

June 7, 2017

The Honorable “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 80,000 individual members that comprise the National Defense Industrial Association, we thank you for the opportunity to provide comments and recommendations on H.R. 2511, *Defense Acquisition Streamlining and Transparency Act*. The attached document contains recommended line-in and line-out changes to the bill and commentary to inform you and your staffs of its implications for industry as you proceed to mark up the National Defense Authorization Act for Fiscal Year 2018.

In our attempt to provide timely input, 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. Further, omission of any commentary or recommendations does not necessarily equate to endorsement.

We hope these recommendations are of value. If you or your staff members have any questions, or would like to meet and discuss our recommendations in greater detail, please contact me at jthomas@ndia.org or (703) 247-2598.

Sincerely,



James Thomas
Assistant Vice President for Policy



Jon Etherton
Senior Fellow

attached: NDIA Recommendations on Defense Acquisition Streamlining and Transparency Act

115TH CONGRESS
1ST SESSION

H. R. 2511

To amend title 10, United States Code, to streamline the acquisition system, invest early in acquisition programs, improve the acquisition workforce, and improve transparency in the acquisition system.

IN THE HOUSE OF REPRESENTATIVES

Mr. THORNBERRY introduced the following bill; which was referred to the Committee on

A BILL

To amend title 10, United States Code, to streamline the acquisition system, invest early in acquisition programs, improve the acquisition workforce, and improve transparency in the acquisition system.

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.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Defense Acquisition Streamlining and Transparency
6 Act”.

1

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

Sec. 1. Short title.

TITLE I—ACQUISITION SYSTEM STREAMLINING

Sec. 101. Procurement through online marketplaces.

Sec. 102. Performance of incurred cost audits.

Sec. 103. Modifications to cost or pricing data and reporting requirements.

TITLE II—EARLY INVESTMENTS IN ACQUISITION PROGRAMS

Sec. 201. Requirement to emphasize reliability and maintainability in weapon system design.

Sec. 202. Licensing of appropriate intellectual property to support major weapon systems.

Sec. 203. Management of intellectual property matters within the Department of Defense.

Sec. 204. Improvement of planning for acquisition of services.

Sec. 205. Improvements to test and evaluation processes and tools.

TITLE III—ACQUISITION WORKFORCE IMPROVEMENTS

Sec. 301. Enhancements to the civilian program management workforce.

Sec. 302. Improvements to the hiring and training of the acquisition workforce.

Sec. 303. Extension and modifications to acquisition demonstration project.

Sec. 304. Acquisition positions in the Offices of the Secretaries of the military departments.

TITLE IV—TRANSPARENCY IMPROVEMENTS

Sec. 401. Transparency of defense business system data.

Sec. 402. Major defense acquisition programs: display of budget information.

Sec. 403. Enhancements to transparency in test and evaluation processes and data.

4 **TITLE I—ACQUISITION SYSTEM**
5 **STREAMLINING**

6 **SEC. 101. PROCUREMENT THROUGH ONLINE MARKET-**
7 **PLACES.**

8 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
9 of Defense shall establish a program to procure commer-
10 cial products through online marketplaces for purposes of
11 expediting procurement and ensuring reasonable pricing
12 of commercial products. The Secretary shall carry out the

1 program in accordance with this section, through one or
2 more contracts with one or more online marketplace pro-
3 viders, and shall design the program to enable Department
4 of Defense-wide use of such marketplaces.

5 (b) CRITERIA FOR ONLINE MARKETPLACES.—The
6 Secretary shall ensure that an online marketplace used
7 under the program established pursuant to subsection
8 (a)—

9 (1) is used widely in the private sector, includ-
10 ing in business-to-business e-commerce;

11 (2) provides dynamic selection, in which sup-
12 pliers and products may be frequently updated, and
13 dynamic pricing, in which suppliers may frequently
14 update product prices;

15 (3) enables offers from multiple suppliers on
16 the same or similar products to be sorted or filtered
17 based on product and shipping price, delivery date,
18 and reviews of suppliers or products;

19 (4) does not feature or prioritize a product of
20 a supplier based on any compensation or fee paid to
21 the online marketplace by the supplier that is exclu-
22 sively for such featuring or prioritization on the on-
23 line marketplace;

1 (5) provides procurement oversight controls, in-
2 cluding spending limits, order approval, and order
3 tracking;

4 (6) provides consolidated invoicing, payment,
5 and customer service functions on behalf of all sup-
6 pliers;

7 (7) satisfies requirements for supplier and prod-
8 uct screening in subsection (c); and

9 (8) collects information necessary to fulfill the
10 information requirements in subsection (g).

11 (c) SUPPLIER AND PRODUCT SCREENING.—The Sec-
12 retary shall—

13 (1) provide or ensure electronic availability to
14 an online marketplace provider awarded a contract
15 pursuant to subsection (a), no less frequently than
16 the first day of each month—

17 (A) the list of suspended and debarred
18 contractors contained in the System of Award
19 Management maintained by the General Serv-
20 ices Administration;

21 (B) a list of suppliers, by product category,
22 that satisfy the requirements of section 2533a
23 or 2533b of title 10, United States Code; and

24 (C) a list of products, by supplier, that are
25 suitable for the Federal Government to procure

1 pursuant to section 8503 of title 41, United
2 States Code; and

3 (2) ensure that an online marketplace used
4 under the program established pursuant to sub-
5 section (a) provides the ability to search suppliers
6 and products and identify such suppliers and prod-
7 ucts as authorized or not authorized for purchase
8 during the procurement and order approval process
9 based on the most recent lists provided pursuant to
10 paragraph (1).

11 (d) RELATIONSHIP TO OTHER PROVISIONS OF
12 LAW.—Notwithstanding any other provision of law, a pro-
13 curement of a product made through an online market-
14 place under the program established pursuant to sub-
15 section (a)—

16 (1) is deemed to satisfy requirements for full
17 and open competition pursuant to section 2304 of
18 title 10, United States Code, and section 3301 of
19 title 41, United States Code, if there are offers from
20 two or more suppliers of such a product on the on-
21 line marketplace;

22 (2) is deemed to be a procurement of a com-
23 mercial product if the product has been purchased
24 within the previous year by a non-Government entity
 through the online marketplace; and

1 (3) is deemed to be an award of a prime con-
2 tract for purposes of the Governmentwide goals es-
3 tablished under section 15(g) of the Small Business
4 Act (15 U.S.C. 644(g)), if the purchase is from a
5 supplier that is a small business concern (as defined
6 under section 3 of the Small Business Act (15
7 U.S.C. 632)).

8 (e) REQUIREMENT TO USE STANDARD TERMS AND
9 CONDITIONS OF ONLINE MARKETPLACES.—Notwith-
10 standing any other provision of law, a procurement of a
11 product through a commercial online marketplace used
12 under the program established pursuant to subsection (a)
13 shall be made under the standard terms and conditions
14 of the marketplace relating to purchasing on the market-
15 place, and the Secretary shall not require an online mar-
16 ketplace to modify its standard terms and conditions as
17 a condition of receiving a contract pursuant to subsection
18 (a).

19 (f) PROCEDURES FOR AWARD OF CONTRACT.—Not-
20 withstanding section 2304 of title 10, United States Code,
21 or any other provision of law, the award of a contract to
22 an online marketplace provider pursuant to subsection (a)
23 may be made without the use of full and open competition.

24 (g) ORDER INFORMATION.—

1 (1) IN GENERAL.—The Secretary of Defense
2 shall require each online marketplace provider
3 awarded a contract pursuant to subsection (a) to
4 provide to the Department of Defense, not less fre-
5 quently than the first day of each month, the ability
6 to electronically access the following information
7 with respect to each product ordered during the pre-
8 ceding month:

9 (A) The product name and description.

10 (B) The date and time of the order.

11 (C) The product price.

12 (D) The Department of Defense purchaser
13 and, if appropriate, the official who authorized
14 the purchase.

15 (E) The delivery address specified in the
16 order for the product.

17 (F) The number of suppliers that offered
18 the same **or similar** product on the same date and
19 time
20 that the product was ordered.

21 (2) DATA SYSTEM.—The Secretary shall ensure
22 that order information listed in paragraph (1) is en-
23 tered into the Federal Procurement Data System de-
24 scribed in section 1122 of title 41, United States
Code.

Comment [R1]: For consistency.

1 (h) LIMITATION ON INFORMATION DISCLOSURE.—In
2 any contract awarded to an online marketplace provider
3 pursuant to subsection (a), the Secretary of Defense shall
4 require that the provider agree not to sell or otherwise
5 make available to any third party any of the information
6 listed in subsection (g)(1) in a manner that identifies the
7 Federal Government, or any of its departments or agen-
8 cies, as the purchaser, except with written consent of the
9 Secretary.

10 (i) DEFINITIONS.—In this section:

11 (1) ONLINE MARKETPLACE PROVIDER.—The
12 term “online marketplace provider” means a com-
13 mercial, non-Government entity providing an online
14 portal for the purchase of commercial products. The
15 term does not include an online portal managed by
16 the Government for, or predominantly for use by,
17 Government agencies.

18 (2) COMMERCIAL PRODUCT.—The term “com-
19 mercial product” means a commercially available off-
20 the-shelf item, as defined in section 104 of title 41,
21 United States Code, except the term does not in-
22 clude services.

23 (j) PROHIBITION. – None of the commercial products
purchased pursuant to subsection (a) shall be provided as
government furnished property to any contractor that meets
the definition of a ‘covered contractor’ contained in Section
893(f)(2) of Public Law 111-383. None of the commercial
products purchased pursuant to subsection (a) shall be

Comment [R2]: COTS items purchased by DoD buyers from the online marketplaces and provided to prime contractors as government-furnished property (GFP) could cause unacceptable supply chain risk and increased compliance costs.

Section 101 stipulates that purchases of COTS items shall be made “under the standard terms and conditions of the marketplace” and “notwithstanding any other provision of law.” If such COTS items were purchased by DoD buyers and provided to prime contractors as GFP, these COTS items would cause significant supply chain risk and increased compliance costs. DoD prime contractors are subject to stringent, defense-unique supply chain restrictions and liability- including for counterfeit electronic parts and cybersecurity not found in the commercial marketplace. In response to these restrictions, DoD prime contractors, subject to these regulatory restrictions, have invested significant resources to conduct increased vetting and surveillance of their suppliers. By contrast, the suppliers of COTS items on the online marketplaces are not subject to these defense-unique requirements. Defense prime contractors have no ability to vet or monitor these online marketplace suppliers.

If the government required the defense prime contractors to accept these COTS items as GFP and integrate them into defense-unique end items, assemblies or sub-assemblies, this GFP would defeat the supply chain security measure put in place by the primes or require additional costly testing and inspection. Moreover, if DoD personnel connected their own unsecured COTS items (e.g. laptop) to the defense prime contractor’s IT network, it could similarly defeat the security/compliance measures put into place by the defense prime contractor. Either scenario could lead to the warfighter getting a less secure item and the taxpayer paying more.

NDIA recommends a prohibition on the government buyer providing the COTS end item as GFP to a prime contractor subject to the full cost accounting standards.

connected to such contractor’s information technology system or networks without that commercial product first meeting current Department of Defense cybersecurity and configuration management standards.

24 **SEC. 102. PERFORMANCE OF INCURRED COST AUDITS.**

25 (a) IN GENERAL.—

1 (1) PERFORMANCE OF INCURRED COST AU-
2 DITS.—Chapter 137 of title 10, United States Code,
3 is amended by inserting after section 2313a the fol-
4 lowing new section:

5 **“§2313b. Performance of incurred cost audits**

6 “(a) COMPLIANCE WITH STANDARDS OF RISK AND
7 MATERIALITY.—For purposes of performing an incurred
8 cost audit of costs associated with a contract of the De-
9 partment of Defense, the Secretary of Defense shall com-
10 ply with commercially accepted standards of risk and ma-
11 teriality.

12 “(b) AUDITS OF INDIRECT COSTS.—Notwithstanding
13 any other provision of law, a contractor of the Department
14 of Defense may present, and the Secretary of Defense
15 shall accept without performing additional audits or re-
16 views, a summary of audit findings on indirect costs of
17 the contractor that were prepared by a commercial auditor
18 if—

19 “(1) the contractor does not have a predomi-
20 nance of cost-type contracts as a percentage of sales;

21 “(2) the commercial auditor previously per-

Comment [R3]: NDIA supports the Financial Executives International comments and recommendations sent to the committee in its letter dated June 6, 2017 pertaining to Section 102.

22 formed an audit of the allowability, measurement,
23 assignment to accounting periods, and allocation of
1 indirect costs of the contractor; and

1 “(3) such audit was performed using relevant
2 commercial accounting standards (such as Generally
3 Accepted Accounting Principles) established by the
4 commercial auditing industry for the relevant ac-
5 counting period.

6 “(c) SELECTION OF AUDITING ENTITY TO PERFORM
7 INCURRED COST AUDITS.—(1) For an incurred cost audit
8 of a contract of the Department of Defense for which an
9 indirect cost audit has not been performed pursuant to
10 subsection (b), the Defense Contract Management Agency
11 or a contract administration office of a military depart-
12 ment shall have the authority to select the Defense Con-
13 tract Audit Agency or a qualified private auditor to per-
14 form an incurred cost audit, based upon guidelines that—

15 “(A) are issued by an audit planning committee
16 that is comprised of one representative from each of
17 the office of the Under Secretary of Defense for Ac-
18 quisition and Sustainment, the Defense Contract
19 Management Agency, a contract administration of-
20 fice of a military department, and the Defense Con-
21 tract Audit Agency;

22 “(B) ensures that, after September 1, 2020,
23 not less than 25 percent of incurred costs are au-

Comment [R4]: Please note that this is typically not audited under a financial statement audit so the burden to pay for this additional review will fall on these contractors.

24 dited by qualified private auditors; and

1 “(C) ensures that multi-year auditing is con-
2 ducted only to address any backlog of incurred cost
3 audits of the Defense Contract Audit Agency in ex-
4 istence on the date of the enactment of this section.

5 “(2)(A) Not later than September 1, 2020, the Sec-
6 retary of Defense shall award an indefinite delivery-indefi-
7 nite quantity task order contract to two or more qualified
8 private auditors to perform incurred cost audits of costs
9 associated with contracts of the Department of Defense.

10 “(B) The Defense Contract Management Agency, ~~or a~~
~~11 contract administration office of a military department,~~
12 ~~the Defense Contract Audit Agency~~ may issue a task order
13 to perform an incurred cost audit to a qualified private
14 auditor under a task order contract awarded under sub-
15 paragraph (A). Such task order may be issued only to a
16 qualified private auditor that certifies that the qualified
17 private auditor has no conflict of interest in performing
18 such an audit.

19 “(C) The Defense Contract Audit Agency may not
20 conduct further audit or review of an incurred cost audit
21 performed by a qualified private auditor pursuant to this
22 section.

23 “(3)(A) Effective September 1, 2022, the Defense
24 Contract Audit Agency may issue unqualified audit find-
25 ings for an incurred cost audit only if the Defense Con-

Comment [R5]: DCMA should have the discretion rather than allowing both DCMA and DCAA the ability to manage the IDIQ contract for audit services.

1 tract Audit Agency is peer reviewed by a commercial audi-
2 tor and passes such peer review.

3 “(B) The peer review referred to in subparagraph (A)
4 shall occur not less frequently than once every three years.

5 “(4) The Secretary of Defense shall consider the re-
6 sults of an incurred cost audit performed under this sec-
7 tion without regard to whether the Defense Contract
8 Audit Agency or a qualified private auditor performed the
9 audit.

10 “(5) The **administrative** contracting officer for a contract
that is the subject of an incurred cost audit shall have the
sole discretion to accept or reject an audit finding on
direct **and indirect** costs of the contract.

11 “(d) MATERIALITY STANDARDS FOR INCURRED COST
12 AUDITS.—(1) Not later than September 1, 2020, and ex-
13 cept as provided in paragraph (2), the minimum materi-
14 ality standard used by an auditor shall—

15 “(A) for an incurred cost audit of costs in
16 an amount less than or equal to \$100,000, be
17 4 percent of such costs;

18 “(B) for an incurred cost audit of costs in
19 an amount greater than \$100,000 but less than
20 \$500,000, be \$2,000 plus 2 percent of such
21 costs;

Comment [R6]: We have added the ability for the ACO to negotiate findings with the contractor on indirect as well as direct costs so that unreasonable audit findings can be reviewed by another party.

1 “(C) for an incurred cost audit of costs in
2 an amount greater than \$500,000 but less than
3 \$1,000,000, be \$5,000 plus 1 percent of such
4 costs;

5 “(D) for an incurred cost audit of costs in
6 an amount greater than \$1,000,000 but less
7 than \$5,000,000, be \$8,000 plus 0.9 percent of
8 such costs;

9 “(E) for an incurred cost audit of costs in
10 an amount greater than \$5,000,000 but less
11 than \$10,000,000, be \$13,000 plus 0.8 percent
12 of such costs;

13 “(F) for an incurred cost audit of costs in
14 an amount greater than \$10,000,000 but less
15 than \$50,000,000, be \$23,000 plus 0.7 percent
16 of such costs;

17 “(G) for an incurred cost audit of costs in
18 an amount greater than \$50,000,000 but less
19 than \$100,000,000, be \$73,000 plus 0.6 per-
20 cent of such costs;

21 “(H) for an incurred cost audit of costs in
22 an amount greater than \$100,000,000 but less
23 than \$500,000,000, be \$153,000 plus 0.52 per-
24 cent of such costs; and

1 “(I) for an incurred cost audit of costs in
2 an amount greater than \$500,000,000, be
3 \$503,000 plus 0.45 percent of such costs.

4 “(2) An auditor that performs an incurred cost audit
5 under this section may use a materiality standard of a
6 lesser amount than the materiality standard described
7 under paragraph (1) with respect to a particular qualified
8 incurred cost submission from a contractor based on an
9 assessment of risk presented by such qualified incurred
10 cost submission. The risk shall be assessed by the auditor
11 in accordance with generally accepted government audit-
12 ing standards and guidance issued by the Secretary of De-
13 fense.

14 “(3) Not later than September 1, 2020, and every
15 5 years thereafter, the Secretary of Defense shall submit
16 to the congressional defense committees a report on com-
17 mercially accepted standards of risk and materiality for
18 performing incurred cost audits. The report may contain
19 recommendations to modify the materiality standards
20 under paragraph (1) to be consistent with such commer-
21 cially accepted standards of risk and materiality.

22 “(e) TIMELINESS OF INCURRED COST AUDITS.—(1)
23 The Secretary of Defense shall ensure that all incurred
24 cost audits performed pursuant to subsection (c) are per-
25 formed in a timely manner.

1 “(2) The Secretary of Defense shall notify a con-
2 tractor within 30 days after receipt of an incurred cost
3 submission from the contractor whether the submission is
4 a qualified incurred cost submission.

5 “(3) Audit findings shall be issued for an incurred
6 cost audit not later than one year after the date of receipt
7 of a qualified incurred cost submission.

8 “(4) If audit findings are not issued within one year
9 after the date of receipt of a qualified incurred cost sub-
10 mission, such qualified incurred cost submission shall be
11 considered accepted in its entirety unless the Secretary of
12 Defense can demonstrate that the contractor unreasonably
13 withheld information necessary to perform the incurred
14 cost audit.

15 “(f) REVIEW OF AUDIT PERFORMANCE.—Not later
16 than April 1, 2025, the Comptroller General of the United
17 States shall provide a report to the congressional defense
18 committees that evaluates for the period beginning on
19 September 1, 2020, and ending on August 31, 2023—

20 “(1) the timeliness, individual cost, and quality
21 of incurred cost audits, set forth separately by in-
22 curred cost audits performed by the Defense Con-
23 tract Audit Agency and by qualified private auditors;

24 “(2) the cost to contractors of the Department
25 of Defense for incurred cost audits, set forth sepa-

1 rately by incurred cost audits performed by the De-
2 fense Contract Audit Agency and by qualified pri-
3 vate auditors;

4 “(3) the effect, if any, on other types of audits
5 conducted by the Defense Contract Audit Agency
6 that results from incurred cost audits conducted by
7 qualified private auditors; and

8 “(4) the capability and capacity of commercial
9 auditors to conduct incurred cost audits for the De-
10 partment of Defense.

11 “(g) DEFINITIONS.—In this section:

12 “(1) The term ‘commercial auditor’ means a
13 private entity engaged in the business of performing
14 audits.

15 “(2) The term ‘incurred cost audit’ means an
16 audit of charges to the Government by a contractor
17 under a cost-type contract or a contract that is not
18 a fixed-price contract.

19 “(3) The term ‘materiality standard’ means a
20 dollar amount of misstatements, including omissions,
21 contained in an incurred cost audit that would be
22 material if the misstatements, individually or in the
23 aggregate, could reasonably be expected to influence
24 the economic decisions of the Government made on
25 the basis of the incurred cost audit.

1 “(4) The term ‘qualified incurred cost submis-
2 sion’ means a submission by a contractor of costs in-
3 curred under a cost-type contract or a contract that
4 is not a fixed-price contract that has been qualified
5 by the Department of Defense as sufficient to con-
6 duct an incurred cost audit.

7 “(5) The term ‘qualified private auditor’ means
8 a commercial auditor—

9 “(A) that performs audits in accordance
10 with generally accepted government auditing
11 standards of the Comptroller General of the
12 United States; and

13 “(B) that has been peer reviewed, con-
14 sistent with commercially accepted peer review
15 processes, and has passed such peer review.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of such chapter is amended
18 by inserting after the item relating to section 2313a
19 the following new item:

“2313b. Performance of incurred cost audits.”.

20 (b) CONFORMING AMENDMENT.—Section 190 of title
21 10, United States Code, as proposed to be added by sec-
22 tion 820(b)(1) of the National Defense Authorization Act
23 for Fiscal Year 2017 (Public Law 114–328; 130 Stat.
24 2274), is amended by striking subsection (f).

1 **SEC. 103. MODIFICATIONS TO CERTIFIED COST OR PRICING DATA**
2 **AND REPORTING REQUIREMENTS.**

3 (a) MODIFICATIONS TO SUBMISSIONS OF COST OR
4 PRICING DATA.—

5 (1) TITLE 10.—Subsection (a) of section 2306a
6 of title 10, United States Code, is amended—

7 (A) by striking “December 5, 1990” each
8 place it appears and inserting “June 30, 2018”;

9 (B) by striking “December 5, 1991” each
10 place it appears and inserting “July 1, 2018”;

11 (C) by striking “\$100,000” each place it
12 appears and inserting “\$~~750,000~~5,000,000”;

13 (D) in paragraph (1)—

14 (i) in subparagraphs (A)(i), (B)(i),
15 (C)(i), (C)(ii), and (D)(i), by striking
16 “\$500,000” and inserting “\$~~2,500,000~~
17 5,000,000”;

18 and

19 (ii) in subparagraph (B)(ii), by strik-
20 ing “\$500,000” and inserting “\$750,000”;

21 (E) in paragraph (6), by striking “Decem-
22 ber 5, 1990” and inserting “June 30, 2018”;
23 and

24 (F) in paragraph (7), by striking “to the
25 amount” and all that follows through “higher
26 multiple of \$50,000.” and inserting “in accord-
ance with section 1908 of title 41.”.

Comment [R7]: Objective: The House Armed Services Committee is committed to reducing wasteful spending and eliminating bureaucratic obstacles.

Congress wants DoD to reduce contractor overhead: Last year, the NDAA set a goal for DoD to reduce the amount of money contractors spend on bid and proposal costs, suggesting that B&P costs are an area of wasteful spending. To date, the Department has not taken any action. Yet, as reported in a 2015 DoD study, in a sole source environment ranging from \$700k to \$5M TINA compliance related proposal costs is estimated to account for 50-60% of total B&P costs which are roughly 2-3% of contract value.

Changing TINA threshold would reduce overhead: Increasing the TINA threshold would significantly reduce B&P costs without reducing DoD’s visibility into higher risk contracts. One large defense contractor reports that changing the threshold from \$2.5M to \$5.0M would decrease the number of TINA submitted proposals by 50%. Another prime contractor reports a 25% reduction in the number of TINA submitted proposals. In another example where a contractor had 450 first tier subcontractors, 266 subcontracts or 60% of the subcontracts were worth less than \$750,000, another 347 subcontracts or 77% were worth less than \$2.5M, and another 385 proposals or 85% were worth less than \$5.0M. Yet, the remaining 65 subcontracts (450- 385) reflect 90% of the subcontractor costs. A focused review on the highest value 65 subcontracts make most sense.

Transactional cost savings and cost-benefit: There is a huge transactional cost for both the government and industry for every purchase order subject to TINA. Not only is it the cost to gather and review the detailed data, but also the cycle time to conduct the transactions. The time to develop the proposal can be 40 hours easily, but the more significant impact is that it takes 4-6 months to complete the cycle, further delaying getting under contract and getting capability to the warfighter. The enormity of the costs and impact has to be weighed against the risk, and used for the highest risk proposals. The number of covered proposals can be reduced significantly while retaining a high percentage of dollars covered by TINA.

DoD has many oversight tools: The title of this provision should be modified to read “Modifications to certified cost or pricing data and reporting requirements.” There will still be many competitive awards and awards subject to TINA. Even for those that would no longer be subject to TINA, the government has many tools to assure price reasonableness through market research and access to other than cost and pricing data. Many of the contractors that would have additional purchase orders exempted would still be subject to business system reviews giving DoD access into the integrity of the contractor’s systems.

1 (2) TITLE 41.—Section 3502 of title 41, United
2 States Code, is amended—

3 (A) in subsection (a)—

4 (i) by striking “October 13, 1994”
5 each place it appears and inserting “June
6 30, 2018”;

7 (ii) by striking “\$100,000” each place
8 it appears and inserting “\$750,000”;

9 (iii) in paragraphs (1)(A), (2)(A),
10 (3)(A), (3)(B), and (4)(A), by striking
11 “\$500,000” and inserting “\$~~2,500,000~~
5,000,000”;

12 and

13 (iv) in paragraph (2)(B), by striking
14 “\$500,000” and inserting “\$750,000”;

15 (B) in subsection (f), by striking “October
16 13, 1994” and inserting “June 30, 2018”; and

17 (C) in subsection (g), by striking “to the
18 amount” and all that follows through “higher
19 multiple of \$50,000.” and inserting “in accord-
20 ance with section 1908.”.

21 (b) REQUIREMENTS FOR DEFENSE CONTRACT AUDIT
22 AGENCY REPORT.—

23 (1) IN GENERAL.—Section 2313a of title 10,
24 United States Code, is amended—

25 (A) in subsection (a)(2)—

Comment [R8]: (Continued from previous page)
DoD has failed to implement pilot program testing efficacy of raising TINA threshold to \$5M: DoD will not, however, accept this risk based approach. In fact, DoD has ignored the Committee’s desire to evaluate the risk and benefit of raising the TINA threshold to \$5M. Section 899 of the FY15 NDAA authorized DoD to conduct a pilot program to test the efficacy of raising the TINA threshold to \$5M. The Department had an opportunity to identify to Congress the potential negative impact of an increase to the TINA threshold but failed to do so. Industry Congress should now take action and demand a risk based approach to DoD contracting by raising the threshold to \$5M.
Industry must submit price proposals that can be audited but they are not: Industry often feels that DoD has an insatiable appetite for data but in turn does not utilize the provided information in a meaningful way. To demonstrate, in 2015, DCAA completed 26 TINA audits. DoD demands certified auditable data but does not audit this data in any meaningful way.

1 (i) in subparagraph (A)—
2 (I) by inserting “and dollar
3 value” after “number”; and
4 (II) by inserting “, set forth sep-
5 arately by type of audit” after “pend-
6 ing”;
7 (ii) in subparagraph (C), by inserting
8 “, both from the date of receipt of a quali-
9 fied incurred cost submission (as defined
10 in section 2313b of this title) and from the
11 date the audit begins” after “audit”;
12 (iii) by amending subparagraph (D) to
13 read as follows:
14 “(D) the sustained questioned costs, set
15 forth separately by type of audit, both as a
16 total value and as a percentage of the total
17 questioned costs for the audit;”;
18 (iv) by striking subparagraph (E);
19 and
20 (v) by inserting after subparagraph
21 (D) the following new subparagraphs:
22 “(E) the aggregate cost of performing au-
23 dits, set forth separately by type of audit;

1 “(F) the ratio of sustained questioned
2 costs to the aggregate costs of performing au-
3 dits, set forth separately by type of audit; and

4 “(G) the total number and dollar value of
5 audits that are pending for a period longer than
6 one year as of the end of the fiscal year covered
7 by the report, and the fiscal year in which the
8 qualified submission was received, set forth sep-
9 arately by type of audit;”); and

10 (B) by adding at the end the following new
11 subsection:

12 “(d) SUSTAINED QUESTIONED COSTS DEFINED.—
13 The term ‘sustained questioned costs’ means questioned
14 costs that were recovered by the Federal Government as
15 a result of contract negotiations related to such questioned
16 costs.”.

17 (2) EXEMPTION TO REPORT TERMINATION RE-
18 QUIREMENTS.—Section 1080 of the National De-
19 fense Authorization Act for Fiscal Year 2016 (Pub-
20 lic Law 114–92; 129 Stat. 1000; 10 U.S.C. 111
21 note), as amended by section 1061(j) of the National
22 Defense Authorization Act for Fiscal Year 2017
23 (Public Law 114–328), does not apply to the report
24 required to be submitted to Congress under section
25 2313a of title 10, United States Code.

1 (c) ADJUSTMENT TO VALUE OF COVERED CON-
2 TRACTS FOR REQUIREMENTS RELATING TO ALLOWABLE
3 COSTS.—Subparagraph (B) of section 2324(l)(1) of title
4 10, United States Code, is amended by striking “to the
5 equivalent” and all that follows through “higher multiple
6 of \$50,000.” and inserting “in accordance with section
7 1908 of title 41.”.

8 **TITLE II—EARLY INVESTMENTS**
9 **IN ACQUISITION PROGRAMS**

10 **SEC. 201. REQUIREMENT TO EMPHASIZE RELIABILITY AND**
11 **MAINTAINABILITY IN WEAPON SYSTEM DE-**
12 **SIGN.**

13 (a) SUSTAINMENT FACTORS IN WEAPON SYSTEM
14 DESIGN.—

15 (1) IN GENERAL.—Chapter 144 of title 10,
16 United States Code, is amended by adding at the
17 end the following new section:

18 **“§2442. Sustainment factors in weapon system design**

19 “(a) IN GENERAL.—The Secretary of Defense shall
20 ensure that the defense acquisition system gives ample em-
21 phasis to sustainment factors, particularly those factors
22 that are affected principally by the design of a weapon
23 system, early in the development of a weapon system.

24 “(b) REQUIREMENTS PROCESS.—The Secretary shall
25 revise guidance on the process for the development of ca-

1 pabilities requirements to provide sufficient emphasis to
2 sustainment factors. The revised guidance shall include re-
3 liability and maintainability as performance attributes of
4 the key performance parameter on sustainment.

5 “(c) SOLICITATION AND AWARD OF CONTRACTS.—

6 “(1) REQUIREMENT.—The program manager of
7 a weapon system shall include in the solicitation for
8 and terms of a contract for the development or pro-
9 duction of a weapon system clearly defined and
10 measurable requirements for reliability and main-
11 tainability as a performance requirement in the con-
12 tract.

13 “(2) EXCEPTION.—If the program manager de-
14 termines that reliability or maintainability should
15 not be a performance requirement in a contract, the
16 program manager shall submit justification for such
17 decision in writing to the milestone decision author-
18 ity for the program.

19 “(3) REVISED GUIDANCE ON SOURCE SELEC-
20 TION CRITERIA.—The Secretary shall revise guid-
21 ance in the Defense Federal Acquisition Regulation
22 Supplement to provide sufficient emphasis to
23 sustainment factors in the process for source selec-
24 tion. The revised guidance shall include reliability
25 and maintainability as factors or significant subfac-

1 tors to consider in the evaluation of competitive pro-
2 posals **only where objective criteria can be established**
3 **to validate or substantiate any offeror representation**
4 **about future end item performance and not be based**
5 **solely on proposal assurances about future**
6 **performance.**

3 ~~“(d) CONTRACT PERFORMANCE.~~

4 ~~“(1) IN GENERAL. The Secretary shall estab-~~
5 ~~lish processes and best practices across the Depart-~~
6 ~~ment of Defense for responding to the positive or~~
7 ~~negative performance of a contractor in meeting the~~
8 ~~sustainment requirements of a development or pro-~~
9 ~~duction contract for a weapon system. The Secretary~~
10 ~~shall encourage the use of incentive fees authorized~~
11 ~~in paragraph (2) in all development and production~~
12 ~~contracts for weapons systems. The Secretary shall~~
13 ~~take the necessary actions to enable program offices~~
14 ~~to execute the recovery options required for each de-~~
15 ~~velopment and production contract under paragraph~~
16 ~~(3).~~

17 ~~“(2) AUTHORITY FOR INCENTIVE FEES. The~~
18 ~~Secretary of Defense is authorized to pay an incen-~~
19 ~~tive fee to a contractor that exceeds the reliability or~~
20 ~~maintainability requirements of a development or~~
21 ~~production contract. In exercising the authority pro-~~
22 ~~vided in this paragraph, the Secretary may provide~~
23 ~~in the terms of the contract for the payment of an~~

Comment [R9]: Proposed subsection 10 U.S.C. 2442(c)(3) should be revised to require that any DFARS guidance on R&M as an evaluation factor or sub-factor be limited to objective criteria that can be validated through reliable metrics and not be based solely on representations about future performance without further proof.

24 ~~incentive fee to a contractor not later than 10 years~~
25 ~~after fielding of the weapon system.~~

~~“(3) RECOVERY OPTIONS. (A) Any develop-~~
1 ~~ment or production contract for a weapon system~~
2 ~~shall include terms for amounts to be paid by the~~
3 ~~contractor to the Government for failure to meet the~~
4 ~~reliability and maintainability requirements of a con-~~
5 ~~tract after a reasonable amount of time, as specified~~
6 ~~in the contract. Terms for such amounts shall be in-~~
7 ~~cluded in the solicitation for the contract. Such~~
8 ~~terms shall include provisions providing that —~~

9 ~~“(i) the contractor, at no or minimal cost~~
10 ~~to the Government as determined by the Sec-~~
11 ~~retary and included in the contract, identifies~~
12 ~~the cause of the failure in the system design,~~
13 ~~develops an engineering change, and, in the~~
14 ~~case of a production contract, modifies all end~~
15 ~~items to be delivered or already delivered under~~
16 ~~the contract; or~~

17 ~~“(ii) the contractor provides the Govern-~~
18 ~~ment —~~

19 ~~“(I) a refund in the amount required~~
20 ~~to identify the cause of the failure in the~~
21 ~~system design, develop an engineering~~
22 ~~change, and modify all end items delivered~~
1 ~~under the contract; and~~

2 ~~“(II) associated technical data re-~~
3 ~~quired to make the necessary modifica-~~
4 ~~tions.~~

5 ~~“(B) The Secretary may waive the requirement~~
6 ~~in subparagraph (A) with respect to a development~~
7 ~~or production contract if the Secretary—~~
8 ~~“(i) determines that such requirement is~~
9 ~~not in the national security interests of the~~
10 ~~United States; and~~

11 ~~“(ii) provides notification and the rationale~~
12 ~~for the determination to the congressional de-~~
13 ~~ference committees before awarding the contract.~~

14 ~~“(4) MEASUREMENT OF RELIABILITY AND~~
15 ~~MAINTAINABILITY.— In carrying out paragraphs (2)~~
16 ~~and (3), the program manager shall base determina-~~
17 ~~tions of a contractor’s performance on reliability and~~
18 ~~maintainability data collected during developmental~~
19 ~~testing, operational testing, or the operation of a~~
20 ~~fielded weapon system as measured and validated by~~
21 ~~the military department concerned on a date chosen~~
22 ~~by the program manager and specified in the con-~~
23 ~~tract.”.~~

24 ~~(2) CLERICAL AMENDMENT.— The table of sec-~~
25 ~~tions at the beginning of subchapter I of such chap-~~

1 ~~ter is amended by adding at the end the following~~
2 ~~new item:~~ |

“2442. Sustainment factors in weapon system design.”.

3 (b) DEADLINE FOR GUIDANCE.—The Secretary of
4 Defense shall revise guidance as required by subsections
5 (b) and (c)(3) of section 2442 of title 10, United States
6 Code, as added by subsection (a), not later than 180 days
7 after the date of the enactment of this Act.

8 (c) EFFECTIVE DATE ~~FOR CERTAIN PROVISIONS.~~—
9 Subsections (c) ~~and (d)~~ of section 2442 of title 10, United
10 States Code, as added by subsection (a), shall apply with
11 respect to any weapon system development and production
12 contract for which the contract solicitation is issued on
13 or after the date occurring one year after the date of the
14 enactment of this Act.

15 (d) INVESTMENT PROGRAM AUTHORIZED.—

16 (1) IN GENERAL.—The Secretary of Defense
17 shall establish an investment program for funding
18 engineering changes to the design of a weapon sys-
19 tem in the development or production phase of an
20 acquisition program to improve reliability or main-
21 tainability of the weapon system and reduce pro-
22 jected operating and support costs. The program
23 may be funded from the Defense Modernization Ac-
24 count authorized in section 2216 of title 10, United
25 States Code. A program manager may apply for

Comment [R10]: The contract performance provision is unworkable. If implemented, this provision will lead to costly claims litigation, delays in providing weapons systems to the warfighter, and increased costs to the taxpayer. Strike the statutory change in Section 201(a) recommended as 10 U.S.C. 2442(d) in its entirety.

1 available funds by presenting a business case anal-
2 ysis of the anticipated return on investment of such
3 funds.

4 (2) GUIDANCE REQUIRED.—Not later than 180
5 days after the date of the enactment of this Act, the
6 Secretary of Defense shall issue guidance for car-
7 rying out the program authorized under paragraph
8 (1). The guidance shall set forth the process for ap-
9 plying for available funds, including information on
10 the validation of business case analyses and the eval-
11 uation of applications.

12 **SEC. 202. LICENSING OF APPROPRIATE INTELLECTUAL**
13 **PROPERTY TO SUPPORT MAJOR WEAPON**
14 **SYSTEMS.**

15 (a) NEGOTIATION OF PRICE FOR TECHNICAL DATA
16 BEFORE DEVELOPMENT OR PRODUCTION OF MAJOR
17 WEAPON SYSTEM.—

18 (1) REQUIREMENT.—Chapter 144 of title 10,
19 United States Code, is amended by inserting after
20 section 2438 the following new section:

21 **“§ 2439. Negotiation of price for technical data before**
22 **development or production of major**
23 **weapon systems**

24 “The Secretary of Defense shall ensure that the De-
25 partment of Defense, before selecting a contractor for the

1 ~~development or~~ development for manufacturing and fielding or
production of a major weapon system, ne-
2 gotiates a price for technical data to be delivered under a
contract for such ~~development or~~ development for manufacturing
3 and fielding or production.”.

Comment [R11]: This blanket requirement to do this for all of development would be too early in the acquisition process.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions at the beginning of such chapter is amended
6 by inserting after the item relating to section 2438
7 the following new item:

“2439. Negotiation of price for technical data before development or production
of major weapon systems.”.

8 (b) WRITTEN DETERMINATION FOR MILESTONE B
9 APPROVAL.—Subsection (a)(3) of section 2366b of title
10 10, United States Code, is amended—

11 (1) by striking “and” at the end of subpara-
12 graph (M); and

13 (2) by inserting after subparagraph (N) the fol-
14 lowing new subparagraph:

15 “(O) appropriate actions have been taken
16 to negotiate and enter into a contract ~~or contract~~
~~options~~ for the technical data required to support the
program;

17 and”.

18 (c) PREFERENCE FOR NEGOTIATION OF CUS-
19 TOMIZED LICENSE AGREEMENTS.—Section 2320 of title
20 10, United States Code, is amended—

21 (1) by redesignating subsections (f) and (g) as
22 subsections (g) and (h), respectively; and

1 (2) by inserting after subsection (e) the fol-
2 lowing new subsection (f):

3 “(f) PREFERENCE FOR SPECIALLY NEGOTIATED LI-
4 CENSES.—The Secretary of Defense shall, to the max-
5 imum extent practicable, negotiate and enter into a con-
6 tract with a contractor for a specially negotiated license
7 for technical data to support the product support strategy
8 of a major weapon system or subsystem of a major weapon
9 system. In performing the assessment and developing the
10 corresponding strategy required under subsection (e) for
11 such a system or subsystem, a program manager shall
12 consider the use of specially negotiated licenses to acquire
13 customized technical data appropriate for the particular
14 elements of the product support strategy.”.

15 **SEC. 203. MANAGEMENT OF INTELLECTUAL PROPERTY**
16 **MATTERS WITHIN THE DEPARTMENT OF DE-**
17 **FENSE.**

18 (a) MANAGEMENT OF INTELLECTUAL PROPERTY.—

19 (1) IN GENERAL.—Chapter 137 of title 10,
20 United States Code, is amended by inserting after
21 section 2321 the following new section:

22 **“§ 2322. Management of intellectual property matters**
23 **within the Department of Defense**

24 “(a) OFFICE AND DIRECTOR OF INTELLECTUAL
25 PROPERTY.—(1) There is an Office of Intellectual Prop-

1 erty within the Office of the Under Secretary of Defense
2 for Acquisition and Sustainment.

3 “(2) The Office shall be headed by a Director of In-
4 tellectual Property, who shall be assigned to such position
5 by the Under Secretary from among civilian employees of
6 the Department of Defense with the qualifications de-
7 scribed in paragraph (3). The Director is responsible in
8 the Department of Defense to the Secretary of Defense
9 (after the Under Secretary of Defense for Acquisition and
10 Sustainment) for policy and oversight of the acquisition
11 and licensing of intellectual property within the Depart-
12 ment of Defense. The Director shall report directly to the
13 Under Secretary.

14 “(3) In order to qualify to be assigned to the position
15 of Director, an individual shall—

16 “(A) have management expertise in, and professional
experience with **industry**, intellectual property
matters, including an understanding of intellectual
property law, regulations, and policies, especially with
respect to regulations and policies of the Federal
Government and the Department of Defense for
acquiring or licensing intellectual property, and best
practices for negotiating and executing business
arrangements with industry for the acquisition or
licensing of intellectual property; and

“(B) have an understanding of Department of
1 Defense weapon system acquisition.

2 “(4) The Secretary of Defense shall designate the po-
3 sition of Director as a critical acquisition position under
4 section 1733(b)(1)(C) of this title.

5 “(b) DUTIES.—(1) The Director of Intellectual Prop-
6 erty (in this section referred to as the ‘Director’) shall
7 oversee and coordinate efforts throughout the Department
8 of Defense to acquire or license intellectual property with-
9 in the Department of Defense. The duties under this para-
10 graph shall include the duties specified in paragraphs (2)
11 through (8).

12 “(2) The Director shall develop and recommend any
13 policy guidance on the acquisition or licensing of intellec-
14 tual property to be issued by the Secretary of Defense.

15 “(3) The Director shall provide oversight and coordi-
16 nation of the efforts within the Department of Defense
17 to acquire or license intellectual property—

18 “(A) to ensure that program managers are
19 aware of the rights afforded the Federal Government
20 and contractors in intellectual property and that
21 program managers fully consider and use all avail-
22 able techniques and best practices for acquiring or
23 licensing intellectual property early in the acquisition
24 process;

1 “(B) to enable consistency across the military
2 departments and the Department of Defense in
3 strategies for obtaining intellectual property and
4 communicating with industry; and

5 “(C) to raise awareness within the acquisition,
6 science and technology, and logistics communities
7 within the Department of intellectual property
8 issues.

9 “(4) The Director shall assist program managers in
10 developing customized intellectual property strategies for
11 each weapon system based on, at a minimum, the unique
12 characteristics of the weapon system and its components,
13 the product support strategy for the weapon system, the
14 organic industrial base strategy of the military department
15 concerned, and the commercial market.

16 “(5) The Director shall develop resources, including
17 templates for specially negotiated licenses, and make them
18 available to the acquisition workforce.

19 “(6) The Director shall establish, maintain, super-
20 vise, and detail to program offices the cadre of intellectual
21 property experts established under subsection (c).

22 “(7) The Director, in coordination with the Defense
23 Acquisition University, shall—

24 “(A) develop a career path, including develop-
25 ment opportunities, talent management programs,

1 and training, for the cadre of intellectual property
2 experts established under subsection (c); and

3 “(B) develop, update, and coordinate intellec-
4 tual property training provided to the acquisition
5 workforce.

6 “(8) The Director shall foster communications with
7 industry and serve as a central point of contact within
8 the Department of Defense for communications with con-
9 tractors on intellectual property matters. The Director
10 may interact directly with industry, trade associations,
11 other Government agencies, academic research and edu-
12 cational institutions, and scientific organizations engaged
13 in intellectual property matters.

14 “(c) CADRE OF INTELLECTUAL PROPERTY EX-
15 PERTS.—(1) The Director shall establish within the Office
16 of Intellectual Property a cadre of personnel who are ex-
17 perts in intellectual property matters. The purpose of the
18 cadre is to ensure a consistent, strategic, and highly
19 knowledgeable approach to acquiring or licensing intellec-
20 tual property by providing expert advice, assistance, and
21 resources to the acquisition workforce on intellectual prop-
22 erty matters, including acquiring or licensing intellectual
23 property.

24 “(2) The cadre of experts shall be detailed tempo-
25 rarily to a weapons system program office or an acquisi-

1 tion command within a military department to advise, as-
2 sist, and provide resources to a program manager or pro-
3 gram executive officer on intellectual property matters at
4 various stages of the life cycle of a weapon system. In per-
5 forming such duties, the experts shall—

6 “(A) interpret and provide counsel on laws, reg-
7 ulations, and policies relating to intellectual prop-
8 erty;

9 “(B) provide advice and assistance in the devel-
10 opment of an acquisition strategy, product support
11 strategy, and intellectual property strategy for a
12 weapon system;

13 “(C) provide resources, including templates, to
14 assist in the drafting of a contract solicitation or
15 contract;

16 “(D) interact with or assist in interactions with
17 contractors, including communications and negotia-
18 tions with contractors on contract solicitations and
19 contract awards; and

20 “(E) conduct or assist with mediation if tech-
21 nical data delivered pursuant to a contract is incom-
22 plete or does not comply with the terms of the con-
23 tract.

24 “(3)(A) In order to achieve the purpose set forth in
25 paragraph (1), the Director shall ensure the cadre has the

1 appropriate number of staff and such staff possesses the
2 necessary skills, knowledge, and experience to carry out
3 the duties under paragraph (2), including in relevant
4 areas of law, contracting, acquisition, logistics, and sys-
5 tems engineering.

6 “(B) Civilian personnel from within the Office of the
7 Secretary of Defense, Joint Staff, military departments,
8 Defense Agencies, and combatant commands may be de-
9 tailed to serve as members of the cadre, upon request of
10 the Director.

11 “(C) The Director may use the authorities for highly
12 qualified experts under section 9903 of title 5, to hire ex-
13 perts as members of the cadre who are skilled profes-
14 sionals in intellectual property and related matters.

15 “(D) The Director may enter into a contract with a
16 private-sector entity for highly specialized expertise to
17 support the cadre **in areas concerning technical data to be
delivered under a contract**. Such entity shall be considered a
covered Government support contractor, as defined in section
18 2320 of this title.

19 “(E) In establishing the cadre, the Director shall give
20 preference to civilian employees of the Department of De-
21 fense, rather than members of the armed forces, to main-
22 tain continuity in the cadre.

23 “(F) The Director is authorized to use funding from
24 the Defense Acquisition Workforce Development Fund for

Comment [R12]: Clarifies that a support contractor would be limited to post-award matters per the wording in 10 USC 2320(f).

1 the purpose of recruitment, training, and retention of the
2 cadre, including paying salaries of newly hired members
3 of the cadre for up to three years.

4 “(G) Members of the cadre shall be supervised by and
5 report to the Director.”.

6 (2) CLERICAL AMENDMENT.—The table of sec-
7 tions at the beginning of such chapter is amended
8 by adding at the end the following new item:

“2322. Management of intellectual property matters within the Department of
Defense.”.

9 (b) PLACEMENT IN THE OFFICE OF THE SECRETARY
10 OF DEFENSE.—Subsection 131(b)(8) of title 10, United
11 States Code, is amended by adding at the end the fol-
12 lowing new subparagraph:

13 “(J) The Director of the Office of Intellec-
14 tual Property assigned pursuant to section
15 2322(a) of this title.”.

16 (c) ADDITIONAL ACQUISITION POSITION.—Sub-
17 section 1721(b) of title 10, United States Code, is amend-
18 ed by adding at the end the following new paragraph:

19 “(12) Intellectual property.”.

20 (d) REVIEW OF ACQUISITION WORKFORCE TRAIN-
21 ING.—Not later than one year after the date of the enact-
22 ment of this Act, the Secretary of Defense shall revise the
23 education and training programs provided to the acquisi-

1 tion workforce under chapter 87 of title 10, United States
2 Code—

3 (1) to ensure the acquisition workforce main-
4 tains a basic familiarity with the fundamental as-
5 pects of the acquisition and licensing of intellectual
6 property; and

7 (2) to establish and maintain advanced exper-
8 tise in the acquisition and licensing of intellectual
9 property to staff the cadre of intellectual property
10 experts required under section 2322 of title 10,
11 United States Code, as added by subsection (a).

12 **SEC. 204. IMPROVEMENT OF PLANNING FOR ACQUISITION**
13 **OF SERVICES.**

14 (a) IN GENERAL.—

15 (1) IMPROVEMENT OF PLANNING FOR ACQUI-
16 TION OF SERVICES.—Chapter 137 of title 10, United
17 States Code, is amended by inserting after section
18 2328 the following new section:

19 **“§ 2329. Procurement of services: data analysis and**
20 **requirements validation**

21 “(a) IN GENERAL.—The Secretary of Defense shall
22 ensure that—

23 “(1) appropriate and sufficiently detailed data
24 are collected and analyzed to support the validation
25 of requirements for services contracts and inform

1 the planning, programming, budgeting, and execu-
2 tion process of the Department of Defense;

3 “(2) requirements for services contracts are
4 evaluated appropriately and in a timely manner to
5 inform decisions regarding the procurement of serv-
6 ices; and

7 “(3) decisions regarding the procurement of
8 services consider available resources and total force
9 management policies and procedures.

10 “(b) SPECIFICATION OF AMOUNTS REQUESTED IN
11 BUDGET.—Effective October 1, 2022, the Secretary of
12 Defense shall annually submit to Congress information on
13 services contracts that clearly and separately identifies the
14 amount requested for each category of services to be pro-
15 cured for each Defense Agency, Department of Defense
16 Field Activity, command, or military installation. Such in-
17 formation shall—

18 “(1) be submitted at or about the time of the
19 budget submission by the President under section
20 1105(a) of title 31;

21 “(2) cover the fiscal year covered by such budg-
22 et submission by the President;

23 “(3) be consistent with total amounts of esti-
24 mated expenditures and proposed appropriations
25 necessary to support the programs, projects, and ac-

1 activities of the Department of Defense included in
2 such budget submission by the President for that
3 fiscal year; and

4 “(4) be organized using a common enterprise
5 data structure developed under section 2222 of this
6 title.

7 “(c) DATA ANALYSIS.—(1) Each Secretary of a mili-
8 tary department shall regularly analyze past spending pat-
9 terns and anticipated future requirements with respect to
10 the procurement of services within such military depart-
11 ment.

12 “(2)(A) The Secretary of Defense shall regularly ana-
13 lyze past spending patterns and anticipated future re-
14 quirements with respect to the procurement of services—

15 “(i) within each Defense Agency and Depart-
16 ment of Defense Field Activity; and

17 “(ii) across military departments, Defense
18 Agencies, and Department of Defense Field Activi-
19 ties.

20 “(B) The Secretaries of the military departments
21 shall make data on services contracts available to the Sec-
22 retary of Defense for purposes of conducting the analysis
23 required under subparagraph (A).

24 “(3) The analyses conducted under this subsection
25 shall—

1 “(A) identify contracts for similar services that
2 are procured for three or more consecutive years at
3 each Defense Agency, Department of Defense Field
4 Activity, command, or military installation;

5 “(B) evaluate patterns in the procurement of
6 services, to the extent practicable, at each Defense
7 Agency, Department of Defense Field Activity, com-
8 mand, or military installation and by category of
9 services procured;

10 “(C) be used to validate requirements for serv-
11 ices contracts entered into after the date of the en-
12 actment of this subsection; and

13 “(D) be used to inform decisions on the award
14 of and funding for such services contracts.

15 “(d) REQUIREMENTS EVALUATION.—Each Services
16 Requirements Review Board **or person or entity designated by**
the Board shall evaluate each requirement for a services
contract, taking into consideration

17 total force management policies and procedures, available
18 resources, the analyses conducted under subsection (c),
19 and contracting efficacy and efficiency. An evaluation of
20 a services contract for compliance with contracting policies
21 and procedures may not be considered to be an evaluation
22 of a requirement for such services contract.

23 “(e) TIMELY PLANNING TO AVOID BRIDGE CON-
24 TRACTS.—(1) Effective October 1, 2018, the Secretary of

Comment [R13]: Flexibility is needed here. The SRRBs should not be reviewing requirements for base grass cutting, for instance.

1 Defense shall ensure that a requirements owner shall, to
2 the extent practicable, plan appropriately before the date
3 of need of a service at a Defense Agency, Department of
4 Defense Field Activity, command, or military installation
5 to avoid the use of a bridge contract to provide for con-
6 tinuation of a service to be performed through a services
7 contract. Such planning shall include allowing time for a
8 requirement to be validated, a services contract to be en-
9 tered into, and funding for the services contract to be se-
10 cured.

11 “(2)(A) Upon the first use, due to inadequate plan-
12 ning (as determined by the Secretary of Defense), of a
13 bridge contract to provide for continuation of a service to
14 be performed through a services contract, the require-
15 ments owner, along with the contracting officer or a rep-
16 resentative of the contracting officer for the contract,
17 shall—

18 “(i) for a services contract in an amount less
19 than \$10,000,000, provide an update on the status
20 of the bridge contract (including the rationale for
21 using the bridge contract) to the commander or the
22 senior civilian official of the Defense Agency con-
23 cerned, Department of Defense Field Activity con-
24 cerned, command concerned, or military installation
25 concerned, as applicable; or

1 “(ii) for a services contract in an amount equal
2 to or greater than \$10,000,000, provide an update
3 on the status of the bridge contract (including the
4 rationale for using the bridge contract) to the service
5 acquisition executive for the military department
6 concerned, the head of the Defense Agency con-
7 cerned, the combatant commander concerned, or the
8 Under Secretary of Defense for Acquisition and
9 Sustainment, as applicable.

10 “(B) Upon the second use, due to inadequate plan-
11 ning (as determined by the Secretary of Defense), of a
12 bridge contract to provide for continuation of a service to
13 be performed through a services contract in an amount
14 less than \$10,000,000, the commander or senior civilian
15 official referred to in subparagraph (A)(i) shall provide no-
16 tification of such second use to the Vice Chief of Staff
17 of the armed force concerned and the service acquisition
18 executive of the military department concerned, the head
19 of the Defense Agency concerned, the combatant com-
20 mander concerned, or the Under Secretary of Defense for
21 Acquisition and Sustainment, as applicable.

22 “(f) EXCEPTION.—Except with respect to the anal-
23 yses required under subsection (c), this section shall not
24 apply to services contracts in support of contingency oper-

1 ations, humanitarian assistance, disaster relief, or national
2 security emergencies.

3 “(g) DEFINITIONS.—In this section:

4 “(1) The term ‘bridge contact’ means—

5 “(A) an extension to an existing contract
6 beyond the period of performance to avoid a
7 lapse in service caused by a delay in awarding
8 a subsequent contract; or

9 “(B) a new short-term contract awarded
10 on a sole-source basis to avoid a lapse in service
11 caused by a delay in awarding a subsequent
12 contract.

13 “(2) The term ‘requirements owner’ means a
14 member of the armed forces (other than the Coast
15 Guard) or a civilian employee of the Department of
16 Defense responsible for a requirement for a service
17 to be performed through a services contract.

18 “(3) The term ‘Services Requirements Review
19 Board’ has the meaning given in Department of De-
20 fense Instruction 5000.74, titled ‘Defense Acquisi-
21 tion of Services’ and dated January 5, 2016, or a
22 successor instruction.”

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of such chapter is amended

Comment [R14]: The exceptions to the services required to fall under the SSRB review process under DoDI 5002.74 are much broader than what would be the case in subsection (f) here. The exceptions in the instruction are:

(1) Services that are managed and reviewed as part of major and non-major defense acquisition programs and major and non-major information technology (IT) acquisition programs, services that meet the Major Automated Information Systems thresholds (to include software as a service), or non-major programs whose primary purpose is to provide capabilities, goods, or systems in accordance with Reference (b).

(2) Services listed in subpart 37.502 of the Federal Acquisition Regulation (Reference (e)).

(3) Classified, cryptologic, and intelligence projects and service activities, except to the extent practical at the discretion of senior officials and decision authorities.

(4) Services from DoD Federally Funded Research and Development Centers (FFRDCs), which are acquired in accordance with the management structure described in subpart 35.017 of Reference (e) and the DoD FFRDC Management Plan; and from DoD University Affiliated Research Centers (UARCs), which are acquired in accordance with the management structure described in the DoD UARC Management Plan (Reference (f)).

Is that your intent?

1 by inserting after the item relating to section 2328
2 the following new item:

“2329. Procurement of services: data analysis and requirements validation.”.

3 (b) CONFORMING REPEAL.—Effective October 1,
4 2022—

5 (1) section 235 of title 10, United States Code,
6 is repealed; and

7 (2) the table of sections at the beginning of
8 chapter 9 of such title is amended by striking the
9 item relating to section 235.

10 **SEC. 205. IMPROVEMENTS TO TEST AND EVALUATION**
11 **PROCESSES AND TOOLS.**

12 (a) DEVELOPMENTAL TEST PLAN SUFFICIENCY AS-
13 SESSMENTS.—

14 (1) ADDITION TO MILESTONE B BRIEF SUM-
15 MARY REPORT.—Section 2366b(c)(1) of title 10,
16 United States Code, is amended—

17 (A) by redesignating subparagraph (G) as
18 subparagraph (H); and

19 (B) by inserting after subparagraph (F)
20 the following new subparagraph (G):

21 “(G) An assessment of the sufficiency of
22 developmental test and evaluation plans.”.

23 (2) ADDITION TO MILESTONE C BRIEF SUM-
24 MARY REPORT.—Section 2366c(a) of such title is

Comment [R15]: This should be more clearly defined. One possible definition could be from the DoD *Qualification Test and Evaluation (QT&E) Procedure* VVPR003 document where a sufficiency assessment is defined as: “an assessment prior to the Test Readiness Review II (TRR II), Operational Test Readiness Review (OTRR), or Full Deployment to determine the sufficiency of QT&E test activities, provide an go/no-go recommendation and determine readiness to conduct TRR II, OTRR, or Full Deployment.”

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

3 “(4) An assessment of the sufficiency of the de-
4 velopmental test and evaluation completed.”.

5 (3) RESPONSIBILITY FOR CONDUCTING ASSESS-
6 MENTS.—For purposes of the sufficiency assess-
7 ments required by section 2366b(c)(1) and section
8 2366c(a)(4) of such title, as added by paragraphs
9 (1) and (2), with respect to a major defense acquisi-
10 tion program—

11 (A) if the milestone decision authority for
12 the program is the service acquisition executive
13 of the military department that is managing the
14 program, the sufficiency assessment shall be
15 conducted by the service test agency that serves
16 as the lead developmental test and evaluation
17 organization for the program; and

18 (B) if the milestone decision authority for
19 the program is the Under Secretary of Defense
20 for Acquisition and Sustainment, the sufficiency
21 assessment shall be conducted by the senior De-
22 partment of Defense official with responsibility
23 for developmental testing.

24 (4) GUIDANCE REQUIRED.—Within one year
25 after the date of the enactment of this Act, the sen-

1 ior Department of Defense official with responsi-
2 bility for developmental testing shall develop guid-
3 ance for the sufficiency assessments required by sec-
4 tion 2366b(c)(1) and section 2366c(a)(4) of title 10,
5 United States Code, as added by paragraphs (1) and
6 (2). At a minimum, the guidance shall require—

7 (A) for the sufficiency assessment required
8 by section 2366b(c)(1) of such title, that the as-
9 sessment address the sufficiency of—

10 (i) the developmental test and evalua-
11 tion plan;

12 (ii) the developmental test and evalua-
13 tion schedule, including a comparison to
14 historic analogous systems;

15 (iii) the developmental test and eval-
16 uation resources (facilities, personnel, and
17 test assets);

18 (iv) the risks of developmental test
19 and production concurrency; and

20 (v) the developmental test criteria for
21 entering the production phase; and

22 (B) for the sufficiency assessment required
23 by section 2366c(a)(4) of such title, that the as-
24 sessment address—

- 1 (i) the sufficiency of the develop-
2 mental test and evaluation completed;
3 (ii) the sufficiency of the plans and
4 resources available for remaining develop-
5 mental test and evaluation;
6 (iii) the risks identified during devel-
7 opmental testing to the production and de-
8 ployment phase;
9 (iv) the sufficiency of the plans and
10 resources for remaining developmental test
11 and evaluation; and
12 (v) the readiness of the system to per-
13 form scheduled initial operational test and
14 evaluation.

15 (b) EVALUATION OF DEPARTMENT OF DEFENSE
16 NEED FOR CENTRALIZED TOOLS FOR DEVELOPMENTAL
17 TEST AND EVALUATION.—

18 (1) IN GENERAL.—The Secretary of Defense
19 shall evaluate the strategy of the Department of De-
20 fense for developing and expanding the use of tools
21 designed to facilitate the cost effectiveness and effi-
22 ciency of developmental testing, including automated
23 test methods and tools, modeling and simulation
24 tools, and big data analytics technologies. The eval-
25 uation shall include a determination of the appro-

1 appropriate role of the senior Department of Defense official with responsibility for developmental testing in developing enterprise level strategies related to such types of testing tools.

5 (2) BRIEFING REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary shall provide a briefing to the Committee on Armed Services of the House of Representatives on the results of the evaluation required by paragraph (1).

11 **TITLE III—ACQUISITION**
12 **WORKFORCE IMPROVEMENTS**

13 **SEC. 301. ENHANCEMENTS TO THE CIVILIAN PROGRAM**
14 **MANAGEMENT WORKFORCE.**

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

17 (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 experienced civilian personnel with the potential to become a program manager of a major defense acquisition program. The program shall be administered and overseen by the Secretary of each military department, acting through the

1 service acquisition executive for the department con-
2 cerned.

3 (2) PLAN REQUIRED.—Not later than one year
4 after the date of the enactment of this Act, the Sec-
5 retary of Defense shall provide to the Committees on
6 Armed Services of the Senate and the House of Rep-
7 resentatives a comprehensive plan to implement the
8 program established under paragraph (1). The plan
9 shall include the following elements:

10 (A) An assessment of the minimum level of
11 subject matter experience, education, years of
12 experience, certifications, and other qualifica-
13 tions required to be selected into the program,
14 set forth separately for current Department of
15 Defense employees and for personnel hired into
16 the program from outside the Department of
17 Defense.

18 (B) A description of hiring flexibilities to
19 be used to recruit qualified personnel from out-
20 side the Department of Defense.

21 (C) A description of the extent to which
22 mobility agreements will be required to be
23 signed by personnel selected for the program
24 during their participation in the program and
25 after their completion of the program.

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

3 (E) A determination of the skills needed to
4 be developed by personnel in the program in
5 order to prepare them to become a program
6 manager of a major defense acquisition pro-
7 gram, and a description of how those skills
8 would be demonstrated.

9 (F) A plan for training during the course
10 of the program, including training in engineer-
11 ing, finance and budgeting, market research,
12 business acumen, contracting, supplier manage-
13 ment, requirement setting and tradeoffs, intel-
14 lectual property matters, and software.

15 (G) A description of career paths to be fol-
16 lowed by personnel in the program in order to
17 ensure that personnel in the program gain ex-
18 pertise in the skills identified by the Depart-
19 ment under subparagraph (E) and the topics
20 identified under subparagraph (F), including—

21 (i) a determination of the types of ad-
22 vanced educational degrees that enhance
23 program management skills and the mech-
24 anisms available to the Department of De-

1 fense to facilitate the attainment of those
2 degrees by personnel in the program;

3 (ii) a determination of required as-
4 signments to positions within acquisition
5 programs, including position type and ac-
6 quisition category of the program office;

7 (iii) a determination of required or en-
8 couraged rotations to career broadening
9 positions outside of acquisition programs;
10 and

11 (iv) a determination of how the pro-
12 gram will ensure the opportunity for a re-
13 quired rotation to industry of at least six
14 months to develop an understanding of in-
15 dustry motivation and business acumen.

16 (H) A description of the number of per-
17 sonnel anticipated to be selected into the pro-
18 gram, how frequently selections will occur, how
19 long personnel selected into the program will
20 participate in the program, and how personnel
21 will be placed into an assignment at the comple-
22 tion of the program.

23 (I) A description of benefits that will be of-
24 fered under the program using existing human

1 capital flexibilities to retain qualified employees,
2 such as student loan repayments.

3 (J) An assessment of personnel flexibilities
4 needed to allow the military departments and
5 the Defense Agencies to reassign or remove pro-
6 gram managers that do not perform effectively.

7 (K) A description of how the program will
8 be administered and overseen by the Secretaries
9 of each military department, acting through the
10 service acquisition executive for the department
11 concerned.

12 (L) A description of how the program will
13 be integrated with existing program manager
14 development efforts at each military depart-
15 ment.

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

1 (4) IMPLEMENTATION.—The program estab-
2 lished under paragraph (1) shall be implemented no
3 later than June 1, 2019.

4 (b) ESTABLISHMENT OF PROGRAM AND PROJECT
5 MANAGEMENT JOB SERIES.—Within one year after the
6 date of the enactment of this Act, the Secretary of Defense
7 shall prescribe regulations that establish a new job series,
8 or update and improve an existing job series, for program
9 and project management throughout the Department of
10 Defense. The Secretary shall take into consideration the
11 regulations issued by the Director of the Office of Per-
12 sonnel Management in accordance with section 861(c)(2)
13 of the National Defense Authorization Act for Fiscal Year
14 2017 (Public Law 114–328; 130 Stat. 2301) to achieve
15 consistency in job series for program and project manage-
16 ment with other Federal Agencies to the extent prac-
17 ticable.

18 (c) INDEPENDENT STUDY OF FINANCIAL INCEN-
19 TIVES FOR PROGRAM MANAGERS.—

20 (1) REQUIREMENT FOR STUDY.—Not later than
21 30 days after the date of the enactment of this Act,
22 the Secretary of Defense shall enter into a contract
23 with an independent research entity described in
24 paragraph (2) to carry out a comprehensive study of
25 financial incentives for Department of Defense pro-

1 gram managers for major defense acquisition pro-
2 grams, including—

3 (A) additional pay options for program
4 managers to provide incentives to senior civilian
5 employees to accept and remain in program
6 manager roles;

7 (B) a financial incentive structure to re-
8 ward program managers for delivering capabili-
9 ties on budget and on time; and

10 (C) a comparison between financial incen-
11 tive structures for program managers in the
12 Department of Defense and an appropriate
13 comparison group of private industry compa-
14 nies.

(D) a comparison between any significant non-
financial incentives for program managers in the
Department of Defense and an appropriation
comparison group of private sector companies.

15 (2) INDEPENDENT RESEARCH ENTITY.—The
16 entity described in this subsection is an independent
17 research entity that is a not-for-profit entity or a
18 federally funded research and development center
19 with appropriate expertise and analytical capability.

20 (3) REPORTS.—

21 (A) TO SECRETARY.—Not later than nine
22 months after the date of the enactment of this
23 Act, the independent research entity shall pro-

Comment [R16]: It would be worthwhile to compare non-financial incentives such as opportunities for management responsibilities and authorities for comparable age and education.

24 vide to the Secretary a report containing—
1 (i) the results of the study required by
2 paragraph (1); and
3 (ii) such recommendations to improve
4 the financial incentive structure of pro-
5 gram managers for major defense acqui-
6 sition programs as the independent research
7 entity considers to be appropriate.
8 (B) TO CONGRESS.—Not later than 30
9 days after receipt of the report under subpara-
10 graph (A), the Secretary of Defense shall sub-
11 mit such report, together with any additional
12 views or recommendations of the Secretary, to
13 the congressional defense committees.

14 SEC. 302. IMPROVEMENTS TO THE HIRING AND TRAINING
15 OF THE ACQUISITION WORKFORCE.

16 (a) USE OF FUNDS FROM THE DEFENSE ACQUI-
17 TION WORKFORCE DEVELOPMENT FUND TO PAY SALA-
18 RIES OF PERSONNEL TO MANAGE THE FUND.—
19 (1) IN GENERAL.—Subsection 1705(e) of title
20 10, United States Code, is amended—
21 (A) in paragraph (1)—
22 (i) by inserting “(A)” before “Subject
23 to the provisions of this subsection”; and
24 (ii) by adding at the end the following
25 new subparagraph:

1 “(B) Amounts in the Fund also may be used to
2 pay salaries of personnel at the Office of the Sec-
3 retary of Defense, military departments, and De-
4 fense Agencies to manage the Fund.”; and

5 (B) in paragraph (3)—

6 (i) by striking “and” at the end of
7 subparagraph (C);

8 (ii) by striking the period and insert-
9 ing “; and” at the end of subparagraph
10 (D); and

11 (iii) by adding at the end the fol-
12 lowing new subparagraph:

13 “(E) describing the amount from the Fund
14 that may be used to pay salaries of personnel
15 at military departments and Defense Agencies
16 to manage the Fund and the circumstances
17 under which such amounts may be used for
18 such purpose.”.

19 (2) GUIDANCE.—Not later than 180 days after
20 the date of the enactment of this Act, the Secretary
21 of Defense shall issue, and submit to the congres-
22 sional defense committees, the policy guidance re-
23 quired by subparagraph (E) of section 1705(e)(3) of
24 title 10, United States Code, as added by paragraph
25 (1).

1 (b) COMPTROLLER GENERAL REVIEW OF EFFEC-
2 TIVENESS OF HIRING AND RETENTION FLEXIBILITIES
3 FOR ACQUISITION WORKFORCE PERSONNEL.—

4 (1) IN GENERAL.—Not later than January 15,
5 2019, the Comptroller General of the United States
6 shall submit to the congressional defense committees
7 a report on the effectiveness of hiring and retention
8 flexibilities for the acquisition workforce.

9 (2) ELEMENTS.—The report under this sub-
10 section shall include the following:

11 (A) A determination of the extent to which
12 the Department of Defense experiences chal-
13 lenges with recruitment and retention of the ac-
14 quisition workforce, such as post-employment
15 restrictions.

16 (B) A description of the hiring and reten-
17 tion flexibilities available to the Department to
18 fill civilian acquisition positions and the extent
19 to which the Department has used the flexibili-
20 ties available to it to target critical or under-
21 staffed career fields.

22 (C) A determination of the extent to which
23 the Department has the necessary data on its
24 use of hiring and retention flexibilities for the

1 civilian acquisition workforce to strategically
2 manage the use of such flexibilities.

3 (D) An identification of the factors that
4 affect the use of hiring and retention flexibili-
5 ties for the civilian acquisition workforce.

6 (E) Recommendations for any necessary
7 changes to the hiring and retention flexibilities
8 available to the Department to fill civilian ac-
9 quisition positions.

10 (F) A description of the flexibilities avail-
11 able to the Department to remove underper-
12 forming members of the acquisition workforce
13 and the extent to which any such flexibilities
14 are used.

15 (c) ASSESSMENT AND REPORT REQUIRED ON BUSI-
16 NESS-RELATED TRAINING FOR THE ACQUISITION WORK-
17 FORCE.—

18 (1) ASSESSMENT.—The Under Secretary of De-
19 fense for Acquisition and Sustainment shall conduct
20 an assessment of the following:

21 (A) The effectiveness of industry certifi-
22 cations and other industry training programs,
23 including fellowships, available to defense acqui-
24 sition workforce personnel.

1 (B) Gaps in knowledge of industry oper-
2 ations, industry motivation, and business acumen
3 in the acquisition workforce.

4 (2) REPORT.—Not later than December 31,
5 2018, the Under Secretary shall submit to the Com-
6 mittees on Armed Services of the Senate and the
7 House of Representatives a report containing the re-
8 sults of the assessment conducted under this sub-
9 section.

10 (3) ELEMENTS.—The assessment and report
11 under paragraphs (1) and (2) shall address the fol-
12 lowing:

13 (A) Current sources of training and career
14 development opportunities, industry rotations,
15 and other career development opportunities re-
16 lated to knowledge of industry operations, in-
17 dustry motivation, and business acumen for
18 each acquisition position, as designated under
19 section 1721 of title 10, United States Code.

20 (B) Gaps in training, industry rotations,
21 and other career development opportunities re-
22 lated to knowledge of industry operations, in-
23 dustry motivation, and business acumen for
24 each such acquisition position.

1 (C) Plans to address those gaps for each
2 such acquisition position.

3 (D) Consideration of the role industry-
4 taught classes and classes taught at educational
5 institutions outside of the Defense Acquisition
6 University could play in addressing gaps.

7 (d) COMPTROLLER GENERAL REVIEW OF ACQUI-
8 SITION TRAINING FOR NON-ACQUISITION WORKFORCE PER-
9 SONNEL.—

10 (1) IN GENERAL.—Not later than January 15,
11 2019, the Comptroller General of the United States
12 shall submit to the congressional defense committees
13 a report on acquisition-related training for personnel
14 working on acquisitions but not considered to be
15 part of the acquisition workforce (as defined in sec-
16 tion 101(18) of title 10, United States Code) (here-
17 after in this subsection referred to as “non-acquisi-
18 tion workforce personnel”).

19 (2) ELEMENTS.—The report shall address the
20 following:

21 (A) The extent to which non-acquisition
22 workforce personnel play a significant role in
23 defining requirements, conducting market re-
24 search, participating in source selection and

1 contract negotiation efforts, and overseeing con-
2 tract performance.

3 (B) The extent to which the Department is
4 able to identify and track non-acquisition work-
5 force personnel performing the roles identified
6 in subparagraph (A).

7 (C) The extent to which non-acquisition
8 workforce personnel are taking acquisition
9 training.

10 (D) The extent to which the Defense Ac-
11 quisition Workforce Development Fund has
12 been used to provide acquisition training to
13 non-acquisition workforce personnel.

14 (E) A description of sources of funding
15 other than the Fund that are available to and
16 used by the Department to provide non-acquisi-
17 tion workforce personnel with acquisition train-
18 ing.

19 (F) The extent to which additional acquisi-
20 tion training is needed for non-acquisition
21 workforce personnel, including the types of
22 training needed, the positions that need the
23 training, and any challenges to delivering nec-
24 essary additional training.

1 (e) BRIEFING ON IMPROVEMENTS TO THE DEFENSE
2 CONTRACT AUDIT AGENCY WORKFORCE.—

3 (1) BRIEFING REQUIRED.—Not later than 180
4 days after the date of the enactment of this Act, the
5 Director of the Defense Contract Audit Agency, in
6 consultation with the Under Secretary of Defense
7 (Comptroller), shall provide a briefing to the Com-
8 mittees on Armed Services of the Senate and the
9 House of Representatives.

10 (2) ELEMENTS.—The briefing required by
11 paragraph (1) shall address the following:

12 (A) The current education, certifications,
13 and qualifications of the Defense Contract
14 Audit Agency workforce, by supervisory and
15 non-supervisory levels and type of position.

16 (B) Shortfalls (if any) in education, quali-
17 fication, or training in the Defense Contract
18 Audit Agency workforce, by supervisory and
19 non-supervisory levels and type of position, and
20 the reasons for those shortfalls.

21 (C) The link between Defense Contract
22 Audit Agency workforce skill and experience
23 gaps and the Agency's backlog of audits.

24 (D) The number of Defense Contract
25 Audit Agency auditors who have relevant pri-

1 vate sector experience, including from industry
2 exchanges while at the Defense Contract Audit
3 Agency and from prior employment experiences,
4 and the perspective of the Defense Contract
5 Audit Agency on the benefits of those experi-
6 ences.

7 (E) Ongoing efforts and future plans by
8 the Defense Contract Audit Agency to improve
9 the professionalization of its audit workforce,
10 including changes in hiring, training, required
11 certifications or qualifications, compensation
12 structure, and increased opportunities for in-
13 dustry exchanges or rotations.

14 **SEC. 303. EXTENSION AND MODIFICATIONS TO ACQUI-**
15 **SITION DEMONSTRATION PROJECT.**

16 (a) EXTENSION.—Section 1762(g) of title 10, United
17 States Code, is amended by striking “December 31, 2020”
18 and inserting “December 31, 2023”.

19 (b) IMPLEMENTATION STRATEGY FOR IMPROVE-
20 MENTS IN ACQUISITION DEMONSTRATION PROJECT.—

21 (1) STRATEGY REQUIRED.—The Secretary of
22 Defense shall develop an implementation strategy to
23 address areas for improvement in the demonstration
24 project required by section 1762 of title 10, United
25 States Code, as identified in the second assessment

1 of such demonstration project required by section
2 1762(e) of such title.

3 (2) ELEMENTS.—The strategy shall include the
4 following elements:

5 (A) Actions that have been or will be taken
6 to assess whether the flexibility to set starting
7 salaries at different levels is being used appro-
8 priately by supervisors and managers to com-
9 pete effectively for highly skilled and motivated
10 employees.

11 (B) Actions that have been or will be taken
12 to assess reasons for any disparities in career
13 outcomes across race and gender for employees
14 in the demonstration project.

15 (C) Actions that have been or will be taken
16 to strengthen the link between employee con-
17 tribution and compensation for employees in the
18 demonstration project.

19 (D) Actions that have been or will be taken
20 to enhance the transparency of the pay system
21 for employees in the demonstration project.

22 (E) A timeframe and individual responsible
23 for each action identified under subparagraphs
24 (A) through (D).

1 (3) BRIEFING REQUIRED.—Not later than one
2 year after the date of the enactment of this Act, the
3 Secretary of Defense shall provide a briefing to the
4 Committees on Armed Services of the Senate and
5 the House of Representatives on the implementation
6 strategy required by paragraph (1).

7 **SEC. 304. ACQUISITION POSITIONS IN THE OFFICES OF THE**
8 **SECRETARIES OF THE MILITARY DEPART-**
9 **MENTS.**

10 (a) OFFICE OF THE SECRETARY OF THE ARMY MAX-
11 IMUM NUMBER OF PERSONNEL.—Section 3014(f) of title
12 10, United States Code, is amended by adding at the end
13 the following new paragraph:

14 “(6) The limitation in paragraph (1) may be exceeded
15 if a civilian employee is assigned on permanent duty in
16 the Office of the Secretary of the Army or on the Army
17 Staff and—

18 “(A) the employee was employed immediately
19 preceding that assignment either—

20 “(i) in a position within the Office of the
21 Under Secretary of Defense for Acquisition,
22 Technology, and Logistics that had responsi-
23 bility for oversight of acquisition programs or
24 processes prior to February 1, 2018, and that
25 was determined to be no longer needed as a re-

1 sult of section 901 of the National Defense Au-
2 thorization Act for Fiscal Year 2017 (Public
3 Law 114–328; 130 Stat. 2339) and the amend-
4 ments made by that section; or

5 “(ii) in a Joint Staff position that sup-
6 ported the Joint Requirements Oversight Coun-
7 cil prior to December 23, 2016, and that was
8 determined to be no longer needed as a result
9 of section 925 of the National Defense Author-
10 ization Act for Fiscal Year 2017 (Public Law
11 114–328; 130 Stat. 2359) and the amendments
12 made by that section; and

13 “(B) the position described in subparagraph
14 (A) is not filled by the Office of the Under Secretary
15 of Defense for Acquisition and Sustainment or the
16 Joint Staff after the employee’s permanent duty as-
17 signment.”.

18 **(b) OFFICE OF THE SECRETARY OF THE NAVY MAX-**
19 **IMUM NUMBER OF PERSONNEL.**—Section 5014(f) of title
20 10, United States Code, is amended by adding at the end
21 the following new paragraph:

22 “(6) The limitation in paragraph (1) may be exceeded
23 if a civilian employee is assigned on permanent duty in
24 the Department of the Navy or assigned or detailed to
25 permanent duty in the Office of the Secretary of the Navy,

1 the Office of Chief of Naval Operations, or the Head-
2 quarters, Marine Corps and—

3 “(A) the employee was employed immediately
4 preceding that assignment either—

5 “(i) in a position within the Office of the
6 Under Secretary of Defense for Acquisition,
7 Technology, and Logistics that had responsi-
8 bility for oversight of acquisition programs or
9 processes prior to February 1, 2018, and that
10 was determined to be no longer needed as a re-
11 sult of section 901 of the National Defense Au-
12 thorization Act for Fiscal Year 2017 (Public
13 Law 114–328; 130 Stat. 2339) and the amend-
14 ments made by that section; or

15 “(ii) in a Joint Staff position that sup-
16 ported the Joint Requirements Oversight Coun-
17 cil prior to December 23, 2016, and that was
18 determined to be no longer needed as a result
19 of section 925 of the National Defense Author-
20 ization Act for Fiscal Year 2017 (Public Law
21 114–328; 130 Stat. 2359) and the amendments
22 made by that section; and

23 “(B) the position described in subparagraph
24 (A) is not filled by the Office of the Under Secretary
25 of Defense for Acquisition and Sustainment or the

1 Joint Staff after the employee’s permanent duty as-
2 signment.”.

3 (c) OFFICE OF THE SECRETARY OF THE AIR FORCE
4 MAXIMUM NUMBER OF PERSONNEL.—Section 8014(f) of
5 title 10, United States Code, is amended by adding at the
6 end the following new paragraph:

7 “(6) The limitation in paragraph (1) may be exceeded
8 if a civilian employee is assigned on permanent duty in
9 the Office of the Secretary of the Air Force or on the Air
10 Staff and—

11 “(A) the employee was employed immediately
12 preceding that assignment either—

13 “(i) in a position within the Office of the
14 Under Secretary of Defense for Acquisition,
15 Technology, and Logistics that had responsi-
16 bility for oversight of acquisition programs or
17 processes prior to February 1, 2018, and that
18 was determined to be no longer needed as a re-
19 sult of section 901 of the National Defense Au-
20 thorization Act for Fiscal Year 2017 (Public
21 Law 114–328; 130 Stat. 2339) and the amend-
22 ments made by that section; or

23 “(ii) in a Joint Staff position that sup-
24 ported the Joint Requirements Oversight Coun-
25 cil prior to December 23, 2016, and that was

1 determined to be no longer needed as a result
2 of section 925 of the National Defense Author-
3 ization Act for Fiscal Year 2017 (Public Law
4 114–328; 130 Stat. 2359) and the amendments
5 made by that section; and
6 “(B) the position described in subparagraph
7 (A) is not filled by the Office of the Under Secretary
8 of Defense for Acquisition and Sustainment or the
9 Joint Staff after the employee’s permanent duty as-
10 signment.”.

11 **TITLE IV—TRANSPARENCY**
12 **IMPROVEMENTS**

13 **SEC. 401. TRANSPARENCY OF DEFENSE BUSINESS SYSTEM**
14 **DATA.**

15 (a) ESTABLISHMENT OF COMMON ENTERPRISE
16 DATA STRUCTURES.—Section 2222 of title 10, United
17 States Code, is amended—

18 (1) in subsection (d), by adding at the end the
19 following new paragraph:

20 “(7) Policy requiring that any data contained in
21 a defense business system are an asset of the De-
22 partment of Defense, and that such data should be
23 made readily available to all members of the Office
24 of the Secretary of Defense, the Joint Staff, and the

1 military departments (except as otherwise provided
2 by law or regulation).”;

3 (2) in subsection (e), by adding at the end the
4 following new paragraph:

5 “(5) COMMON ENTERPRISE DATA STRUC-
6 TURES.—(A) The defense business enterprise archi-
7 tecture shall include one or more common enterprise
8 data structures which can be used to code data that
9 are automatically extracted from the relevant de-
10 fense business systems to facilitate Department of
11 Defense-wide analysis and management of such
12 data.

13 “(B) The Deputy Chief Management Officer
14 shall—

15 “(i) in consultation with the Defense Busi-
16 ness Council established under subsection (f),
17 develop one or more common enterprise data
18 structures; and

19 “(ii) have primary decision-making author-
20 ity with respect to the development of any such
21 common enterprise data structure.

22 “(C) The Director of Cost Assessment and Pro-
23 gram Evaluation shall—

24 “(i) in consultation with the Defense Busi-
25 ness Council established under subsection (f),

1 document and maintain any common enterprise
2 data structure developed under subparagraph
3 (B);
4 “(ii) extract data from defense business
5 systems using the appropriate common data en-
6 terprise structure on a specified schedule;
7 “(iii) provide access to such data to the
8 Office of the Secretary of Defense, the Joint
9 Staff, and the military departments (except as
10 otherwise provided by law or regulation) on a
11 specified schedule developed in consultation
12 with the Defense Business Council established
13 under subsection (f); and
14 “(iv) have primary decision-making author-
15 ity with respect to the maintenance of any such
16 common enterprise data structure.
17 “(D) Common enterprise data structures shall
18 be established and maintained for the following
19 types of data of the Department of Defense:
20 “(i) An accounting of expenditures of the
21 Department of Defense, set forth separately for
22 each type of expenditure.
23 “(ii) Program and budget data in the de-
24 fense business systems of the Under Secretary

1 of Defense (Comptroller) and the Director of
2 Cost Assessment and Program Evaluation.

3 “(iii) Acquisition cost data and earned
4 value management data.

5 “(iv) Operating and support costs for
6 weapon systems, including data on maintenance
7 procedures conducted on each major weapon
8 system (as defined in section 2379 of this title).

9 “(v) An accounting of contracting activi-
10 ties, including goods and services acquired and
11 associated obligations and expenditures.

12 “(E) The Secretary of Defense, the Chairman
13 of the Joint Chiefs of Staff, the Secretaries of the
14 military departments, the Commanders of the com-
15 batant commands, the heads of the Defense Agen-
16 cies, the heads of the Department of Defense Field
17 Activities, and the heads of all other organizations of
18 the Department of Defense shall provide access to
19 the relevant defense business system of such depart-
20 ment, combatant command, Defense Agency, Field
21 Activity, or organization, as applicable, for purposes
22 of automatically populating data sets coded with
23 common enterprise data structures.”;

24 (3) in subsection (f)(2), by adding at the end
25 the following new clause:

1 “(iv) The Director of Cost Assessment
2 and Program Evaluation with respect to
3 common enterprise data structures.”; and

4 (4) in subsection (i), by adding at the end the
5 following new paragraph:

6 “(10) COMMON ENTERPRISE DATA STRUC-
7 TURE.—The term ‘common enterprise data struc-
8 ture’ means a mapping and organization of data
9 from defense business systems into a common data
10 set.”.

11 (b) ADDITIONAL DUTIES OF THE DIRECTOR OF COST
12 ASSESSMENT AND PROGRAM EVALUATION.—Section
13 139a(d) of title 10, United States Code, is amended by
14 adding at the end the following new paragraph:

15 “(9) Maintenance of common enterprise data
16 structures established pursuant to section 2222 of
17 this title, including establishing and maintaining ac-
18 cess to any data contained in a defense business sys-
19 tem (as defined in such section) and used in a com-
20 mon enterprise data structure, as determined appro-
21 priate by the Secretary of Defense or the Director
22 of Cost Assessment and Program Evaluation.”.

1 **SEC. 402. MAJOR DEFENSE ACQUISITION PROGRAMS: DIS-**
2 **PLAY OF BUDGET INFORMATION.**

3 (a) IN GENERAL.—Chapter 144 of title 10, United
4 States Code, is amended by inserting after section 2433a
5 the following new section:

6 **“§ 2434. Major defense acquisition programs: display**
7 **of budget information**

8 “(a) IN GENERAL.—In the defense budget materials
9 for fiscal year 2020 and each subsequent fiscal year, the
10 Secretary of Defense shall ensure that the funding re-
11 quirements listed in subsection (b) are displayed sepa-
12 rately for major defense acquisition programs, as defined
13 in section 2340 of title 10, United States Code.

14 “(b) REQUIREMENTS FOR BUDGET DISPLAY.—The
15 budget justification display for a fiscal year shall include
16 the funding requirement for each major defense acqui-
17 sition program, including all sources of appropriations—

18 “(1) for developmental test and evaluation;

19 “(2) for operational test and evaluation;

20 “(3) for the purchase of cost data from contrac-
21 tors; and

22 “(4) for the purchase or license of technical
23 data.

24 “(c) DEFINITIONS.—In this section, the terms ‘budg-
25 et’ and ‘defense budget materials’ have the meaning given
26 those terms in section 234 of this title.”

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by inserting
3 after the item relating to section 2433a following new
4 item:

“2434. Major defense acquisition programs: display of budget information.”.

5 **SEC. 403. ENHANCEMENTS TO TRANSPARENCY IN TEST**
6 **AND EVALUATION PROCESSES AND DATA.**

7 (a) ADDITIONAL REQUIREMENTS RELATING TO DES-
8 IGNATION OF A MAJOR DEFENSE ACQUISITION PRO-
9 GRAM.—Section 139 of title 10, United States Code, is
10 amended—

11 (1) in subsection (a)(2)(B), by inserting before
12 the period at the end the following: “and in accord-
13 ance with subsection (l).”;

14 (2) by adding at the end the following new sub-
15 section:

16 “(l) For purposes of subsection (a)(2)(B), before des-
17 ignating a program that is not a major defense acquisition
18 program for the purposes of section 2430 of this title as
19 a major defense acquisition program for the purposes of
20 this section, the Director shall provide in writing to the
21 Under Secretary of Defense for Acquisition and
22 Sustainment, and the test and evaluation executive of the
23 military department or departments executing the pro-
24 gram, the specific circumstances of the program that led
25 to the designation decision.”; and

1 (3) by adding at the end of subsection (h)(4)
2 the following: “The report shall also include a brief
3 statement of the rationale for placing on the over-
4 sight list of the Director each program that is not
5 a major defense acquisition program for the pur-
6 poses of section 2430 of this title but has been des-
7 ignated as a major defense acquisition program for
8 the purposes of this section.”.

9 (b) CONSIDERATION OF LEGACY ITEMS OR COMPO-
10 NENTS IN OPERATIONAL TEST AND EVALUATION RE-
11 PORTS.—Section 2399(b)(2) of title 10, United States
12 Code, is amended—

13 (1) by striking “and” at the end of subpara-
14 graph (A)(ii);

15 (2) by redesignating subparagraph (B) as sub-
16 paragraph (C); and

17 (3) by inserting after subparagraph (A) the fol-
18 lowing new subparagraph:

19 “(B) a description of the performance of the
20 items or components tested in relation to comparable
21 legacy items or components, if such items or compo-
22 nents exist and relevant data are available without
23 requiring additional testing; and”.

24 (c) OPPORTUNITY FOR MILITARY DEPARTMENT
25 COMMENTS ON ANNUAL REPORT ON OPERATIONAL TEST

1 AND EVALUATION.—Section 139(h) of title 10, United
2 States Code, is amended—

3 (1) by redesignating paragraph (5) as para-
4 graph (6), and in that paragraph by striking “and
5 the Secretaries of the military departments”; and

6 (2) by inserting after paragraph (4) the fol-
7 lowing new paragraph (5):

8 “(5) Within 45 days after the submission of an
9 annual report by the Director to Congress, the Sec-
10 retaries of the military departments may each sub-
11 mit a report to the congressional defense committees
12 addressing any concerns related to information in-
13 cluded in the annual report, or providing updated or
14 additional information as appropriate.”.

15 (d) GUIDELINES FOR COLLECTION OF COST DATA

16 ON TEST AND EVALUATION.—

17 (1) IN GENERAL.—Not later than one year
18 after the date of the enactment of this Act, the Di-
19 rector of Operational Test and Evaluation shall de-
20 velop policies, procedures, guidance, and a collection
21 method to ensure that consistent, high quality data
22 are collected on the full range of estimated and ac-
23 tual developmental, live fire, and operational testing
24 costs for major defense acquisition programs. Data
25 on estimated and actual developmental, live fire, and

1 operational testing costs shall be maintained in an
2 electronic database maintained by the Director for
3 Cost Assessment and Program Evaluation.

4 (2) CONCURRENCE AND COORDINATION.—In
5 carrying out paragraph (1), the Director of Oper-
6 ational Test and Evaluation shall obtain the concur-
7 rence of the Director for Cost Assessment and Pro-
8 gram Evaluation and shall coordinate with the sen-
9 ior Department of Defense official with responsi-
10 bility for developmental testing, the Director of the
11 Test Resource Management Center, and the Secre-
12 taries of the military departments.

13 (3) MAJOR DEFENSE ACQUISITION PROGRAM
14 DEFINED.—In this section, the term “major defense
15 acquisition program” has the meaning provided in
16 section 2430 of title 10, United States Code.

17 (e) REPORT ON ENTERPRISE APPROACH TO TEST
18 AND EVALUATION KNOWLEDGE MANAGEMENT.—

19 (1) REPORT REQUIRED.—Within one year after
20 the date of the enactment of this Act, the Director
21 of the Test Resource Management Center and the
22 senior Department of Defense official with responsi-
23 bility for developmental testing shall provide to the
24 congressional defense committees a report on the de-

1 development of an enterprise approach to for managing
2 test and evaluation knowledge across the entire
3 Department of Defense enterprise management.

Comment [R017]: For clarity about the meaning of "enterprise approach".

4 (2) ELEMENTS.—The report required by para-
5 graph (1) shall include the following elements:

6 (A) The detailed concepts, requirements,
7 technologies, methodologies, and architecture
8 necessary for an enterprise approach to knowl-
9 edge management for test and evaluation.

10 (B) Resources needed to develop and adopt
11 an enterprise approach to knowledge manage-
12 ment for test and evaluation.

13 (C) Roles and responsibilities of various
14 Department of Defense entities to develop and
15 adopt an enterprise approach to knowledge
16 management for test and evaluation.

17 (D) Timeframes required to develop and
18 adopt an enterprise approach to knowledge
19 management for test and evaluation.

20 (E) A description of pilot studies ongoing
21 at the time of the date of the enactment of this
22 Act or previously conducted related to devel-
23 oping an enterprise approach to test and eval-
24 uation knowledge management, including re-
sults of the pilot studies (if available) and les-
sons learned.