

111TH CONGRESS
1ST SESSION

H. R. 1830

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2009

Mrs. TAUSCHER (for herself and Mr. SPRATT) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Weapon Systems Acquisition Reform Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Congressional defense committees.

TITLE I—ACQUISITION ORGANIZATION

- Sec. 101. Reports on systems engineering capabilities of the Department of Defense.
- Sec. 102. Director of Developmental Test and Evaluation.
- Sec. 103. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.
- Sec. 104. Director of Independent Cost Assessment.
- Sec. 105. Role of the commanders of the combatant commands in identifying joint military requirements.

TITLE II—ACQUISITION POLICY

- Sec. 201. Consideration of trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.
- Sec. 202. Preliminary design review for major defense acquisition programs.
- Sec. 203. Maximization of competition throughout the life cycle of major defense acquisition programs.
- Sec. 204. Critical cost growth in major defense acquisition programs.
- Sec. 205. Organizational conflicts of interest in the acquisition of major weapon systems.
- Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

1 **SEC. 2. CONGRESSIONAL DEFENSE COMMITTEES.**

2 In this Act, the term “congressional defense commit-
3 tees” has the meaning given that term in section
4 101(a)(16) of title 10, United States Code.

5 **TITLE I—ACQUISITION** 6 **ORGANIZATION**

7 **SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILI-** 8 **TIES OF THE DEPARTMENT OF DEFENSE.**

9 (a) **REPORTS BY SERVICE ACQUISITION EXECU-**
10 **TIVES.**—Not later than 180 days after the date of the en-
11 actment of this Act, the service acquisition executive of
12 each military department shall submit to the Under Sec-
13 retary of Defense for Acquisition, Technology, and Logis-
14 ties a report setting forth the following:

1 (1) A description of the extent to which such
2 military department has in place development plan-
3 ning organizations and processes staffed by adequate
4 numbers of personnel with appropriate training and
5 expertise to ensure that—

6 (A) key requirements, acquisition, and
7 budget decisions made for each major weapon
8 system prior to Milestones A and B are sup-
9 ported by a rigorous systems analysis and sys-
10 tems engineering process;

11 (B) the systems engineering strategy for
12 each major weapon system includes a robust
13 program for improving reliability, availability,
14 and maintainability as an integral part of de-
15 sign and development; and

16 (C) systems engineering requirements, in-
17 cluding reliability, availability, and maintain-
18 ability requirements, are identified during the
19 Joint Capabilities Integration Development Sys-
20 tem process and incorporated into contract re-
21 quirements for each major weapon system.

22 (2) A description of the actions that such mili-
23 tary department has taken, or plans to take, to—

1 (A) establish needed development planning
2 and systems engineering organizations and
3 processes; and

4 (B) attract, develop, retain, and reward
5 systems engineers with appropriate levels of
6 hands-on experience and technical expertise to
7 meet the needs of such military department.

8 (b) REPORT BY UNDER SECRETARY OF DEFENSE
9 FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not
10 later than 270 days after the date of the enactment of
11 this Act, the Under Secretary of Defense for Acquisition,
12 Technology, and Logistics shall submit to the Committee
13 on Armed Services of the Senate and the Committee on
14 Armed Services of the House of Representatives a report
15 on the system engineering capabilities of the Department
16 of Defense. The report shall include, at a minimum, the
17 following:

18 (1) An assessment by the Under Secretary of
19 the reports submitted by the service acquisition ex-
20 ecutives pursuant to subsection (a) and of the ade-
21 quacy of the actions that each military department
22 has taken, or plans to take, to meet the systems en-
23 gineering and development planning needs of such
24 military department.

1 (2) An assessment of each of the recommenda-
2 tions of the report on Pre-Milestone A and Early-
3 Phase Systems Engineering of the Air Force Studies
4 Board of the National Research Council, including
5 the recommended checklist of systems engineering
6 issues to be addressed prior to Milestones A and B,
7 and the extent to which such recommendations
8 should be implemented throughout the Department
9 of Defense.

10 **SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVAL-**
11 **UATION.**

12 (a) ESTABLISHMENT OF POSITION.—

13 (1) IN GENERAL.—Chapter 4 of title 10, United
14 States Code, is amended by inserting after section
15 139b the following new section:

16 **“§ 139c. Director of Developmental Test and Evalua-**
17 **tion**

18 “(a) There is a Director of Developmental Test and
19 Evaluation, who shall be appointed by the Secretary of De-
20 fense from among individuals with an expertise in acquisi-
21 tion and testing.

22 “(b)(1) The Director of Developmental Test and
23 Evaluation shall be the principal advisor to the Secretary
24 of Defense and the Under Secretary of Defense for Acqui-

1 sition, Technology, and Logistics on developmental test
2 and evaluation in the Department of Defense.

3 “(2) The Director shall be subject to the supervision
4 of the Under Secretary of Defense for Acquisition, Tech-
5 nology, and Logistics and shall report to the Under Sec-
6 retary.

7 “(c) The Director of Developmental Test and Evalua-
8 tion shall—

9 “(1) develop policies and guidance for the devel-
10 opmental test and evaluation activities of the De-
11 partment of Defense;

12 “(2) monitor and review the developmental test
13 and evaluation activities of the Department of De-
14 fense;

15 “(3) review and approve the test and evaluation
16 master plan for each major defense acquisition pro-
17 gram of the Department of Defense;

18 “(4) supervise the activities of the Director of
19 the Department of Defense Test Resource Manage-
20 ment Center under section 196 of this title;

21 “(5) review the organizations and capabilities of
22 the military departments with respect to develop-
23 mental test and evaluation and identify needed
24 changes or improvements to such organizations and
25 capabilities; and

1 “(6) perform such other activities relating to
2 the developmental test and evaluation activities of
3 the Department of Defense as the Under Secretary
4 of Defense for Acquisition, Technology, and Logis-
5 tics may prescribe.

6 “(d) The Director of Developmental Test and Eval-
7 uation shall have access to all records and data of the De-
8 partment of Defense (including the records and data of
9 each military department) that the Director considers nec-
10 essary in order to carry out the Director’s duties under
11 this section.

12 “(e) The Director of Developmental Test and Evalua-
13 tion shall submit to Congress each year a report on the
14 developmental test and evaluation activities of the Depart-
15 ment of Defense during the preceding year.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 4 of such title is
18 amended by inserting after the item relating to sec-
19 tion 139b the following new item:

“139e. Director of Developmental Test and Evaluation.”.

20 (3) CONFORMING AMENDMENT.—Section 196(f)
21 of such title is amended by striking “the Under Sec-
22 retary of Defense for Acquisition, Technology, and
23 Logistics” and all that follows and inserting “the
24 Under Secretary of Defense for Acquisition, Tech-

1 nology, and Logistics and the Director of Develop-
2 mental Test and Evaluation.”.

3 (b) REPORTS ON DEVELOPMENTAL TESTING ORGA-
4 NIZATIONS AND PERSONNEL.—

5 (1) REPORTS BY SERVICE ACQUISITION EXECU-
6 TIVES.—Not later than 180 days after the date of
7 the enactment of this Act, the service acquisition ex-
8 ecutive of each military department shall submit to
9 the Director of Developmental Test and Evaluation
10 a report on the extent to which the test organiza-
11 tions of such military department have in place, or
12 have effective plans to develop, adequate numbers of
13 personnel with appropriate expertise for each pur-
14 pose as follows:

15 (A) To ensure that testing requirements
16 are appropriately addressed in the translation
17 of operational requirements into contract speci-
18 fications, in the source selection process, and in
19 the preparation of requests for proposals on all
20 major defense acquisition programs.

21 (B) To participate in the planning of de-
22 velopmental test and evaluation activities, in-
23 cluding the preparation and approval of a test
24 and evaluation master plan for each major de-
25 fense acquisition program.

1 (C) To participate in and oversee the con-
2 duct of developmental testing, the analysis of
3 data, and the preparation of evaluations and re-
4 ports based on such testing.

5 (2) FIRST ANNUAL REPORT BY DIRECTOR OF
6 DEVELOPMENTAL TEST AND EVALUATION.—The
7 first annual report submitted to Congress by the Di-
8 rector of Developmental Test and Evaluation under
9 section 139c(e) of title 10, United States Code (as
10 added by subsection (a)), shall be submitted not
11 later than one year after the date of the enactment
12 of this Act, and shall include an assessment by the
13 Director of the reports submitted by the service ac-
14 quisition executives to the Director under paragraph
15 (1).

16 **SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**
17 **CRITICAL TECHNOLOGIES OF MAJOR DE-**
18 **FENSE ACQUISITION PROGRAMS BY THE DI-**
19 **RECTOR OF DEFENSE RESEARCH AND ENGI-**
20 **NEERING.**

21 (a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-
22 SEARCH AND ENGINEERING.—

23 (1) IN GENERAL.—Section 139a of title 10,
24 United States Code, is amended by adding at the
25 end the following new subsection:

1 “(c)(1) The Director of Defense Research and Engi-
2 neering shall periodically review and assess the techno-
3 logical maturity and integration risk of critical tech-
4 nologies of the major defense acquisition programs of the
5 Department of Defense and report on the findings of such
6 reviews and assessments to the Under Secretary of De-
7 fense for Acquisition, Technology, and Logistics.

8 “(2) The Director shall submit to the Secretary of
9 Defense and to Congress each year a report on the techno-
10 logical maturity and integration risk of critical tech-
11 nologies of the major defense acquisition programs of the
12 Department of Defense.”.

13 (2) FIRST ANNUAL REPORT.—The first annual
14 report under subsection (c)(2) of section 139a of
15 title 10, United States Code (as added by paragraph
16 (1)), shall be submitted to Congress not later than
17 March 1, 2011, and shall address the results of re-
18 views and assessments conducted by the Director of
19 Defense Research and Engineering pursuant to sub-
20 section (c)(1) of such section (as so added) during
21 the preceding calendar year.

22 (b) REPORT ON RESOURCES FOR IMPLEMENTA-
23 TION.—Not later than 120 days after the date of the en-
24 actment of this Act, the Director of Defense Research and
25 Engineering shall submit to the congressional defense

1 committees a report describing any additional resources
2 that may be required by the Director, and by other science
3 and technology elements of the Department of Defense,
4 to carry out the following:

5 (1) The requirements under the amendment
6 made by subsection (a).

7 (2) The technological maturity assessments re-
8 quired by section 2366b(a) of title 10, United States
9 Code, as amended by section 202 of this Act.

10 (3) The requirements of Department of Defense
11 Instruction 5000, as revised.

12 **SEC. 104. DIRECTOR OF INDEPENDENT COST ASSESSMENT.**

13 (a) DIRECTOR OF INDEPENDENT COST ASSESS-
14 MENT.—

15 (1) IN GENERAL.—Chapter 4 of title 10, United
16 States Code, as amended by section 102 of this Act,
17 is further amended by inserting after section 139c
18 the following new section:

19 **“§ 139d. Director of Independent Cost Assessment**

20 “(a) There is a Director of Independent Cost Assess-
21 ment in the Department of Defense, appointed by the
22 President, by and with the advice and consent of the Sen-
23 ate. The Director shall be appointed without regard to po-
24 litical affiliation and solely on the basis of fitness to per-
25 form the duties of the Director.

1 “(b) The Director is the principal advisor to the Sec-
2 retary of Defense, the Under Secretary of Defense for Ac-
3 quisition, Technology, and Logistics, and the Under Sec-
4 retary of Defense (Comptroller) on cost estimation and
5 cost analyses for the acquisition programs of the Depart-
6 ment of Defense and the principal cost estimation official
7 within the senior management of the Department of De-
8 fense. The Director shall—

9 “(1) prescribe, by authority of the Secretary of
10 Defense, policies and procedures for the conduct of
11 cost estimation and cost analysis for the acquisition
12 programs of the Department of Defense;

13 “(2) provide guidance to and consult with the
14 Secretary of Defense, the Under Secretary of De-
15 fense for Acquisition, Technology, and Logistics, the
16 Under Secretary of Defense (Comptroller), and the
17 Secretaries of the military departments with respect
18 to cost estimation in the Department of Defense in
19 general and with respect to specific cost estimates
20 and cost analyses to be conducted in connection with
21 a major defense acquisition program under chapter
22 144 of this title or a major automated information
23 system program under chapter 144A of this title;

24 “(3) establish guidance on confidence levels for
25 cost estimates on major defense acquisition pro-

1 grams and require the disclosure of all such con-
2 fidence levels;

3 “(4) monitor and review all cost estimates and
4 cost analyses conducted in connection with major de-
5 fense acquisition programs and major automated in-
6 formation system programs; and

7 “(5) conduct independent cost estimates and
8 cost analyses for major defense acquisition programs
9 and major automated information system pro-
10 grams—

11 “(A) in advance of—

12 “(i) any certification under section
13 2366a or 2366b of this title;

14 “(ii) any certification under section
15 2433(e)(2) of this title; and

16 “(iii) any report under section
17 2445c(f) of this title; and

18 “(B) whenever necessary to ensure that an
19 estimate or analysis under paragraph (4) is un-
20 biased, fair, and reliable.

21 “(c)(1) The Director may communicate views on mat-
22 ters within the responsibility of the Director directly to
23 the Secretary of Defense and the Deputy Secretary of De-
24 fense without obtaining the approval or concurrence of any
25 other official within the Department of Defense.

1 “(2) The Director shall consult closely with, but the
2 Director and the Director’s staff shall be independent of,
3 the Under Secretary of Defense for Acquisition, Tech-
4 nology, and Logistics, the Under Secretary of Defense
5 (Comptroller), and all other officers and entities of the De-
6 partment of Defense responsible for acquisition and budg-
7 eting.

8 “(d)(1) The Secretary of a military department shall
9 report promptly to the Director the results of all cost esti-
10 mates and cost analyses conducted by the military depart-
11 ment and all studies conducted by the military department
12 in connection with cost estimates and cost analyses for
13 major defense acquisition programs of the military depart-
14 ment.

15 “(2) The Director may make comments on cost esti-
16 mates and cost analyses conducted by a military depart-
17 ment for a major defense acquisition program, request
18 changes in such cost estimates and cost analyses to ensure
19 that they are fair and reliable, and develop or require the
20 development of independent cost estimates or cost anal-
21 yses for such program, as the Director determines to be
22 appropriate.

23 “(3) The Director shall have access to any records
24 and data in the Department of Defense (including the
25 records and data of each military department) that the

1 Director considers necessary to review in order to carry
2 out the Director’s duties under this section.

3 “(e)(1) The Director shall prepare an annual report
4 summarizing the cost estimation and cost analysis activi-
5 ties of the Department of Defense during the previous
6 year and assessing the progress of the Department in im-
7 proving the accuracy of its costs estimates and analyses.

8 “(2) Each report under this subsection shall be sub-
9 mitted concurrently to the Secretary of Defense, the
10 Under Secretary of Defense for Acquisition, Technology,
11 and Logistics, the Under Secretary of Defense (Comp-
12 troller), and Congress not later than 10 days after the
13 transmission of the budget for the next fiscal year under
14 section 1105 of title 31. The Director shall ensure that
15 a report submitted under this subsection does not include
16 any information, such as proprietary or source selection
17 sensitive information, that could undermine the integrity
18 of the acquisition process.

19 “(3) The Secretary may comment on any report of
20 the Director to Congress under this subsection.

21 “(f) The President shall include in the budget trans-
22 mitted to Congress pursuant to section 1105 of title 31
23 for each fiscal year a separate statement of estimated ex-
24 penditures and proposed appropriations for that fiscal
25 year for the Director of Independent Cost Assessment in

1 carrying out the duties and responsibilities of the Director
2 under this section.

3 “(g) The Secretary of Defense shall ensure that the
4 Director has sufficient professional staff of military and
5 civilian personnel to enable the Director to carry out the
6 duties and responsibilities of the Director under this sec-
7 tion.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 4 of such title, as
10 so amended, is further amended by inserting after
11 the item relating to section 139c the following new
12 item:

“139d. Director of Independent Cost Assessment.”.

13 (b) REPORT ON MONITORING OF OPERATING AND
14 SUPPORT COSTS FOR MDAPS.—

15 (1) REPORT TO SECRETARY OF DEFENSE.—Not
16 later than one year after the date of the enactment
17 of this Act, the Director of Independent Cost Assess-
18 ment under section 139d of title 10 United States
19 Code (as added by subsection (a)), shall review exist-
20 ing systems and methods of the Department of De-
21 fense for tracking and assessing operating and sup-
22 port costs on major defense acquisition programs
23 and submit to the Secretary of Defense a report on
24 the finding and recommendations of the Director as
25 a result of the review.

1 (2) TRANSMITTAL TO CONGRESS.—Not later
2 than 30 days after receiving the report required by
3 paragraph (1), the Secretary shall transmit the re-
4 port to the congressional defense committees, to-
5 gether with any comments on the report the Sec-
6 retary considers appropriate.

7 (c) TRANSFER OF PERSONNEL AND FUNCTIONS OF
8 COST ANALYSIS IMPROVEMENT GROUP.—The personnel
9 and functions of the Cost Analysis Improvement Group
10 of the Department of Defense are hereby transferred to
11 the Director of Independent Cost Assessment under sec-
12 tion 139d of title 10, United States Code (as so added),
13 and shall report directly to the Director.

14 (d) CONFORMING AMENDMENTS.—

15 (1) Section 2306b(i)(1)(B) of title 10, United
16 States Code, is amended by striking “Cost Analysis
17 Improvement Group of the Department of Defense”
18 and inserting “Director of Independent Cost Assess-
19 ment”.

20 (2) Section 2366a(a)(4) of such title is amend-
21 ed by striking “has been submitted” and inserting
22 “has been approved by the Director of Independent
23 Cost Assessment”.

24 (3) Section 2366b(a)(1)(C) of such title is
25 amended by striking “have been developed to exe-

1 cute” and inserting “have been approved by the Di-
2 rector of Independent Cost Assessment to provide
3 for the execution of”.

4 (4) Section 2433(e)(2)(B)(iii) of such title is
5 amended by striking “are reasonable” and inserting
6 “have been determined by the Director of Inde-
7 pendent Cost Assessment to be reasonable”.

8 (5) Subparagraph (A) of section 2434(b)(1) of
9 such title is amended to read as follows:

10 “(A) be prepared or approved by the Di-
11 rector of Independent Cost Assessment; and”.

12 (6) Section 2445e(f)(3) of such title is amended
13 by striking “are reasonable” and inserting “have
14 been determined by the Director of Independent
15 Cost Assessment to be reasonable”.

16 **SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT**
17 **COMMANDS IN IDENTIFYING JOINT MILITARY**
18 **REQUIREMENTS.**

19 Section 181(d) of title 10, United States Code, is
20 amended—

21 (1) by inserting “(1)” before “The Under Sec-
22 retary”; and

23 (2) by adding at the end the following new
24 paragraph:

1 “(2) The Council shall seek and consider input from
2 the commanders of the combatant commands in carrying
3 out its mission under paragraphs (1) and (2) of subsection
4 (b) and in conducting periodic reviews in accordance with
5 the requirements of subsection (e).”.

6 **TITLE II—ACQUISITION POLICY**

7 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,** 8 **SCHEDULE, AND PERFORMANCE IN THE AC-** 9 **QUISITION OF MAJOR WEAPON SYSTEMS.**

10 (a) CONSIDERATION OF TRADE-OFFS.—

11 (1) IN GENERAL.—The Secretary of Defense
12 shall develop and implement mechanisms to ensure
13 that trade-offs between cost, schedule, and perform-
14 ance are considered as part of the process for devel-
15 oping requirements for major weapon systems.

16 (2) ELEMENTS.—The mechanisms required
17 under this subsection shall ensure, at a minimum,
18 that—

19 (A) Department of Defense officials re-
20 sponsible acquisition, budget, and cost esti-
21 mating functions are provided an appropriate
22 opportunity to develop estimates and raise cost
23 and schedule matters before performance re-
24 quirements are established for major weapon
25 systems; and

1 (B) consideration is given to fielding major
2 weapon systems through incremental or spiral
3 acquisition, while deferring technologies that
4 are not yet mature, and capabilities that are
5 likely to significantly increase costs or delay
6 production, until later increments or spirals.

7 (3) MAJOR WEAPONS SYSTEM DEFINED.—In
8 this subsection, the term “major weapon system”
9 has the meaning given that term in section 2379(d)
10 of title 10, United States Code.

11 (b) DUTIES OF JOINT REQUIREMENTS OVERSIGHT
12 COUNCIL.—Section 181(b)(1) of title 10, United States
13 Code, is amended—

14 (1) in subparagraph (A), by striking “and” at
15 the end;

16 (2) in subparagraph (B), by striking the period
17 at the end and inserting “; and”; and

18 (3) by adding at the end the following new sub-
19 paragraph:

20 “(C) in ensuring the consideration of
21 trade-offs among cost, schedule and perform-
22 ance for joint military requirements;”.

1 **SEC. 202. PRELIMINARY DESIGN REVIEW FOR MAJOR DE-**
2 **FENSE ACQUISITION PROGRAMS.**

3 Section 2366b(a) of title 10, United States Code, is
4 amended—

5 (1) in paragraph (1), by striking “and” at the
6 end;

7 (2) by redesignating paragraph (2) as para-
8 graph (3);

9 (3) by inserting after paragraph (1) the fol-
10 lowing new paragraph (2):

11 “(2) has received a preliminary design review
12 (PDR) and conducted a formal post-preliminary de-
13 sign review assessment, and certifies on the basis of
14 such assessment that the program demonstrates a
15 high likelihood of accomplishing its intended mis-
16 sion; and”;

17 (4) in paragraph (3), as redesignated by para-
18 graph (2) of this section—

19 (A) in subparagraph (D), by striking the
20 semicolon and inserting “, as determined by the
21 Milestone Decision Authority on the basis of an
22 independent review and assessment by the Di-
23 rector of Defense Research and Engineering;
24 and”;

25 (B) by striking subparagraph (E); and

1 (C) by redesignating subparagraph (F) as
2 subparagraph (E).

3 **SEC. 203. MAXIMIZATION OF COMPETITION THROUGHOUT**
4 **THE LIFE CYCLE OF MAJOR DEFENSE ACQUI-**
5 **SITION PROGRAMS.**

6 (a) MAXIMIZATION OF COMPETITION.—The Sec-
7 retary of Defense shall ensure that the acquisition plan
8 for each major defense acquisition program includes meas-
9 ures to maximize competition at both the prime contract
10 level and the subcontract level of such program throughout
11 the life cycle of such program.

12 (b) MEASURES TO MAXIMIZE COMPETITION.—The
13 measures to maximize competition utilized for purposes of
14 subsection (a) may include, but are not limited to, meas-
15 ures to achieve the following, where cost-effective:

16 (1) Competitive prototyping.

17 (2) Dual-sourcing.

18 (3) Funding of a second source for interchange-
19 able, next-generation prototype systems or sub-
20 systems.

21 (4) Utilization of modular, open architectures
22 to enable competition for upgrades.

23 (5) Periodic competitions for subsystem up-
24 grades.

25 (6) Licensing of additional suppliers.

1 (7) Requirements for Government oversight or
2 approval of make or buy decisions to ensure com-
3 petition at the subsystem level.

4 (8) Periodic system or program reviews to ad-
5 dress long-term competitive effects of program deci-
6 sions.

7 (9) Consideration of competition at the sub-
8 contract level and in make or buy decisions as a fac-
9 tor in proposal evaluations.

10 (c) COMPETITIVE PROTOTYPING.—The Secretary of
11 Defense shall modify the acquisition regulations of the De-
12 partment of Defense to ensure with respect to competitive
13 prototyping for major defense acquisition programs the
14 following:

15 (1) That the acquisition strategy for each major
16 defense acquisition program provides for two or
17 more competing teams to produce prototypes before
18 Milestone B approval (or Key Decision Point B ap-
19 proval in the case of a space program) unless the
20 milestone decision authority for such program waives
21 the requirement on the basis of a determination
22 that, but for such waiver, the Department would be
23 unable to meet critical national security objectives.

24 (2) That if the milestone decision authority
25 waives the requirement for prototypes produced by

1 two or more teams for a major defense acquisition
2 program under paragraph (1), the acquisition strat-
3 egy for the program provides for the production of
4 at least one prototype before Milestone B approval
5 (or Key Decision Point B approval in the case of a
6 space program) unless the milestone decision author-
7 ity waives such requirement on the basis of a deter-
8 mination that, but for such waiver, the Department
9 would be unable to meet critical national security ob-
10 jectives.

11 (3) That whenever a milestone decision author-
12 ity authorizes a waiver under paragraph (1) or (2),
13 the waiver, the determination upon which the waiver
14 is based, and the reasons for the determination are
15 submitted in writing to the congressional defense
16 committees not later than 30 days after the waiver
17 is authorized.

18 (d) MAJOR DEFENSE ACQUISITION PROGRAM DE-
19 FINED.—In this section, the term “major defense acquisi-
20 tion program” has the meaning given that term in section
21 2430 of title 10, United States Code.

22 (e) APPLICABILITY.—This section shall apply to any
23 acquisition plan for a major defense acquisition program
24 that is developed or revised on or after the date that is
25 60 days after the date of the enactment of this Act.

1 **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**
2 **QUISITION PROGRAMS.**

3 (a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL
4 COST GROWTH.—Section 2433(e)(2) of title 10, United
5 States Code, is amended—

6 (1) by redesignating subparagraph (C) as sub-
7 paragraph (D);

8 (2) by striking subparagraph (B); and

9 (3) by inserting after subparagraph (A) the fol-
10 lowing new subparagraphs (B) and (C):

11 “(B) terminate such acquisition program, un-
12 less the Secretary determines that the continuation
13 of such program is essential to the national security
14 of the United States and submits a written certifi-
15 cation in accordance with subparagraph (C)(i) ac-
16 companied by a report setting forth the assessment
17 carried out pursuant to subparagraph (A) and the
18 basis for each determination made in accordance
19 with clauses (I) through (IV) of subparagraph
20 (C)(i), together with supporting documentation;

21 “(C) if the program is not terminated—

22 “(i) submit to Congress, before the end of
23 the 60-day period beginning on the day the Se-
24 lected Acquisition Report containing the infor-
25 mation described in subsection (g) is required

1 to be submitted under section 2432(f) of this
2 title, a written certification stating that—

3 “(I) such acquisition program is es-
4 sential to national security;

5 “(II) there are no alternatives to such
6 acquisition program which will provide
7 equal or greater capability to meet a joint
8 military requirement (as that term is de-
9 fined in section 181(g)(1) of this title) at
10 less cost;

11 “(III) the new estimates of the pro-
12 gram acquisition unit cost or procurement
13 unit cost were arrived at in accordance
14 with the requirements of section 139d of
15 this title and are reasonable; and

16 “(IV) the management structure for
17 the acquisition program is adequate to
18 manage and control program acquisition
19 unit cost or procurement unit cost;

20 “(ii) rescind the most recent Milestone ap-
21 proval (or Key Decision Point approval in the
22 case of a space program) for such program and
23 withdraw any associated certification under sec-
24 tion 2366a or 2366b of this title; and

1 “(iii) require a new Milestone approval (or
2 Key Decision Point approval in the case of a
3 space program) for such program before enter-
4 ing into a new contract, exercising an option
5 under an existing contract, or otherwise extend-
6 ing the scope of an existing contract under such
7 program; and”.

8 (b) **TOTAL EXPENDITURE FOR PROCUREMENT RE-**
9 **SULTING IN TREATMENT AS MDAP.**—Section 2430(a)(2)
10 of such title is amended by inserting “, including all
11 planned increments or spirals,” after “an eventual total
12 expenditure for procurement”.

13 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**
14 **THE ACQUISITION OF MAJOR WEAPON SYS-**
15 **TEMS.**

16 (a) **REVISED REGULATIONS REQUIRED.**—Not later
17 than 180 days after the date of the enactment of this Act,
18 the Under Secretary of Defense for Acquisition, Tech-
19 nology, and Logistics shall revise the Defense Supplement
20 to the Federal Acquisition Regulation to address organiza-
21 tional conflicts of interest by contractors in the acquisition
22 of major weapon systems.

23 (b) **ELEMENTS.**—The revised regulations required by
24 subsection (a) shall, at a minimum—

1 (1) ensure that the Department of Defense re-
2 ceives advice on systems architecture and systems
3 engineering matters with respect to major weapon
4 systems from federally funded research and develop-
5 ment centers or other sources independent of the
6 prime contractor;

7 (2) require that a contract for the performance
8 of systems engineering and technical assistance
9 (SETA) functions with regard to a major weapon
10 system contains a provision prohibiting the con-
11 tractor or any affiliate of the contractor from having
12 a direct financial interest in the development or con-
13 struction of the weapon system or any component
14 thereof; and

15 (3) provide for fair and objective “make-buy”
16 decisions by the prime contractor on a major weapon
17 system by—

18 (A) requiring prime contractors to give full
19 and fair consideration to qualified sources other
20 than the prime contractor for the development
21 or construction of major subsystems and com-
22 ponents of the weapon system;

23 (B) providing for government oversight of
24 the process by which prime contractors consider
25 such sources and determine whether to conduct

1 such development or construction in-house or
2 through a subcontract;

3 (C) where appropriate, requiring that pro-
4 gram managers, rather than prime contractors,
5 make the determination whether such develop-
6 ment or construction should be conducted in-
7 house or through a subcontract; and

8 (D) providing for the consideration of
9 prime contractors “make-buy” decisions in past
10 performance evaluations.

11 (c) ORGANIZATIONAL CONFLICT OF INTEREST RE-
12 VIEW BOARD.—

13 (1) ESTABLISHMENT REQUIRED.—Not later
14 than 90 days after the date of the enactment of this
15 Act, the Secretary of Defense shall establish within
16 the Department of Defense a board to be known as
17 the “Organizational Conflict of Interest Review
18 Board”.

19 (2) DUTIES.—The Board shall have the fol-
20 lowing duties:

21 (A) To advise the Under Secretary of De-
22 fense for Acquisition, Technology, and Logistics
23 on policies relating to organizational conflicts of
24 interest in the acquisition of major weapon sys-
25 tems.

1 (1) Procedures for the nomination by the per-
2 sonnel of the military departments and the Defense
3 Agencies of individuals and teams of members of the
4 Armed Forces and civilian personnel of the Depart-
5 ment of Defense for eligibility for recognition under
6 the program.

7 (2) Procedures for the evaluation of nomina-
8 tions for recognition under the program by one or
9 more panels of individuals from the government,
10 academia, and the private sector who have such ex-
11 pertise, and are appointed in such manner, as the
12 Secretary shall establish for purposes of the pro-
13 gram.

14 (c) AWARD OF CASH BONUSES.—As part of the pro-
15 gram required by subsection (a), the Secretary may award
16 to any individual recognized pursuant to the program a
17 cash bonus authorized by any other provision of law to
18 the extent that the performance of such individual so rec-
19 ognized warrants the award of such bonus under such pro-
20 vision of law.

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