

2111 WILSON BOULEVARD, SUITE 400
ARLINGTON, VA 22201-3061
(703) 522-1820 • (703) 522-1885 FAX
WWW.NDIA.ORG

April 6, 2016

The Honorable “Mac” Thornberry
Chairman
Committee on Armed Services
U.S. House of Representatives
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
2216 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Thornberry and Ranking Member Smith,

On behalf of the more than 1,600 member companies and nearly 90,000 individual members that comprise the National Defense Industrial Association, we thank you for your commitment to continued reforms to improve the Defense Acquisition System. In Chairman Thornberry’s opening remarks at a January 7th hearing on acquisition reform, he expressed concerns about the challenges facing the Department of Defense (DoD) in maintaining technological superiority due to the rapid pace of technological innovation, an ever-changing threat environment, and a slow, rigid acquisition system. We share your concerns, and have provided recommendations below to help provide DoD the ‘agility’ it needs to remain dominant in the 21st century security environment.

At its core, the “Acquisition Agility Act,” which was referred to your Committee on March 15, attempts to provide greater ‘agility’ to combat persistent cost and schedule growth in major acquisition programs. The provisions of the “Acquisition Agility Act” support this by requiring modular open system architectures (MOSA) to enable technology refresh throughout the lifecycle, achieve speed to fleet/force, and perform risk reduction at the subsystem and component level; enabling advanced component development and prototyping activities outside of the Program of Record (POR) structure; and, clarifying intellectual property (IP) rights to incentivize innovation and access nontraditional suppliers.

As you have made clear, the “Acquisition Agility Act” is offered as a draft bill, for which you are soliciting feedback from the interested public. Accordingly, we have provided brief section-by-section feedback on each provision of the bill and attached detailed legislative proposals for your consideration as you proceed to mark-up the National Defense Authorization Act for Fiscal Year 2017. As you know, acquisition policy is a complex matter and significant changes require detailed assessment. In our attempt to provide timely input for your April 27th mark-up, the recommendations we put forth are based on a preliminary review, do not signify official positions of all our members, and may therefore change over time as we continue to analyze the bill and gather further feedback from our membership.

Sec. 2. Modular Open System Architecture in the Development of Major Weapon Systems.

We concur with your position that MOSA yields great benefits and should be the preferred approach for the acquisition of major weapon systems where practicable. However, we are concerned about the rigidity of the MOSA requirement and associated process, the focus on “components” rather than “modules” as the level of severable technology to be integrated, and the lack of recognition for the business and technical challenges of systems integration. Our recommended changes would provide DoD greater flexibility by incorporating MOSA into the existing statutory framework governing major systems acquisition and making it a requirement for the acquisition strategy wherever practicable; focusing on the concept of severable “modules” rather than “components” to align with DoD’s ongoing MOSA initiatives; and, most importantly, requiring the Services to develop and report a plan to Congress on using MOSA in system development, that would allow for flexible implementation and congressional review before the effective date of any mandate in this area. Further, our recommendations recognize the critical role and ultimate legal responsibilities of the systems integrator, and ensure that the Services provide adequate resources and support for their efforts.

Sec. 3. Weapon System Component Development, Prototyping, and Deployment.

We believe that properly structured mechanisms to achieve innovation outside the POR structure at the module level will enable risk reduction, rapid deployment of technology, and limit cost and schedule growth for major systems. Unfortunately the approach in Section 3 is too prescriptive and inflexible, and mandatory creation of an oversight board in each Service would undermine the agility desired by the bill by standing-up a new bureaucracy. Our recommendations specify that advanced component development and prototyping activities would be applicable only when there is confidence a discrete technology that could reasonably be separated and reintegrated into a major system will delay a program. We also specify that the funding and time limitations established in the “Acquisition Agility Act” apply to major programs only, and provide greater agility by enabling each of the Services to develop their own governance approach to the new advanced component development and prototyping activities.

Sec. 4. Cost, Schedule, and Performance of Major Defense Acquisition Programs and Sec.

5. Transparency in Major Defense Acquisition Programs. Because of the limited time for review and the need to consider any such proposals in the context of existing statutory and administrative requirements on the major defense program acquisition process, we did not have the time to develop any significant recommendations related to Sections 4 and 5. We believe that it is best for the Committee to work with DoD to determine the optimal review structure for the acquisition process in relation to the current process to avoid the significant risk of creating cumbersome non-value added reviews and requirements and to ensure clear lines of accountability to decision-makers.

Sec. 6. Amendments Relating to Technical Data Rights. We applaud your efforts to clarify IP rights, and agree that it is critical for DoD’s efforts to do business with nontraditional contractors and incentivize innovation from the defense industry. Our primary concerns are related to the provision granting government unlimited rights to “external interfaces.” This is problematic given that DoD has not established a definition of “interface” pursuant to Section 815 of the Fiscal Year 2012 National Defense Authorization Act. Thus, the combination of the new term, “external interface,” with the granting of unlimited rights to “external interfaces” developed


either fully or partially at private expense is troubling. Our omission of recommendations for Section 6, other than recommending consistent use of terms, is a reflection of the technical complexities of defining abstract concepts within statute and the likelihood of severe, adverse unintentional consequences from doing so without thorough vetting. As such, it would be inappropriate for us to provide recommendations for Section 6 within this preliminary review beyond minor conforming edits.

We thank you for the opportunity to provide feedback on the "Acquisition Agility Act" and your sustained commitment to improving defense acquisition reform outcomes. We hope that these comments and recommendations are helpful in your mark-up of the fiscal year 2017 version of the National Defense Authorization Act. If you or your staff members have any questions, please contact James Thomas, Director of Legislative Policy, at jthomas@ndia.org or (703) 247-2598.

Sincerely,



Craig R. McKinley
General, USAF (Ret)
President and CEO



Jon Etherton
Senior Fellow

Attach: NDIA Legislative Proposals for Acquisition Agility Act