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April 9, 2015

The Honorable William “Mac” Thornberry  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
2208 Rayburn House Office Building  
Washington, DC 20515

The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
U.S. House of Representatives  
2264 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 both for your determined leadership with respect to defense acquisition reform. Like you, we believe that defense acquisition outcomes can be improved significantly with new authorities, assistance, and guidance from the Congress coupled with determined oversight.

The Agile Acquisition to Retain Technological Edge Act introduced on March 25 is a solid and impressive first step. We are pleased that you seriously addressed a number of our recommendations from “A Pathway to Transformation.” We strongly concur in your effort to make the Defense Acquisition Workforce Development Fund permanent and to provide for level funding each year. We agree with your desire to create incentives for outstanding military personnel to join the acquisition career field, particularly dual-tracking the acquisition occupation and offering joint duty credit for an acquisition tour. Expanding market research training would improve acquisition outcomes, as would raising the Simplified Acquisition Threshold. Reviewing the Corporate Fellows program would yield insights about how to increase the program’s relevance to the Department’s workforce training needs, and we would welcome a report by the Secretary of Defense on how to improve the Defense Contract Audit Agency process, including by reducing burdens on industry. While you did not propose specific actions on the matter in this year’s bill, we were pleased to see our study quoted in your draft report on the subject of a systematic review of acquisition laws. We look forward to your Committee’s future approaches in that area.

In addition to those areas that addressed our recommendations, we find your other provisions highly commendable. Our study recommended three approaches to improving defense acquisition: giving program managers the authority they need to manage their programs and holding them accountable for program outcomes; matching the requirements levied on the acquisition process to the workforce and other resources provided to execute them; and basing acquisition policy and program decisions on data and evidence rather than anecdotes or opinion.

We found that the provisions of your bill reflect these approaches, including the many provisions we did not recommend in our study but nevertheless applaud.

We commend your willingness to introduce a discussion draft of the legislation to allow for input and reaction prior to the National Defense Authorization Act (NDAA) mark up process. In the spirit of offering constructive feedback, we wish to highlight some of the draft provisions that would benefit from reconsideration or modification.

**Sec. 703. Required Review of Acquisition-Related Functions of the Chiefs of Staff of the Armed Forces.** We thank you for the very close adaptation of our recommendation to have the Service Chiefs report on linking and streamlining the requirements, acquisition, and budget processes which you included in Sec. 702, “Report on linking and streamlining requirements, budget, and acquisition processes within armed forces.” The Service Chiefs are the only leaders positioned to bring these processes together within their respective services. For that reason, we reiterate our recommendation to hold each Service Chief accountable for these processes, and particularly for program requirements validation. As we recommended in the “Pathway to Transformation” report, the Service Chief should be responsible for validating program requirements prior to Milestone A approval. Further, in the event of a Nunn-McCurdy breach, the Service Chief should be responsible for revalidating program requirements rather than the Service Acquisition Executive. Existing law simply does not go far enough in requiring leadership in this area from the Service Chiefs, so any actions or plans that they report to the Congress in this area will necessarily fall short.

**Sec. 706. Procurement of Commercial Items.** We strongly concur in your desire to reduce the exposure of the same commercial item to multiple commercial item reviews and determinations, a desire echoed in our “Pathway to Transformation” report. How the approach in section 706 would be implemented would determine whether the mandated process would be a positive or negative approach. The 706 process could ensure greater consistency in the application of criteria for determining the commerciality of an item. However, consolidating the authority to make commercial item determinations into a single position or individual could considerably delay a process that would otherwise be accomplished through individual contracting officers across the Department of Defense. For that reason, we suggest modifying this proposal to ensure that only the most challenging commercial item determinations are referred to a central authority for adjudication and final decision. Most importantly, the language should clearly stipulate that however a commercial item determination is made, once an item is properly determined to be commercial, the determination should not be revisited in the future. Further, any legislation should clarify that the commercial item determination process is separate from the process of determining price reasonableness.

**Sec. 709. Codification of Other Transaction Authority for Certain Prototype Projects.** While we did not address the subject of Other Transaction Authority (OTA) in our report, we concur in making OTA prototype authority permanent. However, it appears that the intent behind section 709 would be to limit the use of this authority to agreements with non-traditional or small business contractors except under exceptional circumstances meriting a waiver by an agency’s senior procurement executive. Our report recommendations generally sought to expand grants of authority while coupling those authorities with increased accountability. The current OTA

prototype authority strongly favors the involvement of non-traditional suppliers and small businesses, but does not in principle exclude any supplier provided that there is significant involvement by non-traditional firms or that cost share is incorporated in appropriate cases. This approach recognizes that any company—traditional or non-traditional, small or large, singly or in combination—may have innovations that the government wishes to access through an OTA prototype agreement. Further, because the Department awards prime procurement contracts under the Federal Acquisition Regulation and Cost Accounting Standards to traditional defense suppliers, involving traditional suppliers in innovative advanced or rapid prototyping supports the effort to migrate prototypes into procurement programs of record. Limiting the circumstances under which traditional suppliers can participate in prototype agreements under this authority would have the opposite effect at a time when the Department of Defense needs flexible tools for tapping into private sector and academic innovation.

**Sec. 710. Amendments to Certain Acquisition Thresholds.** While we support the provision in the draft bill that would raise the Simplified Acquisition Threshold (SAT) to \$500,000, we believe the approach we recommended in “Pathway to Transformation” is a more effective balance of interests. In developing our recommendation, we attempted to carefully address the needs and interests of large, medium, and small defense contractors by recommending an increase of the SAT to \$500,000 but retaining the small business reserve for contracts of \$250,000 or less. Because this compromise was reached after substantial discussion with and input from companies at each tier, including small businesses, we still believe it is the best approach to expand the ability of federal agencies to take greater advantage of the attributes of small businesses while maximizing competition.

We thank you again for your outstanding bill and hope that these comments are helpful to you during the process of marking up this year’s NDAA. We look forward to working with you as we continue on the path to transforming the acquisition process. If you or your staff members have any questions, please contact Jon Etherton, Senior Fellow, at [jon@ethertonandassociates.com](mailto:jon@ethertonandassociates.com) or (703) 442-8885.

Sincerely,



Maj Gen Arnold Punaro, USMC (Ret.)  
Chairman of the Board



Jon Etherton  
Senior Fellow

cc:

The Honorable John McCain, Chairman, Committee on Armed Services, U.S. Senate  
The Honorable Jack Reed, Ranking Member, Committee on Armed Services, U.S. Senate