTS.**—The special reserve account may include—

"(A) funds made available for any major weapon system included in the pilot program to cover termination liability;

"(B) funds made available for any major weapon system included in the pilot program for award fees that may be earned by contractors; and

"(C) funds appropriated to the special reserve account.

"(3) **AVAILABILITY OF FUNDS.**—Funds in the special reserve account may be used, in accordance with guidance issued by the Secretary for purposes of this section, for the following purposes:

"(A) To cover termination liability for any major weapon system included in the pilot program.

"(B) To pay award fees that are earned by any contractor for a major weapon system included in the pilot program.

"(C) To address unforeseen contingencies that could prevent a major weapon system included in the pilot program from meeting critical schedule or performance requirements.

"(4) **REPORTS ON USE OF FUNDS.**—Not later than 30 days after the use of funds in the special reserve account for the purpose specified in paragraph (3)(C), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of funds in the account for such purpose. The report shall set forth the purposes for which the funds were used and the reasons for the use of the funds for such purposes.

"(5) **RELATIONSHIP TO APPROPRIATIONS.**—Nothing in this subsection may be construed as extending any period of time for which appropriated funds are made available.

"(g) **ADMINISTRATION OF PILOT PROGRAM.**—The Secretary of Defense shall prescribe policies and procedures on the administration of the pilot program. Such policies and procedures shall—

"(1) provide for the use of program status reports based on earned value data to track progress on a major weapon system under the pilot program against baseline estimates applicable to such system at each systems engineering technical review point; and

"(2) grant authority, to the maximum extent practicable, to the program manager for the acquisition program for a major weapon system to make key program decisions and trade-offs, subject to management reviews only if cost or schedule deviations exceed the baselines for such acquisition program by 10 percent or more.

"(h) **REMOVAL OF WEAPONS SYSTEMS FROM PILOT PROGRAM.**—The Secretary of Defense shall remove a major weapon system from the pilot program if—

"(1) the weapon system receives Milestone C approval; or

"(2) the Secretary determines that the weapon system is no longer in substantial compliance with the criteria in subsection (c)(2) or is otherwise no longer appropriate for inclusion in the pilot program.

"(i) **EXPIRATION OF AUTHORITY TO INCLUDE ADDITIONAL SYSTEMS IN PILOT PROGRAM.**—

"(1) **EXPIRATION.**—A major weapon system may not be included in the pilot program after **September 30, 2012.**

"(2) **RETENTION OF SYSTEMS.**—A major weapon system included in the pilot program before the date specified in paragraph (1) in accordance with the requirements of this section may remain in the pilot program after that date.

"(j) **ANNUAL REPORT.**—

"(1) **IN GENERAL.**—Not later than one year after including the first major weapon system in the pilot program, and annually thereafter, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, and the major weapon systems included in the pilot program, during the one-year period ending on the date of such report.

"(2) **ELEMENTS.**—Each report under this subsection shall include—

"(A) a description of progress under the pilot program, and on each major weapon system included in the pilot program, during the period covered by such report;

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(B) a description of the use of all funds in the special reserve account established under subsection (f); and

"(C) such other matters as the Secretary considers appropriate.

"(k) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term 'major weapon system' means a weapon system that is treatable as a major system under section 2302(5) of title 10, United States Code."

**19. Section 806 of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109–163, Jan. 6, 2006 (10 U.S.C. 2302 note), provided:**

**“SEC. 806. CONGRESSIONAL NOTIFICATION OF CANCELLATION OF MAJOR AUTOMATED INFORMATION SYSTEMS.**

"(a) REPORT REQUIRED.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not less than 60 days before cancelling a major automated information system program that has been fielded or approved to be fielded, or making a change that will significantly reduce the scope of such a program, of the proposed cancellation or change.

"(b) CONTENT.—Each notification submitted under subsection (a) with respect to a proposed cancellation or change shall include—

"(1) the specific justification for the proposed cancellation or change;

"(2) a description of the impact of the proposed cancellation or change on the ability of the Department to achieve the objectives of the program proposed for cancellation or change;

"(3) a description of the steps that the Department plans to take to achieve those objectives; and

"(4) other information relevant to the change in acquisition strategy.

"(c) DEFINITIONS.—In this section:

"(1) The term 'major automated information system' has the meaning given that term in Department of Defense directive 5000.1.

"(2) The term 'approved to be fielded' means having received Milestone C approval."

**20. Section 817 of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163 (10 U.S.C. 2302 note), provides:**

**“SEC. 817. JOINT POLICY ON CONTINGENCY CONTRACTING.**

"(a) JOINT POLICY.—

"(1) REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop a joint policy for contingency contracting during combat operations and post-conflict operations.

"(2) MATTERS COVERED.—The joint policy for contingency contracting required by paragraph (1) shall, at a minimum, provide for—

"(A) the designation of a senior commissioned officer in each military department with the responsibility for administering the policy;

"(B) the assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur;

"(C) an organizational approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations and post-conflict operations;

"(D) a requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

"(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of title 10, United States Code, sealed bidding, letter contracts, indefinite delivery indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

"(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

"(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process;

"(E) appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation; and

"(F) such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

**"(b) REPORTS.—**

**"(1) INTERIM REPORT.—**

"(A) REQUIREMENT.—Not later than 270 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on contingency contracting.

"(B) MATTERS COVERED.—The report shall include discussions of the following:

"(i) Progress in the development of the joint policy under subsection (a).

"(ii) The ability of the Armed Forces to support contingency contracting.

"(iii) The ability of commanders of combatant commands to request contingency contracting support and the ability of the military departments and the acquisition support agencies to respond to such requests and provide such support, including the availability of rapid acquisition personnel for such support.

"(iv) The ability of the current civilian and military acquisition workforce to deploy to combat theaters of operations and to conduct contracting activities during combat and during post-conflict, reconstruction, or other contingency operations.

"(v) The effect of different periods of deployment on continuity in the acquisition process.

"(2) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the committees listed in paragraph (1)(A) a final report on contingency contracting, containing a discussion of the implementation of the joint policy developed under subsection (a), including updated discussions of the matters covered in the interim report.

**"(c) DEFINITIONS.—In this section:**

"(1) CONTINGENCY CONTRACTING PERSONNEL.—The term 'contingency contracting personnel' means members of the Armed Forces and civilian employees of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

"(2) CONTINGENCY CONTRACTING.—The term 'contingency contracting' means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

"(3) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning provided in section 101(13) of title 10, United States Code.

"(4) ACQUISITION SUPPORT AGENCIES.—The term 'acquisition support agencies' means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities."

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**21.** Section 141 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, P.L. 108–375, Oct. 28, 2004 (**10 U.S.C. 2302 note**) , provided:

**“SEC. 141. DEVELOPMENT OF DEPLOYABLE SYSTEMS TO INCLUDE CONSIDERATION OF FORCE PROTECTION IN ASYMMETRIC THREAT ENVIRONMENTS.**

"(a) **REQUIREMENT FOR SYSTEMS DEVELOPMENT.**—The Secretary of Defense shall require that the Department of Defense regulations, directives, and guidance governing the acquisition of covered systems be revised to require that-

"(1) an assessment of warfighter survivability and of system suitability against asymmetric threats shall be performed as part of the development of system requirements for any such system; and

"(2) requirements for key performance parameters for force protection and survivability shall be included as part of the documentation of system requirements for any such system.

"(b) **COVERED SYSTEMS.**—In this section, the term 'covered system' means any of the following systems that is expected to be deployed in an asymmetric threat environment:

"(1) Any manned system.

"(2) Any equipment intended to enhance personnel survivability.

"(c) **INAPPLICABILITY OF DEVELOPMENT REQUIREMENT TO SYSTEMS ALREADY THROUGH DEVELOPMENT.**—The revisions pursuant subsection (a) to Department of Defense regulations, directives, and guidance shall not apply to a system that entered low-rate initial production before the date of the enactment of this Act [Oct. 28, 2004].

"(d) **DEADLINE FOR POLICY REVISIONS.**—The revisions required by subsection (a) to Department of Defense regulations, directives, and guidance shall be made not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004]."

**22.** Section 802 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, P.L. 108–375, Oct. 28, 2004 (**10 U.S.C. 2302 note**), as amended, provided:

**“SEC. 802. INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.**

"(a) **INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.**—(1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

"(A) review—

"(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

"(ii) the administration of those policies, procedures, and internal controls; and

"(B) for each such Center, determine in writing whether—

"(i) the Center is compliant with defense procurement requirements;

"(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

"(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

"(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

"(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

"(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

"(b) **COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.**—For the purposes of this section, a GSA Client Support Center is compliant with defense procurement requirements if the GSA Client Support Center's policies, procedures, and internal controls, and the manner in which they are administered, are adequate to ensure



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

compliance of that Center with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

"(c) LIMITATIONS ON PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.—(1) After March 15, 2005, and before March 16, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of \$100,000 through any GSA Client Support Center for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

"(2) After March 15, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of \$100,000 through any GSA Client Support Center that has not been determined under this section as being compliant with defense procurement requirements.

"(d) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—(1) No limitation applies under subsection (c) with respect to the procurement of property and services from a particular GSA Client Support Center during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through that GSA Client Support Center.

"(2) A written determination with respect to a GSA Client Support Center under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

"(e) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (c) shall cease to apply to a GSA Client Support Center on the date on which the Inspector General of the Department of Defense and the Inspector General of the General Services Administration jointly determine that such Center is compliant with defense procurement requirements and notify the Secretary of Defense of that determination.

"(f) GSA CLIENT SUPPORT CENTER DEFINED.—In this section, the term 'GSA Client Support Center' means a Client Support Center of the Federal Acquisition Service of the General Services Administration."

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**23. Section 801(b) of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108–136, Nov. 24, 2003 (10 U.S.C. 2302 note), provided:**

**“SEC. 801. CONSOLIDATION OF CONTRACT REQUIREMENTS.**

(a) AMENDMENT TO TITLE 10.—[added sec. 2382 to title 10, U.S.C.]

(b) DATE REVIEW.—

"(1) The Secretary of Defense shall revise the data collection systems of the Department of Defense to ensure that such systems are capable of identifying each procurement that involves a consolidation of contract requirements within the department with a total value in excess of \$5,000,000.

"(2) The Secretary shall ensure that appropriate officials of the Department of Defense periodically review the information collected pursuant to paragraph (1) in cooperation with the Small Business Administration—

"(A) to determine the extent of the consolidation of contract requirements in the Department of Defense; and

"(B) to assess the impact of the consolidation of contract requirements on the availability of opportunities for small business concerns to participate in Department of Defense procurements, both as prime contractors and as subcontractors.

"(3) In this subsection:

"(A) The term 'consolidation of contract requirements' has the meaning given that term in [former] section 2382(c)(1) of title 10, United States Code, as added by subsection (a).

"(B) The term 'small business concern' means a business concern that is determined by the Administrator of the Small Business Administration to be a small-business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a))."

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**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**24.** Section 805(a) of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108–136, Nov. 24, 2003 (**10 U.S.C. 2302 note**), provided:

**“SEC. 805. COMPETITIVE AWARD OF CONTRACTS FOR RECONSTRUCTION ACTIVITIES IN IRAQ.**

"(a) COMPETITIVE AWARD OF CONTRACTS.—The Department of Defense shall fully comply with chapter 137 of title 10, United States Code, and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and shall conduct a full and open competition for performing work needed for the reconstruction of the Iraqi oil industry.

(b) REPORT.—[omitted]"

**25.** Section 352 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, P.L. 107–314, §352, Dec. 2, 2002 (**10 U.S.C. 2302 note**), provided:

**“SEC. 352. POLICY REGARDING ACQUISITION OF INFORMATION ASSURANCE AND INFORMATION ASSURANCE-ENABLED INFORMATION TECHNOLOGY PRODUCTS.**

"(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish a policy to limit the acquisition of information assurance and information assurance-enabled information technology products to those products that have been evaluated and validated in accordance with appropriate criteria, schemes, or programs.

"(b) WAIVER.—As part of the policy, the Secretary of Defense shall authorize specified officials of the Department of Defense to waive the limitations of the policy upon a determination in writing that application of the limitations to the acquisition of a particular information assurance or information assurance-enabled information technology product would not be in the national security interest of the United States.

"(c) IMPLEMENTATION.—The Secretary of Defense shall ensure that the policy is uniformly implemented throughout the Department of Defense."

**26.** Section 326 of the National Defense Authorization Act for Fiscal Year 1993, P.L. 102–484, Oct. 23, 1992 (**10 U.S.C. 2302 note**), as amended, provided:

**“SEC. 326. ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS.**

"(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

"(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine-

"(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

"(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(ii) A contract referred to in clause (i) is any contract in an amount in excess of \$10,000,000 that-

"(I) was awarded before June 1, 1993; and

"(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

"(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

"(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

"(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

"(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

"(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

"(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

"(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

"(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

"(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

"(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

"(c) DEFINITIONS.—In this section:

"(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

"(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 1303(a) of title 41, United States Code."

**27. Section 9004 of the Department of Defense Appropriations Act, 1990, P.L. 101–165, Nov. 21, 1989 (10 U.S.C. 2302 note), provided:**

**“EQUITABLE PARTICIPATION OF AMERICAN SMALL AND MINORITY-OWNED  
BUSINESS IN FURNISHING OF COMMODITIES AND SERVICES.**

"SEC. 9004. During the current fiscal year and hereafter, the Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act [see Tables for classification] by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act."

**28. Section 913 of the Department of Defense Authorization Act, 1986, P.L. 99–145, Nov. 8, 1985 (10 U.S.C. 2302 note), as amended, provided:**

**“SEC. 913. MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS.**

"(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

"(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in [section 2304 of title 10, United States Code](#)."

**29. Section 802 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, P.L. 110–417, Oct. 14, 2008 (10 U.S.C. 2304 note) provided:**

**“SEC. 802. IMPLEMENTATION OF STATUTORY REQUIREMENTS REGARDING THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.**

"(a) GUIDANCE REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue guidance regarding—

"(1) the appropriate application of the authority in [sections 2304\(b\) and 2304\(c\)\(3\)\(A\) of title 10, United States Code](#), in connection with major defense acquisition programs; and

"(2) the appropriate timing and performance of the requirement in [section 2440 of title 10, United States Code](#), to consider the national technology and industrial base in the development and implementation of acquisition plans for each major defense acquisition program.

"(b) DEFINITIONS.—In this section:[:]

"(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' has the meaning provided in [section 2430 of title 10, United States Code](#).

"(2) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The term 'national technology and industrial base' has the meaning provided in [section 2500\(1\) of title 10, United States Code](#)."

**30. Section 821 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008 (10 U.S.C. 2304 note), as amended, provided:**

**“SEC. 821. PLAN FOR RESTRICTING GOVERNMENT-UNIQUE CONTRACT CLAUSES ON COMMERCIAL CONTRACTS.**

"(a) PLAN.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to the following:

"(1) Government-unique clauses authorized by law or regulation.

"(2) Any additional clauses that are relevant and necessary to a specific contract.

"(b) COMMERCIAL CONTRACT.—In this section:

"(1) The term 'commercial contract' means a contract awarded by the Federal Government for the procurement of a commercial item.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(2) The term 'commercial item' has the meaning provided by [section 103 of title 41, United States Code](#)."

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**31.** Section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007, P.L. 109–364, Oct. 17, 2006 (**10 U.S.C. 2304 note**), as amended, provided:

**“SEC. 813. PANEL ON CONTRACTING INTEGRITY.**

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Secretary of Defense shall establish a panel to be known as the 'Panel on Contracting Integrity'.

"(2) COMPOSITION.—The panel shall be composed of the following:

"(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the panel.

"(B) A representative of the service acquisition executive of each military department.

"(C) A representative of the Inspector General of the Department of Defense.

"(D) A representative of the Inspector General of each military department.

"(E) A representative of each Defense Agency involved with contracting, as determined appropriate by the Secretary of Defense.

"(F) Such other representatives as may be determined appropriate by the Secretary of Defense.

"(b) DUTIES.—In addition to other matters assigned to it by the Secretary of Defense, the panel shall—

"(1) conduct reviews of progress made by the Department of Defense to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur;

"(2) review the report by the Comptroller General required by section 841 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3389), relating to areas of vulnerability of Department of Defense contracts to fraud, waste, and abuse; and

"(3) recommend changes in law, regulations, and policy that it determines necessary to eliminate such areas of vulnerability.

"(c) MEETINGS.—The panel shall meet as determined necessary by the Secretary of Defense but not less often than once every six months.

"(d) REPORT.—

"(1) REQUIREMENT.—The panel shall prepare and submit to the Secretary of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an annual report on its activities. The report shall be submitted not later than December 31 of each year and contain a summary of the panel's findings and recommendations for the year covered by the report.

"(2) FIRST REPORT.—The first report under this subsection shall be submitted not later than December 31, 2007, and shall contain an examination of the current structure in the Department of Defense for contracting integrity and recommendations for any changes needed to the system of administrative safeguards and disciplinary actions to ensure accountability at the appropriate level for any violations of appropriate standards of behavior in contracting.

"(3) INTERIM REPORTS.—The panel may submit such interim reports to the congressional defense committees as the Secretary of Defense considers appropriate.

"(e) TERMINATION.—

"(1) IN GENERAL.—Subject to paragraph (2), the panel shall continue to serve until the date that is 18 months after the date on which the Secretary of Defense notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of an intention to terminate the panel based on a determination that the activities of the panel no longer justify its continuation and that concerns about contracting integrity have been mitigated.

"(2) MINIMUM CONTINUING SERVICE.—The panel shall continue to serve at least until December 31, 2011."

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**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**32.** Section 391 of the National Defense Authorization Act for Fiscal Year 1998, P.L. 105–85, Nov. 18, 1997 (**10 U.S.C. 2304 note**), as amended, provided:

**“SEC. 391. WARRANTY CLAIMS RECOVERY PILOT PROGRAM.**

"(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense may carry out a pilot program to use commercial sources of services to improve the collection of Department of Defense claims under aircraft engine warranties.

"(b) CONTRACTS.—Exercising the authority provided in [section 3718 of title 31, United States Code](#), the Secretary of Defense may enter into contracts under the pilot program to provide for the following services:

"(1) Collection services.

"(2) Determination of amounts owed the Department of Defense for repair of aircraft engines for conditions covered by warranties.

"(3) Identification and location of the sources of information that are relevant to collection of Department of Defense claims under aircraft engine warranties, including electronic data bases and document filing systems maintained by the Department of Defense or by the manufacturers and suppliers of the aircraft engines.

"(4) Services to define the elements necessary for an effective training program to enhance and improve the performance of Department of Defense personnel in collecting and organizing documents and other information that are necessary for efficient filing, processing, and collection of Department of Defense claims under aircraft engine warranties.

"(c) CONTRACTOR FEE.—Under the authority provided in [section 3718\(d\) of title 31, United States Code](#), a contract entered into under the pilot program shall provide for the contractor to be paid, out of the amount recovered by the contractor under the program, such percentages of the amount recovered as the Secretary of Defense determines appropriate.

"(d) RETENTION OF RECOVERED FUNDS.—Subject to any obligation to pay a fee under subsection (c), any amount collected for the Department of Defense under the pilot program for a repair of an aircraft engine for a condition covered by a warranty shall be credited to an appropriation available for repair of aircraft engines for the fiscal year in which collected and shall be available for the same purposes and same period as the appropriation to which credited.

"(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

"(f) TERMINATION OF AUTHORITY.—The pilot program shall terminate on September 30, 2006, and contracts entered into under this section shall terminate not later than that date.

"(g) REPORTING REQUIREMENT.—Not later than February 1, 2006, the Secretary of Defense shall submit to Congress a report on the pilot program, including-

"(1) a description of the extent to which commercial firms have been used to provide the services specified in subsection (b) and the type of services procured;

"(2) a description of any problems that have limited the ability of the Secretary to utilize the pilot program to procure such services; and

"(3) the recommendation of the Secretary regarding whether the pilot program should be made permanent or extended beyond September 30, 2006."

**33.** Section 927(b) of P.L. 99–500, Oct. 18, 1986 (**10 U.S.C. 2304 note**), P.L. 99–591, Oct. 30, 1986, and P.L. 99–661, Nov. 14, 1986, P.L. 100–26, §3(5), Apr. 21, 1987, provided:

**“SEC. 927. ALLOCATION OF OVERHEAD TO PARTS TO WHICH CONTRACTOR HAS ADDED LITTLE VALUE**

(a) IN GENERAL.—[added section 2304(i) to title 10, U.S.C.]

"(b) DEADLINE.—The Secretary of Defense shall prescribe the regulations required by section 2304(i) of such title (as added by subsection (a)) not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986]."

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**34.** Section 1222(b) of the National Defense Authorization Act for Fiscal Year 1987, P.L. 99–661, Nov. 14, 1986 (**10 U.S.C. 2304 note**) provided:

**“SEC. 1222. PROHIBITION ON CONTRACTS FOR PERFORMANCE OF FIREFIGHTING AND SECURITY FUNCTIONS.**

(a) \*\*\* [added section 2693 to title 10, U.S.C.]

“(b) ONE-YEAR SECURITY-GUARD PROHIBITION .—(1) Except as provided in paragraph (2), funds appropriated to the Department of Defense may not be obligated or expended before October 1, 1987, for the purpose of entering into a contract for the performance of security-guard functions at any military installation or facility.

“(2) The prohibition in paragraph (1) does not apply—

“(A) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which military personnel would have to be used for the performance of the function described in paragraph (1) at the expense of unit readiness;

“(B) to a contract to be carried out on a Government-owned but privately operated installation;

“(C) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983; or

“(D) to a contract for the performance of security-guard functions if (i) the requirement for the functions arises after the date of the enactment of this Act [Nov. 14, 1986], and (ii) the Secretary of Defense determines the functions can be performed by contractor personnel without adversely affecting installation security, safety, or readiness.”

**35.** Section 814(b) of the National Defense Authorization Act for Fiscal Year 2010, P.L. 111–84, Oct. 28, 2009 (**10 U.S.C. 2304a note**), provides:

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of a task or delivery order contract awarded with respect to intelligence activities of the Department of Defense, any notification **provided under [former] subparagraph (B)** of section 2304a(d)(3) of title 10, United States Code, as amended by subsection (a), **shall also be provided at the same time** as notification is provided to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] under that subparagraph—

(1) to the Permanent Select Committee on Intelligence of the House of Representatives insofar as such task or delivery order contract relates to tactical intelligence and intelligence-related activities of the Department; and

(2) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives insofar as such task or delivery order contract relates to intelligence and intelligence-related activities of the Department other than those specified in paragraph (1).

**NOTE:** The requirement to provide a notification under subparagraph (B) of section 2304a(d)(3) of title 10, United States Code, terminated with the repeal of that subparagraph by section 809(b) of P. L. 112–81, Dec. 31, 2011, 125 Stat. 1490, so the requirement above to provide the notification at the same time to HPSCI and SSCI would appear to be moot.

**36.** Section 834 of the John Warner National Defense Authorization Act for Fiscal Year 2007, P.L. 109–364 (**10 U.S.C. 2304b note**), provides:

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**“SEC. 834. WAIVERS TO EXTEND TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.**

**“(a) DEFENSE CONTRACTS.—**

**“(1) WAIVER AUTHORITY.—**The head of an agency may issue a waiver to extend a task order contract entered into under section 2304b of title 10, United States Code, for a period not exceeding 10 years, through five one-year options, if the head of the agency determines in writing—

**“(A)** that the contract provides engineering or technical services of such a unique and substantial technical nature that award of a new contract would be harmful to the continuity of the program for which the services are performed;

**“(B)** that award of a new contract would create a large disruption in services provided to the Department of Defense; and

**“(C)** that the Department of Defense would, through award of a new contract, endure program risk during critical program stages due to loss of program corporate knowledge of ongoing program activities.

**“(2) DELEGATION.—**The authority of the head of an agency under paragraph (1) may be delegated only to the senior procurement executive of the agency.

**“(3) REPORT.—**Not later than April 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on advisory and assistance services. The report shall include the following information:

**“(A)** The methods used by the Department of Defense to identify a contract as an advisory and assistance services contract, as defined in section 2304b of title 10, United States Code.

**“(B)** The number of such contracts awarded by the Department during the five-year period preceding the date of the enactment of this Act [Oct. 17, 2006].

**“(C)** The average annual expenditures by the Department for such contracts.

**“(D)** The average length of such contracts.

**“(E)** The number of such contracts recompeted and awarded to the previous award winner.

**“(4) PROHIBITION ON USE OF AUTHORITY BY DEPARTMENT OF DEFENSE IF REPORT NOT SUBMITTED.—**The head of an agency may not issue a waiver under paragraph (1) if the report required by paragraph (3) is not submitted by the date set forth in that paragraph.

**“(b) CIVILIAN AGENCY CONTRACTS.—**

**“(1) WAIVER AUTHORITY.—**The head of an executive agency may issue a waiver to extend a task order contract entered into under section 303I of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253i) [see 41 U.S.C. 4105] for a period not exceeding 10 years, through five one-year options, if the head of the agency determines in writing—

**“(A)** that the contract provides engineering or technical services of such a unique and substantial technical nature that award of a new contract would be harmful to the continuity of the program for which the services are performed;

**“(B)** that award of a new contract would create a large disruption in services provided to the executive agency; and

**“(C)** that the executive agency would, through award of a new contract, endure program risk during critical program stages due to loss of program corporate knowledge of ongoing program activities.

**“(2) DELEGATION.—**The authority of the head of an executive agency under paragraph (1) may be delegated only to the Chief Acquisition Officer of the agency (or the senior procurement executive in the case of an agency for which a Chief Acquisition Officer has not been appointed or designated under section 16(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 414(a)) [now 41 U.S.C. 1702(a), (b)(1), (2)]).

**“(3) REPORT.—**Not later than April 1, 2007, the Administrator for Federal Procurement Policy shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on advisory and assistance services. The report shall include the following information:



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(A) The methods used by executive agencies to identify a contract as an advisory and assistance services contract, as defined in section 3031(i) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253i(i)) [now 41 U.S.C. 4105(a)].

"(B) The number of such contracts awarded by each executive agency during the five-year period preceding the date of the enactment of this Act [Oct. 17, 2006].

"(C) The average annual expenditures by each executive agency for such contracts.

"(D) The average length of such contracts.

"(E) The number of such contracts recompeted and awarded to the previous award winner.

"(4) PROHIBITION ON USE OF AUTHORITY BY EXECUTIVE AGENCIES IF REPORT NOT SUBMITTED.—The head of an executive agency may not issue a waiver under paragraph (1) if the report required by paragraph (3) is not submitted by the date set forth in that paragraph.

"(c) **TERMINATION OF AUTHORITY**.—A waiver may not be issued under this section after December 31, 2011.

"(d) **COMPTROLLER GENERAL REVIEW**.—\*\*\*

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**37. Section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, P.L. 105–261, Oct. 17, 1998 (10 U.S.C. 2306a note), as amended, provided:**

**“SEC. 803. DEFENSE COMMERCIAL PRICING MANAGEMENT IMPROVEMENT.**

"(a) MODIFICATION OF PRICING REGULATIONS FOR CERTAIN COMMERCIAL ITEMS EXEMPT FROM COST OR PRICING DATA CERTIFICATION REQUIREMENTS.—(1) The Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405, 421) [see 41 U.S.C. 1121, 1303] shall be revised to clarify the procedures and methods to be used for determining the reasonableness of prices of exempt commercial items (as defined in subsection (d)).

"(2) The regulations shall, at a minimum, provide specific guidance on-

"(A) the appropriate application and precedence of such price analysis tools as catalog-based pricing, market-based pricing, historical pricing, parametric pricing, and value analysis;

"(B) the circumstances under which contracting officers should require offerors of exempt commercial items to provide-

"(i) information on prices at which the offeror has previously sold the same or similar items; or

"(ii) other information other than certified cost or pricing data;

"(C) the role and responsibility of Department of Defense support organizations in procedures for determining price reasonableness; and

"(D) the meaning and appropriate application of the term 'purposes other than governmental purposes' in section 4(12) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(12)) [see 41 U.S.C. 103].

"(3) This subsection shall cease to be effective 1 year after the date on which final regulations prescribed pursuant to paragraph (1) take effect.

"(b) **UNIFIED MANAGEMENT OF PROCUREMENT OF EXEMPT COMMERCIAL ITEMS**.—The Secretary of Defense shall develop and implement procedures to ensure that, whenever appropriate, a single item manager or contracting officer is responsible for negotiating and entering into all contracts from a single contractor for the procurement of exempt commercial items or for the procurement of items in a category of exempt commercial items.

"(c) **COMMERCIAL PRICE TREND ANALYSIS**.—(1) The Secretary of Defense shall develop and implement procedures that, to the maximum extent that is practicable and consistent with the efficient operation of the Department of Defense, provide for the collection and analysis of information on price trends for categories of exempt commercial items described in paragraph (2).

"(2) A category of exempt commercial items referred to in paragraph (1) consists of exempt commercial items-

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(A) that are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends; and

"(B) for which there is a potential for the price paid to be significantly higher (on a percentage basis) than the prices previously paid in procurements of the same or similar items for the Department of Defense, as determined by the head of the procuring Department of Defense agency or the Secretary of the procuring military department on the basis of criteria prescribed by the Secretary of Defense.

"(3) The head of a Department of Defense agency or the Secretary of a military department shall take appropriate action to address any unreasonable escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

"(4) Not later than April 1 of each of fiscal years 2000 through 2009, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted by the Secretary of each military department and the Director of the Defense Logistics Agency for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken by each Secretary and the Director to identify and address any unreasonable price escalation for the categories of items.

"(d) EXEMPT COMMERCIAL ITEMS DEFINED.—For the purposes of this section, the term 'exempt commercial item' means a commercial item that is exempt under subsection (b)(1)(B) of section 2306a of title 10, United States Code, or section 3503(a)(2) of title 41, United States Code, from the requirements for submission of certified cost or pricing data under that section."

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**38. Section 1075 of the National Defense Authorization Act for Fiscal Year 1995, P.L. 103–337, Oct. 5, 1994 (10 U.S.C. 2315 note) , provided:**

**“SEC. 1075. LIMITATION REGARDING TELECOMMUNICATIONS REQUIREMENTS.**

"(a) LIMITATION.—No funds available to the Department of Defense or any other Executive agency may be expended to provide for meeting Department of Defense telecommunications requirements through the telecommunications procurement known as 'FTS–2000' or through any other Government-wide telecommunications procurement until—

"(1) the Secretary of Defense submits to the Congress a report containing—

"(A) a certification by the Secretary that the FTS–2000 procurement or the other telecommunications procurement will provide assured, secure telecommunications support (including associated telecommunications services) for Department of Defense activities; and

"(B) a description of how the procurement will be implemented and managed to meet defense information infrastructure requirements, including requirements to support deployed forces and intelligence activities; and

"(2) 30 days elapse after the date on which such report is received by the committees.

"(b) DEFINITIONS.—In this section:

"(1) The term 'defense telecommunications requirements' means requirements for telecommunications equipment and services that, if procured by the Department of Defense, would be exempt from the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759) pursuant to [section 2315 of title 10, United States Code](#).

"(2) The term 'Executive agency' has the meaning given such term in [section 105 of title 5, United States Code](#).

"(3) The term 'procurement' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403) [see [41 U.S.C. 111](#)].

"(c) EFFECT ON OTHER LAW.—Nothing in this section may be construed as modifying or superseding, or as intended to impair or restrict authorities or responsibilities under—

"(1) section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759); or

"(2) section 620 of Public Law 103–123 [107 Stat. 1264]."

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**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**39.** Section 824(a) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, P.L. 111–383, Jan. 7, 2011 (**10 U.S.C. 2320 note**), provided:

**“SEC. 824. GUIDANCE RELATING TO RIGHTS IN TECHNICAL DATA.**

"(a) REVIEW OF GUIDANCE.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall review guidance issued by the military departments on the implementation of **section 2320(e) of title 10, United States Code**, to ensure that such guidance is consistent with the guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the requirements of this section [amending this section and **section 2321 of this title**]. Such guidance shall be designed to ensure that the United States—

"(1) preserves the option of competition for contracts for the production and sustainment of systems or subsystems that are developed exclusively with Federal funds as defined in accordance with the amendments made by this section; and

"(2) is not required to pay more than once for the same technical data."

**40.** Section 818 of the National Defense Authorization Act for Fiscal Year 1995, **P.L. 103–337, Oct. 5, 1994 (10 U.S.C. 2324 note)**, as amended, provided:

**“SEC. 818. PAYMENT OF RESTRUCTURING COSTS UNDER DEFENSE CONTRACTS.**

"[(a) Repealed. P. L. 105–85, §804(d), Nov. 18, 1997, 111 Stat. 1834]

"(b) REQUIREMENT FOR REGULATIONS.—Not later than January 1, 1995, the Secretary of Defense shall prescribe regulations on the allowability of restructuring costs associated with business combinations under defense contracts.

"(c) MATTERS TO BE INCLUDED.—At a minimum, the regulations shall-

"(1) include a definition of the term 'restructuring costs'; and

"(2) address the issue of contract novations under such contracts.

"(d) CONSULTATION.—In developing the regulations, the Secretary of Defense shall consult with the Administrator for Federal Procurement Policy.

"(e) REPORT.—Not later than November 13 in each of the years 1995, 1996, and 1997, the Secretary of Defense shall submit to Congress a report on the following:

"(1) A description of the procedures being followed within the Department of Defense for evaluating projected costs and savings under a defense contract resulting from a restructuring of a defense contractor associated with a business combination.

"(2) A list of all defense contractors for which restructuring costs have been allowed by the Department, along with the identities of the firms which those contractors have acquired or with which those contractors have combined since July 21, 1993, that qualify the contractors for such restructuring reimbursement.

"(3) The Department's experience with business combinations for which the Department has agreed to allow restructuring costs since July 21, 1993, including the following:

"(A) The estimated amount of costs associated with each restructuring that have been or will be treated as allowable costs under defense contracts, including the type and amounts of costs that would not have arisen absent the business combination.

"(B) The estimated amount of savings associated with each restructuring that are expected to be achieved on defense contracts.

"(C) The types of documentation relied on to establish that savings associated with each restructuring will exceed costs associated with the restructuring.

"(D) Actual experience on whether savings associated with each restructuring are exceeding costs associated with the restructuring.

"(E) Identification of any programmatic or budgetary disruption in the Department of Defense resulting from contractor restructuring.

"(f) DEFINITION.—In this section, the term 'business combination' includes a merger or acquisition.



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(g) COMPTROLLER GENERAL REPORTS.—(1) Not later than March 1, 1995, the Comptroller General shall submit to Congress a report on the adequacy of the regulations prescribed under subsection (b) with respect to—

"(A) whether such regulations are consistent with the purposes of this section, other applicable law, and the Federal Acquisition Regulation; and

"(B) whether such regulations establish policies, procedures, and standards to ensure that restructuring costs are paid only when in the best interests of the United States.

"(2) The Comptroller General shall report periodically to Congress on the implementation of the policy of the Department of Defense regarding defense industry restructuring."

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**41. Section 812 of the National Defense Authorization Act for Fiscal Year 2010, P.L. 111–84, Oct. 28, 2009 (10 U.S.C. 2326 note), provided:**

**“SEC. 812. REVISION OF DEFENSE SUPPLEMENT RELATING TO PAYMENT OF COSTS PRIOR TO DEFINITIZATION.**

"(a) REVISION REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to ensure that any limitations described in subsection (b) are applicable to all categories of undefinitized contractual actions (including undefinitized task orders and delivery orders).

"(b) LIMITATIONS.—The limitations referred to in subsection (a) are any limitations on the reimbursement of costs and the payment of profits or fees with respect to costs incurred before the definitization of an undefinitized contractual action of the Department of Defense, including—

"(1) such limitations as described in part 52.216-26 of the Federal Acquisition Regulation; and

"(2) any such limitations implementing the requirements of section 809 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2326 note)."

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**42. Section 908(a)–(c), (e) of P.L. 99–500, Oct. 18, 1986(10 U.S.C. 2326 note), P.L. 99–591, and P.L. 99–661, Nov. 14, 1986, amended by P.L. 100–26, §§3(5), 5(2), Apr. 21, 1987; P.L. 104–106, §4322(b)(2), Feb. 10, 1996, 110 Stat. 677, provided:**

**“SEC. 908. LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS; OVERSIGHT BY INSPECTOR GENERAL; WAIVER AUTHORITY.**

"(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—(1) On the last day of each six-month period described in paragraph (4), the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretary of each military department shall determine—

"(A) the total amount of funds obligated for contractual actions during the six-month period;

"(B) the total amount of funds obligated during the six-month period for undefinitized contractual actions; and

"(C) the total amount of funds obligated during the six-month period for undefinitized contractual actions that are not definitized on or before the last day of such period.

"(2) On the last day of each six-month period described in paragraph (4), the amount of funds obligated for undefinitized contractual actions entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the six-month period that are not definitized on or before such day may not exceed 10 percent of the amount of funds obligated for all contractual actions entered into by the Secretary during the six-month period.

"(3) If on the last day of a six-month period described in paragraph (4) the total amount of funds obligated for undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the six-month period exceeds the limit established in paragraph (2), the Secretary—

"(A) shall, not later than the end of the 45-day period beginning on the first day following the six-month period, submit to the defense committees an unclassified report concerning—

**TEXT OF PROVISIONS IN REPEAL PACKAGE**

"(i) the amount of funds obligated for contractual actions under the jurisdiction of the Secretary that were entered into during the six-month period with respect to which the report is submitted; and

"(ii) the amount of such funds obligated for undefinitized contractual actions; and

"(B) except with respect to the six-month period described in paragraph (4)(A), may not enter into any additional undefinitized contractual actions until the date on which the Secretary certifies to Congress that such limit is not exceeded by the cumulative amount of funds obligated for undefinitized contractual actions under the jurisdiction of the Secretary that are not definitized on or before such date and were entered into-

"(i) during the six-month period for which such limit was exceeded; or

"(ii) after the end of such six-month period.

"(4) This subsection applies to the following six-month periods:

"(A) The period beginning on October 1, 1986, and ending on March 31, 1987.

"(B) The period beginning on April 1, 1987, and ending on September 30, 1987.

"(C) The period beginning on October 1, 1987, and ending on March 31, 1988.

"(D) The period beginning on April 1, 1988, and ending on September 30, 1988.

"(E) The period beginning on October 1, 1988, and ending on March 31, 1989.

"(b) OVERSIGHT BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall-

"(1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and

"(2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

"(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the application of subsections (a) and (b) for urgent and compelling considerations relating to national security or public safety if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives of such waiver before the end of the 30-day period beginning on the date that the waiver is made.

"(e) DEFINITION.—For purposes of this section, the term 'undefinitized contractual action' has the meaning given such term in section 2326(g) [now 2326(i)] of title 10, United States Code (as added by subsection (d)(1))."

**43. Section 805 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008, (10 U.S.C. 2330 note), as amended, provided:**

**“SEC. 805. PROCUREMENT OF COMMERCIAL SERVICES.**

"(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense for the procurement of commercial services for or on behalf of the Department of Defense.

"(b) APPLICABILITY OF COMMERCIAL PROCEDURES.—

"(1) SERVICES OF A TYPE SOLD IN MARKETPLACE.—The regulations modified pursuant to subsection (a) shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial items for purposes of section 2306a of title 10, United States Code (relating to truth in negotiations), only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services.

"(2) INFORMATION SUBMITTED.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit-

"(A) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

"(c) TIME-AND-MATERIALS CONTRACTS.—

"(1) COMMERCIAL ITEM ACQUISITIONS.—The regulations modified pursuant to subsection (a) shall ensure that procedures applicable to time-and-materials contracts and labor-hour contracts for commercial item acquisitions may be used only for the following:

"(A) Services procured for support of a commercial item, as described in [section 103\(5\)](#) of title 41, United States Code.

"(B) Emergency repair services.

"(C) Any other commercial services only to the extent that the head of the agency concerned approves a determination in writing by the contracting officer that—

"(i) the services to be acquired are commercial services as defined in [section 103\(6\)](#) of title 41, United States Code;

"(ii) if the services to be acquired are subject to subsection (b), the offeror of the services has submitted sufficient information in accordance with that subsection;

"(iii) such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

"(iv) the use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

"(2) NON-COMMERCIAL ITEM ACQUISITIONS.—Nothing in this subsection shall be construed to preclude the use of procedures applicable to time-and-materials contracts and labor-hour contracts for non-commercial item acquisitions for the acquisition of any category of services."

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**44. Section 801(d)–(f) of the National Defense Authorization Act for Fiscal Year 2002, P.L. 107–107, Dec. 28, 2001 (10 U.S.C. 2330 note), as amended, provided:**

**“SEC. 801. MANAGEMENT OF PROCUREMENT SERVICES.**

(a) \*\*\*

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"(d) REQUIREMENT FOR PROGRAM REVIEW STRUCTURE.—(1) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of Defense shall issue and implement a policy that applies to the procurement of services by the Department of Defense a program review structure that is similar to the one developed for and applied to the procurement of weapon systems by the Department of Defense.

"(2) The program review structure for the procurement of services shall, at a minimum, include the following:

"(A) Standards for determining which procurements should be subject to review by either the senior procurement executive of a military department or the senior procurement executive of the Department of Defense under such section, including criteria based on dollar thresholds, program criticality, or other appropriate measures.

"(B) Appropriate key decision points at which those reviews should take place.

"(C) A description of the specific matters that should be reviewed.

"(e) COMPTROLLER GENERAL REVIEW.—Not later than 90 days after the date on which the Secretary issues the policy required by subsection (d) and the Under Secretary of Defense for Acquisition, Technology, and Logistics issues the guidance required by subsection (b)(2) [set out as a note above], the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives an assessment of the compliance with the requirements of this section [enacting this section and [section 2330a of this title](#), amending [sections 133 and 2331 of this title](#), and enacting provisions set out as a note under this section] and the amendments made by this section.

"(f) DEFINITIONS.—In this section:

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(1) The term 'senior procurement executive' means the official designated as the senior procurement executive under [section 1702\(c\) of title 41, United States Code](#).

"(2) The term 'performance-based', with respect to a contract or a task order means that the contract or task order, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes."

**45. Section 802 of the National Defense Authorization Act for Fiscal Year 2002, P.L. 107–107, Dec. 28, 2001 (10 U.S.C. 2330 note) , as amended, provided:**

**“SEC. 802. PERFORMANCE GOALS FOR PROCUREMENTS OF SERVICES.**

"(a) GOALS.—(1) It shall be an objective of the Department of Defense to achieve efficiencies in procurements of services pursuant to multiple award contracts through the use of—

"(A) performance-based services contracting;

"(B) appropriate competition for task orders under services contracts;

"(C) program review, spending analyses, and improved management of services contracts.

"(2) In furtherance of such objective, the Department of Defense shall have the following goals:

"(A) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the volume of the individual purchases of services that are made on a competitive basis and involve receipt of more than one offer from qualified contractors to a percentage as follows:

"(i) For fiscal year 2003, a percentage not less than 40 percent.

"(ii) For fiscal year 2004, a percentage not less than 50 percent.

"(iii) For fiscal year 2011, a percentage not less than 75 percent.

"(B) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the use of performance-based purchasing specifying firm fixed prices for the specific tasks to be performed to a percentage as follows:

"(i) For fiscal year 2003, a percentage not less than 25 percent.

"(ii) For fiscal year 2004, a percentage not less than 35 percent.

"(iii) For fiscal year 2005, a percentage not less than 50 percent.

"(iv) For fiscal year 2011, a percentage not less than 70 percent.

"(3) The Secretary of Defense may adjust any percentage goal established in paragraph (2) if the Secretary determines in writing that such a goal is too high and cannot reasonably be achieved. In the event that the Secretary chooses to adjust such a goal, the Secretary shall—

"(A) establish a percentage goal that the Secretary determines would create an appropriate incentive for Department of Defense components to use competitive procedures or performance-based services contracting, as the case may be; and

"(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing an explanation of the reasons for the Secretary's determination and a statement of the new goal that the Secretary has established.

"(b) ANNUAL REPORT.—Not later than March 1, 2002, and annually thereafter through March 1, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress made toward meeting the objective and goals established in subsection (a). Each report shall include, at a minimum, the following information:

"(1) A summary of the steps taken or planned to be taken in the fiscal year of the report to improve the management of procurements of services.

"(2) A summary of the steps planned to be taken in the following fiscal year to improve the management of procurements of services.

"(3) An estimate of the amount that will be expended by the Department of Defense for procurements of services in the fiscal year of the report.

"(4) An estimate of the amount that will be expended by the Department of Defense for procurements of services in the following fiscal year.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(5) Regarding the individual purchases of services that were made by or for the Department of Defense under multiple award contracts in the fiscal year preceding the fiscal year in which the report is required to be submitted, information (determined using the data collection system established under [section 2330a of title 10, United States Code](#)) as follows:

"(A) The percentage (calculated on the basis of dollar value) of such purchases that are purchases that were made on a competitive basis and involved receipt of more than one offer from qualified contractors.

"(B) The percentage (calculated on the basis of dollar value) of such purchases that are performance-based purchases specifying firm fixed prices for the specific tasks to be performed.

"(c) DEFINITIONS.—(1) In this section, the terms 'individual purchase' and 'multiple award contract' have the meanings given such term— in section 803(c) of this Act [[10 U.S.C. 2304 note](#)].

"(2) For the purposes of this section, an individual purchase of services is made on a competitive basis only if it is made pursuant to procedures described in paragraphs (2), (3), and (4) of section 803(b) of this Act [[10 U.S.C. 2304 note](#)]."

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**46. Section 1032 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, P.L. 107–314, Dec. 2, 2002 ([10 U.S.C. 2358 note](#)), as amended, provided:**

**“SEC. 1032. REPORT ON WEAPONS AND CAPABILITIES TO DEFEAT HARDENED AND DEEPLY BURIED TARGETS.**

"(a) REPORT.—Not later than March 1, 2009, and every two years thereafter, the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on the research and development, procurement, and other activities undertaken during the preceding two fiscal years and planned for the current fiscal year and the next fiscal year by the Department of Defense, the Department of Energy, and the intelligence community to develop weapons and capabilities to defeat hardened and deeply buried targets.

"(b) REPORT ELEMENTS.—A report submitted under subsection (a) shall—

"(1) include a discussion of the integration and interoperability of the activities referred to in that subsection that were or will be undertaken during the four-fiscal-year period covered by the report, including a discussion of the relevance of such activities to applicable recommendations by the Chairman of the Joint Chiefs of Staff, assisted under [section 181\(b\) of title 10, United States Code](#), by the Joint Requirements Oversight Council; and

"(2) set forth separately a description of the activities referred to in that subsection, if any, that were or will be undertaken during the four-fiscal-year period covered by the report by each element of—

"(A) the Department of Defense;

"(B) the Department of Energy; and

"(C) the intelligence community.

"(c) DEFINITION.—In this section, the term 'intelligence community' has the meaning given such term in section 3(4) of the National Security Act of 1947 ([50 U.S.C. 401a\(4\)](#)) [now [50 U.S.C. 3003\(4\)](#)].

"(d) TERMINATION.—No report is required under this section after the submission of the report that is due on **March 1, 2013**.

"(e) INTEGRATION ACTIVITIES IN FISCAL YEAR 2003 WITH RESPECT TO RNEP.—The report under subsection (a) that is due on April 1, 2004, shall include, in addition to the elements specified in subsection (b), a description of the integration and interoperability of the research and development, procurement, and other activities undertaken during fiscal year 2003 by the Department of Defense and the Department of Energy with respect to the Robust Nuclear Earth Penetrator."

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**47. Section 241 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, P.L. 107–314, Dec. 2, 2002 ([10 U.S.C. 2358 note](#)), provided:**



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**“SEC. 241. PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF DEPARTMENT OF DEFENSE.**

"(a) ADDITIONAL PILOT PROGRAM.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense.

"(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

"(A) To use innovative methods of personnel management appropriate for ensuring that the selected laboratories can-

"(i) employ and retain a workforce appropriately balanced between permanent and temporary personnel and among workers with appropriate levels of skills and experience; and

"(ii) effectively shape workforces to ensure that the workforces have the necessary sets of skills and experience to fulfill their organizational missions.

"(B) To develop or expand innovative methods of entering into and expanding cooperative relationships and arrangements with private sector organizations, educational institutions (including primary and secondary schools), and State and local governments to facilitate the training of a future scientific and technical workforce that will contribute significantly to the accomplishment of organizational missions.

"(C) To develop or expand innovative methods of establishing cooperative relationships and arrangements with private sector organizations and educational institutions to promote the establishment of the technological industrial base in areas critical for Department of Defense technological requirements.

"(D) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A), (B), and (C).

"(3) The Secretary may carry out the pilot program under this subsection at each selected laboratory for a period of three years beginning not later than March 1, 2003.

"(b) RELATIONSHIP TO FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS.—The pilot program under this section is in addition to, but may be carried out in conjunction with, the fiscal years 1999 and 2000 revitalization pilot programs.

"(c) REPORTS.—(1) Not later than January 1, 2003, the Secretary shall submit to Congress a report on the experience under the fiscal years 1999 and 2000 revitalization pilot programs in exercising the authorities provided for the administration of those programs. The report shall include a description of-

"(A) barriers to the exercise of the authorities that have been encountered;

"(B) the proposed solutions for overcoming the barriers; and

"(C) the progress made in overcoming the barriers.

"(2) Not later than September 1, 2003, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program under subsection (a) and the fiscal years 1999 and 2000 revitalization pilot programs. The report shall include, for each such pilot program, the following:

"(A) Each laboratory selected for the pilot program.

"(B) To the extent practicable, a description of the innovative methods that are to be tested at each laboratory.

"(C) The criteria to be used for measuring the success of each method to be tested.

"(3) Not later than 90 days after the expiration of the period for the participation of a laboratory in a pilot program referred to in paragraph (2), the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

"(A) A description of the methods tested.

"(B) The results of the testing.

"(C) The lessons learned.

"(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.

"(d) EXTENSION OF AUTHORITY FOR OTHER REVITALIZATION PILOT PROGRAMS.—(1) [Amended section 246(a)(4) of P.L. 105–26.]

"(2) [Amended section 245(a)(4) of P.L. 106–65.]

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(e) PARTNERSHIPS UNDER PILOT PROGRAM.—(1) The Secretary of Defense may authorize one or more laboratories and test centers participating in the pilot program under subsection (a) or in one of the fiscal years 1999 and 2000 revitalization pilot programs to enter into a cooperative arrangement (in this subsection referred to as a 'public-private partnership') with entities in the private sector and institutions of higher education for the performance of work.

"(2) A competitive process shall be used for the selection of entities outside the Government to participate in a public-private partnership.

"(3)(A) Not more than one public-private partnership may be established as a limited liability company.

"(B) An entity participating in a limited liability company as a party to a public-private partnership under the pilot program may contribute funds to the company, accept contributions of funds for the company, and provide materials, services, and use of facilities for research, technology, and infrastructure of the company, if it is determined under regulations prescribed by the Secretary of Defense that doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

"(f) FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS DEFINED.—In this section, the term 'fiscal years 1999 and 2000 revitalization pilot programs' means—

"(1) the pilot programs authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1955; [former] 10 U.S.C. 2358 note); and

"(2) the pilot programs authorized by section 245 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 552; [former] 10 U.S.C. 2358 note)."

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**48. Section 606 of Public Law 92–436, Sept. 29, 1972 (10 U.S.C. 2358 note), provided:**

**“SEC. 606. CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE.**

"(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the reasons why such course of instruction is of vital importance to the security of the United States.

"(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

"(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section."

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**49. Section 913(b) of the National Defense Authorization Act for Fiscal Year 2000, P.L. 106–65, Oct. 5, 1999 (10 U.S.C. 2364 note), provided:**

**“SEC. 913. PERFORMANCE REVIEW PROCESS.**

"Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary of Defense shall develop an appropriate performance review process for rating the quality and relevance of work performed by the Department of Defense laboratories. The process shall include customer evaluation and peer review by Department of Defense personnel and appropriate experts from outside the Department of Defense. The process shall provide for rating all laboratories of the Army, Navy, and Air Force on a consistent basis."

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

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**50.** Sections 234(a) and (b) of the National Defense Authorization Act for Fiscal Year 1987, P.L. 99–661, Nov. 14, 1986 (**10 U.S.C. 2364 note**), provided:

**“SEC. 234. COORDINATION OF RESEARCH ACTIVITIES OF DEPARTMENT OF DEFENSE.**

"(a) PURPOSE.—The purpose of this section is to strengthen coordination among Department of Defense research facilities and other organizations in the Department of Defense.

"(b) FINDINGS.—The Congress finds that centralized coordination of the collection and dissemination of technological data among research facilities and other organizations within the Department of Defense is necessary—

"(1) to ensure that personnel of the Department are currently informed about emerging technology for defense systems; and

"(2) to avoid unnecessary and costly duplication of research staffs and projects."

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**51.** Section 943(b) of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008 (**10 U.S.C. 2366a note**), as amended, provided:

**“SEC. 943.**

(a) [added section 2366b to title 10, U.S.C.]

"(b) REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall review Department of Defense Directive 5000.1 and associated guidance, and the manner in which such directive and guidance have been implemented, and take appropriate steps to ensure that the Department does not commence a technology development program for a major defense acquisition program without Milestone A approval (or Key Decision Point A approval in the case of a space program)."

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**52.** Section 1047(d) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, P.L. 110–417, Oct. 14, 2008 (**10 U.S.C. 2366b note**), as amended, provided:

**“SEC. 1047.**

(a) \*\*\*

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(d) FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that-

"(A) the bandwidth requirements needed to support such program are or will be met;

and

"(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.

"(2) REPORTS.—Not later than January 1 of each year, the Secretary of Defense and the Director of National Intelligence shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on any determinations made under paragraph (1) with respect to



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

meeting the bandwidth requirements for major defense acquisition programs and major system acquisition programs during the preceding fiscal year."

**53.** Section 844(b) of the National Defense Authorization Act for Fiscal Year 2016, P.L. 114–92, Nov. 25, 2015 (10 U.S.C. 2377 note), provided:

**“SEC. 844. MANDATORY REQUIREMENT FOR TRAINING RELATED TO THE CONDUCT OF MARKET RESEARCH.**

(a) [added a new subsection (d) [now (e)] to 10 U.S.C. 2377]

"(b) INCORPORATION INTO MANAGEMENT CERTIFICATION TRAINING MANDATE.—The Chairman of the Joint Chiefs of Staff shall ensure that the requirements of section 2377(d) [now 2377(e)] of title 10, United States Code, as added by subsection (a), are incorporated into the requirements management certification training mandate of the Joint Capabilities Integration Development System."

**54.** Section 801 of the National Defense Authorization Act for Fiscal Year 1990, P.L. 101–189, Nov. 29, 1989 (10 U.S.C. 2399 note), provided:

**“SEC. 801. ASSESSMENT OF RISK IN CONCURRENT DEVELOPMENT OF MAJOR DEFENSE ACQUISITION SYSTEMS.**

"(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish guidelines for-

"(1) determining the degree of concurrency that is appropriate for the development of major defense acquisition systems; and

"(2) assessing the degree of risk associated with various degrees of concurrency.

"(b) REPORT ON GUIDELINES.—The Secretary shall submit to Congress a report that describes the guidelines established under subsection (a) and the method used for assessing risk associated with concurrency.

"(c) REPORT ON CONCURRENCY IN MAJOR ACQUISITION PROGRAMS.—(1) The Secretary shall also submit to Congress a report outlining the risk associated with concurrency for each major defense acquisition program that is in either full-scale development or low-rate initial production as of January 1, 1990.

"(2) The report shall include consideration of the following matters with respect to each such program:

"(A) The degree of confidence in the enemy threat assessment for establishing the system's requirements.

"(B) The type of contract involved.

"(C) The degree of stability in program funding.

"(D) The level of maturity of technology involved in the system.

"(E) The availability of adequate test assets, including facilities and ranges.

"(F) The plans for transition from development to production.

"(d) SUBMISSION OF REPORTS.—The reports under subsections (b) and (c) shall be submitted to Congress not later than March 1, 1990.

"(e) DEFINITION.—For purposes of this section, the term 'concurrency' means the degree of overlap between the development and production processes of an acquisition program."

**55.** Section 807(b) of the John Warner National Defense Authorization Act for Fiscal Year 2007, P.L. 109–364, Oct. 17, 2006 (10 U.S.C. 2410p note), provided:

**“SEC. 807. LEAD SYSTEM INTEGRATORS.**

(a) [added section 2410p to title 10, U.S.C.]

"(b) UPDATE OF REGULATIONS ON LEAD SYSTEM INTEGRATORS.—Not later than December 31, 2006, the Secretary of Defense shall update the acquisition regulations of the Department of Defense in order to specify fully

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

in such regulations the matters with respect to lead system integrators set forth in section 805(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3372) and the amendments made by subsection (a) [enacting section 2410p]."

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**56.** Section 908(d) of the National Defense Authorization Act for Fiscal Year 2008, **P.L. 110–181, Jan. 28, 2008 (10 U.S.C. 2430 note)**, as amended, provided:

**“SEC. 908. ASSISTANT SECRETARIES OF THE MILITARY DEPARTMENTS FOR ACQUISITION MATTERS; PRINCIPAL MILITARY DEPUTIES.**

(a) [added a new paragraph (5) to 10 U.S.C. 3016(b)]

(b) [added a new paragraph (4) to 10 U.S.C. 5016(b)]

(c) [added a new paragraph (4) to 10 U.S.C. 8016(b)]

"(d) DUTY OF PRINCIPAL MILITARY DEPUTIES TO INFORM SERVICE CHIEFS ON MAJOR DEFENSE ACQUISITION PROGRAMS.—Each Principal Military Deputy to a service acquisition executive shall be responsible for—

"(1) keeping the Chief of Staff of the Armed Force concerned informed of the progress of major defense acquisition programs;

"(2) informing the Chief of Staff on a continuing basis of any developments on major defense acquisition programs, which may require new or revisited trade-offs among cost, schedule, technical feasibility, and performance, including—

"(A) significant cost growth or schedule slippage; and

"(B) requirements creep (as defined in section 2547(c)(1) [now 2547(d)(1)] of **title 10, United States Code**); and

"(3) ensuring that the views of the Chief of Staff on cost, schedule, technical feasibility, and performance trade-offs are strongly considered by program managers and program executive officers in all phases of the acquisition process."

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**57.** Section 837 of the National Defense Authorization Act for Fiscal Year 1994, **P.L. 103–160, Nov. 30, 1993 (10 U.S.C. 2430 note)**, as amended, provided:

**“SEC. 837. EFFICIENT CONTRACTING PROCESSES.**

"The Secretary of Defense shall take any additional actions that the Secretary considers necessary to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense. Such actions shall include, in the Secretary's discretion, developing methods to streamline the procurement process, streamlining the period for entering into contracts, and defining alternative techniques to reduce reliance on military specifications and standards, in contracts for the defense acquisition programs participating in the Defense Acquisition Pilot Program."

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**58.** Section 838 of the National Defense Authorization Act for Fiscal Year 1994, **P.L. 103–160, 30, 1993 (10 U.S.C. 2430 note)**, as amended, provided:

**“SEC. 838. CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT.**

"For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of **section 2307 of title 10, United States Code**, the Secretary of Defense should define payment milestones on the basis of quantitative measures of results."

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**59.** Section 828 of the National Defense Authorization Act for Fiscal Year 2010, P.L. 111–84, Oct. 28, 2009 (10 U.S.C. 2458 note), provided:

**“SEC. 328. IMPROVEMENT OF INVENTORY MANAGEMENT PRACTICES.**

"(a) INVENTORY MANAGEMENT PRACTICES IMPROVEMENT PLAN REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive plan for improving the inventory management systems of the military departments and the Defense Logistics Agency with the objective of reducing the acquisition and storage of secondary inventory that is excess to requirements.

"(b) ELEMENTS.—The plan under subsection (a) shall include the following:

"(1) A plan for a comprehensive review of demand-forecasting procedures to identify and correct any systematic weaknesses in such procedures, including the development of metrics to identify bias toward over-forecasting and adjust forecasting methods accordingly.

"(2) A plan to accelerate the efforts of the Department of Defense to achieve total asset visibility, including efforts to link wholesale and retail inventory levels through multi-echelon modeling.

"(3) A plan to reduce the average level of on-order secondary inventory that is excess to requirements, including a requirement for the systemic review of such inventory for possible contract termination.

"(4) A plan for the review and validation of methods used by the military departments and the Defense Logistics Agency to establish economic retention requirements.

"(5) A plan for an independent review of methods used by the military departments and the Defense Logistics Agency to establish contingency retention requirements.

"(6) A plan to identify items stored in secondary inventory that require substantial amounts of storage space and shift such items, where practicable, to direct vendor delivery.

"(7) A plan for a comprehensive assessment of inventory items on hand that have no recurring demands, including the development of—

"(A) metrics to track years of no demand for items in stock; and

"(B) procedures for ensuring the systemic review of such items for potential reutilization or disposal.

"(8) A plan to more aggressively pursue disposal reviews and actions on stocks identified for potential reutilization or disposal.

"(c) GAO REPORTS.—

"(1) ASSESSMENT OF PLAN.—Not later than 60 days after the date on which the plan required by subsection (a) is submitted as specified in that subsection, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth an assessment of the extent to which the plan meets the requirements of this section.

"(2) ASSESSMENT OF IMPLEMENTATION.—Not later than 18 months after the date on which the plan required by subsection (a) is submitted, the Comptroller General shall submit to the congressional defense committees a report setting forth an assessment of the extent to which the plan has been effectively implemented by each military department and by the Defense Logistics Agency.

"(d) INVENTORY THAT IS EXCESS TO REQUIREMENTS DEFINED.—In this section, the term 'inventory that is excess to requirements' means inventory that—

"(1) is excess to the approved acquisition objective concerned; and

"(2) is not needed for the purposes of economic retention or contingency retention."

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**60.** Section 325 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, P.L. 108–375, Oct. 28, 2004 (10 U.S.C. 2461 note), as amended, provided:

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**“SEC. 325. PILOT PROGRAM FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES FOR MILITARY INSTALLATIONS.**

"(a) PILOT PROGRAM AUTHORIZED.—The Secretary of a military department may carry out a pilot program to procure one or more of the municipal services specified in subsection (b) for a military installation under the jurisdiction of the Secretary from a county or municipality in which the installation is located for the purpose of evaluating the efficacy of procuring such services rather than providing them directly.

"(b) SERVICES AUTHORIZED FOR PROCUREMENT.—Only the following services may be procured for a military installation participating in the pilot program:

- "(1) Refuse collection.
- "(2) Refuse disposal.
- "(3) Library services.
- "(4) Recreation services.
- "(5) Facility maintenance and repair.
- "(6) Utilities.

"(c) PARTICIPATING INSTALLATIONS.—Not more than three military installations from each military service may be selected to participate in the pilot program, and only installations located in the United States are eligible for selection.

"(d) CONGRESSIONAL NOTIFICATION.—The Secretary of a military department may not enter into a contract under the pilot program for the procurement of municipal services until the Secretary notifies the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] of the proposed contract and a period of 14 days elapses from the date the notification is received by the committees.

"(e) TERMINATION OF PILOT PROGRAM.—The pilot program shall terminate on **September 30, 2012**. Any contract entered into under the pilot program shall terminate not later than that date."

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**61.** Section 336 of the National Defense Authorization Act for Fiscal Year 2004, [P.L. 108–136, Nov. 24, 2003 \(10 U.S.C. 2461 note\)](#) provided:

**“SEC. 336. PILOT PROGRAM FOR BEST-VALUE SOURCE SELECTION FOR PERFORMANCE OF INFORMATION TECHNOLOGY SERVICES.**

"(a) AUTHORITY TO USE BEST-VALUE CRITERION.—The Secretary of Defense may carry out a pilot program for the procurement of information technology services for the Department of Defense that uses a best-value criterion in the selection of the source for the performance of the information technology services.

"(b) REQUIRED EXAMINATION UNDER PILOT PROJECT.—Under the pilot program, the Secretary of Defense shall modify the examination otherwise required by section 2461(b)(3)(A) [now 2461(c)(3)(A)] of [title 10, United States Code](#), to be an examination of the performance of an information technology services function by Department of Defense civilian employees and by one or more private contractors to demonstrate whether-

"(1) a change to performance by the private sector will result in the best value to the Government over the life of the contract, as determined in accordance with the competition requirements of Office of Management and Budget Circular A–76; and

"(2) certain benefits exist, in addition to price, that warrant performance of the function by a private sector source at a cost higher than that of performance by Department of Defense civilian employees.

"(c) EXEMPTION FOR PILOT PROGRAM.—[Former] [Section 2462\(a\) of title 10, United States Code](#), does not apply to the procurement of information technology services under the pilot program.

"(d) DURATION OF PILOT PROGRAM.—(1) The authority to carry out the pilot program begins on the date on which the Secretary of Defense submits to Congress the report on the effect of the recent revisions to Office of Management and Budget Circular A–76, as required by section 335 of this Act [set out above], and expires on September 30, 2008.

"(2) The expiration of the pilot program shall not affect the selection of the source for the performance of an information technology services function for the Department of Defense for which the analysis required by

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

section 2461(b)(3) [now 2461(c)(3)] of title 10, United States Code, has been commenced before the expiration date or for which a solicitation has been issued before the expiration date.

"(e) GAO REVIEW.—Not later than February 1, 2008, the Comptroller General shall submit to Congress a report containing-

"(1) a review of the pilot program to assess the extent to which the pilot program is effective and is equitable for the potential public sources and the potential private sources of information technology services for the Department of Defense; and

"(2) any other conclusions of the Comptroller General resulting from the review.

"(f) INFORMATION TECHNOLOGY SERVICE DEFINED.—In this section, the term 'information technology service' means any service performed in the operation or maintenance of information technology (as defined in section 11101 of title 40, United States Code) that is necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel)."

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**62. Section 353(a) of the National Defense Authorization Act for Fiscal Year 1996, P.L. 104–106, Feb. 10, 1996 (10 U.S.C. 2461 note), provided:**

**“SEC. 353. PAYROLL, FINANCE, AND ACCOUNTING FUNCTIONS OF DEPARTMENT OF DEFENSE.**

"(a) PLAN FOR PRIVATE OPERATION OF CERTAIN FUNCTIONS.—(1) Not later than October 1, 1996, the Secretary of Defense shall submit to Congress a plan for the performance by private-sector sources of payroll functions for civilian employees of the Department of Defense other than employees paid from nonappropriated funds.

"(2)(A) The Secretary shall implement the plan referred to in paragraph (1) if the Secretary determines that the cost of performance by private-sector sources of the functions referred to in that paragraph does not exceed the cost of performance of those functions by employees of the Federal Government.

"(B) In computing the total cost of performance of such functions by employees of the Federal Government, the Secretary shall include the following:

"(i) Managerial and administrative costs.

"(ii) Personnel costs, including the cost of providing retirement benefits for such personnel.

"(iii) Costs associated with the provision of facilities and other support by Federal agencies.

"(C) The Defense Contract Audit Agency shall verify the costs computed for the Secretary under this paragraph by others.

"(3) At the same time the Secretary submits the plan required by paragraph (1), the Secretary shall submit to Congress a report on other accounting and finance functions of the Department that are appropriate for performance by private-sector sources."

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**63. Section 356 of the National Defense Authorization Act for Fiscal Year 1996, P.L. 104–106, Feb. 10, 1996 (10 U.S.C. 2461 note) as amended, provided:**

**“SEC. 356. PROGRAM FOR IMPROVED TRAVEL PROCESS FOR DEPARTMENT OF DEFENSE.**

"(a) IN GENERAL.—(1) The Secretary of Defense shall conduct a program to evaluate options to improve the Department of Defense travel process. To carry out the program, the Secretary shall compare the results of the tests conducted under subsection (b) to determine which travel process tested under such subsection is the better option to effectively manage travel of Department personnel.

"(2) The program shall be conducted at not less than three and not more than six military installations, except that an installation may be the subject of only one test conducted under the program.

"(3) The Secretary shall act through the Under Secretary of Defense (Comptroller) in the performance of the Secretary's responsibilities under this section.



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(b) CONDUCT OF TESTS.—(1) The Secretary shall conduct a test at an installation referred to in subsection (a)(2) under which the Secretary-

"(A) implements the changes proposed to be made with respect to the Department of Defense travel process by the task force on travel management that was established by the Secretary in July 1994;

"(B) manages and uniformly applies that travel process (including the implemented changes) throughout the Department; and

"(C) provides opportunities for private-sector sources to provide travel reservation services and credit card services to facilitate that travel process.

"(2) The Secretary shall conduct a test at an installation referred to in subsection (a)(2) under which the Secretary-

"(A) enters into one or more contracts with a private-sector source pursuant to which the private-sector source manages the Department of Defense travel process (except for functions referred to in subparagraph (B)), provides for responsive, reasonably priced services as part of the travel process, and uniformly applies the travel process throughout the Department; and

"(B) provides for the performance by employees of the Department of only those travel functions, such as travel authorization, that the Secretary considers to be necessary to be performed by such employees.

"(3) Each test required by this subsection shall begin not later than 60 days after the date of the enactment of this Act [Feb. 10, 1996] and end two years after the date on which it began. Each such test shall also be conducted in accordance with the guidelines for travel management issued for the Department by the Under Secretary of Defense (Comptroller).

"(c) EVALUATION CRITERIA.—The Secretary shall establish criteria to evaluate the travel processes tested under subsection (b). The criteria shall, at a minimum, include the extent to which a travel process provides for the following:

"(1) The coordination, at the time of a travel reservation, of travel policy and cost estimates with the mission which necessitates the travel.

"(2) The use of fully integrated travel solutions envisioned by the travel reengineering report of the Department of Defense dated January 1995.

"(3) The coordination of credit card data and travel reservation data with cost estimate data.

"(4) The elimination of the need for multiple travel approvals through the coordination of such data with proposed travel plans.

"(5) A responsive and flexible management information system that enables the Under Secretary of Defense (Comptroller) to monitor travel expenses throughout the year, accurately plan travel budgets for future years, and assess, in the case of travel of an employee on temporary duty, the relationship between the cost of the travel and the value of the travel to the accomplishment of the mission which necessitates the travel.

"(d) PLAN FOR PROGRAM.—Before conducting the program, the Secretary shall develop a plan for the program that addresses the following:

"(1) The purposes of the program, including the achievement of an objective of reducing by at least 50 percent the total cost incurred by the Department annually to manage the Department of Defense travel process.

"(2) The methodology and anticipated cost of the program, including the cost of an arrangement pursuant to which a private-sector source would receive an agreed-upon payment plus an additional negotiated amount that does not exceed 50 percent of the total amount saved in excess of the objective specified in paragraph (1).

"(3) A specific citation to any provision of law, rule, or regulation that, if not waived, would prohibit the conduct of the program or any part of the program.

"(4) The evaluation criteria established pursuant to subsection (c).

"(5) A provision for implementing throughout the Department the travel process determined to be the better option to effectively manage travel of Department personnel on the basis of a final assessment of the results of the program.

"(e) REPORT.—After the first full year of the conduct of the tests required by subsection (b), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the implementation of the program. The report shall include an analysis of the evaluation criteria established pursuant to subsection (c)."

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

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**64.** Section 4101 of the National Defense Authorization Act for Fiscal Year 1993, **P.L. 102–484, Oct. 23, 1992 (10 U.S.C. 2500 note)**, provided:

**“SEC. 4101. CONGRESSIONAL FINDINGS.**

"Congress makes the following findings:

"(1) The collapse of communism in Eastern Europe and the dissolution of the Soviet Union have fundamentally changed the military threat that formed the basis for the national security policy of the United States since the end of World War II.

"(2) The change in the military threat presents a unique opportunity to restructure and reduce the military requirements of the United States.

"(3) As the United States proceeds with the post-Cold War defense build down, the Nation must recognize and address the impact of reduced defense spending on the military personnel, civilian employees, and defense industry workers who have been the foundation of the national defense policies of the United States.

"(4) The defense build down will have a significant impact on communities as procurements are reduced and military installations are closed and realigned.

"(5) Despite the changes in the military threat, the United States must maintain the capability to respond to regional conflicts that threaten the national interests of the United States, and to reconstitute forces in the event of an extended conflict.

"(6) The skills and capabilities of military personnel, civilian employees of the Department of Defense, defense industry workers, and defense industries represent an invaluable national resource that can contribute to the economic growth of the United States and to the long-term vitality of the national technology and industrial base.

"(7) Prompt and vigorous implementation of defense conversion, reinvestment, and transition assistance programs is essential to ensure that the defense build down is structured in a manner that—

"(A) enhances the long-term ability of the United States to maintain a strong and vibrant national technology and industrial base; and

"(B) promotes economic growth."

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**65.** Section 256 of the National Defense Authorization Act for Fiscal Year 2008, **P.L. 110–417, §256, Oct. 14, 2008 (10 U.S.C. 2501 note)** provided:

**“SEC. 256. EXECUTIVE AGENT FOR PRINTED CIRCUIT BOARD TECHNOLOGY.**

"(a) EXECUTIVE AGENT.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall designate a senior official of the Department of Defense to act as the executive agent for printed circuit board technology.

"(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—

"(1) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and in accordance with Directive 5101.1, the Secretary of Defense shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a).

"(2) SPECIFICATION.—The roles and responsibilities of the executive agent designated under subsection (a) shall include each of the following:

"(A) Development and maintenance of a printed circuit board and interconnect technology roadmap that ensures that the Department of Defense has access to the manufacturing capabilities and technical expertise necessary to meet future military requirements regarding such technology.

"(B) Development of recommended funding strategies necessary to meet the requirements of the roadmap developed under subparagraph (A).

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(C) Assessment of the vulnerabilities, trustworthiness, and diversity of the printed circuit board supply chain, including the development of trustworthiness requirements for printed circuit boards used in defense systems, and to develop strategies to address matters that are identified as a result of such assessment.

"(D) Such other roles and responsibilities as the Secretary of Defense considers appropriate.

"(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—In accordance with Directive 5101.1, the Secretary of Defense shall ensure that the military departments, Defense Agencies, and other components of the Department of Defense provide the executive agent designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agent.

"(d) DEFINITIONS.—In this section:

"(1) The term 'Directive 5101.1' means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

"(2) The term 'executive agent' has the meaning given the term 'DoD Executive Agent' in Directive 5101.1."

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**66.** Section 1118 of the National Defense Authorization Act for Fiscal Year 1995, P.L. 103–337, Oct. 5, 1994 (**10 U.S.C. 2501note**), provided:

**“SEC. 1118. DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS.**

"At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 2501(a) of such title or a particular policy objective set forth in [former] section 2501(b) of such title."

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**67.** Section 238(b) of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008 (**10 U.S.C. 2521 note**), provided:

**“SEC. 238. STRATEGIC PLAN FOR THE MANUFACTURING TECHNOLOGY PROGRAM.**

(a) [amended 10 U.S.C. 2521 to add a new subsection (e)]

“(b) INITIAL DEVELOPMENT AND SUBMISSION OF PLAN.—

"(1) DEVELOPMENT.—The Secretary of Defense shall develop the strategic plan required by subsection (e) [now (f)] of [section 2521 of title 10, United States Code](#) (as added by subsection (a) of this section), so that the plan goes into effect at the beginning of fiscal year 2009.

"(2) SUBMISSION.—Not later than the date on which the budget of the President for fiscal year 2010 is submitted to Congress under [section 1105 of title 31, United States Code](#), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the plan specified in paragraph (1)."

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**68.** Section 823 of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108–136, Nov. 24, 2003 (**10 U.S.C. 2521 note**), provided:

**“SEC. 823. TECHNICAL ASSISTANCE RELATING TO MACHINE TOOLS.**



**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(a) TECHNICAL ASSISTANCE.—The Secretary of Defense shall publish in the Federal Register information on Government contracting for purposes of assisting machine tool companies in the United States and entities that use machine tools. The information shall contain, at a minimum, the following:

"(1) An identification of resources with respect to Government contracting regulations, including compliance procedures and information on the availability of counseling.

"(2) An identification of resources for locating opportunities for contracting with the Department of Defense, including information about defense contracts that are expected to be carried out that may require the use of machine tools.

"(b) SCIENCE AND TECHNOLOGY INITIATIVES.—The Secretary of Defense shall incorporate into the Department of Defense science and technology initiatives on manufacturing technology an objective of developing advanced machine tool capabilities. Such technologies shall be used to improve the technological capabilities of the United States domestic machine tool industrial base in meeting national security objectives."

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**69.** Section 823 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, P.L. 111–383, Jan. 7, 2011 (**10 U.S.C. 2533b note**), provided:

**“SEC. 823. REVIEW OF REGULATORY DEFINITION RELATING TO PRODUCTION OF SPECIALTY METALS.**

"(a) REVIEW REQUIRED.—The Secretary of Defense shall review the regulations specified in subsection (b) to ensure that the definition of the term 'produce' in such regulations complies with the requirements of [section 2533b of title 10, United States Code](#). In carrying out the review, the Secretary shall seek public comment, consider congressional intent, and revise the regulations as the Secretary considers necessary and appropriate.

"(b) REGULATIONS SPECIFIED.—The regulations referred to in subsection (a) are any portion of subpart 252.2 of the defense supplement to the Federal Acquisition Regulation that includes a definition of the term 'produce' for purposes of implementing [section 2533b of title 10, United States Code](#).

"(c) COMPLETION OF REVIEW.—The Secretary shall complete the review required by subsection (a) and any necessary and appropriate revisions to the defense supplement to the Federal Acquisition Regulation not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011]."

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**70.** Section 804(h) of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110–181, Jan. 28, 2008 (**10 U.S.C. 2533b note**), provided:

**“SEC. 804. CLARIFICATION OF THE PROTECTION OF STRATEGIC MATERIALS CRITICAL TO NATIONAL SECURITY.**

(a) \*\*\*

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"(h) REVISION OF DOMESTIC NONAVAILABILITY DETERMINATIONS AND RULES.—No later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], any domestic nonavailability determination under [section 2533b of title 10, United States Code](#), including a class deviation, or rules made by the Department of Defense between December 6, 2006, and the date of the enactment of this Act, shall be reviewed and amended, as necessary, to comply with the amendments made by this section [amending this section and enacting provisions set out as a note under this section]. This requirement shall not apply to a domestic nonavailability determination that applies to—

"(1) an individual contract that was entered into before the date of the enactment of this Act; or

"(2) an individual Department of Defense program, except to the extent that such domestic nonavailability determination applies to contracts entered into after the date of the enactment of this Act."

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**71.** Section 842(b) of the John Warner National Defense Authorization Act for Fiscal Year 2007, P.L. 109–364, Oct. 17, 2006 (**10 U.S.C. 2533b note**), provided:

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

**“SEC. 842. PROTECTION OF STRATEGIC MATERIALS CRITICAL TO NATIONAL SECURITY.**

(a) \*\*\*

(b) ONE-TIME WAIVER OF SPECIALTY METALS DOMESTIC SOURCE REQUIREMENT.—

"(1) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may accept specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States before the date of the enactment of this Act [Oct. 17, 2006] with respect to which the contracting officer for the contract determines that the contractor is not in compliance with [section 2533b of title 10, United States Code](#) (as added by subsection (a)(1)), if-

"(A) the contracting officer for the contract determines in writing that-

"(i) it would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

"(ii) the prime contractor and subcontractor responsible for providing items containing non-compliant materials have in place an effective plan to ensure compliance with [section 2533b of title 10, United States Code](#) (as so added), with regard to items containing specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States after the date of the enactment of this Act [Oct. 17, 2006]; and

"(iii) the non-compliance is not knowing or willful; and

"(B) the Under Secretary of Defense for Acquisition, Technology, and Logistics or the service acquisition executive of the military department concerned approves the determination.

"(2) NOTICE.—Not later than 15 days after a contracting officer makes a determination under paragraph (1)(A) with respect to a contract, the contracting officer shall post a notice on FedBizOps.gov that a waiver has been granted for the contract under this subsection.

"(3) DEFINITION.—In this subsection, the term 'FedBizOps.gov' means the website maintained by the General Services Administration known as FedBizOps.gov (or any successor site).

"(4) TERMINATION OF AUTHORITY.—A contracting officer may exercise the authority under this subsection only with respect to the delivery of items the final acceptance of which takes place after the date of the enactment of this Act [Oct. 17, 2006] and before September 30, 2010."

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**72. Section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, P.L. 106–398, Oct. 30, 2000 (10 U.S.C. 4551 note), as amended, provided:**

**“SEC. 343. ARSENAL SUPPORT PROGRAM INITIATIVE.**

"(a) DEMONSTRATION PROGRAM REQUIRED.—To help maintain the viability of the Army manufacturing arsenals and the unique capabilities of these arsenals to support the national security interests of the United States, the Secretary of the Army shall carry out a demonstration program under this section during fiscal years 2001 through 2012 at each manufacturing arsenal of the Department of the Army.

"(b) PURPOSES OF DEMONSTRATION PROGRAM.—The purposes of the demonstration program are as follows:

"(1) To provide for the utilization of the existing skilled workforce at the Army manufacturing arsenals by commercial firms.

"(2) To provide for the reemployment and retraining of skilled workers who, as a result of declining workload and reduced Army spending on arsenal production requirements at these Army arsenals, are idled or underemployed.

"(3) To encourage commercial firms, to the maximum extent practicable, to use these Army arsenals for commercial purposes.

"(4) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use these Army arsenals for those purposes.

"(5) To maintain in the United States a work force having the skills in manufacturing processes that are necessary to meet industrial emergency planned requirements for national security purposes.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(6) To demonstrate innovative business practices, to support Department of Defense acquisition reform, and to serve as both a model and a laboratory for future defense conversion initiatives of the Department of Defense.

"(7) To the maximum extent practicable, to allow the operation of these Army arsenals to be rapidly responsive to the forces of free market competition.

"(8) To reduce or eliminate the cost of Government ownership of these Army arsenals, including the costs of operations and maintenance, the costs of environmental remediation, and other costs.

"(9) To reduce the cost of products of the Department of Defense produced at these Army arsenals.

"(10) To leverage private investment at these Army arsenals through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the demonstration program for the following activities:

"(A) Recapitalization of plant and equipment.

"(B) Environmental remediation.

"(C) Promotion of commercial business ventures.

"(D) Other activities approved by the Secretary of the Army.

"(11) To foster cooperation between the Department of the Army, property managers, commercial interests, and State and local agencies in the implementation of sustainable development strategies and investment in these Army arsenals.

"(c) CONTRACT AUTHORITY.—(1) In the case of each Army manufacturing arsenal, the Secretary of the Army may enter into contracts with commercial firms to authorize the contractors, consistent with [section 4543 of title 10, United States Code](#)—

"(A) to use the arsenal, or a portion of the arsenal, and the skilled workforce at the arsenal to manufacture weapons, weapon components, or related products consistent with the purposes of the program; and

"(B) to enter into subcontracts for the commercial use of the arsenal consistent with such purposes.

"(2) A contract under paragraph (1) shall require the contractor to contribute toward the operation and maintenance of the Army manufacturing arsenal covered by the contract.

"(3) In the event an Army manufacturing arsenal is converted to contractor operation, the Secretary may enter into a contract with the contractor to authorize the contractor, consistent with [section 4543 of title 10, United States Code](#)—

"(A) to use the facility during the period of the program in a manner consistent with the purposes of the program; and

"(B) to enter into subcontracts for the commercial use of the facility consistent with such purposes.

"(d) LOAN GUARANTEES.—(1) Subject to paragraph (2), the Secretary of the Army may guarantee the repayment of any loan made to a commercial firm to fund, in whole or in part, the establishment of a commercial activity at an Army manufacturing arsenal under this section.

"(2) Loan guarantees under this subsection may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required by section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

"(3) The Secretary of the Army may enter into agreements with the Administrator of the Small Business Administration or the Administrator of the Farmers Home Administration, the Administrator of the Rural Development Administration, or the head of other appropriate agencies of the Department of Agriculture, under which such Administrators may, under this subsection—

"(A) process applications for loan guarantees;

"(B) guarantee repayment of loans; and

"(C) provide any other services to the Secretary of the Army to administer this subsection.

"(4) An Administrator referred to in paragraph (3) may guarantee loans under this section to commercial firms of any size, notwithstanding any limitations on the size of applicants imposed on other loan guarantee programs that the Administrator administers. To the extent practicable, each Administrator shall use the same procedures for processing loan guarantee applications under this subsection as the Administrator uses for processing loan guarantee applications under other loan guarantee programs that the Administrator administers.

**[TEXT OF PROVISIONS IN REPEAL PACKAGE]**

"(e) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under subsection (d) may not exceed-

"(1) \$20,000,000, with respect to any single borrower; and

"(2) \$320,000,000 with respect to all borrowers.

"(f) TRANSFER OF FUNDS.—The Secretary of the Army may transfer to an Administrator providing services under subsection (d), and the Administrator may accept, such funds as may be necessary to administer loan guarantees under such subsection."

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**809 PANEL RECOMMENDATIONS FOR REPEAL OF  
CERTAIN TITLE 10 “NOTE” SECTIONS**

[Sections are set out in U.S. Code section order]

1    **SEC. \_\_\_\_.** REPEAL OF CERTAIN DEFENSE ACQUISITION LAWS CLASSIFIED AS  
2                            **“NOTE” SECTIONS IN THE PUBLICATION OF TITLE 10, UNITED**  
3                            **STATES CODE, THAT REQUIRED THE ISSUANCE OF REGULATIONS**  
4                            **OR THAT HAVE EXPIRED OR ARE OTHERWISE OBSOLETE.**

5            The following provisions of law are repealed:

6                            (1) Section 387(c) of the National Defense Authorization Act for Fiscal Year  
7                            1998 (Public Law 105-85; 10 U.S.C. 195 note).

8                            (2) Section 801 of the Carl Levin and Howard P. “Buck” McKeon National  
9                            Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 2223a  
10                            note).

11                            (3) Section 938 of the National Defense Authorization Act for Fiscal Year 2014  
12                            (Public Law 113–66; 10 U.S.C. 2223a note).

13                            (4) Section 934 of the National Defense Authorization Act for Fiscal Year 2013  
14                            (Public Law 112–239; 10 U.S.C. 2223a note).

15                            (5) Section 2867 of the National Defense Authorization Act for Fiscal Year 2012  
16                            (Public Law 112–81; 10 U.S.C. 2223a note).

17                            (6) Section 215 of the Ike Skelton National Defense Authorization Act for Fiscal  
18                            Year 2011 (Public Law 111–383; 10 U.S.C. 2223a note).

## SECTION 809 PANEL RECOMMENDATIONS FOR REPEAL OF CERTAIN TITLE 10 NOTE SECTIONS

(7) Section 804 of the National Defense Authorization Act for Fiscal Year 2010  
(Public Law 111–84; 10 U.S.C. 2223a note).

(8) Section 881 of the National Defense Authorization Act for Fiscal Year 2008  
(Public Law 110–181; 10 U.S.C. 2223a note).

(9) Section 814(a) of the National Defense Authorization Act for Fiscal Year  
2017 (Public Law 114–328; 10 U.S.C. 2302 note).

(10) Section 881 of the National Defense Authorization Act for Fiscal Year 2016  
(Public Law 114–92; 10 U.S.C. 2302 note).

(11) Section 804 of the National Defense Authorization Act for Fiscal Year 2013  
(Public Law 112–239; 10 U.S.C. 2302 note).

(12) Section 843 of the National Defense Authorization Act for Fiscal Year 2013  
(Public Law 112–239; 10 U.S.C. 2302 note).

(13) Section 844 of the National Defense Authorization Act for Fiscal Year 2013  
(Public Law 112–239; 10 U.S.C. 2302 note).

(14) Section 818(g) of the National Defense Authorization Act for Fiscal Year  
2012 (Public Law 112–81; 10 U.S.C. 2302 note).

(15) Section 127 of the Ike Skelton National Defense Authorization Act for Fiscal  
Year 2011 (Public Law 111–383; 10 U.S.C. 2302 note).

(16) Section 815(b) of the National Defense Authorization Act for Fiscal Year  
2008 (Public Law 110–181; 10 U.S.C. 2302 note).

(17) Section 812 of the John Warner National Defense Authorization Act for  
Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2302 note).

## SECTION 809 PANEL RECOMMENDATIONS FOR REPEAL OF CERTAIN TITLE 10 NOTE SECTIONS

(18) Section 806 of the National Defense Authorization Act for Fiscal Year 2006  
(Public Law 109–163; 10 U.S.C. 2302 note).

(19) Section 817 of the National Defense Authorization Act for Fiscal Year 2006  
(Public Law 109-163; 10 U.S.C. 2302 note).

(20) Section 141 of the Ronald W. Reagan National Defense Authorization Act  
for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 2302 note).

(21) Section 802 of the Ronald W. Reagan National Defense Authorization Act  
for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 2302 note).

(22) Section 801(b) of the National Defense Authorization Act for Fiscal Year  
2004 (Public Law 108–136; 10 U.S.C. 2302 note).

(23) Section 805(a) of the National Defense Authorization Act for Fiscal Year  
2004 (Public Law 108–136; 10 U.S.C. 2302 note).

(24) Section 352 of the Bob Stump National Defense Authorization Act for Fiscal  
Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note).

(25) Section 326 of the National Defense Authorization Act for Fiscal Year 1993  
(Public Law 102–484; 10 U.S.C. 2302 note).

(26) Section 9004 of the Department of Defense Appropriations Act, 1990 (Public  
Law 101–165; 10 U.S.C. 2302 note).

(27) Section 913 of the Department of Defense Authorization Act, 1986 (Public  
Law 99–145; 10 U.S.C. 2302 note).

(28) Section 802 of the Duncan Hunter National Defense Authorization Act for  
Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2304 note).

## SECTION 809 PANEL RECOMMENDATIONS FOR REPEAL OF CERTAIN TITLE 10 NOTE SECTIONS

(29) Section 821 of the National Defense Authorization Act for Fiscal Year 2008  
(Public Law 110–181; 10 U.S.C. 2304 note).

(30) Section 813 of the John Warner National Defense Authorization Act for  
Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2304 note).

(31) Section 391 of the National Defense Authorization Act for Fiscal Year 1998  
(Public Law 105–85; 10 U.S.C. 2304 note).

(32) Section 927(b) of Public Laws 99–500, 99–591, and 99–661 (10 U.S.C. 2304  
note).

(33) Section 1222(b) of the National Defense Authorization Act for Fiscal Year  
1987 (Public Law 99–661; 10 U.S.C. 2304 note).

(34) Section 814(b) of the National Defense Authorization Act for Fiscal Year  
2010 (Public Law 111-84; 10 U.S.C. 2304a note).

(35) Section 834 of the John Warner National Defense Authorization Act for  
Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2304b note).

(36) Section 803 of the Strom Thurmond National Defense Authorization Act for  
Fiscal Year 1999 (Public Law 105–261; 10 U.S.C. 2306a note).

(37) Section 1075 of the National Defense Authorization Act for Fiscal Year 1995  
(Public Law 103–337; 10 U.S.C. 2315 note).

(38) Section 824(a) of the Ike Skelton National Defense Authorization Act for  
Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2320 note).

(39) Section 818 of the National Defense Authorization Act for Fiscal Year 1995  
(Public Law 103–337; 10 U.S.C. 2324 note).



## SECTION 809 PANEL RECOMMENDATIONS FOR REPEAL OF CERTAIN TITLE 10 NOTE SECTIONS

(40) Section 812 of the National Defense Authorization Act for Fiscal Year 2010  
(Public Law 111–84; 10 U.S.C. 2326 note).

(41) Sections 908(a), (b), (c), and (e) of Public Laws 99–500, 99–591, and 99–661  
(10 U.S.C. 2326 note).

(42) Section 805 of the National Defense Authorization Act for Fiscal Year 2008  
(Public Law 110–181; 10 U.S.C. 2330 note).

(43) Sections 801(d), (e), and (f) of the National Defense Authorization Act for  
Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 2330 note).

(44) Section 802 of the National Defense Authorization Act for Fiscal Year 2002  
(Public Law 107–107; 10 U.S.C. 2330 note).

(45) Section 1032 of the Bob Stump National Defense Authorization Act for  
Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2358 note).

(46) Section 241 of the Bob Stump National Defense Authorization Act for Fiscal  
Year 2003 (Public Law 107–314; 10 U.S.C. 2358 note).

(47) Section 606 of Public Law 92–436 (10 U.S.C. 2358 note).

(48) Section 913(b) of the National Defense Authorization Act for Fiscal Year  
2000 (Public Law 106–65; 10 U.S.C. 2364 note).

(49) Sections 234(a) and (b) of the National Defense Authorization Act for Fiscal  
Year 1987 (Public Law 99–661; 10 U.S.C. 2364 note).

(50) Section 943(b) of the National Defense Authorization Act for Fiscal Year  
2008 (Public Law 110–181; 10 U.S.C. 2366a note).

(51) Section 1047(d) of the Duncan Hunter National Defense Authorization Act  
for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2366b note).

## SECTION 809 PANEL RECOMMENDATIONS FOR REPEAL OF CERTAIN TITLE 10 NOTE SECTIONS

(52) Section 844(b) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2377 note).

(53) Section 801 of the National Defense Authorization Act for Fiscal Year 1990 (Public Law 101–189; 10 U.S.C. 2399 note).

(54) Section 807(b) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2410p note).

(55) Section 908(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2430 note).

(56) Section 837 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2430 note).

(57) Section 838 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2430 note).

(58) Section 828 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2458 note).

(59) Section 325 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 2461 note).

(60) Section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2461 note).

(61) Section 353(a) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2461 note).

(62) Section 356 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2461 note).

## SECTION 809 PANEL RECOMMENDATIONS FOR REPEAL OF CERTAIN TITLE 10 NOTE SECTIONS

(63) Section 4101 of the National Defense Authorization Act for Fiscal Year 1993  
(Public Law 102–484; 10 U.S.C. 2500 note).

(64) Section 256 of the National Defense Authorization Act for Fiscal Year 2008  
(Public Law 110–417; 10 U.S.C. 2501 note).

(65) Section 1118 of the National Defense Authorization Act for Fiscal Year 1995  
(Public Law 103–337; 10 U.S.C. 2501note).

(66) Section 238(b) of the National Defense Authorization Act for Fiscal Year  
2008 (Public Law 110–181; 10 U.S.C. 2521 note).

(67) Section 823 of the National Defense Authorization Act for Fiscal Year 2004  
(Public Law 108–136; 10 U.S.C. 2521 note).

(68) Section 823 of the Ike Skelton National Defense Authorization Act for Fiscal  
Year 2011 (Public Law 111–383; 10 U.S.C. 2533b note).

(69) Section 804(h) of the National Defense Authorization Act for Fiscal Year  
2008 (Public Law 110–181; 10 U.S.C. 2533b note).

(70) Section 842(b) of the John Warner National Defense Authorization Act for  
Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2533b note).

(71) Section 343 of the Floyd D. Spence National Defense Authorization Act for  
Fiscal Year 2001 (as enacted into law by Public Law 106–398; 10 U.S.C. 4551 note).



# Advisory Panel on Streamlining and Codifying Acquisition Regulations

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## Section 809 Panel Recommendations #2 for Repeal of Acquisition-Related Provisions of Law

March 23, 2018







March 23, 2018

The Honorable Mac Thornberry  
Chairman  
Committee on Armed Services  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Section 809 Panel, as part of its “streamlining” mandate, recommends that the provisions of law specified on the attached list be repealed. There are 32 provisions on the list, all of which relate to defense acquisition. Three are sections of title 10, United States Code; the remainder appear in the U.S. Code as “note” sections under various provisions of title 10. Also attached are (1) draft legislation to carry out the proposed repeals, and (2) a document with the current text of the provisions of law proposed for repeal.

This recommendation is a follow-on to a similar recommendation transmitted to the congressional defense committees in late February. That recommendation provided a list of 71 provisions of law proposed for repeal.

As in the case of the February transmittal, the provisions recommended for repeal in this transmittal generally (1) required the Department to issue regulations (directives or guidance, etc.), (2) have now expired by their own terms, or (3) are otherwise obsolete.

The Panel believes that enactment of the repeals recommended in the two lists would be a significant step toward “decluttering” the Code.

As in the case of the February transmittal, the Panel wishes to emphasize that, with respect to any recommendation for repeal of a statutory requirement for issuance of a regulation, the Panel is not expressing a view on the merits of the policies covered by the regulation. Rather, in recommending repeal of the statutory requirement for a regulation, the Panel is recommending that the Secretary of Defense be allowed to revise the regulation as circumstances warrant. Repeal of the statutory requirement for the regulation would allow the Secretary to revise or rescind the regulation, but would not require it; the decision to retain, or not retain, the regulation would be up to the Secretary.

As part of its ongoing work reviewing defense acquisition statutes, the Panel may identify further provisions to recommend to Congress for repeal.

The Panel is submitting these recommendations at this time, rather than waiting to include them in Volume II of the Panel's report in June of this year, in order to provide the committees the fullest opportunity to consider them for inclusion in the National Defense Authorization Act for Fiscal Year 2019.

Sincerely,



David Drabkin  
Chair, Section 809 Panel

Attachments:

- (1) Spreadsheet with list of provisions recommended for repeal
- (2) Text of provisions recommended for repeal
- (3) Draft statutory text to carry out the recommended repeals

cc:

The Honorable Adam Smith  
Ranking Member



## Provisions Recommended for Repeal by Section 809 Panel - 2d Tranche

|   | A              | B   | C  | D   | E                        |
|---|----------------|---|--|---|--------------------------|
|   | 10 USC Section | Source Cite                                 | Title  | Description   | 809 Panel Recommendation |
| 1 | 167a           |   | Unified combatant command for joint warfighting experimentation: acquisition authority                 | Enacted Nov. 24, 2003; expired Sept. 30, 2010. Authorized SecDef to delegate certain limited acquisition authority to the commander of the unified combatant command that has the mission for joint warfighting experimentation, as assigned by the SecDef; internal inspector general audits required            | Repeal                   |
| 2 | 2302 note      | FY17 NDAA, P.L. 114-328, §854, Dec 23, 2016 | Key Performance Parameter Reduction Pilot Program  | Enacted in Dec 2016 – allows SecDef to carry out pilot program to reduce performance measurements for an acquisition program (no more than 3); no sunset date   | Repeal                   |
| 3 | 2302 note      | FY13 NDAA, P.L. 112-239, §829, Jan 2, 2013  | Extension of Contractor Conflict of Interest Limitations   | Enacted in Jan 2013 – required SecDef review guidance (within 180 days) on personal conflict of interest for contractor employees (enacted in 2009) for possible extension (and DFARS revision) related to additional covered functions   | Repeal                   |
| 4 | 2304 note      | FY16 NDAA, P.L. 114-92, §895, Nov 25, 2015  | Mitigating Potential Unfair Advantage for Technical Advisors   | Enacted in Nov 2015 – required AT&L review of guidance (within 180 days) to mitigate potential unfair competitive advantages of technical advisors  | Repeal                   |
| 5 | 2313 note      | FY12 NDAA, P.L. 112-81, §842, Dec 31, 2011  | Additional Access to Contractor and Subcontractor Records in the Central Command Theater of Operations | Enacted in Dec 2011 – required SecDef to revise DFARS to include a clause in all covered contracts to allow examination of records upon written determination of probable extortion or corruption; required flow-down of clause; required submission of reports (for 3 years) to congressional defense committees | Repeal                   |
| 6 | 2323           |   | Contract goal for small disadvantaged businesses and certain institutions of higher education          | Authority expired 9/30/09. Established a 5% contract goal for contracts/subcontracts with socially & economically disadvantaged firms, historically Black colleges and other special groups; authorized technical and other assistance as well as advance payments.   | Repeal                   |

## Provisions Recommended for Repeal by Section 809 Panel - 2d Tranche

|    | A              | B  | C   | D   | E                        |
|----|----------------|--|---|---|--------------------------|
|    | 10 USC Section | Source Cite  | Title   | Description   | 809 Panel Recommendation |
| 1  |                |  |   |   |                          |
| 8  | 2330 note      | FY17 NDAA, P.L. 114-328, §803(a), 12/23/16             | Modernization of Services Acquisition                           | Enacted in Dec 2016 – required SecDef review and possible revision of DOD instruction 5000.74 (within 180 days) on acquisition of services, considering changes in technology   | Repeal                   |
| 9  | 2330 note      | FY16 NDAA, P.L. 114-92, §882, Nov 25, 2015             | Guidance Relating to Oversight & Approval of Services Contracts | Enacted in Nov 2015 – required AT&L to examine (by March 2016) decision authority on services acquisition & issue guidance to improve capabilities  | Repeal                   |
| 10 | 2330 note      | FY12 NDAA, P.L. 112-81, §807, Dec 31, 2011             | Defense Science Board Recommendations on Services               | Enacted in Dec 2011 – required AT&L to develop a plan (within 180 days) to implement recommendations of DSB to improve services acquisition; required GAO report (by Dec 2011)  | Repeal                   |
| 11 | 2330 note      | FY11 NDAA, P.L. 111-111-383, §863(a)-(h), Jan. 7, 2011 | Requirements for The Acquisition of Services                    | Enacted in January 2011 – required SecDef to ensure implementation plans are in place by the military departments for proper processes for identifying, assessing and validating requirements for the acquisition of services (for operational commands and supporting requirements); plans must be consistent with joint policy guidance   | Repeal                   |
| 12 | 2330 note      | FY08 NDAA, P.L. 110-110-181, §808, Jan. 28, 2008       | Independent Management Reviews of Contracts for Services        | Enacted in January 2008 – required SecDef to issue guidance (within 180 days) to provide independent reviews of services contracts (related to cost/schedule & performance, contracting vehicles, pass throughs, reliance of use of contractors for closely associated inherently governmental work, ETC); required report to congressional defense committees (in 270 days) and a GAO review | Repeal                   |

## Provisions Recommended for Repeal by Section 809 Panel - 2d Tranche

|    | A              | B   | C  | D  | E                        |
|----|----------------|---|--|--|--------------------------|
|    | 10 USC Section | Source Cite   | Title  | Description  | 809 Panel Recommendation |
| 1  |                |   |  |  |                          |
| 13 | 2330 note      | FY06 NDAA, P.L. 109-163, §812(b)-(c), Jan 6, 2006         | Management Structure for the Procurement of Contract Services: Phased Implementation | Enacted in Jan 2006 – required AT&L to implement in phases requirements for services acquisition (including establishing categories & dollar thresholds); required report to SASC & HASC within one year of enactment. Last phase was 2009   | Repeal                   |
| 14 | 2330a note     | FY09 NDAA, P.L. 110-417, §831                             | Development of Guidance on Personal Services Contracts                               | Enacted in 2008 -- required SecDef develop guidance (in 270 days) on personal service contracts  | Repeal                   |
| 15 | 2332           |   | Share-in-savings contracts.  | Enacted in Dec 2002; terminated Sept. 2005. Allowed agency head to enter into share-in-savings contracts (up to five years) for information technology to accelerate achievement of mission and to share with contractor any savings on contract performance; provided for cancellation/termination of contract if funds no longer available for contract. | Repeal                   |
| 16 | 2401a note     | FY2000 DoD Approps Act, §8133, P.L. 106-79, Oct. 25, 1999 | Multi-Year Aircraft Lease Pilot Program  | Enacted in 1999 - authorized a multiyer pilot program for lease by the AF of operational support aircraft. Limited to six aircraft and provided that no lease could be entered into under the pilot program after Sept 30, 2004.   | Repeal                   |
| 17 | 2430 note      | FY16 NDAA, P.L. 114-92, §825(c)(1), (2), Nov 25, 2015     | Designation of Milestone Decision Authority: Implementation                          | Enacted in Nov 2015 – required SecDef to submit a plan (within 180 days) to congressional defense committees for implementing milestone decision authorities   | Repeal                   |
| 18 | 2430 note      | FY15 NDAA, P.L. 113-291, §1058, Dec 19, 2014              | Improving Analytic Support to Systems Acquisition                                    | Enacted in Dec 2014 – required SecDef review & revision of guidance (within 120 days) on analytic support for MDAPs; required briefing to congressional defense committees within 180 days   | Repeal                   |

## Provisions Recommended for Repeal by Section 809 Panel - 2d Tranche

| A              | B  | C   | D   | E                        |
|----------------|--|---|---|--------------------------|
| 10 USC Section | Source Cite  | Title   | Description   | 809 Panel Recommendation |
| 1              | 1. FY91 NDAA, P.L. 101-510, §809, Nov. 5, 1990<br>2. FY94 NDAA, P.L. 103-160, §833, Nov. 30, 1993<br>3. FY94 NDAA, P.L. 103-160, §839, Nov. 30, 1993<br>4. FY95 NDAA, P.L. 103-337, §819, Oct. 5, 1994<br>5. FASA, P.L. 103-355, §5064, Oct. 13, 1994<br>6. FY97 NDAA, P.L. 104-201, §803, Sept 23, 1996 | <u>Defense Acquisition Pilot Program (6 sections)</u><br>1. Major Defense Acquisition Pilot Program<br>2. Mission Oriented Program Management<br>3. Contractor Performance Assessment<br>4. Defense Acquisition Pilot Program Designations<br>5. Department of Defense Acquisition Pilot Programs<br>6. Authority to Waive Certain Requirements of Defense Acquisition Pilot Programs | 1. Enacted in Sept 1996 – authorized SecDef to waive certain statutory provisions (including OT&E) for any defense acquisition program in a designated pilot program; required written notification to Congress   | Repeal                   |
| 19             |  |   |   |                          |
| 20             | FY84 NDAA, P.L. 98-94, §1215, Sept 24, 1983  | Regs Relating to Increases in Prices for Spare Parts & Replacement  | Enacted in Sept 1983 – required SecDef to issue regulations (within 120 days) to prohibit purchase of parts or equipment that increased in price in excess of certain established percentage thresholds; allowed purchase upon written certification of national security interests; proposed regs required to be submitted to SASC & HASC (within 30 days) | Repeal                   |
| 21             | FY99 NDAA, P.L. 105-261, §347, Oct 17, 1998  | Best Comm Inventory Practices for Management of Secondary Supply Items  | Enacted in Oct 1998 – required Secy of mil depts. to submit (within 180 days) to Congress a schedule for implementing best commercial inventory practices for managing secondary supply items; schedule to be completed within 5 years; required GAO report   | Repeal                   |

## Provisions Recommended for Repeal by Section 809 Panel - 2d Tranche

|    | A              | B   | C  | D  | E                        |
|----|----------------|---|--|--|--------------------------|
|    | 10 USC Section | Source Cite                                   | Title  | Description  | 809 Panel Recommendation |
| 1  |                |   |  |  |                          |
| 22 | 2458 note      | FY99 NDAA, P.L. 105-261, §349, Oct 17, 1998   | Inventory Management of In-Transit Items   | Enacted in Oct 1998 – required SecDef to develop & carry out plan to ensure visibility of all in-transit end & secondary items; required GAO report; required submission to Congress of any revision to plans required by subsequent laws  | Repeal                   |
| 23 | 2458 note      | FY98 NDAA, P.L. 105-85, §395, Nov 18, 1997    | Inventory Management   | Enacted in Nov 1997 – required DLA Director (within 180 days) to develop & submit to Congress a plan to implement best commercial practices for distribution of supplies & equipment consistent with military requirements; required GAO report (by March 1998) on feasibility of expanding the covered list | Repeal                   |
| 24 | 2458 note      | FY96 NDAA, P.L. 104-106, §352, Feb 10, 1996   | Direct Vendor Delivery System for Consumable Inventory Items   | Enacted in Feb 1996 – required SecDef (by Sept 30, 1997) to implement a system to deliver directly from vendors certain consumable items in order to reduce maintaining warehouses for the items   | Repeal                   |
| 25 | 2461 note      | FY96 NDAA P.L. 104-106, §353(b), Feb 10, 1996 | Payroll, Finance, & Accounting Functions of DoD: Pilot Program for Private Sector Operation of NAFI Functions          | Enacted in Feb 1996 – authorized SecDef to carryout pilot program to test performance of private sector to perform payroll, accounting & other financial activities for nonappropriated fund instrumentalities; required evaluation of cost efficiencies (with goal of 25% reduction of total costs)         | Repeal                   |
| 26 | 2465 note      | P.L. 107-56, § 1010, Oct 26, 2001             | Temp Authority to Contract with Local & State Govts for Performance of Security Functions at US Military Installations | Enacted in Oct 2001 – allowed DOD to contract with State/Local govts for certain security & fire functions (while military forces are engaged in Operation Enduring Freedom/ 180 days after); required report to SASC & HASC within 1 year on performance  | Repeal                   |
| 27 | 2504 note      | FY12 NDAA, P.L. 112-81, §852, Dec 31, 2011    | Strategy for Securing Supply Chain and Industrial Base   | Enacted in Dec 2011—required SecDef to include in 2012 annual report to Congress an assessment (tier by tier) of industrial base; required updates for 2013-2015   | Repeal                   |

## Provisions Recommended for Repeal by Section 809 Panel - 2d Tranche

|    | A              | B   | C  | D  | E                        |
|----|----------------|---|--|--|--------------------------|
|    | 10 USC Section | Source Cite                                       | Title  | Description  | 809 Panel Recommendation |
| 1  | 2540c note     | FY01 NDAA, P. L. 106-398, §1081(c), Oct. 30, 2000 | Funds For Administrative Expenses Under Defense Export Loan Guarantee Program: Limitation Pending Submission of Report | Enacted in Oct 2000 – prohibited SecDef from exercising authority (related to administrative fees) until report was submitted to Congress on Defense Export Loan Guarantee Program | Repeal                   |
| 28 |                |   |  |  |                          |

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

## **Sections Proposed for Repeal — Package #2**

**This document sets out the text of the sections of law that are proposed for repeal by the Section 809 Panel in its repeal package #2, approved by the Panel on March 20, 2018.**

[The number at the beginning of each item below corresponds to the row number for that item on the accompanying spreadsheet. (Note that on the spreadsheet Row 1 is a header, so the first item is on Row 2 and accordingly the first item below is numbered 2.)]

### **2. Section 167a of title 10, United States Code, provides:**

#### **§167a. Unified combatant command for joint warfighting experimentation: acquisition authority**

(a) LIMITED ACQUISITION AUTHORITY FOR COMMANDER OF CERTAIN UNIFIED COMBATANT COMMAND.—The Secretary of Defense may delegate to the commander of the unified combatant command referred to in subsection (b) authority of the Secretary under chapter 137 of this title sufficient to enable the commander to develop, acquire, and maintain equipment described in subsection (c). The exercise of authority so delegated is subject to the authority, direction, and control of the Secretary.

(b) COMMAND DESCRIBED.—The commander to whom authority is delegated under subsection (a) is the commander of the unified combatant command that has the mission for joint warfighting experimentation, as assigned by the Secretary of Defense.

(c) EQUIPMENT.—The equipment referred to in subsection (a) is as follows:

(1) Equipment for battle management command, control, communications, and intelligence.

(2) Any other equipment that the commander referred to in subsection (b) determines necessary and appropriate for—

(A) facilitating the use of joint forces in military operations; or

(B) enhancing the interoperability of equipment used by the various components of joint forces.

(d) EXCEPTIONS.—The authority delegated under subsection (a) does not apply to the development or acquisition of a system for which—

(1) the total expenditure for research, development, test, and evaluation is estimated to be \$10,000,000 or more; or

(2) the total expenditure for procurement is estimated to be \$50,000,000 or more.

(e) INTERNAL AUDITS AND INSPECTIONS.—The commander referred to in subsection (b) shall require the inspector general of that command to conduct internal audits and inspections of purchasing and contracting administered by the commander under the authority delegated under subsection (a).

(f) LIMITATION ON AUTHORITY TO MAINTAIN EQUIPMENT.—The authority delegated under subsection (a) to maintain equipment is subject to the availability of funds authorized and appropriated specifically for that purpose.

(g) TERMINATION.—The Secretary may delegate the authority referred to in subsection (a) only during fiscal years 2004 through 2010, and any authority so delegated shall not be in effect after September 30, 2010.

**3. Section 854 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, (10 USC 2302 note), provided that:**

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

**SEC. 854. KEY PERFORMANCE PARAMETER REDUCTION PILOT PROGRAM.**

(a) **IN GENERAL.**—The Secretary of Defense may carry out a pilot program under which the Secretary may identify at least one acquisition program in each military department for reduction of the total number of key performance parameters established for the program, for purposes of determining whether operational and programmatic outcomes of the program are improved by such reduction.

(b) **LIMITATION ON KEY PERFORMANCE PARAMETERS.**—Any acquisition program identified for the pilot program carried out under subsection (a) shall establish no more than three key performance parameters, each of which shall describe a program-specific performance attribute. Any key performance parameters for such a program that are required by statute shall be treated as key system attributes.

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4. Section 829 of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, **(10 USC 2302 note)**, provided that:

**SEC. 829. EXTENSION OF CONTRACTOR CONFLICT OF INTEREST LIMITATIONS.**

(a) **ASSESSMENT OF EXTENSION OF LIMITATIONS TO CERTAIN ADDITIONAL FUNCTIONS AND CONTRACTS.**—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall review the guidance on personal conflicts of interest for contractor employees issued pursuant to section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4537) in order to determine whether it would be in the best interest of the Department of Defense and the taxpayers to extend such guidance to personal conflicts of interest by contractor personnel performing any of the following:

(1) Functions other than acquisition functions that are closely associated with inherently governmental functions (as that term is defined in section 2383(b)(3) of title 10, United States Code).

(2) Personal services contracts (as that term is defined in section 2330a(g)(5) of title 10, United States Code).

(3) Contracts for staff augmentation services (as that term is defined in section 808(d)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1490)).

(b) **EXTENSION OF LIMITATIONS.**—If the Secretary determines pursuant to the review under subsection (a) that the guidance on personal conflicts of interest should be extended, the Secretary shall revise the Defense Supplement to the Federal Acquisition Regulation to the extent necessary to achieve such extension.

(c) **RESULTS OF REVIEW.**—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary shall document in writing the results of the review conducted under subsection (a), including, at a minimum—

(1) the findings and recommendations of the review; and

(2) the basis for such findings and recommendations.

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5. Section 895 of the National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114-92, **(10 USC 2304 note)**, provided that:

**SEC. 895. MITIGATING POTENTIAL UNFAIR COMPETITIVE ADVANTAGE OF TECHNICAL ADVISORS TO ACQUISITION PROGRAMS.**

Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review, and as necessary revise or issue, policy guidance



**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

pertaining to the identification, mitigation, and prevention of potential unfair competitive advantage conferred to technical advisors to acquisition programs.

6. Section 842 of the National Defense Authorization Act for Fiscal Year 2012, [Pub. L. 112–81 \(10 USC 2313 note\)](#), as amended, provided:

**“SEC. 842. ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS.**

**“(a) DEPARTMENT OF DEFENSE CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—**

**“(1) IN GENERAL.—**Not later than 30 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that—

**“(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of the Department of Defense that is awarded on or after the date of the enactment of this Act; and**

**“(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of the Department that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).**

**“(2) CLAUSE.—**The clause described in this paragraph is a clause authorizing the Secretary, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds available under the contract, grant, or cooperative agreement—

**“(A) are not subject to extortion or corruption; and**

**“(B) are not provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.**

**“(3) WRITTEN DETERMINATION.—**The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer or comparable official responsible for a grant or cooperative agreement, upon a finding by the Commander of the United States Central Command, that there is reason to believe that funds available under the contract, grant, or cooperative agreement concerned may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

**“(4) FLOWDOWN.—**A clause described in paragraph (2) shall also be required in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of \$100,000.

**“(b) REPORTS.—**Not later than March 1 of each of 2013, 2014, and 2015, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority provided by this section in the preceding calendar year. Each report shall identify, for the calendar year covered by such report, each instance in which the Department of Defense exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken,[] Any report under this subsection may be submitted in classified form.

**“(c) DEFINITIONS.—**In this section:

**“(1) The term 'contingency operation' has the meaning given that term in [section 101\(a\)\(13\) of title 10, United States Code.](#)**

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

"(2) The term 'covered contract, grant, or cooperative agreement' means a contract, grant, or cooperative agreement with an estimated value in excess of \$100,000 that will be performed in the United States Central Command theater of operations in support of a contingency operation.

"(d) **SUNSET**.—

"(1) **IN GENERAL**.—The clause described by subsection (a)(2) shall not be required in any contract, grant, or cooperative agreement that is awarded after the date that is three years after the date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 [Dec. 19, 2014].

"(2) **CONTINUING EFFECT OF CLAUSES INCLUDED BEFORE SUNSET**.—Any clause described by subsection (a)(2) that is included in a contract, grant, or cooperative agreement pursuant to this section before the date specified in paragraph (1) shall remain in effect in accordance with its terms."

## **7. Section 2323 of title 10, United States Code, provides:**

### **§2323. Contract goal for small disadvantaged businesses and certain institutions of higher education**

(a) **GOAL**.—(1) Except as provided in subsection (d), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration in each fiscal year for the total combined amount obligated for contracts and subcontracts entered into with—

(A) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals, and qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act);

(B) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986;

(C) minority institutions (as defined in section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k));

(D) Hispanic-serving institutions (as defined in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a))); and

(E) Native Hawaiian-serving institutions and Alaska Native-serving institutions (as defined in section 317 of the Higher Education Act of 1965).

(2) The head of the agency shall establish a specific goal within the overall 5 percent goal for the award of prime contracts and subcontracts to historically Black colleges and universities, Hispanic-serving institutions, Native Hawaiian-serving institutions and Alaska Native-serving institutions, and minority institutions in order to increase the participation of such colleges and universities and institutions in the program provided for by this section.

(3) The Federal Acquisition Regulation shall provide procedures or guidelines for contracting officers to set goals which agency prime contractors that are required to submit subcontracting plans under section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agency's program to meet the 5 percent goal specified in paragraph (1) should meet in awarding subcontracts, including subcontracts to minority-owned media, to entities described in that paragraph.

(b) **AMOUNT**.—(1) With respect to the Department of Defense, the requirements of subsection (a) for any fiscal year apply to the combined total of the following amounts:

(A) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for procurement.

(B) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for research, development, test, and evaluation.

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
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(C) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for military construction.

(D) Funds obligated for contracts entered into with the Department of Defense for operation and maintenance.

(2) With respect to the Coast Guard, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the Coast Guard for such fiscal year.

(3) With respect to the National Aeronautics and Space Administration, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the National Aeronautics and Space Administration for such fiscal year.

(c) TYPES OF ASSISTANCE.—(1) To attain the goal specified in subsection (a)(1), the head of an agency shall provide technical assistance to the entities referred to in that subsection and, in the case of historically Black colleges and universities, Hispanic-serving institutions, Native Hawaiian-serving institutions and Alaska Native-serving institutions, and minority institutions, shall also provide infrastructure assistance.

(2) Technical assistance provided under this section shall include information about the program, advice about agency procurement procedures, instruction in preparation of proposals, and other such assistance as the head of the agency considers appropriate. If the resources of the agency are inadequate to provide such assistance, the head of the agency may enter into contracts with minority private sector entities with experience and expertise in the design, development, and delivery of technical assistance services to eligible individuals, business firms and institutions, acquisition agencies, and prime contractors. Agency contracts with such entities shall be awarded annually, based upon, among other things, the number of minority small business concerns, historically Black colleges and universities, and minority institutions that each such entity brings into the program.

(3) Infrastructure assistance provided by the Department of Defense under this section to historically Black colleges and universities, to Hispanic-serving institutions, to Native Hawaiian-serving institutions and Alaska Native-serving institutions, and to minority institutions may include programs to do the following:

(A) Establish and enhance undergraduate, graduate, and doctoral programs in scientific disciplines critical to the national security functions of the Department of Defense.

(B) Make Department of Defense personnel available to advise and assist faculty at such colleges and universities in the performance of defense research and in scientific disciplines critical to the national security functions of the Department of Defense.

(C) Establish partnerships between defense laboratories and historically Black colleges and universities and minority institutions for the purpose of training students in scientific disciplines critical to the national security functions of the Department of Defense.

(D) Award scholarships, fellowships, and the establishment of cooperative work-education programs in scientific disciplines critical to the national security functions of the Department of Defense.

(E) Attract and retain faculty involved in scientific disciplines critical to the national security functions of the Department of Defense.

(F) Equip and renovate laboratories for the performance of defense research.

(G) Expand and equip Reserve Officer Training Corps activities devoted to scientific disciplines critical to the national security functions of the Department of Defense.

(H) Provide other assistance as the Secretary determines appropriate to strengthen scientific disciplines critical to the national security functions of the Department of Defense or the college infrastructure to support the performance of defense research.

(4) The head of the agency shall, to the maximum extent practical, carry out programs under this section at colleges, universities, and institutions that agree to bear a substantial portion of the cost associated with the programs.

(d) APPLICABILITY.—Subsection (a) does not apply to the Department of Defense—

(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

(2) if the Secretary notifies Congress of such determination and the reasons for such determination.

(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—To attain the goal of subsection (a):

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

(1)(A) The head of the agency shall—

(i) ensure that substantial progress is made in increasing awards of agency contracts to entities described in subsection (a)(1);

(ii) exercise his utmost authority, resourcefulness, and diligence;

(iii) in the case of the Department of Defense, actively monitor and assess the progress of the military departments, Defense Agencies, and prime contractors of the Department of Defense in attaining such goal; and

(iv) in the case of the Coast Guard and the National Aeronautics and Space Administration, actively monitor and assess the progress of the prime contractors of the agency in attaining such goal.

(B) In making the assessment under clauses (iii) and (iv) of subparagraph (A), the head of the agency shall evaluate the extent to which use of the authority provided in paragraphs (2) and (3) and compliance with the requirement in paragraph (4) is effective for facilitating the attainment of the goal.

(2) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency shall make advance payments under section 2307 of this title to contractors described in subsection (a). The Federal Acquisition Regulation shall provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.

(3)(A) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency may, except as provided in subparagraph (B), enter into contracts using less than full and open competitive procedures (including awards under section 8(a) of the Small Business Act) and partial set asides for entities described in subsection (a)(1), but shall pay a price not exceeding fair market cost by more than 10 percent in payment per contract to contractors or subcontractors described in subsection (a). The head of an agency shall adjust the percentage specified in the preceding sentence for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.

(B)(i) The Secretary of Defense may not exercise the authority under subparagraph (A) to enter into a contract for a price exceeding fair market cost if the regulations implementing that authority are suspended under clause (ii) with respect to that contract.

(ii) At the beginning of each fiscal year, the Secretary shall determine, on the basis of the most recent data, whether the Department of Defense achieved the 5 percent goal described in subsection (a) during the fiscal year to which the data relates. Upon determining that the Department achieved the goal for the fiscal year to which the data relates, the Secretary shall issue a suspension, in writing, of the regulations that implement the authority under subparagraph (A). Such a suspension shall be in effect for the one-year period beginning 30 days after the date on which the suspension is issued and shall apply with respect to contracts awarded pursuant to solicitations issued during that period.

(iii) For purposes of clause (ii), the term "most recent data" means data relating to the most recent fiscal year for which data are available.

(4) To the extent practicable, the head of an agency shall maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program.

(5) Each head of an agency shall prescribe regulations which provide for the following:

(A) Procedures or guidance for contracting officers to provide incentives for prime contractors referred to in subsection (a)(3) to increase subcontractor awards to entities described in subsection (a)(1).

(B) A requirement that contracting officers emphasize the award of contracts to entities described in subsection (a)(1) in all industry categories, including those categories in which such entities have not traditionally dominated.

(C) Guidance to agency personnel on the relationship among the following programs:

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

(i) The program implementing this section.

(ii) The program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(iii) The small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

(D) With respect to an agency procurement which is reasonably likely to be set aside for entities described in subsection (a)(1), a requirement that (to the maximum extent practicable) the procurement be designated as such a set-aside before the solicitation for the procurement is issued.

(E) Policies and procedures which, to the maximum extent practicable, will ensure that current levels in the number or dollar value of contracts awarded under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)) are maintained and that every effort is made to provide new opportunities for contract awards to eligible entities, in order to meet the goal of subsection (a).

(F) Implementation of this section in a manner which will not alter the procurement process under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(G) A requirement that one factor used in evaluating the performance of a contracting officer be the ability of the officer to increase contract awards to entities described in subsection (a)(1).

(H) Increased technical assistance to entities described in subsection (a)(1).

(f) **PENALTIES AND REGULATIONS RELATING TO STATUS.**—(1) Whoever for the purpose of securing a contract or subcontract under subsection (a) misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)) or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act), shall be punished by imprisonment for not more than one year, or a fine under title 18, or both.

(2) The Federal Acquisition Regulation shall prohibit awarding a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(o)(1) of the Small Business Act (15 U.S.C. 644(o)(1)).

(g) **INDUSTRY CATEGORIES.**—(1) To the maximum extent practicable, the head of the agency shall—

(A) ensure that no particular industry category bears a disproportionate share of the contracts awarded to attain the goal established by subsection (a); and

(B) ensure that contracts awarded to attain the goal established by subsection (a) are made across the broadest possible range of industry categories.

(2) Under procedures prescribed by the head of the agency, a person may request the Secretary to determine whether the use of small disadvantaged business set asides by a contracting activity of the agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity for the purposes of this section. Upon making a determination that a particular industry category is bearing a disproportionate share, the head of the agency shall take appropriate actions to limit the contracting activity's use of set asides in awarding contracts in that particular industry category.

(h) **COMPLIANCE WITH SUBCONTRACTING PLAN REQUIREMENTS.**—(1) The Federal Acquisition Regulation shall contain regulations to ensure that potential contractors submitting sealed bids or competitive proposals to the agency for procurement contracts to be awarded under the program provided for by this section are complying with applicable subcontracting plan requirements of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(2) The regulations required by paragraph (1) shall ensure that, with respect to a sealed bid or competitive proposal for which the bidder or offeror is required to negotiate or submit a subcontracting plan under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), the subcontracting plan shall be a factor in evaluating the bid or proposal.

(i) **ANNUAL REPORT.**—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.



**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

- (2) The report required under paragraph (1) shall include the following:
- (A) A full explanation of any progress toward attaining the goal of subsection (a).
  - (B) A plan to achieve the goal, if necessary.
- (j) DEFINITIONS.—In this section:
- (1) The term "agency" means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.
  - (2) The term "head of an agency" means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.
- (k) EFFECTIVE DATE.—(1) This section applies in the Department of Defense to each of fiscal years 1987 through **2009**.
- (2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through **2009**.

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8. Section 803(a) of the National Defense Authorization Act for Fiscal Year 2017, [Pub. L. 114–328](#), **(10 USC 2330 note)** provided that:

**SEC. 803. MODERNIZATION OF SERVICES ACQUISITION.**

"(a) REVIEW OF SERVICES ACQUISITION CATEGORIES.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall review and, if necessary, revise Department of Defense Instruction 5000.74, dated January 5, 2016 (in this section referred to as the 'Acquisition of Services Instruction'), and other guidance pertaining to the acquisition of services. In conducting the review, the Secretary shall examine—

"(1) how the acquisition community should consider the changing nature of the technology and professional services markets, particularly the convergence of hardware and services; and

"(2) the services acquisition portfolio groups referenced in the Acquisition of Services Instruction and other guidance in order to ensure the portfolio groups are fully reflective of changes to the technology and professional services market."

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9. Section 882 of the National Defense Authorization Act for Fiscal Year 2016, [Pub. L. 114–92](#) **(10 USC 2330 note)**, provided that:

**SEC. 882. GUIDANCE RELATING TO OVERSIGHT AND APPROVAL OF SERVICES CONTRACTS.**

"Not later than March 1, 2016, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall—

"(1) complete an examination of the decision authority related to acquisition of services; and

"(2) develop and issue guidance to improve capabilities and processes related to requirements development and source selection for, and oversight and management of, services contracts."

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10. Section 807 of the National Defense Authorization Act for Fiscal Year 2012, [Pub. L. 112–81](#), **(10 USC 2330 note)** provided that:

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

**SEC. 807. DEFENSE SCIENCE BOARD RECOMMENDATIONS ON SERVICES.**

"(a) **PLAN FOR IMPLEMENTATION.**—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall, acting pursuant to the Under Secretary's responsibility under [section 2330 of title 10, United States Code](#), develop a plan for implementing the recommendations of the Defense Science Board Task Force on Improvements to Service Contracting.

"(b) **ELEMENTS.**—The plan developed pursuant to subsection (a) shall include, to the extent determined appropriate by the Under Secretary for Acquisition, Technology, and Logistics, the following:

"(1) Meaningful incentives to services contractors for high performance at low cost, consistent with the objectives of the Better Buying Power Initiative established by the Under Secretary.

"(2) Improved means of communication between the Government and the services contracting industry in the process of developing requirements for services contracts.

"(3) Clear guidance for defense acquisition personnel on the use of appropriate contract types for particular categories of services contracts.

"(4) Formal certification and training requirements for services acquisition personnel, consistent with the requirements of [sections 1723 and 1724 of title 10, United States Code](#).

"(5) Appropriate emphasis on the recruiting and training of services acquisition personnel, consistent with the strategic workforce plan developed pursuant to [former] [section 115b of title 10, United States Code](#), and the funds available through the Department of Defense Acquisition Workforce Development Fund established pursuant to [section 1705 of title 10, United States Code](#).

"(6) Policies and guidance on career development for services acquisition personnel, consistent with the requirements of [sections 1722a and 1722b of title 10, United States Code](#).

"(7) Actions to ensure that the military departments dedicate portfolio-specific commodity managers to coordinate the procurement of key categories of contract services, as required by [section 2330\(b\)\(3\)\(C\) of title 10, United States Code](#).

"(8) Actions to ensure that the Department of Defense conducts realistic exercises and training that account for services contracting during contingency operations, as required by [section 2333\(e\) of title 10, United States Code](#).

"(c) **COMPTROLLER GENERAL REPORT.**—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the following:

"(1) The actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics to carry out the requirements of this section.

"(2) The actions taken by the Under Secretary to carry out the requirements of [section 2330 of title 10, United States Code](#).

"(3) The actions taken by the military departments to carry out the requirements of [section 2330 of title 10, United States Code](#).

"(4) The extent to which the actions described in paragraphs (1), (2), and (3) have resulted in the improved acquisition and management of contract services."

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11. Section 863(a)–(h) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, [Pub. L. 111–383 \(10 USC 2330 note\)](#), as amended, provided that:

**SEC. 863. REQUIREMENTS FOR THE ACQUISITION OF SERVICES.**

"(a) **ESTABLISHMENT OF REQUIREMENTS PROCESSES FOR THE ACQUISITION OF SERVICES.**—The Secretary of Defense shall ensure that the military departments and Defense Agencies each establish a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services.

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

"(b) OPERATIONAL REQUIREMENTS.—With regard to requirements for the acquisition of services in support of combatant commands and military operations, the Secretary shall ensure-

"(1) that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps implement and bear chief responsibility for carrying out, within the Armed Force concerned, the process established pursuant to subsection (a) for such Armed Force; and

"(2) that commanders of unified combatant commands and other officers identified or designated as joint qualified officers have an opportunity to participate in the process of each military department to provide input on joint requirements for the acquisition of services.

"(c) SUPPORTING REQUIREMENTS.—With regard to requirements for the acquisition of services not covered by subsection (b), the Secretary shall ensure that the secretaries of the military departments and the heads of the Defense Agencies implement and bear chief responsibility for carrying out, within the military department or Defense Agency concerned, the process established pursuant to subsection (a) for such military department or Defense Agency.

"(d) IMPLEMENTATION PLANS REQUIRED.—The Secretary shall ensure that an implementation plan is developed for each process established pursuant to subsection (a) that addresses, at a minimum, the following:

"(1) The organization of such process.

"(2) The level of command responsibility required for identifying, assessing, reviewing, and validating requirements for the acquisition of services in accordance with the requirements of this section and the categories established under [section 2330\(a\)\(1\)\(C\) of title 10, United States Code](#).

"(3) The composition of positions necessary to operate such process.

"(4) The training required for personnel engaged in such process.

"(5) The relationship between doctrine and such process.

"(6) Methods of obtaining input on joint requirements for the acquisition of services.

"(7) Procedures for coordinating with the acquisition process.

"(8) Considerations relating to opportunities for strategic sourcing.

"(9) Considerations relating to total force management policies and procedures established under [section 129a of title 10, United States Code](#).

"(e) MATTERS REQUIRED IN IMPLEMENTATION PLAN.—Each plan required under subsection (d) shall provide for initial implementation of a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services not later than one year after the date of the enactment of this Act [Jan. 7, 2011] and shall provide for full implementation of such process at the earliest date practicable.

"(f) CONSISTENCY WITH JOINT GUIDANCE.—Whenever, at any time, guidance is issued by the Chairman of the Joint Chiefs of Staff relating to requirements for the acquisition of services in support of combatant commands and military operations, each process established pursuant to subsection (a) shall be revised in accordance with such joint guidance.

"(g) DEFINITION.—The term 'requirements for the acquisition of services' means objectives to be achieved through acquisitions primarily involving the procurement of services.

"(h) REVIEW OF SUPPORTING REQUIREMENTS TO IDENTIFY SAVINGS.—The secretaries of the military departments and the heads of the Defense Agencies shall review and validate each requirement described in subsection (c) with an anticipated cost in excess of \$10,000,000 with the objective of identifying unneeded or low priority requirements that can be reduced or eliminated, with the savings transferred to higher priority objectives. Savings identified and transferred to higher priority objectives through review and revalidation under this subsection shall count toward the savings objectives established in the June 4, 2010, guidance of the Secretary of Defense on improved operational efficiencies and the annual reduction in funding for service support contractors required by the August 16, 2010, guidance of the Secretary of Defense on efficiency initiatives. As provided by the Secretary, cost avoidance shall not count toward these objectives."

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12. Section 808 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110–181 (**10 USC 2330 note**), as amended, provided that:



**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

**SEC. 808. INDEPENDENT MANAGEMENT REVIEWS OF CONTRACTS FOR SERVICES.**

"(a) GUIDANCE AND INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent management reviews of contracts for services. The independent management review guidance and instructions issued pursuant to this subsection shall be designed to evaluate, at a minimum—

"(1) contract performance in terms of cost, schedule, and requirements;

"(2) the use of contracting mechanisms, including the use of competition, the contract structure and type, the definition of contract requirements, cost or pricing methods, the award and negotiation of task orders, and management and oversight mechanisms;

"(3) the contractor's use, management, and oversight of subcontractors;

"(4) the staffing of contract management and oversight functions; and

"(5) the extent of any pass-throughs, and excessive pass-through charges (as defined in section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Pub. L. 109–364, 10 U.S.C. 2324 note]), by the contractor.

"(b) ADDITIONAL SUBJECT OF REVIEW.—In addition to the matters required by subsection (a), the guidance and instructions issued pursuant to subsection (a) shall provide for procedures for the periodic review of contracts under which one contractor provides oversight for services performed by other contractors. In particular, the procedures shall be designed to evaluate, at a minimum—

"(1) the extent of the agency's reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions as defined in section 2383(b)(3) of title 10, United States Code; and

"(2) the financial interest of any prime contractor performing acquisition functions described in paragraph (1) in any contract or subcontract with regard to which the contractor provided advice or recommendations to the agency.

"(c) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

"(1) the contracts subject to independent management reviews, including any applicable thresholds and exceptions;

"(2) the frequency with which independent management reviews shall be conducted;

"(3) the composition of teams designated to perform independent management reviews;

"(4) any phase-in requirements needed to ensure that qualified staff are available to perform independent management reviews;

"(5) procedures for tracking the implementation of recommendations made by independent management review teams; and

"(6) procedures for developing and disseminating lessons learned from independent management reviews.

"(d) REPORTS.—

"(1) Report on guidance and instruction.—Not later than 270 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the guidance and instructions issued pursuant to subsection (a).

"(2) GAO report on implementation.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the implementation of the guidance and instructions issued pursuant to subsection (a)."

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13. Section 812(b)-(c) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163 (10 USC 2330 note), provided that:

**SEC. 812. MANAGEMENT STRUCTURE FOR THE PROCUREMENT OF CONTRACT SERVICES.**

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

(a) [amended 10 USC 2330]

"(b) **PHASED IMPLEMENTATION.**—The requirements of [section 2330 of title 10, United States Code](#) (as added by subsection (a)), shall be implemented as follows:

"(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall-

"(A) establish an initial set of contract services acquisition categories, based on dollar thresholds, by not later than June 1, 2006; and

"(B) issue an initial set of policies, procedures, and best practices guidelines in accordance with [section 2330\(a\)\(1\)\(A\)](#) by not later than October 1, 2006.

"(2) The contract services acquisition categories established by the Under Secretary shall include-

"(A) one or more categories for acquisitions with an estimated value of \$250,000,000 or more;

"(B) one or more categories for acquisitions with an estimated value of at least \$10,000,000 but less than \$250,000,000; and

"(C) one or more categories for acquisitions with an estimated value greater than the simplified acquisition threshold but less than \$10,000,000.

"(3) The senior officials responsible for the management of acquisition of contract services shall assign responsibility to specific individuals in the Department of Defense for the review and approval of procurements in the contract services acquisition categories established by the Under Secretary, as follows:

"(A) Not later than October 1, 2006, for all categories established pursuant to paragraph (2)(A).

"(B) Not later than October 1, 2007, for all categories established pursuant to paragraph (2)(B).

"(C) Not later than October 1, 2009, for all categories established pursuant to paragraph (2)(C).

"(c) **REPORT.**—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a final report on the implementation of [section 2330 of title 10, United States Code](#), as added by this section."

14. Section 831 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110–417 (**10 USC 2330a note**) provided that:

**SEC. 831. DEVELOPMENT OF GUIDANCE ON PERSONAL SERVICES CONTRACTS.**

"(a) **GUIDANCE REQUIRED.**—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall develop guidance related to personal services contracts to-

"(1) require a clear distinction between employees of the Department of Defense and employees of Department of Defense contractors;

"(2) provide appropriate safeguards with respect to when, where, and to what extent the Secretary may enter into a contract for the procurement of personal services; and

"(3) assess and take steps to mitigate the risk that, as implemented and administered, non-personal services contracts may become personal services contracts.

"(b) **DEFINITION OF PERSONAL SERVICES CONTRACT.**—In this section, the term 'personal services contract' has the meaning given that term in [section 2330a\(g\)\(5\)](#) [former 2330a(h)(5)] of [title 10, United States Code](#)."

15. Section 2332 of title 10, United States Code, provides:

**§2332. Share-in-savings contracts**

(a) **AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.**—(1) The head of an agency may enter into a share-in-savings contract for information technology (as defined in [section 11101\(6\) of title 40](#)) in which the

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Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(B) Amounts retained by the agency under this subsection shall—

(i) without further appropriation, remain available until expended; and

(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

(A) appropriations available for the performance of the contract;

(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(3)(A) Subject to subparagraph (B), the head of an agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

(I) 25 percent of the estimated costs of a cancellation or termination; or

(II) \$5,000,000.

(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

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(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

(c) DEFINITIONS.—In this section:

- (1) The term "contractor" means a private entity that enters into a contract with an agency.
- (2) The term "savings" means-
  - (A) monetary savings to an agency; or
  - (B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).
- (3) The term "share-in-savings contract" means a contract under which-
  - (A) a contractor provides solutions for-
    - (i) improving the agency's mission-related or administrative processes; or
    - (ii) accelerating the achievement of agency missions; and
  - (B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from-
    - (i) any improvements in mission-related or administrative processes that result from implementation of the solution; or
    - (ii) acceleration of achievement of agency missions.

(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.

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16. Section 8133 of the Department of Defense Appropriations Act, 2000, Pub. L. 106–79 (**10 USC 2401a note**), provided that:

"Sec. 8133. (a) The Secretary of the Air Force may establish a multi-year pilot program for leasing aircraft for operational support purposes, including transportation for the combatant Commanders in Chief, on such terms and conditions as the Secretary may deem appropriate, consistent with this section.

"(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

"(c) Under the aircraft lease Pilot Program authorized by this section:

"(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee.

"(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years.

"(3) The Secretary may provide for special payments to a lessor if either the Secretary terminates or cancels the lease prior to the expiration of its term or aircraft are damaged or destroyed prior to the expiration of the term of the lease. Such special payments shall not exceed an amount equal to the value of one year's lease payment under the lease. The amount of special payments shall be subject to negotiation between the Air Force and lessors.

"(4) Notwithstanding any other provision of law, any payments required under a lease under this section, and any payments made pursuant to subsection (3) above may be made from:

"(A) appropriations available for the performance of the lease at the time the lease takes effect;

"(B) appropriations for the operation and maintenance available at the time which the payment is due;

and

"(C) funds appropriated for those payments.

"(5) The Secretary may lease aircraft, on such terms and conditions as the Secretary may deem appropriate, consistent with this section, through an operating lease consistent with OMB Circular A–11.

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
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"(6) The Secretary may exchange or sell existing aircraft and apply the exchange allowance or sale proceeds in whole or in part toward the cost of leasing replacement aircraft under this section.

"(7) Lease arrangements authorized by this section may not commence until:

"(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and the savings in operations and support costs expected to be derived from retiring older aircraft as compared to the expected cost of leasing newer replacement aircraft.

"(B) A period of not less than 30 calendar days has elapsed after submitting the report.

"(8) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

"(9) No lease of operational support aircraft may be entered into under this section after September 30, 2004.

"(d) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

"(e) The authority provided under this section may be used to lease not more than a total of six aircraft for the purposes of providing operational support."

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17. Section 825(c) of the National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114–92 (**10 USC 2430 note**), provided that:

**SEC. 825. DESIGNATION OF MILESTONE DECISION AUTHORITY.**

(a) [added a new subsection (d) to 10 USC 2430]

(b) [amended 10 USC 133(b)(5)]

“(c) **IMPLEMENTATION.**—

"(1) **IMPLEMENTATION PLAN.**—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementing subsection (d) of [section 2430 of title 10, United States Code](#), as added by subsection (a) of this section.

"(2) **GUIDANCE.**—The Deputy Chief Management Officer of the Department of Defense, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the service acquisition executives, shall issue guidance to ensure that by not later than October 1, 2016, the acquisition policy, guidance, and practices of the Department of Defense conform to the requirements of subsection (d) of [section 2430 of title 10, United States Code](#), as added by subsection (a) of this section. The guidance shall be designed to ensure a streamlined decisionmaking and approval process and to minimize any information requests, consistent with the requirement of paragraph (4)(A) of such subsection (d).

“(3) \*\*\*”

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18. Section 1058 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113–291 (**10 USC 2430 note**) provided that:

**SEC. 1058. IMPROVING ANALYTIC SUPPORT TO SYSTEMS ACQUISITION.**

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"(a) GUIDANCE.—Not later than 120 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall review and issue or revise guidance to components of the Department of Defense to improve the application of operations research and systems analysis to—

"(1) the requirements process for acquisition of major defense acquisition programs and major automated information systems; and

"(2) the allocation of intelligence, surveillance, and reconnaissance systems to the combatant commands.

"(b) BRIEFING OF CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall brief—

"(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on any guidance issued or revised under subsection (a); and

"(2) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on any guidance issued or revised under subsection (a)(2) relevant to intelligence."

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**19. DEFENSE ACQUISITION PILOT PROGRAM**  
**(10 USC 2430 NOTE)**

(1) Section 809 of the National Defense Authorization Act for Fiscal Year 1991, **P. L. 101–510 (10 USC 2430 note)**, as amended, provided:

**“SEC. 809. MAJOR DEFENSE ACQUISITION PILOT PROGRAM.**

"(a) AUTHORITY TO CONDUCT PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in defense acquisition programs.

"(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) Subject to paragraph (2), the Secretary may designate defense acquisition programs for participation in the pilot program.

"(2) The Secretary may designate for participation in the pilot program only those defense acquisition programs specifically authorized to be so designated in a law authorizing appropriations for such program enacted after the date of the enactment of this Act [Nov. 5, 1990].

"(c) CONDUCT OF PILOT PROGRAM.—(1) In the case of each defense acquisition program designated for participation in the pilot program, the Secretary-

"(A) shall conduct the program in accordance with standard commercial, industrial practices; and

"(B) may waive or limit the applicability of any provision of law that is specifically authorized to be waived in the law authorizing appropriations referred to in subsection (b)(2) and that prescribes-

"(i) procedures for the procurement of supplies or services;

"(ii) a preference or requirement for acquisition from any source or class of sources;

"(iii) any requirement related to contractor performance;

"(iv) any cost allowability, cost accounting, or auditing requirements; or

"(v) any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program.

"(2) The waiver authority provided in paragraph (1)(B) does not apply to a provision of law if, as determined by the Secretary-

"(A) a purpose of the provision is to ensure the financial integrity of the conduct of a Federal Government program; or

"(B) the provision relates to the authority of the Inspector General of the Department of Defense.



**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
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"(d) PUBLICATION OF POLICIES AND GUIDELINES.—The Secretary shall publish in the Federal Register a proposed memorandum setting forth policies and guidelines for implementation of the pilot program under this section and provide an opportunity for public comment on the proposed memorandum for a period of 60 days after the date of publication. The Secretary shall publish in the Federal Register any subsequent proposed change to the memorandum and provide an opportunity for public comment on each such proposed change for a period of 60 days after the date of publication.

"(e) NOTIFICATION AND IMPLEMENTATION.—(1) The Secretary shall transmit to the congressional defense committees a written notification of each defense acquisition program proposed to be designated by the Secretary for participation in the pilot program.

"(2) If the Secretary proposes to waive or limit the applicability of any provision of law to a defense acquisition program under the pilot program in accordance with this section, the Secretary shall include in the notification regarding that acquisition program—

"(A) the provision of law proposed to be waived or limited;

"(B) the effects of such provision of law on the acquisition, including specific examples;

"(C) the actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

"(D) a discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

"(f) LIMITATION ON WAIVER AUTHORITY.—The applicability of the following requirements of law may not be waived or limited under subsection (c)(1)(B) with respect to a defense acquisition program:

"(1) The requirements of this section.

"(2) The requirements contained in any law enacted on or after the date of the enactment of this Act [Nov. 5, 1990] if that law designates such defense acquisition program as a participant in the pilot program, except to the extent that a waiver of such requirement is specifically authorized for such defense acquisition program in a law enacted on or after such date.

"(g) TERMINATION OF AUTHORITY.—The authority to waive or limit the applicability of any law under this section may not be exercised after **September 30, 1995**."

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(2) Section 833 of the National Defense Authorization Act for Fiscal Year 1994, P. L. 103–160 (**10 USC 2430 note**), as amended, provided:

**“SEC. 833. MISSION ORIENTED PROGRAM MANAGEMENT.**

"(a) MISSION-ORIENTED PROGRAM MANAGEMENT.—In the exercise of the authority provided in section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (**10 U.S.C. 2430 note**), the Secretary of Defense should propose for one or more of the defense acquisition programs covered by the Defense Acquisition Pilot Program to utilize the concept of mission-oriented program management.

"(b) POLICIES AND PROCEDURES.—In the case of each defense acquisition program covered by the Defense Acquisition Pilot Program, the Secretary of Defense should prescribe policies and procedures for the interaction of the program manager and the commander of the operational command (or a representative) responsible for the requirement for the equipment acquired, and for the interaction with the commanders of the unified and specified combatant commands. Such policies and procedures should include provisions for enabling the user commands to participate in acceptance testing."

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(3) Section 839 of the National Defense Authorization Act for Fiscal Year 1994, P. L. 103–160, (**10 USC 2430 note**), provided:

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
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**“SEC. 839. CONTRACTOR PERFORMANCE ASSESSMENT.**

"(a) COLLECTION AND ANALYSIS OF PERFORMANCE INFORMATION.—The Secretary of Defense shall collect and analyze information on contractor performance under the Defense Acquisition Pilot Program.

"(b) INFORMATION TO BE INCLUDED.—Information collected under subsection (a) shall include the history of the performance of each contractor under the Defense Acquisition Pilot Program contracts and, for each such contract performed by the contractor, a technical evaluation of the contractor's performance prepared by the program manager responsible for the contract."

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(4) Section 819 of the National Defense Authorization Act for Fiscal Year 1995, P. L. 103–337, (10 USC 2430 note), provided:

**“SEC. 819. DEFENSE ACQUISITION PILOT PROGRAM DESIGNATIONS.**

"The Secretary of Defense is authorized to designate the following defense acquisition programs for participation, to the extent provided in the Federal Acquisition Streamlining Act of 1994 in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430 note):

"(1) The Fire Support Combined Arms Tactical Trainer program.

"(2) The Joint Direct Attack Munition program.

"(3) The Joint Primary Aircraft Training System.

"(4) Commercial-derivative aircraft.

"(5) Commercial-derivative engine."

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(5) Section 5064 of the Federal Acquisition Streamlining Act of 1994, P. L. 103–355, (10 USC 2430 note), as amended, provided:

**“SEC. 5064. DEPARTMENT OF DEFENSE ACQUISITION PILOT PROGRAMS.**

"(a) IN GENERAL.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

"(1) FIRE SUPPORT COMBINED ARMS TACTICAL TRAINER (FSCATT).—The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training simulation system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components, with development of software as required to generate the training exercises and component interfaces.

"(2) JOINT DIRECT ATTACK MUNITION (JDAM I).—The Joint Direct Attack Munition program with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit to enhance the delivery accuracy of 500-pound, 1000-pound, and 2000-pound bombs in inventory.

"(3) JOINT PRIMARY AIRCRAFT TRAINING SYSTEM (JPATS).—The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

"(4) COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).—



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"(A) All contracts directly related to the acquisition or upgrading of commercial-derivative aircraft for use in meeting airlift and tanker requirements and the air vehicle component for airborne warning and control systems.

"(B) For purposes of this paragraph, the term 'commercial-derivative aircraft' means any of the following:

"(i) Any aircraft (including spare parts, support services, support equipment, technical manuals, and data related thereto) that is or was of a type customarily used in the course of normal business operations for other than Federal Government purposes, that has been issued a type certificate by the Administrator of the Federal Aviation Administration, and that has been sold or leased for use in the commercial marketplace or that has been offered for sale or lease for use in the commercial marketplace.

"(ii) Any aircraft that, but for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet Federal Government requirements, would satisfy or would have satisfied the criteria in subclause (I).

"(iii) For purposes of a potential complement or alternative to the C-17 program, any nondevelopmental airlift aircraft, other than the C-17 or any aircraft derived from the C-17, shall be considered a commercial-derivative aircraft.

"(5) COMMERCIAL-DERIVATIVE ENGINE (CDE).—The commercial derivative engine program with respect to all contracts directly related to the acquisition of (A) commercial derivative engines (including spare engines and upgrades), logistics support equipment, technical orders, management data, and spare parts, and (B) commercially derived engines for use in supporting the purchase of commercial-derivative aircraft for use in airlift and tanker requirements (including engine replacement and upgrades) and the air vehicle component for airborne warning and control systems. For purposes of a potential complement or alternative to the C-17 program, any nondevelopmental airlift aircraft engine shall be considered a commercial-derivative engine.

"(b) PILOT PROGRAM IMPLEMENTATION.—(1) [Amended section 833 of P. L. 103-160, set out above]

"(2) [Amended section 837 of P. L. 103-160]

"(3) [Amended section 838 of P. L. 103-160]

"(4) Not later than 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 [Oct. 13, 1994], the Secretary of Defense shall identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

"(5) For each defense acquisition program participating in the pilot program, the Secretary of Defense shall establish a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that-

"(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

"(B) reduce data requirements from the current program review reporting requirements.

"(c) SPECIAL AUTHORITY.—The authority delegated under subsection (a) may include authority for the Secretary of Defense-

"(1) to apply any amendment or repeal of a provision of law made in this Act to the pilot programs before the effective date of such amendment or repeal; and

"(2) to apply to a procurement of items other than commercial items under such programs-

"(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

"(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

"(d) APPLICABILITY.—(1) Subsection (c) applies with respect to-

"(A) a contract that is awarded or modified during the period described in paragraph (2); and

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"(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

"(2) The period referred to in paragraph (1) is the period that begins on October 13, 1994, and ends on **October 1, 2007**.

"(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a)."

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(6) Section 803 of the National Defense Authorization Act for Fiscal Year 1997, [P. L. 104–201](#), (**10 USC 2430 note**), as amended, provided:

**“SEC. 803. AUTHORITY TO WAIVE CERTAIN REQUIREMENTS OF DEFENSE ACQUISITION PILOT PROGRAMS.**

"(a) AUTHORITY.—The Secretary of Defense may waive [sections 2399, 2432, and 2433 of title 10, United States Code](#), in accordance with this section for any defense acquisition program designated by the Secretary of Defense for participation in the defense acquisition pilot program authorized by section **809** of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [10 U.S.C. 2430 note](#)).

"(b) OPERATIONAL TEST AND EVALUATION.—The Secretary of Defense may waive the requirements for operational test and evaluation for such a defense acquisition program as set forth in [section 2399 of title 10, United States Code](#), if the Secretary-

"(1) determines (without delegation) that such test would be unreasonably expensive or impractical;

"(2) develops a suitable alternate operational test program for the system concerned;

"(3) describes in the test and evaluation master plan, as approved by the Director of Operational Test and Evaluation, the method of evaluation that will be used to evaluate whether the system will be effective and suitable for combat; and

"(4) submits to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] a report containing the determination that was made under paragraph (1), a justification for that determination, and a copy of the plan required by paragraph (3).

"(c) SELECTED ACQUISITION REPORTS.—The Secretary of Defense may waive the requirements of [sections 2432 and 2433 of title 10, United States Code](#), for such a defense acquisition program if the Secretary provides a single annual report to Congress at the end of each fiscal year that describes the status of the program in relation to the baseline description for the program established under section 2435 of such title."

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20. Section 1215 of the National Defense Authorization Act for Fiscal Year 1984, [Pub. L. 98–94](#) (**10 USC 2452 note**), as amended, provided that:

**SEC. 1215. REGULATIONS RELATING TO INCREASES IN PRICES FOR SPARE PARTS AND REPLACEMENT.**

"(a) Not later than 120 days after the date of the enactment of this Act [Sept. 24, 1983], the Secretary of Defense shall issue regulations which—

"(1) except as provided in clause (2), prohibit the purchase of any spare part or replacement equipment when the price of such part or equipment, since a time in the past specified by the Secretary (in terms of days or

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months) or since the most recent purchase of such part or equipment by the Department of Defense, has increased in price by a percentage in excess of a percentage threshold specified by the Secretary in such regulations, and

"(2) permit the purchase of such spare part or equipment (notwithstanding the prohibition contained in clause (1)) if the contracting officer for such part or equipment certifies in writing to the head of the procuring activity before the purchase is made that—

"(A) such officer has evaluated the price of such part or equipment and concluded that the increase in the price of such part or equipment is fair and reasonable, or

"(B) the national security interests of the United States require that such part or equipment be purchased despite the increase in price of such part or equipment.

"(b)(1) The Secretary shall publish the regulations issued under this section in the Federal Register.

"(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.

"(c) Not less than 30 days before the Secretary publishes such regulations in accordance with subsection (b), the Secretary shall submit the text of the proposed regulations to the Committees on Armed Services of the Senate and House of Representatives."

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21. Section 347 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, [Pub. L. 105–261](#) (10 USC 2458 note), provided that:

**SEC. 347. BEST COMMERCIAL INVENTORY PRACTICES FOR MANAGEMENT OF SECONDARY SUPPLY ITEMS.**

"(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall submit to Congress a schedule for implementing within the military department, for secondary supply items managed by that military department, inventory practices identified by the Secretary as being the best commercial inventory practices for the acquisition and distribution of such supply items consistent with military requirements. The schedule shall provide for the implementation of such practices to be completed not later than five years after the date of the enactment of this Act.

"(b) DEFINITION.—For purposes of this section, the term 'best commercial inventory practice' includes cellular repair processes, use of third-party logistics providers, and any other practice that the Secretary of the military department determines will enable the military department to reduce inventory levels while improving the responsiveness of the supply system to user needs.

"(c) GAO REPORTS ON MILITARY DEPARTMENT AND DEFENSE LOGISTICS AGENCY SCHEDULES.—(1) Not later than 240 days after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report evaluating the extent to which the Secretary of each military department has complied with the requirements of this section.

"(2) Not later than 18 months after the date on which the Director of the Defense Logistics Agency submits to Congress a schedule for implementing best commercial inventory practices under section 395 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1718; 10 U.S.C. 2458 note), the Comptroller General shall submit to Congress an evaluation of the extent to which best commercial inventory practices are being implemented in the Defense Logistics Agency in accordance with that schedule."

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22. Section 349 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, [Pub. L. 105–261](#) (10 USC 2458 note), as amended, provided that:

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
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**SEC. 349. INVENTORY MANAGEMENT OF IN-TRANSIT ITEMS.**

"(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall prescribe and carry out a comprehensive plan to ensure visibility over all in-transit end items and secondary items.

"(b) END ITEMS.—The plan required by subsection (a) shall address the specific mechanisms to be used to enable the Department of Defense to identify at any time the quantity and location of all end items.

"(c) SECONDARY ITEMS.—The plan required by subsection (a) shall address the following problems with Department of Defense management of inventories of in-transit secondary items:

"(1) The vulnerability of in-transit secondary items to loss through fraud, waste, and abuse.

"(2) Loss of oversight of in-transit secondary items, including any loss of oversight when items are being transported by commercial carriers.

"(3) Loss of accountability for in-transit secondary items due to either a delay of delivery of the items or a lack of notification of a delivery of the items.

"(d) CONTENT OF PLAN.—The plan shall include for subsection (b) and for each of the problems described in subsection (c) the following information:

"(1) The actions to be taken by the Department, including specific actions to address underlying weaknesses in the controls over items being shipped.

"(2) Statements of objectives.

"(3) Performance measures and schedules.

"(4) An identification of any resources necessary for implementing the required actions, together with an estimate of the annual costs.

"(5) The key management elements for monitoring, and for measuring the progress achieved in, the implementation of the plan, including-

"(A) the assignment of oversight responsibility for each action identified pursuant to paragraph (1);

"(B) a description of the resources required for oversight; and

"(C) an estimate of the annual cost of oversight.

"(e) GAO REVIEWS.—(1) Not later than 60 days after the date on which the Secretary of Defense submits the initial plan to Congress, the Comptroller General shall review the plan and submit to Congress any comments that the Comptroller General considers appropriate regarding the plan.

"(2) The Comptroller General shall monitor any implementation of the plan and, not later than 1 year after the date referred to in paragraph (1), submit to Congress an assessment of the extent to which the plan has been implemented.

"(f) SUBMISSIONS TO CONGRESS.—The Secretary shall submit to Congress any revisions made to the plan that are required by any law enacted after October 17, 1998. The revisions so made shall be submitted not later than 180 days after the date of the enactment of the law requiring the revisions."

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23. Section 395 of the National Defense Authorization Act for Fiscal Year 1998, [Pub. L. 105–85](#) (10 USC 2458 note) provided that:

**SEC. 395. INVENTORY MANAGEMENT.**

"(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Director of the Defense Logistics Agency shall develop and submit to Congress a schedule for implementing within the agency, for the supplies and equipment described in subsection (b), inventory practices identified by the Director as being the best commercial inventory practices for the acquisition and distribution of such supplies and equipment consistent with military requirements. The schedule shall provide for the implementation of such practices to be completed not later than three years after the date of the enactment of this Act.

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

"(b) COVERED SUPPLIES AND EQUIPMENT.—Subsection (a) shall apply to the following types of supplies and equipment for the Department of Defense:

- "(1) Medical and pharmaceutical.
- "(2) Subsistence.
- "(3) Clothing and textiles.
- "(4) Commercially available electronics.
- "(5) Construction.
- "(6) Industrial.
- "(7) Automotive.
- "(8) Fuel.
- "(9) Facilities maintenance.

"(c) DEFINITION.—For purposes of this section, the term 'best commercial inventory practice' includes a so-called prime vendor arrangement and any other practice that the Director determines will enable the Defense Logistics Agency to reduce inventory levels and holding costs while improving the responsiveness of the supply system to user needs.

"(d) REPORT ON EXPANSION OF COVERED SUPPLIES AND EQUIPMENT.—Not later than March 1, 1998, the Comptroller General shall submit to Congress a report evaluating the feasibility of expanding the list of covered supplies and equipment under subsection (b) to include repairable items."

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24. Section 352 of the National Defense Authorization Act for Fiscal Year 1996, [Pub. L. 104–106](#), **(10 USC 2458 note)** provided that:

**SEC. 352. DIRECT VENDOR DELIVERY SYSTEM FOR CONSUMABLE INVENTORY ITEMS.**

"(a) IMPLEMENTATION OF DIRECT VENDOR DELIVERY SYSTEM.—Not later than September 30, 1997, the Secretary of Defense shall, to the maximum extent practicable, implement a system under which consumable inventory items referred to in subsection (b) are delivered to military installations throughout the United States directly by the vendors of those items. The purpose for implementing the system is to reduce the expense and necessity of maintaining extensive warehouses for those items within the Department of Defense.

"(b) COVERED ITEMS.—The items referred to in subsection (a) are the following:

- "(1) Food and clothing.
- "(2) Medical and pharmaceutical supplies.
- "(3) Automotive, electrical, fuel, and construction supplies.
- "(4) Other consumable inventory items the Secretary considers appropriate."

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25. Section 353(b) of the National Defense Authorization Act for Fiscal Year 1996, [Pub. L. 104–106](#) **(10 USC 2461 note)** provided that:

**SEC. 353. PAYROLL, FINANCE, AND ACCOUNTING FUNCTIONS OF THE DEPARTMENT OF DEFENSE.**

(a) \*\*\*

“(b) PILOT PROGRAM FOR PRIVATE SECTOR OPERATION OF NAFI FUNCTIONS.—(1) The Secretary shall carry out a pilot program to test the performance by private-sector sources of payroll and other accounting

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

and finance functions of nonappropriated fund instrumentalities and to evaluate the extent to which cost savings and efficiencies would result from the performance of such functions by those sources.

"(2) The payroll and other accounting and finance functions designated by the Secretary for performance by private-sector sources under the pilot program shall include at least one major payroll, accounting, or finance function.

"(3) To carry out the pilot program, the Secretary shall enter into discussions with private-sector sources for the purpose of developing a request for proposals to be issued for performance by those sources of functions designated by the Secretary under paragraph (2). The discussions shall be conducted on a schedule that accommodates issuance of a request for proposals within 60 days after the date of the enactment of this Act [Feb. 10, 1996].

"(4) A goal of the pilot program is to reduce by at least 25 percent the total costs incurred by the Department annually for the performance of a function referred to in paragraph (2) through the performance of that function by a private-sector source.

"(5) Before conducting the pilot program, the Secretary shall develop a plan for the program that addresses the following:

"(A) The purposes of the program.

"(B) The methodology, duration, and anticipated costs of the program, including the cost of an arrangement pursuant to which a private-sector source would receive an agreed-upon payment plus an additional negotiated amount not to exceed 50 percent of the dollar savings achieved in excess of the goal specified in paragraph (4).

"(C) A specific citation to any provisions of law, rule, or regulation that, if not waived, would prohibit the conduct of the program or any part of the program.

"(D) A mechanism to evaluate the program.

"(E) A provision for all payroll, accounting, and finance functions of nonappropriated fund instrumentalities of the Department of Defense to be performed by private-sector sources, if determined advisable on the basis of a final assessment of the results of the program.

"(6) The Secretary shall act through the Under Secretary of Defense (Comptroller) in the performance of the Secretary's responsibilities under this subsection."

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26. Section 1010 of the USA Patriot Act of 2001, [Pub. L. 107-56](#) (10 USC 2465 note), provided that:

**SEC. 1010. TEMPORARY AUTHORITY TO CONTRACT WITH LOCAL AND STATE GOVERNMENTS FOR PERFORMANCE OF SECURITY FUNCTIONS AT UNITED STATES MILITARY INSTALLATIONS.**

"(a) IN GENERAL.—Notwithstanding [section 2465 of title 10, United States Code](#), during the period of time that United States armed forces are engaged in Operation Enduring Freedom, and for the period of 180 days thereafter, funds appropriated to the Department of Defense may be obligated and expended for the purpose of entering into contracts or other agreements for the performance of security functions at any military installation or facility in the United States with a proximately located local or State government, or combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation.

"(b) TRAINING.—Any contract or agreement entered into under this section shall prescribe standards for the training and other qualifications of local government law enforcement personnel who perform security functions under this section in accordance with criteria established by the Secretary of the service concerned.



**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

"(c) REPORT.—One year after the date of enactment of this section [Oct. 26, 2001], the Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives describing the use of the authority granted under this section and the use by the Department of Defense of other means to improve the performance of security functions on military installations and facilities located within the United States."

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27. Section 852 of the National Defense Authorization Act for Fiscal Year 2012, [Pub. L. 112–81](#), (10 USC 2504 note), as amended, provided that:

**SEC. 852. STRATEGY FOR SECURING SUPPLY CHAIN AND INDUSTRIAL BASE.**

"(a) REPORT REQUIRED.—The Secretary of Defense shall ensure that the annual report to Congress on the defense industrial base submitted for fiscal year 2012 pursuant to [section 2504 of title 10, United States Code](#), includes a description of, and a status report on, the sector-by-sector, tier-by-tier assessment of the industrial base undertaken by the Department of Defense.

"(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include, at a minimum, a description of the steps taken and planned to be taken-

"(1) to identify current and emerging sectors of the defense industrial base that are critical to the national security of the United States;

"(2) in each sector, to identify items that are critical to military readiness, including key components, subcomponents, and materials;

"(3) to examine the structure of the industrial base, including the competitive landscape, relationships, risks, and opportunities within that structure;

"(4) to map the supply chain for critical items identified under paragraph (2) in a manner that provides the Department of Defense visibility from raw material to final products;

"(5) to perform a risk assessment of the supply chain for such critical items and conduct an evaluation of the extent to which-

"(A) the supply chain for such items is subject to disruption by factors outside the control of the Department of Defense; and

"(B) such disruption would adversely affect the ability of the Department of Defense to fill its national security mission.

"(c) FOLLOW-UP REVIEW.—The Secretary of Defense shall ensure that the annual report to Congress on the defense industrial base submitted for each of fiscal years 2013, 2014, and 2015 includes an update on the steps taken by the Department of Defense to act on the findings of the sector-by-sector, tier-by-tier assessment of the industrial base and implement the strategy required by [section 2501 of title 10, United States Code](#). Such updates shall, at a minimum-

"(1) be conducted based on current mapping of the supply chain and industrial base structure, including an analysis of the competitive landscape, relationships, risks, and opportunities within that structure; and

"(2) take into account any changes or updates to the National Defense Strategy, National Military Strategy, national counterterrorism policy, homeland security policy, and applicable operational or contingency plans."

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28. Section 1081(c) of the National Defense Authorization Act for Fiscal Year 2007, P. L. 106–398 (10 U.S.C. 2540c note), provides:

**[TEXT OF SECTIONS PROPOSED FOR REPEAL  
BY SECTION 809 PANEL — PACKAGE #2]**

**“SEC. 1081. FUNDS FOR ADMINISTRATIVE EXPENSES UNDER DEFENSE EXPORT LOAN  
GUARANTEE PROGRAM.**

(a) \*\*\*\*

(b) \*\*\*

(c) **LIMITATION PENDING SUBMISSION OF REPORT.**—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), **until** the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

(1) \*\*\*

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SECTION 809 PANEL RECOMMENDATIONS #2  
FOR REPEAL OF CERTAIN TITLE 10 PROVISIONS

**809 PANEL RECOMMENDATIONS #2 FOR  
REPEAL OF CERTAIN TITLE 10 PROVISIONS**

[Sections in subsection (b) are set out in U.S. Code section order]

1   **SEC. \_\_\_\_ . REPEAL OF CERTAIN ACQUISITION-RELATED STATUTES.**

2           (a) TITLE 10, UNITED STATES CODE.—

3                   (1) REPEAL OF EXPIRED PROVISIONS.—The following sections of title 10, United  
4           States Code, are repealed: section 167a, section 2323, and section 2332.

5                   (2) CLERICAL AMENDMENTS.—

6                           (A) The table of sections at the beginning of chapter 6 of such title is  
7                   amended by striking the item relating to section 167a.

8                           (B) The table of sections at the beginning of chapter 137 of such title is  
9                   amended by striking the items relating to sections 2323 and 2332.

10          (b) OTHER PROVISIONS OF LAW.—The following provisions of law are repealed:

11                   (1) Section 854 of the National Defense Authorization Act for Fiscal Year 2017  
12           (Public Law 114-328; 10 U.S.C. 2302 note).

13                   (2) Section 829 of the National Defense Authorization Act for Fiscal Year 2013  
14           (Public Law 112-239; 10 U.S.C. 2302 note).

15                   (3) Section 895 of the National Defense Authorization Act for Fiscal Year 2016  
16           (Public Law 114-92; 10 U.S.C. 2304 note).

17                   (4) Section 842 of the National Defense Authorization Act for Fiscal Year 2012  
18           (Public Law 112–81; 10 U.S.C. 2313 note).

## SECTION 809 PANEL RECOMMENDATIONS #2 FOR REPEAL OF CERTAIN TITLE 10 PROVISIONS

1 (5) Section 803(a) of the National Defense Authorization Act for Fiscal Year  
2 2017 (Public Law 114–328; 10 U.S.C. 2330 note).

3 (6) Section 882 of the National Defense Authorization Act for Fiscal Year 2016  
4 (Public Law 114–92; 10 U.S.C. 2330 note).

5 (7) Section 807 of the National Defense Authorization Act for Fiscal Year 2012  
6 (Public Law 112–81; 10 U.S.C. 2330 note).

7 (8) Section 863(a)–(h) of the Ike Skelton National Defense Authorization Act for  
8 Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2330 note).

9 (9) Section 808 of the National Defense Authorization Act for Fiscal Year 2008  
10 (Public Law 110–181; 10 U.S.C. 2330 note).

11 (10) Section 812(b)–(c) of the National Defense Authorization Act for Fiscal Year  
12 2006 (Public Law 109–163; 10 U.S.C. 2330 note).

13 (11) Section 831 of the Duncan Hunter National Defense Authorization Act for  
14 Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2330a note).

15 (12) Section 8133 of the Department of Defense Appropriations Act, 2000 (Public  
16 Law 106–79; 10 U.S.C. 2401a note).

17 (13) Section 825(c)(1)–(2) of the National Defense Authorization Act for Fiscal  
18 Year 2016 (Public Law 114–92; 10 U.S.C. 2430 note).

19 (14) Section 1058 of the Carl Levin and Howard P. “Buck” McKeon National  
20 Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 2430  
21 note).

22 (15) Section 809 of the National Defense Authorization Act for Fiscal Year 1991  
23 (Public Law 101–510; 10 U.S.C. 2430 note).

## SECTION 809 PANEL RECOMMENDATIONS #2 FOR REPEAL OF CERTAIN TITLE 10 PROVISIONS

(16) Section 833 of the National Defense Authorization Act for Fiscal Year 1994  
(Public Law 103–160; 10 U.S.C. 2430 note).

(17) Section 839 of the National Defense Authorization Act for Fiscal Year 1994  
(Public Law 103–160; 10 U.S.C. 2430 note).

(18) Section 819 of the National Defense Authorization Act for Fiscal Year 1995  
(Public Law 103–337; 10 U.S.C. 2430 note).

(19) Section 5064 of the Federal Acquisition Streamlining Act of 1994 (Public  
Law 103–355; 10 U.S.C. 2430 note).

(20) Section 803 of the National Defense Authorization Act for Fiscal Year 1997  
(Public Law 104–201; 10 U.S.C. 2430 note).

(21) Section 1215 of the Department of Defense Authorization Act, 1984 (Public  
Law 98–94; 10 U.S.C. 2452 note).

(22) Section 347 of the Strom Thurmond National Defense Authorization Act for  
Fiscal Year 1999 (Public Law 105–261; 10 U.S.C. 2458 note).

(23) Section 349 of the Strom Thurmond National Defense Authorization Act for  
Fiscal Year 1999 (Public Law 105–261; 10 U.S.C. 2458 note).

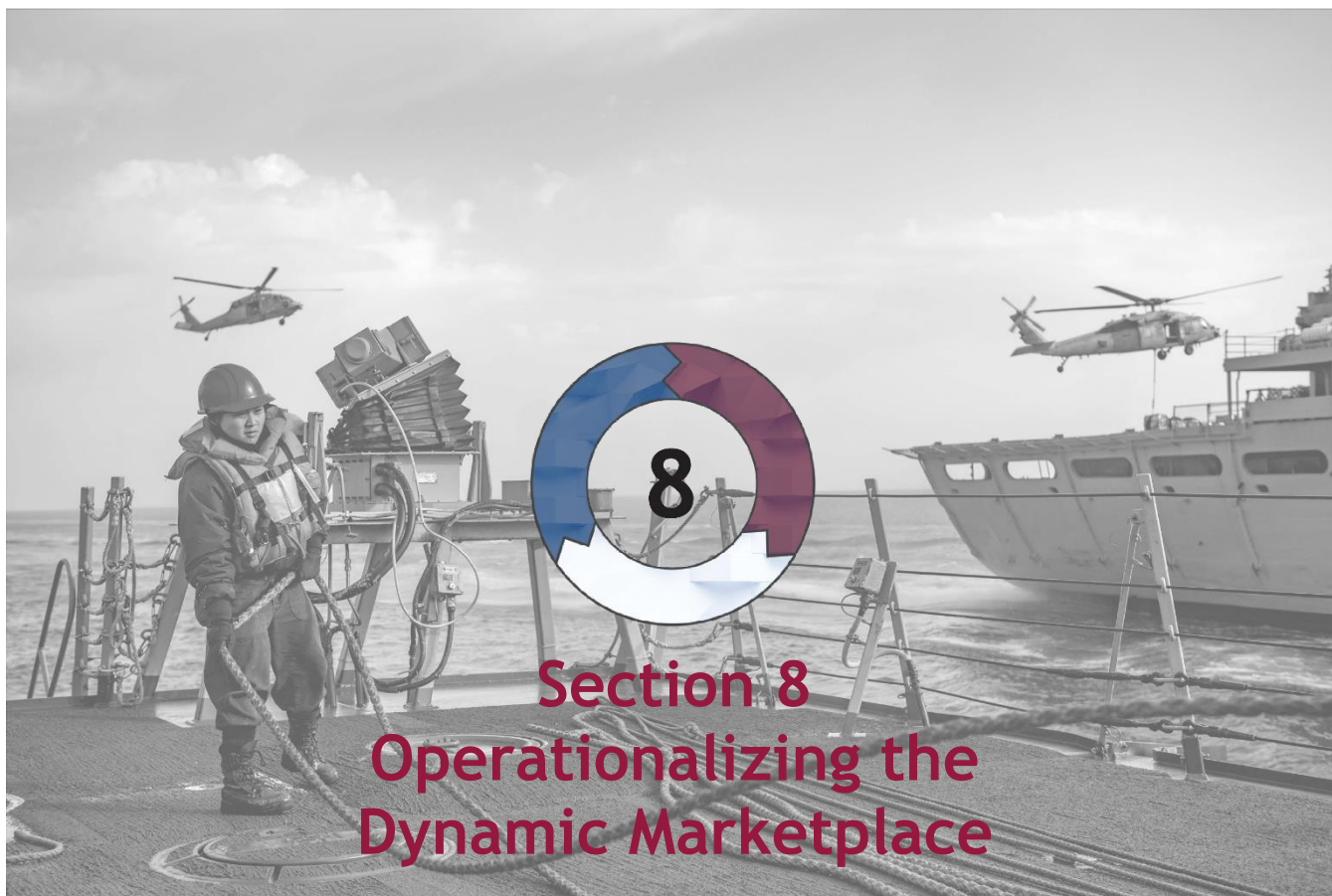
(24) Section 395 of the National Defense Authorization Act for Fiscal Year 1998  
(Public Law 105–85; 10 U.S.C. 2458 note).

(25) Section 352 of the National Defense Authorization Act for Fiscal Year 1996  
(Public Law 104–106; 10 U.S.C. 2458 note).

(26) Section 353(b) of the National Defense Authorization Act for Fiscal Year  
1996 (Public Law 104–106; 10 U.S.C. 2461 note).

## SECTION 809 PANEL RECOMMENDATIONS #2 FOR REPEAL OF CERTAIN TITLE 10 PROVISIONS

- 1 (27) Section 1010 of the USA Patriot Act of 2001 (Public Law 107–56; 10 U.S.C.
- 2 2465 note).
- 3 (28) Section 852 of the National Defense Authorization Act for Fiscal Year 2012
- 4 (Public Law 112–81; 10 U.S.C. 2504 note).
- 5 (29) Section 1081(c) of the National Defense Authorization Act for Fiscal Year
- 6 2007 (Public Law 106–398; 10 U.S.C. 2540c note).



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*The ultimate goal is an outcomes-based DoD acquisition system that exhibits flexibility, empowered decision making, speed to the marketplace, and collaboration.*

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## SUMMARY

The Section 809 Panel has continued to examine the Dynamic Marketplace concept as an avenue for bold changes to the cost-centric and inflexible system used today that values process perfection over operational output. In working to translate this concept into transaction rules, it has become apparent that there are three operational lanes—rather than four, as described in the *Volume 1 Report*. Lane 1 pertains to readily available items that can be purchased with no customization or can be purchased with customization that is part of the normal course of business. Lane 2 pertains to items readily available to the private-sector but require customization that is consistent with existing private-sector practices to meet DoD needs. Lane 3 pertains to defense-unique items or development.

**There are no recommendations associated with this section.**

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