



# PATHWAY TO TRANSFORMATION

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## NDIA Acquisition Reform Recommendations



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December 2, 2014

The Honorable Carl Levin  
Chairman  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510-6050

The Honorable Howard P. “Buck” McKeon  
Chairman  
House Committee on Armed Services  
2120 Rayburn House Office Building  
Washington, DC 20515-6035

The Honorable James M. Inhofe  
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Senate Committee on Armed Services  
228 Russell Senate Office Building  
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The Honorable Adam Smith  
Ranking Member  
House Committee on Armed Services  
2120 Rayburn House Office Building  
Washington, DC 20515-6035

The Honorable Mac Thornberry  
Vice Chairman  
House Committee on Armed Services  
2120 Rayburn House Office Building  
Washington, DC 20515-6035

Dear Chairmen, Ranking Members, and Vice Chairman of the Committees on Armed Services:

On behalf of the National Defense Industrial Association (NDIA), a non-partisan, non-profit association of nearly 1,600 corporate members and 90,000 individual members, we thank the House and Senate Committees on Armed Services for requesting our views on how to improve the Defense Acquisition System. In particular, we thank you for your patience as NDIA undertook a thorough, expert-led, and member-driven process to produce the detailed recommendations included in this final report.

In our letter to you on July 10 (at Appendix 1), we conveyed the three themes that characterize our final recommendations: providing authority to decision makers and holding them accountable for their decisions, matching the resources invested in the Defense Acquisition System to the requirements placed upon it, and vice versa, and making decisions about how to design the Defense Acquisition System based on data and evidence. Those themes have not changed since our interim response to you.

What did change, to a certain extent, was our approach to developing recommendations. As we undertook the approach described in our July 10 letter, we learned lessons and used those lessons to adapt our process in appropriate and helpful ways. As we described to you, our process was anchored in the analyses and conclusions of prior

*“Publishers of National Defense Magazine”*

studies, which were immensely helpful. Those studies reflect 12 consistent problem areas<sup>1</sup> in defense acquisition, and the vast majority of those problem areas are addressed in some way by our recommendations. The small handful that are not addressed were left aside either because they were not of interest to our members, the scope of the problem was so broad as to resist clear, specific, and actionable recommendations for change, the problem results from what we call “boundary conditions,” that is, from factors outside of our acquisition system uniquely resistant to change, or the problem simply fell prey to the limited resources of time and manpower available to us. Regardless, it is our plan to continue providing ideas, research, and analysis to your Committees in these areas, and we do not consider this report our last word on acquisition improvements.

In addition to our review of prior studies, our July 10 letter described a process for engaging our membership through working groups and large group meetings. This process was indeed an outstanding vehicle for creating and refining a set of possible recommendations. After our working groups completed their initial products and presented them to a second large group meeting, we concluded that it would be most productive to take these member-generated approaches and expose them to the thinking of the experts in the Pentagon responsible for each respective area. We also wanted to expose them to the congressional staff supporting your work. These interviews helped immensely and allowed us to refine our proposals based on what acquisition leaders already had underway. Furthermore, Pentagon acquisition leaders and your staff proposed suggestions with merit in their own right, which we subsequently folded into this report.

Our foremost conclusion is as simple as it is obvious: we will not reform defense acquisition once and for all nor solve its every problem. The Defense Acquisition System is a complicated framework of related systems, and it should be subject every few years to a review for a block upgrade. The process will never be perfect, but it can produce significantly better outcomes in a more affordable manner if we trace problems back to the underlying features that cause them. We look forward to supporting your Committees to that end.

Sincerely,



Jonathan Etherton  
Senior Fellow



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

CC:

The Honorable Frank Kendall, Under Secretary of Defense (AT&L)  
The Honorable Katrina McFarland, Assistant Secretary of Defense (Acquisition)  
The Honorable Bill LaPlante, Assistant Secretary of the Air Force (Acquisition)  
The Honorable Heidi Shyu, Assistant Secretary of the Army (ALT)  
The Honorable Sean Stackley, Assistant Secretary of the Navy (RDA)

<sup>1</sup> Listed on page 5 of our July 10 letter.



# Introduction

## *Why Has the Defense Acquisition System Proved So Difficult to Fix?*

This question has become a theme in congressional, military, acquisition, and industry circles. Although obviously not the first person to utter the question, Professor J. Ronald Fox of Harvard Business School made it implicit in his historical analysis of the last half century of acquisition reform efforts, *Defense Acquisition Reform, 1960-2009: An Elusive Goal*. Over the last year, the House Armed Services Committee (HASC) kicked off its current inquiry into acquisition reform by asking the question more directly in a hearing entitled, “Twenty-five years of Acquisition Reform: Where do we go from here?” The Senate Armed Services Committee reflected the theme in its hearing inquiring into the Reform of the Defense Acquisition Process and the Senate Homeland Security and Governmental Affairs Committee’s Permanent Subcommittee on Investigations similarly posed the question when it released a compendium of expert views entitled, *Defense Acquisition Reform: Where Do We Go From Here?* The theme, though consistent, is also cautionary to anyone who believes that acquisition outcomes need to be improved: whatever one might propose has probably been tried before, and probably did not work.

Yet those who have sought to answer the question have offered remarkably similar themes and prescriptions for change. In his book, Professor Fox identified a need to change incentives rather than processes. In testimony before HASC, Pierre Chao noted the disconnection between the requirements process meant to define the equipment to be purchased and the acquisition process meant to purchase it. Paul Francis identified the disconnection between acquisition and budget processes. Moshe Schwartz addressed the complexity of the Defense Acquisition System. Dov Zakheim focused on problems with the acquisition workforce. Each of these key themes was surrounded by similar or even nearly identical insights

among expert witnesses in statements reflecting more commonality than difference.

We share many of the views expressed by Fox, Chao, Francis, Schwartz, Zakheim, and many others, including those expressed by our sister Associations in response to the Armed Services Committees’ inquiries: the Aerospace Industries Association, the Professional Services Council, TechAmerica, and the IT Alliance for the Public Sector. Furthermore, participants in the NDIA analytical process that produced this report have themselves led or been on panels that produced earlier acquisition reform recommendations, such as the 2007 Report of the Acquisition Advisory Panel and the Defense Business Board’s 2012 report on linking and streamlining the requirements, acquisition, and budget processes.

If so much has been said already, why say it again? As Moshe Schwartz in his testimony quoted Harvey Sapolsky as saying,

The limited number of available reforms have all been recycled. You can centralize or decentralize. You can create a specialist acquisition corps or you can outsource their tasks. You can fly before you buy or buy before you fly. Another blue-ribbon study, more legislation, and a new slogan will not make it happen.

While this statement is true, and the pessimism it reflects will never go out of style in Washington, NDIA believes that the conditions that have strongly resisted transformation of the acquisition system may be more susceptible to change today than at any time in the recent past. The reasons relate to the way in which our constitutional form of government and other factors have created the boundary conditions that hold the Defense Acquisition System in its current state of equilibrium, and how an alignment of interests and views across the branches of our government can thereby deliver meaningful change.

### *Boundary Conditions, Equilibrium, and Entropy in the Defense Acquisition System*

If the government has consistently sought to reform the Defense Acquisition System, but the System has proven resistant to meaningful change and remained more or less in a state of equilibrium, then forces stronger than acquisition law or policy are holding the System in place. We refer to those forces as “boundary conditions,” and Jon Etherton detailed an illustrative list of them in prepared testimony before the Senate Armed Services Committee (SASC):

The federal military and civilian personnel systems. The federal personnel hiring and promotion systems for civilian employees and military service members impact the education and experience of acquisition personnel and, in the case of the military, the amount of an officer’s career that is devoted to acquisition versus operational assignments.

The budgeting and program planning processes. The budget, planning, and programming processes in the federal government dictate decisions about schedules and the availability of resources and have to reconcile a number of competing public policy imperatives, of which cost-effective acquisition is only one. The incentives embedded in these processes can have a decisive effect on the structure, size, and pace of technology maturation of federal acquisition programs.

Industry action. While industry faces a number of barriers to entry into and exit from the federal market, companies’ behavior in the buyer–seller relationship is not dictated solely by changes to federal acquisition policy. Other considerations also influence a company’s response

to a policy change, such as the need to demonstrate sustained shareholder value to institutional investors. Also, the federal sales of a commercial company may be quite small as a proportion of its total sales in the global marketplace, reducing its willingness to participate in a highly regulated federal marketplace.

The audit and oversight structure and process. The federal oversight and audit community sometimes judges acquisition decisions based upon a narrow set of data on a single transaction basis when other factors such as the use of individual judgment, innovative approaches, and prudent risk-taking in support an agency’s mission may in fact be more relevant to the overall success of the Defense Acquisition System.

The news media and outside organizations. The independent media and outside organizations’ judgments of the performance of a federal program or agency have a major impact on perceptions and the support of the public and Congress for a given set of policies over time.

While several of these areas are technically subject to change under the law, their resistance to change reflects either institutional prerogatives rooted in the Constitution or prerogatives of powerful actors in our political process that shape the application of our system of laws more than they are shaped by them. The Framers of the Constitution themselves offered an explanation of the basic defect of our government which ultimately produces the boundary conditions that hold the Defense Acquisition System firmly in place:

To what expedient, then, shall we finally resort, for maintaining in practice the

necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places...

[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.<sup>2</sup>

In each of our “boundary conditions,” and in many others we have not listed, the basic challenge is the misalignment of incentives among and between actors inside and outside the acquisition system, allowing them to work at cross purposes while each pursues his own interests by constitutional means. These misaligned incentives are by constitutional design; they will not be remedied by law or policy.

Despite having produced the most effective weapon systems and defense capabilities in history, the Defense Acquisition System is characterized by a significant degree of entropy and inefficiency. “Entropy” is another way of saying that a system will tend to achieve equilibrium, or, put colloquially, that “water seeks its own level.” To reverse entropy requires that a disruptive new force be applied to the system and sustained over time. Otherwise,

the system will eventually return to its prior state of equilibrium. “Culture eats strategy for lunch,” as they say, and without some effort to combat entropy, the Defense Acquisition System will tend to produce in the future what it tends to produce in the present and has tended to produce in the past: outcomes at increasingly unaffordable cost.

### *The Key to Reforming the Defense Acquisition System*

Of course there is no single key to reforming the Defense Acquisition System, otherwise it would have been discovered and the system successfully reformed long ago. There are, however, ways to proceed step by step toward system and process transformation. Professor Fox concludes as much in his book, the final section of which is entitled, “The Need for Extended Follow-up Actions.” If entropy is endemic in the acquisition process, the Congress and the Executive Branch cannot apply the force of external changes to the Defense Acquisition System every handful of years, as has been done in previous and successive acquisition reform efforts, without addressing some of the root causes. Taking brief action without follow up will mean watching the system to settle back into its former state of equilibrium. The attention and force must be thorough, consistent, and sustained—otherwise we should expect the same outcome as in previous reform efforts and take Professor Sapolsky’s advice and “skip acquisition reform this time.”

It is the leadership needed for such consistent, positive change that causes NDIA’s members to believe that meaningful acquisition improvement is now possible. Between Under Secretary Kendall and the commitment of the leadership of the House and Senate Armed Services Committees and the other key committees in Congress, the moment appears to be ripe for mounting a consistent campaign to improve acquisition outcomes over the next several years. To that end, we have proposed the following changes we believe are consistent with the approaches taken in the Weapon Systems Acquisition Reform Act of 2009, by the Clinger-Cohen Act of 1996, the Federal Acquisition Streamlining Act of 1994, and the Goldwater-Nichols Act of 1986.

2. From *Federalist 51*, <http://www.constitution.org/fed/federa51.htm>

As we said in our July 10 letter to the HASC and SASC,

To maintain the world's finest military, the Department of Defense needs three things: high quality people, realistic and constant training, and cutting-edge technology and support from industry. If we have the first two but not the last, we risk losing our ability to protect our national security interests around the world. Rapidly falling defense budgets underscore the need to achieve major reductions in the costs of what we acquire as well as the costs of acquisition processes and organizations themselves. Neither the current acquisition process nor its outcomes appear affordable in the long run.

Three basic principles should underpin our future efforts toward acquisition reform. First, acquisition decision-making should be based on evidence of strong performance and outcomes rather than on beliefs, opinions, or arbitrary preferences. Second, individual and organizational authority and accountability are better guarantors of performance than increasing compliance requirements. Third, process requirements should be matched with the resources available to properly implement them, particularly in the domains of human capital, performance measurement systems, and program funding.

It is in those three primary areas that we tender the following analyses and recommendations, and look forward to working with the Armed Services Committees to sustain the acquisition transformation effort until it takes firm root and redefines the Defense Acquisition System as it presently operates.



# I. Authority and Accountability

*Provide acquisition decision makers with the authority to make real decisions, and hold them accountable for the decisions they make.*

## 1) Defense Streamlined Programs Pilot Authority

**Problem Description:** Overly complex acquisition laws, regulations, and their enforcement bureaucracy create unclear lines of authority and accountability in program management.

**Root Cause Analysis:** Perceived failures in the system have led to micromanagement through ever-increasing imposition of process compliance and reporting measures.

**Solution Proposal:** Acquisition experts frequently debate whether true acquisition reform will result from the use of rapid acquisition authorities as a way to circumvent the traditional acquisition system, or whether the Defense Acquisition System itself must be changed to more closely resemble rapid acquisition authorities. For our part, NDIA does not believe there is a “one size fits all” approach that will uniformly deliver the best acquisition outcomes. Different kinds of acquisition programs require different kinds of tools, authorities, and oversight to ensure integrity in the process.

Therefore, to continue an appropriate expansion of the acquisition toolkit, NDIA recommends authorizing a new pilot authority called “Defense Streamlined Programs” (DSP) to model concepts of increased leadership and accountability. The premise of DSP is to adhere to the “Packard model” of acquisition—reduce number of management layers, reduce the process burdens and extraneous votes outside of the chain of command, empower program managers to succeed, reward them when they do, and hold them accountable if they do not.

Under the DSP, each Service Acquisition Executive (SAE), in coordination with Defense Acquisition Executive, may select up to four pilot programs. A senior program manager with highly relevant experience, selected by the SAE, will lead each pilot program. Candidate programs should be smaller value Acquisition Category (ACAT)-I or ACAT-II programs to diminish organizational incentives to resist the streamlined pilot. (The challenge for very large programs that attempt to circumvent the bureaucracy is that bureaucracies tend to resist relieving such programs of process requirements because of the risk of program failure that could result.) Candidate programs should be sufficiently early in the acquisition cycle (prior to Milestone A) in order for the streamlined process to have an impact.

DSP provides the ability to challenge non-value added regulatory, budget, and policy requirements not based in statute. Furthermore, the DSP would provide a process to seek statutory relief from Congress for other non-value added requirements based in law. (This relief could include a reorientation of the milestone decision process, if such a reorientation would deliver better outcomes and could still provide the necessary managerial oversight.) Last, DSP would provide authority to trade off requirements against life-cycle costs and schedule as long as such trades were made in direct coordination with the user and test communities.

Again, the DSP is not intended to solve every problem of systems acquisition. What it is meant to do is to allow selected capable acquisition professionals to manage effectively without the unnecessary burden of process requirements they do not need because of their skill and experience. NDIA does not envision a future where every acquisition program would be suitable for the DSP authority, but if the DSP pilots prove successful, the lessons learned from substituting increased program

manager authority and accountability in the place of reliance on process compliance may prove worthy of expansion.

### **Legislative Proposal:**

#### **Sec. 8\_\_ . Defense Streamlined Program Pilot**

(a) IN GENERAL.—(1) Chapter 144 of title 10, United States Code, is amended by adding after section 2436 the following new section:

“Sec. 2436a. Defense streamlined program pilot authority

“(a) IN GENERAL.—The Secretary of Defense shall conduct, through the Secretaries of the military departments, a program to test increasing the efficiency of the management of defense acquisition programs by increasing program manager authority and by reducing non-value added requirements on the management of the program.”.

“(b) DESIGNATION OF PARTICIPATING PROGRAMS.—The Secretary of a military department, in coordination with the Under Secretary of Defense for Acquisition, Technology and Logistics and acting through the Service Acquisition Executive, may designate up to a total of four defense acquisition programs or automated information systems programs from programs under the jurisdiction of the Secretary to participate in the program described in subsection (a). A program designated under this subsection shall be known as a ‘defense streamlined program pilot.’”.

“(c) PROGRAM ELIGIBILITY CRITERIA.—Programs selected under (b) shall be those programs under the jurisdiction of the Secretary that have a total estimated acquisition cost valued at no more than \$15,000,000,000 and which have not yet received approval to proceed to technology maturation and risk reduction as defined in DoD Instruction 5000.02 or successor document.”.

“(d) GUIDELINES.— No later than March 1, 2016, the Secretary of Defense shall issue guidelines governing the management of defense streamlined programs. Such guidelines shall include the following requirements:

“(1) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the armed forces who have significant and relevant experience managing large and complex programs.

“(2) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

“(3) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

“(4) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

“(5) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

“(6) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

“(7) The program manager of a defense streamlined program shall be provided a process to expeditiously seek a waiver from Congress from any statutory requirement that the program manager deems to add little or no value to the

management of the program.

“(8) The program manager of a defense streamlined program pilot shall be provided a process, working in coordination with the service acquisition executive, to propose within 120 days of the date of the designation of the program as a defense streamlined program pilot a modified milestone review plan that may involve waiver of a regulation, policy, directive or administrative rule or guideline or a statutory requirement under the process in (7).”.

“(d) APPLICABLE RULES AND REGULATIONS.—(1) Except as specified by the senior acquisition executive of the military department concerned, a defense streamlined pilot program shall not be subject to any regulation, policy, directive, or administrative rule or guideline relating to the acquisition activities of the Department of Defense other than the Federal Acquisition Regulation and the Department of Defense supplement to the Federal Acquisition Regulation.

“(2) Paragraph (1) shall not be construed to limit or modify the application of Federal legislation relating to the acquisition activities of the Department of Defense.

“(3) In this subsection the term ‘Federal Acquisition Regulation’ has the meaning given such term in section 2320(a)(4) of this title.”.

“(f) LIMITATION.---The authority to designate programs to participate in the program described in subsection (a) shall cease to be effective on December 31, 2018.

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 2436 the following new item:

“2436a. Defense streamlined program pilot.”.

(b) REVIEW.—Not later than June 1, 2018, the Comptroller General shall carry out a review of the use of the pilot authority in this section. The review shall consider, at a minimum, the following for each of the programs designated as a defense streamlined pilot program pilot under (b):

- (1) The use of the authorities in 2436a (d) (4), (5), (7), and (8);
- (2) The extent of reduction in applicable rules and regulations as result of the prohibition in subsection (e);
- (3) Any measureable impact on the program schedule from the use of the authorities in (1) and (2); and
- (4) Any measurable impact on program requirements, performance, acquisition costs and sustainment costs from decisions exercised using the authority in (d)(5).”.

(c) REPORT. -- Not later than January 1, 2019, Comptroller General shall transmit a report to the congressional defense committees describing the results of the review required in subsection (e) including any recommendations for actions by Congress or the Department of Defense to improve the effectiveness of the pilot and to transition specific approaches to management of major and non-major defense acquisition programs and major automated information systems programs not designated as pilot programs under (b).

## 2) Improved Acquisition Leadership by the Military Service Chiefs

**Problem Description:** The requirements, budget, and acquisition processes are not linked or streamlined and are too complex, paper-laden, and costly. They are disconnected and uncoordinated both at inception and during execution.

**Root Cause Analysis:** The Service Chiefs who could and should serve as a link for these three major processes (requirements, acquisition, and budget) are not sufficiently involved in the acquisition process. In the words of a House of

Representatives report from 2010, “The Goldwater Nichols Act (Public Law 99–433) assigned control of the acquisition system to the civilian leadership of the Department of Defense. The committee continues to support this principle, but is concerned that the perceived divide between acquisition and the responsibilities of the military service chiefs has become so wide that it hinders both the acquisition and requirements processes. This title would clarify that the military service chiefs have a role in assigning and guiding the training of military personnel in the acquisition process and in coordinating requirements with acquisition.”<sup>3</sup> Or, as the Defense Business Board put it, “. . . a Military Service Chief, who is a key decision-maker in the requirements and budget processes, is NOT involved in the acquisition phase. This hinders their ability to fully execute their responsibilities in Title 10 to ‘equip’ in support of the requirements of the Combatant Commands. This lack of involvement has contributed to program failures that could have been avoided.”

Further, the report points out, “The barriers between military-controlled requirements and civilian-controlled acquisitions need to be removed. Just as the increased involvement of the USD(AT&L)<sup>4</sup> is critical to the requirements process to emphasize affordability and technological feasibility, the increased Service Chief involvement is critical in the acquisition process in order to ensure military needs are met. While they are often-times held accountable for problem programs, the Service Chiefs are neither sufficiently involved nor informed under current practices.”<sup>5</sup>

As the House Armed Services Committee and the Defense Business Board pointed out, a chasm has opened between the uniformed officers who lead the military services, who typically have backgrounds in operations, and civilians and officers of the military acquisition community who very rarely attain high grades. In practice, this usually means that Service Chiefs have little comfort with the acquisition process and therefore little desire to effectively link and streamline the requirements, acquisition, and budget processes that they are technically responsible for leading.

### Expand the Service Chiefs’ Acquisition-Related Responsibilities

**Solution Proposal:** The Service Chiefs’ acquisition responsibilities are delineated in 10 U.S.C. § 2547, established relatively recently in law by the Fiscal Year 2011 National Defense Authorization Act. While this section of code is very helpful, it could and should more directly express the expectations of Congress for the Service Chiefs, and in particular that they are not to merely assist but to actually provide leadership in the area of their Services’ acquisition processes.

### **Legislative Proposal:**

#### **§2547. Acquisition-related functions of chiefs of the armed forces**

(a) Sense of Congress.—It is the sense of the Congress that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps—

(1) are the only individuals able to link and streamline the requirements, acquisition, and budget processes as the senior uniformed officers responsible for their respective military services, given that the process of materiel requirements development is particularly unique to the uniformed services;

(2) are responsible, in coordination with the Defense Acquisition Executive and Service Acquisition Executive, for the performance of materiel programs under the purview of their respective military services; and

(3) shall be held accountable by the Congress in hearings and through oversight for the performance of those programs, and in particular for their role in promoting integration among the requirements, acquisition, and budget processes and workforces of their respective military services.

<sup>3</sup> House Armed Services Committee, *House Report 111-465, Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010, H.R. 5013*, p. 24. <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt465/pdf/CRPT-111hrpt465-pt1.pdf>

<sup>4</sup> Under Secretary of Defense for Acquisition, Technology, and Logistics

<sup>5</sup> Defense Business Board, *Linking and Streamlining the Defense Requirements, Acquisition, and Budget Processes*, pp. 15-16. [http://dbb.defense.gov/Portals/35/Documents/Reports/2012/FY12-2\\_Linking\\_And\\_Streamlining\\_The\\_Defense\\_Requirements\\_Acquisition\\_Budget\\_Processes\\_2012-4.pdf](http://dbb.defense.gov/Portals/35/Documents/Reports/2012/FY12-2_Linking_And_Streamlining_The_Defense_Requirements_Acquisition_Budget_Processes_2012-4.pdf)



~~(a)~~ (b) Performance of Certain Acquisition-related Functions.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps ~~assist the~~ **are involved in, and provide leadership and accountability for** the Secretary of the military department concerned in the performance of the following acquisition-related functions, **to include requirements and budget preparation**, of such department:

- (1) The development of requirements for equipping the armed force concerned (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).
- (2) The coordination **and implementation** of measures to control requirements creep in the defense acquisition system.
- (3) The recommendation of trade-offs among life-cycle cost, schedule, and performance objectives, **technical feasibility**, and procurement quantity objectives, to ensure acquisition programs deliver best value in meeting the approved military requirements.
- (4) Termination of development or procurement programs for which life-cycle cost, schedule, and performance expectations are no longer consistent with approved military requirements and levels of priority, or which no longer have approved military requirements.
- (5) The development **and management** of career paths in acquisition for military personnel (as required by section 1722a of this title).
- (6) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.
- (7) The linking and streamlining of the requirements, acquisition, and budget processes.**

### §3033. Chief of Staff

(a)(1) There is a Chief of Staff of the Army, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Army. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

...

(d) Subject to the authority, direction, and control of the Secretary of the Army, the Chief of Staff shall—

- (1) preside over the Army Staff;
- (2) transmit the plans and recommendations of the Army Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;
- (3) after approval of the plans or recommendations of the Army Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;
- (4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Army as the Secretary determines;
- (5) perform the duties prescribed for him by sections 171 **and 2547** of this title and other provisions of law; and
- (6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Army.

...

### §5033. Chief of Naval Operations

(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term of four years, from the flag officers of the Navy. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed

for a term of not more than four years.

...

- (d) Subject to the authority, direction, and control of the Secretary of the Navy, the Chief of Naval Operations shall—
- (1) preside over the Office of the Chief of Naval Operations;
  - (2) transmit the plans and recommendations of the Office of the Chief of Naval Operations to the Secretary and advise the Secretary with regard to such plans and recommendations;
  - (3) after approval of the plans or recommendations of the Office of the Chief of Naval Operations by the Secretary, act as the agent of the Secretary in carrying them into effect;
  - (4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Navy and the Marine Corps as the Secretary determines;
  - (5) perform the duties prescribed for him by sections 171 and 2547 of this title and other provisions of law; and
  - (6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

...

#### **§5043. Commandant of the Marine Corps**

(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate. The Commandant shall be appointed for a term of four years from the general officers of the Marine Corps. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

...

- (e) Subject to the authority, direction, and control of the Secretary of the Navy, the Commandant shall—
- (1) preside over the Headquarters, Marine Corps;
  - (2) transmit the plans and recommendations of the Headquarters, Marine Corps, to the Secretary and advise the Secretary with regard to such plans and recommendations;
  - (3) after approval of the plans or recommendations of the Headquarters, Marine Corps, by the Secretary, act as the agent of the Secretary in carrying them into effect;
  - (4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Marine Corps and the Navy as the Secretary determines;
  - (5) perform the duties prescribed for him by sections 171 and 2547 of this title and other provisions of law; and
  - (6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

...

#### **§8033. Chief of Staff**

(a)(1) There is a Chief of Staff of the Air Force, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

...

- (d) Subject to the authority, direction, and control of the Secretary of the Air Force, the Chief of Staff shall—
- (1) preside over the Air Staff;

- (2) transmit the plans and recommendations of the Air Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;
- (3) after approval of the plans or recommendations of the Air Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;
- (4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Air Force as the Secretary determines;
- (5) perform the duties prescribed for him by sections 171 and 2547 of this title and other provisions of law; and
- (6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Air Force.

...

#### Service Chiefs Report on Plans to Link and Streamline Requirements, Acquisition, and Budget Processes

**Solution Proposal:** To kick off the renewed emphasis on Service Chief involvement, the Fiscal Year 2016 National Defense Authorization Act should require a report from each of the Service Chiefs to explain their plans for linking and streamlining the requirements, acquisition, and budget processes of their military services, along with a timeline and accountable outcomes that can be objectively monitored and reviewed.

#### **Legislative Proposal:**

#### **Sec. \_\_\_\_ . Report on Linking and Streamlining Service Requirements, Acquisition, and Budget Processes**

- (a) Reports.—Not later than 180 days after the date of the enactment of this Act, the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps shall each submit to the congressional defense committees a report on their efforts to link and streamline their Services' requirements, acquisition, and budget processes.
- (b) Matters Included.—The reports under subsection (a) shall include the following:
- (1) A specific description of—
    - (A) the management actions the Chief of Staff has taken or plans to take to link and streamline the requirements, acquisition, and budget processes of the particular military service;
    - (B) any reorganization or process changes that will link and streamline the requirements, acquisition, and budget processes of the particular military service;
    - (C) any cross-training or professional development initiatives of the Chief of Staff .
  - (2) For each description under subsection (1)—
    - (A) the specific timeline and deadline associated with implementation;
    - (B) the anticipated outcomes once implemented;
    - (C) how to measure whether or not those outcomes are realized; and
  - (3) Any other matters the Service Chief considers appropriate.

#### Service Chiefs Accountable for Program Requirements

**Solution Proposal:** Further, while the Service Chiefs often drive military requirements for their budgets' acquisition portfolios, the Service Chiefs are not required to account for them as part of the Milestone A review for the program requirements as approved by the Joint Requirements Oversight Council. Nor are they asked to propose requirements

trade-offs that could be made to improve cost or schedule in the event of a Nunn-McCurdy breach. Writing a requirements certification and the report back to Congress on appropriate requirements trade-offs in the event of a Nunn-McCurdy breach should focus the attention of the Service Chiefs on their Services' acquisition processes and dramatically increase their efforts to align the requirements, acquisition, and budget processes of their respective military services.

### Legislative Proposal:

#### §2366a. Major defense acquisition programs: certification required before Milestone A approval

(a) Certification **by the Milestone Decision Authority**.—A major defense acquisition program may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the Milestone Decision Authority certifies, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program is being executed by an entity with a relevant function as identified by the Secretary of Defense under section 118b of this title;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;

(4) that a determination of applicability of core logistics capabilities requirements has been made;

(5) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation; and

(6) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is consistent with the priority level assigned by the Joint Requirements Oversight Council.

(b) Certification by the Service Chief of the military service responsible for the program.—A major defense acquisition program may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the Service Chief of the military service responsible for the executing the program has certified to the congressional defense committees that the program requirements reflect military needs and are technologically feasible within the cost estimate submitted for the program.

~~(b)~~(c) Notification.—

(1) With respect to a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram, at any time prior to Milestone B approval, exceeds the cost estimate for the program submitted at the time of the certification by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent, the program manager for the program concerned shall notify the Milestone Decision Authority. The Milestone Decision Authority, in consultation with the ~~Joint Requirements Oversight Council~~ **Service Chief of the military service responsible for the program** on matters related to program requirements and military needs, shall determine whether the level of resources required to develop and procure the program remains consistent with the priority level assigned by the Joint Requirements Oversight Council. The Milestone Decision Authority may withdraw the certification concerned or rescind Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(2) Not later than 30 days after a program manager submits a notification to the Milestone Decision Authority pursuant to paragraph (1) with respect to a major defense acquisition program or designated major subprogram, the Milestone Decision Authority shall submit to the congressional defense committees a report that—

(A) identifies the root causes of the cost or schedule growth in accordance with applicable policies, proce-



dures, and guidance;

(B) identifies appropriate acquisition performance measures for the remainder of the development of the program; and

(C) includes one of the following:

(i) A written certification (with a supporting explanation) stating that—

~~(I) the program is essential to national security;~~

~~(II) there are no alternatives to the program that will provide acceptable military capability at less cost;~~

~~(III) new estimates of the development cost or schedule, as appropriate, are reasonable;~~

and

~~(IV) the management structure for the program is adequate to manage and control program development cost and schedule.~~

(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

~~(3) Except in circumstances where the Milestone Decision Authority submits a plan under subsection (c)(2)(C)~~

~~(ii), not later than 30 days after a program manager submits a notification to the Milestone Decision Authority pursuant to paragraph (1) with respect to a major defense acquisition program or designated major subprogram, the Service Chief of the military service responsible for the program shall submit to the congressional defense committees a report that—~~

~~(A) includes one of the following:~~

~~(i) A written certification (with a supporting explanation) stating that—~~

~~(I) the program as planned is essential to national security and~~

~~(II) there are no alternatives to the program that will provide acceptable military capability at less cost.~~

~~(ii) A recommendation of program requirements to trade off in order to improve program cost and schedule.~~

~~(e)(d)~~ Definitions.—In this section:

(1) The term “major defense acquisition program” has the meaning provided in section 2430 of this title.

(2) The term “designated major subprogram” means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term “initial capabilities document” means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(4) The term “technology development program” means a coordinated effort to assess technologies and refine user performance parameters to fulfill a capability gap identified in an initial capabilities document.

(5) The term “entity” means an entity listed in section 118b(c)(3) of this title.

(6) The term “Milestone B approval” has the meaning provided that term in section 2366(e)(7) of this title.

(7) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

### Congress Oversees the Service Chiefs’ Acquisition Efforts

**Solution Proposal:** Following the principle that what gets measured gets done, the Congress should develop an oversight plan—communicated to the Service Chiefs—with an annual oversight hearing or other review of their efforts to lead in the area of materiel acquisition. While the requirements for hearings, reports, and consistent oversight are substantial, they are also necessary. Since it has been difficult to discern any difference in the Service Chiefs’ involvement in acquisition following the codification of 10 U.S.C. § 2547 in 2011, the Congress will need to emphasize the importance of these responsibilities and reinforce that emphasis if the Service Chiefs’ own priorities are to adapt to this new mandate.

### **Oversight Proposal:**

Following the passage of the National Defense Authorization Act which includes the legislation proposed above, the House and Senate Armed Services Committees should conduct a hearing or other oversight review with the Service Chiefs to have them describe what they see as the challenges to and potential advantages of linking and streamlining the requirements, acquisition, and budget processes of their respective Services.

Following the submission of each report required in the legislative proposal above, a further hearing or other oversight review should again be conducted with the Service Chiefs in order for the Committees to receive information about the specifics of each proposal and to ensure that the Service Chiefs are held accountable for implementing what they have proposed.

### **3) Innovation through the Commercial Marketplace**

**Problem Description:** The government acquisition process is growing less open to innovation from non-government funded research and development as well as emerging private sector ways of delivering capabilities.

**Root Cause Analysis:** The acquisition workforce is not empowered or incentivized to make use of all available options for acquiring capabilities when making acquisition decisions. Acquisition processes are inflexible with respect to new technologies or emerging ways of acquiring capabilities.

Acquisition processes are structured and driven by a narrow approach to measuring value: getting the lowest price in a single transaction. This approach to measuring value does not account for benefits to the government from savings incurred through overhead cost avoidance, cost avoidance through private investment into research and development, savings from lease versus ownership, and the value of market access to products and services the government could not research and develop with its own funding in a timely manner.

Inflexible acquisition mandates, the imperatives that flow from the federal budget process, and a narrow value concept jointly undermine incentives to reevaluate specific product options and different approaches for acquiring capabilities in a more cost-effective manner. The government acquisition cycle remains longer and out of synch with the private sector innovation cycle. The dynamic private sector market, its technologies, and its practices are increasingly outstripping the ability of the defense acquisition system to acquire state of the art technologies from the commercial sector.

#### Use “State of the Practice” Commercial Technologies

**Solution Proposal:** The Defense Acquisition System could see major improvements in capability and reductions in lifecycle costs when it increases and incentivizes access to technologies and solutions developed outside of the government marketplace.

The Department of Defense desperately needs to incorporate the “state of the practice” commercial components (which NDIA defines as standard-use contemporary commercial solutions, as opposed to an obsolete commercial solutions or the “state of the art,” cutting-edge commercial solutions) for its major systems. During our process of research and discovery, we came across individuals who claimed it was standard operating procedure for programs to incorporate contemporary commercial components, yet when looking at major systems, NDIA was able to identify obsolete commercial components on major systems, and occasionally parts that had been obsolete for several decades. It costs more to maintain a

commercial part that has become obsolete than it does to use its “state of the practice” alternative, and the additional cost increases with time and the rarity of the obsolete part.

Because more than one individual assured us that programs and initiatives are underway to identify and incorporate “state of the practice” technologies into programs, we suggest that the Congress begin by tasking the Government Accountability Office (GAO) to identify any such existing programs in the Department and evaluate their effectiveness. Furthermore, to establish the case for broadening “state of the practice” commercial component acquisitions, GAO should identify factors which serve as process or institutional barriers to such approaches as well as cases where obsolete components were purchased and what implications those purchasing decisions had on the program’s lifecycle costs.

### **Legislative Proposal:**

#### **Sec. 8 \_\_\_\_. Review of Department of Defense to Identify and Use State of Practice Approaches from Commercial Industry for Use in Defense Programs**

(a) REVIEW REQUIRED.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a review of the degree to which the military departments and the agencies of the Department of Defense have established programs to allow for the identification and use of products and capabilities that reflect the current state of practice in the applicable sector of commercial industry.

(b) In carrying out the review in (a), the Comptroller General shall, at a minimum, identify and consider the following:

(1) Programs or initiatives within the Department of Defense for lowering acquisition and life cycle costs of major programs through the timely identification and use of applicable technology and product innovations accepted in commercial industry.

(2) Programs or initiatives within the Department of Defense to identify, assess, and appropriately utilize non-traditional approaches accepted in the commercial sector for delivering capabilities, such as the use of product or capability “as a service” approaches in lieu of direct purchase.

(3) Regulations, policies, directives, specifications, administrative rules or guidelines, or statutory requirements that hinder or prevent the timely identification and use of products and capabilities by the Department of Defense that reflect the current state of practice in the applicable sectors of commercial industry.

(4) The sufficiency of the training or education available to the civilian and military acquisition workforce to allow them to effectively carry out programs or initiatives described in (1) and (2).

(5) Examples of failures within current or recent acquisition programs to identify and incorporate state of the practice approaches, technologies, or components and any estimated potential lifecycle cost resulting from such failures.

(c) REPORT.—Not later than 60 days after the date on which the review is completed, the Comptroller General shall transmit a report to the congressional defense committees describing the results of the review including any recommendations for actions by Congress or the Department of Defense to expand the timely access of and use by the Department of products and capabilities that reflect the current state of practice in the applicable sector of commercial industry.

(d) DEFINITION.—For the purposes of the requirement in (a), “state of the practice” means the current commercial practice in the application of a device, technique, procedure, system or component design, operation, performance level, or business practice that could provide the Department of Defense an opportunity for better system performance or lower than programmed operating cost.

#### Expand Concepts of Acquisition Value Beyond Single Transactions

**Solution Proposal:** One frustrating aspect of the preference for government-unique solutions is how value is measured by acquisition processes and the government oversight community. The simplest and most obvious cost-benefit measures in the acquisition system are to determine how a single transaction cost compares to other instances where the same or similar item was purchased (referred to as price analysis) or to determine what it cost to make the item and how that compares to the proposed price (referred to as cost analysis). But neither price analysis nor cost analysis, when limited to a single transaction, can adequately account for cost and risk avoidance in circumstances where private investment brings a product to market without public involvement, cost avoidance by reducing the administrative burden of government contracting, cost avoidance by increasing genuine competition among offerors, lifecycle operations and maintenance cost savings, and the value of early access to cutting-edge commercial technologies.

To begin the process of exploring sound alternative concepts of value, NDIA recommends that Congress direct the Defense Science Board to study and report on how to identify and measure other forms of value in the Defense Acquisition System so that acquisition professionals are not limited to comparing acquisition strategies and techniques on a transaction-by-transaction basis. Considering value on a more holistic basis throughout the lifecycle of a product or program would provide acquisition professionals with greater flexibility to make trade-offs between immediate costs and other considerations, and have those trade-offs recognized as appropriate stewardship of taxpayer dollars and support of warfighter needs. The Defense Science Board should focus its review on data that is already collected, or would be easy to collect, to avoid creating another administrative burden for program offices or contractors.

### Legislative Proposal:

#### Sec. 8 \_\_\_\_. Value Concepts in Acquisition

(a) REVIEW REQUIRED.—Not later than 90 days after the date of enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall direct the Defense Science Board to conduct a review of current approaches to measuring value in the Defense Acquisition System, practices for measuring value in the private sector that would be appropriate and desirable to incorporate into the Defense Acquisition System, and identify data currently collected and maintained that could support the objective measurement of such value in making sound acquisition decisions throughout the life cycle of a product, program, or service.

(b) In carrying out the review in (a), the Defense Science Board shall, at a minimum, consider recognition and measurement of value in the following areas:

- (1) Cost avoidance, in terms of—
  - (A) individual transactions;
  - (B) reduced overhead burden;
  - (C) increased meaningful competition;
  - (D) private investment in research and development;
  - (E) increased access to markets too expensive to create with public funds;
  - (F) lifecycle operations and maintenance savings;
- (2) capability; and
- (3) risk avoidance through private sector investment in research and development.

(c) REPORT.—Not later than 60 days after the date on which the review in (a) is completed, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall transmit a report to the congressional defense committees describing the results of the review including any recommendations for actions by Congress or the Department of Defense to increase and improve appropriate consideration of forms of value beyond those immediately present in an individual transaction.



Streamline Commercial Item Determination

**Solution Proposal:** NDIA and its members strongly support the commercial item preference enshrined in law and have expressed concerns at its erosion in recent years. To reassert the government’s preference for commercial items, we recommend streamlining the process for commercial item determination by presuming a reliance on a single commerciality determination unless the government can produce information to demonstrate that such reliance is unfounded. Further, the requirements in 10 U.S.C. § 2379 for establishing price reasonableness prior to a commercial item determination create unacceptable ambiguity by suggesting that a commercial item determination should depend upon a price reasonableness determination. Whether an item is commercial or not should be a separate determination from whether it is priced reasonably. In making the latter determination, a contracting officer should rely on commercial price negotiation practices to obtain a fair and reasonable price.

**Legislative Proposal:**

Add the following new section:

**Sec. 8\_\_ . Commercial Item Determination**

(a) IN GENERAL.—(1) Chapter 137 of title 10, United States Code, is amended by adding after section 2306d the following new section:

**“Sec. 2306e. Commercial item determination.**

A contracting officer shall presume that a prior determination by an agency official that an item may be treated as a commercial item for the purposes of section 2306a is justified for all subsequent acquisitions of such item unless the head of the contracting activity determines, based on information provided by the Department of Defense, that the original determination was made in error or was based on inadequate information.”

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 2306d the following new item:

“2306e. Commercial item determination.”.

Amend 10 U.S.C. §2379 as follows:

**§2379. Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items.**

(a) Requirement for Determination and Notification.—A major weapon system of the Department of Defense may be treated as a commercial item, or purchased under procedures established for the procurement of commercial items, only if—

(1) the Secretary of Defense determines that—

(A) the major weapon system is a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

(B) such treatment is necessary to meet national security objectives;

~~(2) the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the~~

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~~price for such system;~~ and

(23) the congressional defense committees are notified at least 30 days before such treatment or purchase occurs.

(b) Treatment of Subsystems as Commercial Items.—A subsystem of a major weapon system (other than a commercially available off-the-shelf item as defined in section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))) shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items only if—

(1) the subsystem is intended for a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (a); or

(2) the contracting officer determines in writing that—

~~(A) the subsystem is a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and~~

~~(B) the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such subsystem.~~

(c) Treatment of Components and Spare Parts as Commercial Items.—

(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item as defined in section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))) may be treated as a commercial item for the purposes of section 2306a of this title only if—

(A) the component or spare part is intended for—

(i) a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (a); or

(ii) a subsystem of a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (b); or

(B) the contracting officer determines in writing that—

(i) the component or spare part is a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

~~(ii) the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such component or spare part.~~

(2) This subsection shall apply only to components and spare parts that are acquired by the Department of Defense through a prime contract or a modification to a prime contract (or through a subcontract under a prime contract or a modification to a prime contract on which the prime contractor adds no, or negligible, value).

(d) Information Submitted.—To the extent necessary to ~~determine the reasonableness of the price for items acquired under this section, make a determination under subsection (a)(2), (b)(2), or (c)(1)(B),~~ the contracting officer may request the offeror to submit—

(1) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

(2) if the contracting officer determines that the information described in paragraph (1) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

(e) Delegation.—The authority of the Secretary of Defense to make a determination under subsection (a) may be delegated only to the Deputy Secretary of Defense, without further redelegation.

(f) Major Weapon System Defined.—In this section, the term “major weapon system” means a weapon system acquired

pursuant to a major defense acquisition program (as that term is defined in section 2430 of this title).

### Repeal Certain Laws Related to Intellectual Property

**Solution Proposal:** Government contracting policies have always recognized the importance of protecting contractor investments and intellectual property rights. These policies also recognize the government’s need to acquire appropriate rights for maintaining equipment and competition. The government is required to determine the extent of its intellectual property needs and to pay reasonable prices for that intellectual property. In the 1980s and 1990s, Congress conducted a comprehensive review of these policies to find an appropriate balance recognizing the interests of both industry and government.

Two significant legislative changes have undermined this balance. One is the change added in section 802(b) of the Fiscal Year 2007 National Defense Authorization Act that altered the presumption in 10 U.S.C. §2321 that a commercial item was developed at private expense. Although this provision was later amended to exclude commercial off the shelf (COTS) items, it leaves at risk a contractor’s control of intellectual property associated with any commercial item which has been subject to minor modifications. Section 815 of the Fiscal Year 2012 National Defense Authorization Act added a requirement for any contractor to deliver technical data that is merely “utilized” in performance of a contract and allows the DoD to demand greater data rights to “segregation” and “reintegration” data in perpetuity, while also broadening DoD’s rights to release or disclose proprietary data outside the government to third parties.

The proposed regulations implementing Section 815 have yet to be issued three years after the enactment of the provision, and NDIA believes that the challenges with defining the meaning and limits of so-called segregation and reintegration data for general application by contracting officers will likely result in a tool that has limited practical benefit for the government while placing an unreasonably burdensome data retention and retrieval requirement on industry.

NDIA believes that these recent laws passed on intellectual property deter good vendors with valuable intellectual property from entering the government marketplace. Ambiguous rules about who controls and can use intellectual property cause many vendors to decide the risk of lost proprietary rights is not worth the reward. To reverse this trend in the short term, the Congress should repeal Section 802 of the Fiscal Year 2007 National Defense Authorization Act and Section 815 of the Fiscal Year 2012 National Defense Authorization Act and establish a comprehensive review of the legislative requirements of government and industry stakeholders.

### **Legislative Proposal:**

#### **Sec. 8\_\_ . Rights in Data**

(a) Section 815 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-181) is repealed.

(b) Subsection (b) of section 802 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), as amended, is repealed.

### Establish a Panel to Find Better Solutions for Intellectual Property

**Solution Proposal:** Given the evolution in the practices and technology in the commercial and government marketplaces since the rights in technical data legislation was enacted in the 1990s, it is time for a more thorough review involving all the stakeholders in intellectual property rights. Congress should establish a government-industry advisory panel to review the current requirements relating to rights in technical data in 10 U.S.C. § § 2320 and 2321. Such a panel could review the interests of government and industry in intellectual property and recommend solutions that better recognize and balance

them both.

### Legislative Proposal:

#### Sec. 8\_\_ . Government-Industry Advisory Panel on Rights in Technical Data

- (a) GOVERNMENT-INDUSTRY ADVISORY PANEL.— Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall appoint a government-industry advisory panel for the purpose of reviewing the requirements for regulations in section 2320 and the requirements in section 2321 of title 10, United States Code, and making recommendations to Congress and the Secretary of Defense for the purpose of modifying the requirements to achieve the following objectives:
- (1) Simplifying and streamlining requirements with respect to the treatment rights in technical data.
  - (2) Encouraging industry to invest in new technologies relevant to the missions of the Department of Defense.
  - (3) Expanding Department of Defense access to innovation from commercial industry.
  - (4) Supporting the ability of the Department of Defense to acquire capabilities competitively and on an enterprise basis throughout the life cycle of a product or program.
- (b) The membership of the advisory panel shall include, at a minimum, representatives of the following:
- (1) The Under Secretary of Defense for Acquisition, Technology and Logistics.
  - (2) The acquisition executives of the military departments.
  - (3) Prime contractors under major defense acquisition programs.
  - (4) Subcontractors and suppliers under major defense acquisition programs.
  - (5) Contractors under contracts other than contracts under major defense acquisition programs.
  - (6) Subcontractors and suppliers under contracts other than contracts under major defense acquisition programs.
  - (7) Small businesses.
  - (8) Contractors and subcontractors primarily involved in the sale of commercial products to the Department of Defense.
  - (9) Contractors and subcontractors primarily involved in the sale of spare or repair parts to the Department of Defense.
  - (10) Providers of innovative commercial products who are not primarily involved in the sale of products to the Department of Defense.
  - (11) Developers of commercial software.
  - (12) Institutions of higher education.
- (c) Not later than September 30, 2016, the advisory panel shall submit to the Secretary and the congressional defense committees a report containing the following matters:
- (1) Proposals for the modification to the requirements for regulations in section 2320 and the requirements in section 2321 of title 10, United States Code to achieve the objectives in (a), and
  - (2) Any other recommendations that the advisory panel considers appropriate.

## 4) Government-Industry Dialog

**Problem Description:** The acquisition system discourages an effective information exchange between government and industry which worsens acquisition outcomes.

**Root Cause Analysis:** Dialog with industry is seen by many government officials as too risky and difficult to be worth the effort. Despite attempts to “myth bust” on the part of the Office of Federal Procurement Policy (OFPP) and to encourage

appropriate and helpful government-industry dialog,<sup>6</sup> other guidance suggests that no dialog should occur without pre-approval by or in the presence of a government lawyer.<sup>7</sup> Such restrictions communicate a clear message to public officials: steer clear of industry unless you are required to engage in dialog. But guidance that places fetters on appropriate government-industry dialog is unlikely to have much positive effect. If corrupt public officials are not deterred by the law and threat of punishment, well-meaning guidance is also unlikely to persuade them. Such guidance just makes the job harder for officials who are trying to do their work properly and ethically.

Furthermore, government-industry conferences, which experts endorse as the best forum for ethical, appropriate, and meaningful government-industry dialog to take place,<sup>8</sup> have faced restrictions following two inexcusably wasteful conferences run by the government and involving the exclusive participation of government employees. It merits repeating: the conferences involving intolerable and inexcusable waste identified by the Inspectors General of the Department of Veterans Affairs and the General Services Administration were organized and run by government employees for government employees—not to facilitate the appropriate, legal, and ethical interaction of government purchasing officials with their industry supplier base.<sup>9</sup> Ironically, it is government participation in industry conferences that has suffered most in the aftermath. New conference approval restrictions might achieve some modest up-front savings,<sup>10</sup> but even if they do, those savings come at the cost of an acquisition workforce that is significantly less informed about the industry it partners with and purchases from. The dramatically increased oversight and increasing restrictions communicate a clear message to the acquisition workforce: just don't go. Do not attend government-industry conferences, industry days, or trade shows for market research purposes, regardless of whether or not the taxpayer would ultimately benefit from your dialog with vendors and a greater awareness of market offerings.

Last, the dialog between government suppliers and government regulators during the rulemaking process could be significantly improved. Acquisition regulators and the suppliers they regulate have a good relationship, but dialog during the rulemaking process is stymied by an overly restrictive interpretation of the Federal Advisory Committee Act (FACA). The result is that regulators and government suppliers cannot have an honest conversation about the most efficient and effective ways to draft a proposed rule to maximize its implementation while minimizing its cost. Instead, government regulators closely hold all of the details of the rulemaking process until releasing a proposed rule, and then after the rule is proposed, will not engage in dialog as part of the rulemaking process, instead relying on back-and-forth formal written letters until the final rule is completed. A real conversation between regulators and those they regulate on how best to draft a proposed rule does not presuppose agreement among the parties, only an ability to talk through the details in a way that is impossible when “dialog” is limited to exchanges of written correspondence, which is the character of the current rulemaking process.

### Improve Government Market Research

6 OFPP released two memoranda on this subject. “Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process, Dan Gordon, Administrator of Federal Procurement Policy, February 2, 2011. <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/Myth-Busting.pdf>. And “Myth-Busting 2”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process, Lesley Field, Acting Administrator of Federal Procurement Policy, May 7, 2012, <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/myth-busting-2-addressing-misconceptions-and-further-improving-communication-during-the-acquisition-process.pdf>.

7 Standards of Conduct Guidance, Admiral Mark Ferguson, Vice Chief of Naval Operations, January 6, 2014. <http://www.ndia.org/Advocacy/policyweeklydigest/Documents/16May2014/DoN-Standards-of-Conduct-Guidance.pdf>

8 All three memoranda listed in the prior two footnotes support broadly-attended venues, i.e. conferences, for appropriate and ethical government-industry dialog. This endorsement was reiterated by Under Secretary of Defense for Acquisition, Technology, and Logistics, Frank Kendall, in a February 20, 2014, memorandum entitled Participation in Technical and Industry Conferences. In that memo he stated, “I ask each addressee, consistent with the November 6, 2013, Deputy Chief Management Officer (DCMO) guidance, ‘Implementation of Updated Conference Oversight Requirements,’ to give appropriate consideration to the importance of attendance at technical symposia and conferences that enhance communication between DoD acquisition professionals and their industry counterparts. I ask that you support properly justified attendance by DoD personnel to the extent possible, subject to the availability of resources, including travel funds.” <http://www.navyopportunityforum.com/documents/KendallConferencesFeb2014.pdf>

9 The two Inspectors General reports can be found at <http://www.gsaig.gov/?LinkServID=908FFF8C-B323-14AD-270C38936310AEBD> and <http://www.va.gov/oig/pubs/VAOIG-12-02525-291R.pdf>.

10 This assertion deserves further study before it is accepted as a fact. The Office of Management and Budget, the office of the Deputy Chief Management Officer, and each of the Military Services have created headquarters organizations with multiple full-time staff members responsible for conference attendance policy and reviewing conference requests when they are submitted. These new administrative overhead costs do not include the costs of staff at subordinate organizations that must gather the necessary information and prepare those conference approval requests. All in all, it is quite possible that the government saves no money, and perhaps spends more money, on its new conference approval bureaucracy than it saves by avoiding travel and registration costs.



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**Solution Proposal:** Former OFPP Administrator Daniel Gordon’s original “Myth Busters” memo debunked the myths that market research and dialog with industry are too administratively burdensome, too time-consuming, and of little value. Today, market research is explicitly or implicitly required by at least six separate statutes,<sup>11</sup> but none of them establish a minimum threshold for what constitutes market research. Since it is obvious that procurement experts consider real dialog with industry to be of value, particularly for the purposes of market research, and since market research is already a requirement of law, it makes sense for the Congress to explicitly endorse dialog with industry by making it the essential requirement of performing market research. Market research may also include many other activities, but at the very least it should include a handful of verbal discussions with industry representatives to inform whatever other market research activities take place.

### Legislative Proposal:

#### 41 U.S.C. §3306. Planning and solicitation requirements

(a) Planning and Specifications.—

(1) Preparing for procurement.—In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research, which at a minimum shall include—

(i) contacting knowledgeable individuals in industry regarding market capabilities to meet requirements; or

(ii) conducting or participating in others’ interchange meetings or presolicitation conferences to involve potential offerors early in the acquisition process; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

...

#### 41 U.S.C. §3307. Preference for commercial items

...

(d) Market Research.—

(1) When to be used.—The head of an executive agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that executive agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) Minimum requirements.—Market research shall at a minimum include—

(A) contacting knowledgeable individuals in industry regarding market capabilities to meet requirements; or

(B) conducting or participating in others’ interchange meetings or presolicitation conferences to involve potential offerors early in the acquisition process.

(2)(3) Use of results.—The head of an executive agency shall use the results of market research to determine whether commercial items or, to the extent that commercial items suitable to meet the executive agency’s needs are not available, nondevelopmental items other than commercial items are available that—

(A) meet the executive agency’s requirements;

(B) could be modified to meet the executive agency’s requirements; or

(C) could meet the executive agency’s requirements if those requirements were modified to a reasonable

<sup>11</sup> 41 U.S.C. § 3306, 41 U.S.C. § 3307, 10 U.S.C. § 2337, 10 U.S.C. § 2366b, 15 U.S.C. § 644, and 6 U.S.C. § 796.

extent.

~~(3)~~(4) Only minimum information required to be submitted.—In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

...

### 10 U.S.C. §2377. Preference for acquisition of commercial items

...

(c) Preliminary Market Research.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

~~(A)~~ which shall at a minimum include—

~~(i) contacting knowledgeable individuals in industry regarding market capabilities to meet requirements; or~~

~~(ii) conducting or participating in others' interchange meetings or presolicitation conferences to involve potential offerors early in the acquisition process;~~

~~(A)~~(B) before developing new specifications for a procurement by that agency;

~~(B)~~(C) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold;

and

~~(C)~~(D) before awarding a task order or delivery order in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(4) The head of an agency shall take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of \$5,000,000 for the procurement of items other than commercial items engages in such market research as may be necessary to carry out the requirements of subsection (b)(2) before making purchases for or on behalf of the Department of Defense.

### Make Market Research a Component of the Requirements Development Process

**Solution Proposal:** Market research should not be limited to program managers and contracting officers. The Weapons System and Acquisition Reform Act of 2009 made admirable strides by including cost and schedule considerations in the requirements development process, and in addition to those improvements, Service and joint requirements officials should take pains to gain an awareness of available materiel offerings through market research. Gaining an awareness of the market and technology readiness levels through dialog with the supplier base will enable requirements officials to ground their work in technological reality, achieve their new mandate of cost-consciousness, and leverage technology areas that may be enjoying significant advances in capability while avoiding others that have stalled out.

### **Legislative Proposal:**

#### **§181. Joint Requirements Oversight Council**

...

(b) Mission.—In addition to other matters assigned to it by the President or Secretary of Defense, the Joint Requirements Oversight Council shall—

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- (1) assist the Chairman of the Joint Chiefs of Staff—
    - (A) in identifying, assessing, and approving joint military requirements (including existing systems and equipment) to meet the national military strategy;
    - (B) in conducting market research which shall at a minimum include—
      - (i) contacting knowledgeable individuals in industry regarding market capabilities to meet requirements; or
      - (ii) conducting or participating in others' interchange meetings or presolicitation conferences to involve potential offerors early in the acquisition process;
    - ~~(B)~~(C) in identifying the core mission area associated with each such requirement; and
    - ~~(C)~~(D) in ensuring that appropriate trade-offs are made among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, in the establishment and approval of military requirements in consultation with the advisors specified in subsection (d);
  - (2) assist the Chairman in establishing and assigning priority levels for joint military requirements;
  - (3) assist the Chairman, in consultation with the advisors to the Council under subsection (d), in reviewing the estimated level of resources required in the fulfillment of each joint military requirement and in ensuring that the total cost of such resources is consistent with the level of priority assigned to such requirement;
  - (4) assist acquisition officials in identifying alternatives to any acquisition program that meet joint military requirements for the purposes of section 2366a(b), section 2366b(a)(4), and section 2433(e)(2) of this title; and
  - (5) assist the Chairman, in consultation with the commanders of the combatant commands and the Under Secretary of Defense for Acquisition, Technology, and Logistics, in establishing an objective for the overall period of time within which an initial operational capability should be delivered to meet each joint military requirement.
- ...

### Make it Less Difficult for Government Employees to Attend Conferences When Appropriate

**Solution Proposal:** Regarding government attendance and participation in conferences, including science and technology conferences, conferences that facilitate the interaction of the acquisition workforce with industry, and conferences designed for government market research, applying new restrictions is penny smart but pound foolish. The two conferences that gave rise to the current restrictive oversight were conferences run by government employees for government employees—they did not involve, nor were they designed for, government-industry dialog. In order to keep appropriate conference oversight from limiting appropriate government attendance at conferences with industry, legislation should make clear that ongoing and future conference restrictions are not meant to inhibit the appropriate and necessary attendance of government at conferences that facilitate the government-industry dialog.

This proposal is supported most recently by a GAO report published in October 2014.<sup>12</sup> In that report, GAO arrived at the following conclusions:

“We found that agencies’ market research on the higher dollar value contracts generally involved more communication with industry and these contracts were more often awarded on a competitive basis...more extensive use of techniques involving communication with industry, such as issuing requests for information and draft requests for proposals, and holding conferences with vendors...allowed agencies’ officials to gather vendor feedback and collect information that could be used to refine requirements and inform competition determinations.”<sup>13</sup>

“Overall, our work found the market research, and in particular, industry outreach efforts, appeared to contribute to the

<sup>12</sup> GAO 15-8, “Market Research: Better Documentation Needed to Inform Future Procurements at Selected Agencies,” <http://www.gao.gov/products/GAO-15-8>

<sup>13</sup> *Ibid.*, p. 18

degree of competition achieved on the higher dollar contracts we reviewed.”<sup>14</sup>

Last, “Overall we identified limitations in the market research supporting seven lower dollar value contracts awarded by DOD and DHS, all of which were sole-source or received only one offer. As a result, DOD and DHS officials may have missed opportunities to promote competition.”<sup>15</sup>

### Legislative Proposal:

#### Sec. \_\_\_\_. Government participation in conferences with industry

(a) Appropriate conference attendance.—Subject to the availability of travel funds, no limitations on government spending on conferences, or on government employee participation in conferences, shall inhibit the appropriate attendance of Department of Defense employees in—

- (1) scientific or technical conferences;
- (2) conferences that enhance communication between acquisition professionals and their industry counterparts; or
- (3) conferences or trade shows involving government market research.

#### Increase Appropriate Dialog Between Regulators and Industry

**Solution Proposal:** With regard to an honest dialog between regulators and defense industry, since the Federal Advisory Committee Act (FACA) is used to justify the prohibition on a meaningful dialog with industry during the federal rulemaking process, the solution is simple: exclude dialog with government contractors from those activities covered by FACA. The exclusion could be narrowly or broadly drawn, but however it is drawn in the law, the Congress should ensure that FACA is no longer interpreted as an excuse to avoid necessary, helpful, and appropriate dialog between regulators and those they regulate.

### Legislative Proposal:

#### 5 U.S.C. Appendix, The Federal Advisory Committee Act

##### §3. Definitions

For the purpose of this Act-

- (1) The term “Administrator” means the Administrator of General Services.
- (2) The term “advisory committee” means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as “committee”), which is—
  - (A) established by statute or reorganization plan, or
  - (B) established or utilized by the President, or
  - (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, ~~and~~ (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration,; **and (iii) any committee or group that is composed of representatives of sources of supply to the Federal Government under title 10 or title 41, United States Code.**

- (3) The term “agency” has the same meaning as in section 551(1) of title 5, United States Code.
- (4) The term “Presidential advisory committee” means an advisory committee which advises the President.

#### Encourage and Reward Training with Industry

<sup>14</sup> *Ibid.*, p. 20

<sup>15</sup> *Ibid.*, p. 21

**Solution Proposal:** Finally, the broadest and most lasting enhancement to government industry dialog is giving those in government a temporary opportunity to experience the acquisition process from the vantage point of industry. While the government already has Training with Industry programs, those programs are not used broadly enough to offer much more than professional enhancement for selected individuals. Training with Industry programs do not presently target those in the acquisition workforce, and even if they did so, producing one or two trainees each year who receive no Defense Acquisition Workforce Improvement Act (DAWIA) credit for their year of training is not likely to lead to a workforce substantially more informed about the challenges of doing business with the government. Government employees would benefit from a better understanding of their vendors, and the best way to bring that about is to allow them to temporarily be a vendor and award them DAWIA credit in return for the time.

### Legislative Proposal:

#### §1742. Internship, cooperative education, ~~and~~ scholarship, and training with industry programs

(a) Programs.—The Secretary of Defense shall conduct the following education and training programs:

(1) An intern program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.

(2) A cooperative education credit program under which the Secretary arranges, through cooperative arrangements entered into with one or more accredited institutions of higher education, for such institutions to grant undergraduate credit for work performed by students who are employed by the Department of Defense in acquisition positions.

(3) A scholarship program for the purpose of qualifying personnel for acquisition positions in the Department of Defense.

(4) A program established under subsection 2013(a)(2)(D) of this title, for which participants shall receive credit toward fulfillment standards under the program established in section 1748 of this title.

(b) Scholarship Program Requirements.—Each recipient of a scholarship under a program conducted under subsection (a) (3) shall be required to sign a written agreement that sets forth the terms and conditions of the scholarship. The agreement shall be in a form prescribed by the Secretary and shall include terms and conditions, including terms and conditions addressing reimbursement in the event that a recipient fails to fulfill the requirements of the agreement, that are comparable to those set forth as a condition for providing advanced education assistance under section 2005. The obligation to reimburse the United States under an agreement under this subsection is, for all purposes, a debt owing the United States.

#### §2013. Training at non-Government facilities

(a) Authority To Enter Into Agreements.—(1) The Secretary concerned, without regard to section 6101(b)–(d) of title 41, may make agreements or other arrangements for the training of members of the uniformed services ~~and all employees covered by Chapter 87 of this title~~ under the jurisdiction of that Secretary by, in, or through non-Government facilities.

(2) In this section, the term “non-Government facility” means any of the following:

(A) The government of a State or of a territory or possession of the United States, including the Commonwealth of Puerto Rico, an interstate governmental organization, and a unit, subdivision, or instrumentality of any of the foregoing.

(B) A foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this section.

(C) A medical, scientific, technical, educational, research, or professional institution, foundation, or organization.



(D) A business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization.

(E) Individuals other than civilian or military personnel of the Government.

(F) The services and property of any of the foregoing providing the training.

...

**§1748. Fulfillment standards for acquisition workforce training**

The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop fulfillment standards, and implement and maintain a program, for purposes of the training requirements and programs of sections 1723, 1724, ~~and 1735~~, and 1742 of this title. Such fulfillment standards shall consist of criteria for determining whether an individual has demonstrated competence in the areas that would be taught in the training courses required under those sections. If an individual meets the appropriate fulfillment standard, the applicable training requirement is fulfilled.

# II. Matching Requirements to Resources

*Match the resources invested in the Defense Acquisition System to the requirements placed upon it, and vice versa.*

## 1) Statutory Sunsets and Review

**Problem Description:** The layering of compliance and reporting requirements on the acquisition process without subsequent review inhibits improvements to the Defense Acquisition System and the culture of its workforce, both of which gradually become increasingly bureaucratic. Reviews, when they occur, are infrequent, ad hoc, and lack consistent standards of evaluation or predictable paths to implementation.

**Root Cause Analysis:** The political, and to some extent regulatory, processes driving the requirements in the government acquisition system tend to be reactive and are often focused on addressing issues in isolation. Requirements imposed on the system to address transitory issues are not reviewed again for relevance or continuing value in any systematic fashion involving expert input from the broader acquisition stakeholder community. This tendency has caused regulatory sclerosis in the acquisition system over time.

### Apply Sunsets to Acquisition Mandates

**Solution Proposal:** In the long run, the Armed Services Committees would benefit from a formalized, rolling review of statutory requirements and mandates that add costs, in terms of time and manpower, to the Defense Acquisition System. This is a systematic and phased approach to the Defense Business Board’s 2012 study recommendation, “Zero-base the entire system, including all directives and regulations. The burden of proof should be on those who argue to retain something versus those who argue to remove it.”<sup>16</sup> Although many acquisition laws exist for good reason, and would therefore be replaced by substantially similar provisions should the acquisition laws, regulations, and policies be “zero based,” new laws are written more frequently than old laws are reviewed, and so some housekeeping process must be adopted to keep the weight of the Defense Acquisition System’s directives from crushing the System itself.

To that end, we have produced a selected list of nine statutes that could have a sunset applied to them as of December 31, 2017. NDIA nomination of these particular laws does not mean we favor their repeal, nor does it mean that other laws should not be subject to a similar review. These are intended merely as an illustrative list to provide an example of how such a sunset could be put in place for a set of statutes. The point of establishing a sunset should be to require a review for continuing relevance. Every provision of law was enacted for an underlying reason, and that reason may no longer apply or may be seen as ill-conceived in light of available data. If the original reasons behind the enactment of a statute are determined to be sound and to still apply, and a sunset will force a new validation of the statute’s relevance of the statute.

### **Legislative Proposal:**

#### **Sec. 8\_\_ . Sunset of Selected Acquisition Laws**

( ) The provisions in the following sections shall cease to be effective on December 31, 2017—

- (1) 10 USC 2379
- (2) 10 USC 2533a
- (3) 10 USC 2533b

<sup>16</sup> Defense Business Board, *Linking and Streamlining the Defense Requirements, Acquisition, and Budget Processes*, p. 13. <http://dbb.defense.gov/Portals/35/Documents/Reports/2012/FY12-2 Linking And Streamlining The Defense Requirements Acquisition Budget Processes 2012-4.pdf>

- (4) 10 USC 4540
- (5) 10 USC 7212
- (6) 10 USC 9540
- (7) 50 USC App –section 2155
- (8) Public Law 109-282, the Federal Funding Accountability and Transparency Act
- (9) Section 8108(c) of Public Law 112-10, Department of Defense and Full-Year Continuing Appropriations Act, 2011

**Proposed accompanying report language**

*The committee included a provision, section \_\_, which would sunset without prejudice a number of current statutory requirements and authorities applicable to the acquisition process. This provision is intended to provide for a review of the extent to which the subject provisions remain necessary in their current form to structure buyer-seller relations in the context of Government procurement, to ensure the financial and ethical integrity of Government programs, and to protect other fundamental governmental policies in a cost effective manner. Over the next two years, the committee intends to review the value of continuing the applicability of these provisions in their current form in more detail and solicits the views of the public with the respect each of them on the issues noted above. Members of the Department of Defense as well as the public are invited to submit with respect the statutes listed in the section: (1) whether the statutory purpose remains or will remain valid in light of subsequent changes in the acquisition system or emerging approaches to acquiring items, services or capabilities; (2) if so, whether the wording of the statute should be changes to reflect subsequent or anticipated developments; (3) whether detailed requirements should be replaced by broad statutory guidance. In order for the Committee to have sufficient time to make decisions on whether to allow the sunset for each of the subject statutes to become effective or to take other action with respect to each, interested parties should submit their views no later than February 28, 2017.*

Use Sunsets to Review Acquisition Processes

**Solution Proposal:** Should the Committee decide to undertake the sunset approach to legal housekeeping, NDIA recommends grouping other interrelated acquisition statues by subject at phased two-year intervals after 2017. Again, as an illustration, we offer a review of the statutes that establish the process requirements for Major Defense Acquisition Programs and Major Automated Information Systems. In this case, such a sunset-driven review could force a reconsideration of these process requirements to determine if they serve the purposes for which they were originally enacted. We support and expect for the law to retain statutory requirements for major programs, so this group further demonstrates that the sunset clause is less an exercise in eliminating statutes and more one of forcing the government to reassess the value of each statute and to determine if it could be improved in some way.

**Legislative Proposal:**

**Sec. 8\_\_ . Sunset of Selected Laws Applicable to Major Defense Acquisition and Major Automated Information Systems Programs**

- ( ) The provisions in the following sections shall cease to be effective on December 31, 2019—
- (1) 10 USC 2430
  - (2) 10 USC 2430a
  - (3) 10 USC 2431
  - (4) 10 USC 2432
  - (5) 10 USC 2433

## II. MATCHING REQUIREMENTS TO RESOURCES

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- (6) 10 USC 2433a
- (7) 10 USC 2435
- (8) 10 USC 2436
- (9) 10 USC 2437
- (10) 10 USC 2439
- (11) 10 USC 2440
- (12) 10 USC 2445a
- (13) 10 USC 2445b
- (14) 10 USC 2445c
- (15) 10 USC 2445d
- (16) 10 USC 2366
- (17) 10 USC 2366a
- (18) 10 USC 2366b
- (19) 10 USC 2366c

### Make Sunsets a Standard Component of New Acquisition Laws

**Solution Proposal:** Beyond recommending that existing statutes be made subject to phased sunset reviews, NDIA recommends that new statutes also include a standard sunset clause. The sunset would authorize four years of duration for any new statute and require a GAO evaluation of the statute in its third year to provide the Committees with some basis for a cost-benefit analysis of the statute during its period of review.

After the Committees subject a provision to an initial review, NDIA recommends a blanket, rolling, seven-year (or other periodic) review of acquisition statutes coupled with a review by GAO.

### **Legislative Proposal:**

The provisions in this section shall cease to be effective on the date that is seven years after the date of enactment of this Act.

REVIEW REQUIRED.—The Comptroller General of the United States shall review the implementation and use of the provision in this section by the Department of Defense.

MATTERS TO BE REVIEWED.—The review of the implementation and use of the provisions shall include at a minimum—

(1) the analysis of the cost effects associated with the implementation of the provisions under this section by the Office of Information Review and Regulatory Affairs in the Office of Management and Budget and methodology used to analyze such costs;

(2) the cost to government contractors and to the government associated with the implementation of such provisions;

(3) the effectiveness of the provisions as implemented in achieving the benefits intended by Congress; and

(4) the impact of the implementation of the provisions on other requirements of the Federal Acquisition Regulation.

REPORT.—Not later than three years after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the review required by subsection , including a discussion of each of the matters specified in subsection . The report shall include any

recommendations relating to the matters reviewed that the Comptroller General considers appropriate.

#### Establish a Panel to Review the Full Body of Acquisition Law

**Solution Proposal:** While NDIA believes that a mandated sunset review clause is a controlled way of implementing the Defense Business Board’s recommendation, the best example of an historical statutory review is the so-called “Section 800 Panel,” established in the Fiscal Year 1991 National Defense Authorization Act, which gathered a group of experts to review the entire body of acquisition statutes at one time and offer recommendations about what to repeal, what to keep, and what to modify. From our discussions on the Hill and in the Pentagon, we note that there seems at present to be little appetite for a resurrected Section 800 Panel, but NDIA still believes that such a panel could accomplish a great deal over a reasonable time and relieve the Armed Services and other congressional committees of the direct burden of such reviews amid other priorities.

#### **Legislative Proposal:**

#### **Sec. 8\_\_ . Advisory Panel on Streamlining and Codifying Acquisition Laws**

(a) ESTABLISHMENT.—Not later than January 15, 2016, the Under Secretary of Defense for Acquisition, Technology and Logistics shall establish under the sponsorship of the Defense Acquisition University an advisory panel on streamlining and codifying acquisition laws.

(b) MEMBERSHIP.—The panel shall be composed of at least nine individuals who are recognized experts in acquisition laws and procurement policy. In making appointments to the advisory panel, the Under Secretary shall ensure that the members of the panel reflect diverse experiences in the public and private sectors.

(c) DUTIES.—The panel shall—

- (1) review the acquisition laws applicable to the Department of Defense with a view toward streamlining the defense acquisition process;
- (2) make any recommendations for the repeal or amendment of such laws that the panel considers necessary, as a result of such review, to—
  - (A) eliminate any such laws that are unnecessary for the establishment and administration of buyer and seller relationships in procurement;
  - (B) ensure the continuing financial and ethical integrity of defense procurement programs; and
  - (C) protect the best interests of the Department of Defense; and
- (3) prepare a proposed code of relevant acquisition laws.

(d) REPORT.—(1) Not later than December 15, 2017, the advisory panel shall transmit a final report on the actions of the panel to the Under Secretary of Defense for Acquisition, Technology and Logistics.

(2) The final report shall contain a detailed statement of the findings and conclusions of the panel, the proposed codification of acquisition laws prepared pursuant to subsection (c), and such additional recommendations for such legislation as the Panel considers appropriate.

(3) The Secretary of Defense shall transmit the final report of the Under Secretary of Defense for Acquisition, together with such comments as he deems appropriate, to the congressional defense committees not later than January 15, 2018.



### **Proposed accompanying report language (Adapted from Senate Report 101-384, pages 194-195):**

*The goal of the Advisory Panel will be to develop a statutory proposal and supporting documentation for consideration by the Congress. The Advisory Panel should produce a report in two parts. The first part should be will list each current acquisition law, accompanied by: (1) a legislative history that describes the purpose of the original provision and any subsequent amendments; (2) a description of the role of the law in current acquisition practices (both statutory and regulatory); and (3) a recommendation as to whether the law should be retained, repealed, or modified. The second part of the report will consist of a statutory proposal and sectional analysis.*

*The Advisory Panel should seek to limit statutory provisions to those necessary to structure buyer-seller relations in the context of Government procurement, to ensure the financial and ethical integrity of Government programs, and to protect other fundamental governmental policies. When considering whether a particular statute should be retained, repealed, or modified, the Advisory Panel should consider: (1) whether the statutory purpose remains or will remain valid in light of subsequent changes in the acquisition system or emerging approaches to acquiring items, services or capabilities; (2) if so, whether the wording of the statute should be changes to reflect subsequent or anticipated developments; (3) whether detailed requirements should be replaced by broad statutory guidance.*

## **2) Improve the Management of the Civilian Acquisition Workforce**

**Problem Description:** The acquisition workforce is not provided with sufficient staffing and could benefit from additional training and experience.

**Root Cause Analysis:** The workforce was cut massively in the 1990s and is still in the process of rebuilding. New process requirements are constantly added or changed as the marketplace also changes rapidly. Future budgets are likely to severely constrain training, recruiting, and retention.

### Make Sure the Acquisition Workforce Has the Competencies it Needs

**Solution Proposal:** The Department of Defense must structure, educate, and fund a workforce sufficient to meet the process and outcome requirements that are levied on it.

The first step toward preparing the defense acquisition workforce for any new requirements it faces is to determine what skills or competencies the future workforce must have in order to meet those new requirements and how those skills and competencies overlay with the skills and competencies that exist in today's workforce. Any gap between today's and tomorrow's realities will clarify what continuing development the workforce needs to be successful in its missions.

### **Legislative Proposal:**

#### **§115b. Biennial strategic workforce plan**

(a) Biennial Plan Required.—(1) The Secretary of Defense shall submit to the congressional defense committees **not later than December 1** in every even-numbered year a strategic workforce plan to shape and improve the civilian employee workforce of the Department of Defense **including details for employees serving in the following acquisition-related positions as designated by the Secretary of Defense under Section 1721 of Title 10, United States Code:**

- (A) Requirements development;
- (B) Program management;
- (C) Systems planning, research, development, engineering, and testing;
- (D) Procurement, including contracting;
- (E) Industrial property management;
- (F) Logistics;
- (G) Quality control and assurance;
- (H) Manufacturing and production;
- (I) Cost estimating, and auditing;
- (J) Education, training, and career development;
- (K) Construction;
- (L) Joint development and production, and production with other government agencies and foreign countries.

(2) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for developing and implementing the strategic workforce plan, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) Contents.—Each strategic workforce plan under subsection (a) shall include, at a minimum, the following:

(1) An assessment of—

(A) the critical skills and competencies that will be needed in the future within the civilian employee workforce by the Department of Defense to support national security requirements and effectively manage the Department during the five-year period corresponding to the current future-years defense program under section 221 of this title;

(B) the appropriate mix of military, civilian, and contractor personnel capabilities, as determined under the total force management policies and procedures established under section 129a of this title;

(C) the critical skills and competencies of the existing civilian employee workforce of the Department and projected trends in that workforce based on expected losses due to retirement and other attrition; **and**

**(D) new or expanded critical skills and competencies the existing civilian employee in the acquisition workforce will need to address new acquisition process requirements established by law or policy during the four years prior to the date of the preparation of the report;**

~~(E)~~ gaps in the existing or projected civilian employee workforce of the Department that should be addressed to ensure that the Department has continued access to the critical skills and competencies described in subparagraphs (A) and (C).

(2) A plan of action for developing and reshaping the civilian employee workforce of the Department to address the gaps in critical skills and competencies identified under paragraph (1)(D), including—

(A) specific recruiting and retention goals, especially in areas identified as critical skills and competencies under paragraph (1), including the program objectives of the Department to be achieved through such goals and the funding needed to achieve such goals;

(B) specific strategies for developing, training, deploying, compensating, and motivating the civilian employee workforce of the Department, including the program objectives of the Department to be achieved through such strategies and the funding needed to implement such strategies;

(C) any incentives necessary to attract or retain any civilian personnel possessing the skills and competencies identified under paragraph (1);

(D) any changes in the number of personnel authorized in any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address such gaps and effectively meet the needs of the Department;

(E) any changes in resources or in the rates or methods of pay for any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address inequities and ensure that the Depart-

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ment has full access to appropriately qualified personnel to address such gaps and meet the needs of the Department;

(F) the progress of changes to policy to accommodate future workforce behavior trends, including increasing periodic transition of employees in and out of government service; and

(FG) any legislative changes that may be necessary to achieve the goals referred to in subparagraph (A).

(3) An assessment, using results-oriented performance measures, of the progress of the Department in implementing the strategic workforce plan under this section during the previous year.

(4) A statement of the amounts credited to the Defense Acquisition Workforce Development Fund for each of the two fiscal years preceding the year in which the plan is required to be submitted.

(A) A description of the expenditures made from the Fund (including expenditures following a transfer of amounts in the Fund to a military department or Defense Agency) in each such fiscal year, including the purpose of such expenditures.

(B) A description and assessment of improvements in the Department of Defense acquisition workforce resulting from such expenditures.

(C) Recommendations for additional authorities to fulfill the purpose of the Fund.

(D) A statement of the balance remaining in the Fund at the end of each such fiscal year.

(5) Any additional matters the Secretary of Defense considers necessary to address.

(c) Senior Management, Functional, and Technical Workforce.—(1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the senior management, functional, and technical workforce (including scientists and engineers) of the Department of Defense.

(2) For purposes of paragraph (1), each plan shall include, with respect to such senior management, functional, and technical workforce—

(A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);

(B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)

(2);

(C) specific strategies for developing, training, deploying, compensating, motivating, and designing career paths and career opportunities; and

(D) specific steps that the Department has taken or plans to take to ensure that such workforce is managed in compliance with the requirements of section 129 of this title and the policies and procedures established under section 129a of this title.

(d) Defense Acquisition Workforce.—(1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the defense acquisition workforce, including both military and civilian personnel.

(2) For purposes of paragraph (1), each plan shall include, with respect to the defense acquisition workforce—

(A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);

(B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)

(2);

(C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the acquisition field and to implement the requirements of section 1722a of this title with regard to members of the armed forces in the acquisition field; and

(D) a plan for funding needed improvements in the acquisition workforce of the Department through the period of the future-years defense program, including—

(i) the funding programmed for defense acquisition workforce improvements, including a specific identification of funding provided in the Department of Defense Acquisition Workforce Fund established under section 1705 of this title, along with a description of how such funding is being implemented and whether it is being fully used; and

(ii) a description of any continuing shortfalls in funding available for the acquisition workforce.

(e) Financial Management Workforce.- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the financial management workforce of the Department of Defense, including both military and civilian personnel of that workforce.

(2) For purposes of paragraph (1), each plan shall include, with respect to the financial management workforce of the Department-

(A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);

(B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)

(2);

(C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the financial management field and to implement the requirements of section 1599d of this title; and

(D) a plan for funding needed improvements in the financial management workforce of the Department through the period of the current future-years defense program under section 221 of this title, including a description of any continuing shortfalls in funding available for that workforce.

(f) Submittals by Secretaries of the Military Departments and Heads of the Defense Agencies.-The Secretary of Defense shall require the Secretary of each military department and the head of each Defense Agency to submit a report to the Secretary addressing each of the matters described in this section. The Secretary of Defense shall establish a deadline for the submittal of reports under this subsection that enables the Secretary to consider the material submitted in a timely manner and incorporate such material, as appropriate, into the strategic workforce plan required by this section.

(g) Definitions.-In this section:

(1) The term “senior management, functional, and technical workforce of the Department of Defense” includes the following categories of Department of Defense civilian personnel:

(A) Appointees in the Senior Executive Service under section 3131 of title 5.

(B) Persons serving in positions described in section 5376(a) of title 5.

(C) Highly qualified experts appointed pursuant to section 9903 of title 5.

(D) Scientists and engineers appointed pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).

(E) Scientists and engineers appointed pursuant to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note).

(F) Persons serving in the Defense Intelligence Senior Executive Service under section 1606 of this title.

(G) Persons serving in Intelligence Senior Level positions under section 1607 of this title.

(2) The term “acquisition workforce” includes individuals designated under section 1721 as filling acquisition positions.

### Expand Competency Modeling Beyond the Contracting Career Field

**Solution Proposal:** When it comes to carrying out competency modeling to support the development of a strategic workforce plan, the Department has focused on the 30,000 employee-strong contracting career field. NDIA believes that competency modeling should be expanded to other career field areas beyond contracting which also matter significantly to improving acquisition outcomes.<sup>17</sup> For that reason, we recommend enumerating the other acquisition career fields delineated by 10 U.S.C. § 1721 as also in need of strategic workforce planning.

### **Legislative Proposal:**

#### **§115b. Biennial strategic workforce plan**

<sup>17</sup> See Report to Congress on Defense Logistics Agency Fair and Reasonable Pricing Analysis, August 2014, p. 4.

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...

(d) Defense Acquisition Workforce.—(1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the defense acquisition workforce, including both military and civilian personnel serving in the following acquisition-related positions as designated by the Secretary of Defense under section 1721 of title 10, United States Code:

- (A) Requirements development;
- (B) Program management;
- (C) Systems planning, research, development, engineering, and testing;
- (D) Procurement, including contracting;
- (E) Industrial property management;
- (F) Logistics;
- (G) Quality control and assurance;
- (H) Manufacturing and production;
- (I) Cost estimating, and auditing;
- (J) Education, training, and career development;
- (K) Construction;
- (L) Joint development and production, and production with other government agencies and foreign countries.

(2) For purposes of paragraph (1), each plan shall include, with respect to the defense acquisition workforce—

- (A) an assessment of the matters set forth in subparagraphs (A) through (DE) of subsection (b)(1);
- (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
- (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the acquisition field and to implement the requirements of section 1722a of this title with regard to members of the armed forces in the acquisition field; and
- (D) a plan for funding needed improvements in the acquisition workforce of the Department through the period of the future-years defense program, including—
  - (i) the funding programmed for defense acquisition workforce improvements, including a specific identification of funding provided in the Department of Defense Acquisition Workforce Development Fund established under section 1705 of this title, along with a description of how such funding is being implemented and whether it is being fully used; and
  - (ii) a description of any continuing shortfalls in funding available for the acquisition workforce.

...

### Have the Department Report on its Human Capital Planning

**Solution Proposal:** None of these plans currently receives close congressional oversight, and they would likely benefit from it. Therefore NDIA recommends that the Department provide its biennial strategic workforce plans to the House and Senate Armed Services Committees for their review, including some specific reporting on how well the Department is implementing its plans and whether those plans involve adjustments to a workforce that will be increasingly populated by members of the so-called Millennial Generation whose career and job-transition behaviors differ significantly from those of earlier generations in the traditional civil service workforce.

### **Legislative Proposal:**

#### **§115b. Biennial strategic workforce plan**

...

(g) Report.—Not later than March 1 of each year after the year in which the biennial plan under this section is required to



~~be completed, the Secretary shall submit to the defense committees of the Senate and the House of Representatives—  
 —(1) the update of the strategic human capital plan required by this section;  
 —(2) the assessment of the Secretary, using results-oriented performance measures, of the progress of the Department of Defense in implementing the strategic human capital plan; and  
 —(3) the progress of changes to policy to accommodate future workforce trends, including increasing transience, and any recommended changes to the law for the same purpose.~~

(gh) Definitions.—In this section:

(1) The term “senior management, functional, and technical workforce of the Department of Defense” includes the following categories of Department of Defense civilian personnel:

(A) Appointees in the Senior Executive Service under section 3131 of title 5.

(B) Persons serving in positions described in section 5376(a) of title 5.

(C) Highly qualified experts appointed pursuant to section 9903 of title 5.

(D) Scientists and engineers appointed pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).

(E) Scientists and engineers appointed pursuant to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note).

(F) Persons serving in the Defense Intelligence Senior Executive Service under section 1606 of this title.

(G) Persons serving in Intelligence Senior Level positions under section 1607 of this title.

(2) The term “acquisition workforce” includes individuals designated under section 1721 as filling acquisition positions.

#### Authorize the Retention of Critical, Senior Acquisition Employees

**Solution Proposal:** Through interviews with acquisition leaders, NDIA discovered a desire to make continued service in the acquisition workforce more attractive to retirement-eligible career civil servants. While government pay rates do not typically compare favorably to senior private sector executive positions, this discrepancy worsens as civil servants become retirement-eligible. In these circumstances, civil servants choose between continuing to work in government for their current rate of pay or retiring from government to receive a percentage of their current pay as retirement pay and then potentially also going to work in the private sector if a lucrative opportunity presents itself. As additional years of retirement eligibility accrue, the percentage of retired pay increases, making continued civil service a decreasingly attractive option compared to retiring from government and receiving an additional private sector paycheck. This phenomenon makes it easy for industry to recruit the acquisition workforce’s most experienced and capable government employees.

To make continued government service more competitive with private sector opportunities, NDIA recommends extending the authority to allow full payment of both annuities and salary for limited-time appointees under 5 U.S.C. §8344(l) (which pertains to the Civil Service Retirement System, CSRS) and 5 U.S.C. §8468(i) (which pertains to the Federal Employees Retirement System, FERS) for an additional five years for up to 20 critical civil service acquisition employees (10 each from CSRS and FERS) while they continue to receive their retirement annuities. Limiting this authority to such a small number would ensure that it is used only when it is critically needed and would diminish the likelihood of its abuse. Furthermore, it would limit the cost to the taxpayer of the program.

In addition to this reemployment program, NDIA recommends extending a part-time retiree reemployment authority that could be used in any number of ways to benefit the acquisition workforce, including for senior mentor programs and for

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program oversight functions. Senator Susan Collins also proposed extending this program earlier this year. Extending this authority would give senior acquisition appointees the ability to have experienced part-time workers on hand to perform any number of critical roles.

### Legislative Proposal:

#### §8344. Annuities and pay on reemployment

...

(i)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(3) **The Secretary of Defense may, acting through the Under Secretary of Defense for Acquisition, Technology and Logistics and the acquisition executives of the military departments, waive the application of the preceding provisions of this section on a case-by-case basis for up to ten employees of the Department of Defense serving in critical acquisition positions as designated under section 1733 of title 10, United States Code.**

...

(l)(1) For purposes of this subsection—

(A) the term “head of an agency” means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (k)(2), other than the Government Accountability Office; and

(B) the term “limited time appointee” means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) or (b) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life or property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) or (b) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months

following the individual’s annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage;

and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office of Personnel Management or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for the effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) or (b) shall terminate 510 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010.

(m)(1) For the purpose of subsections (i) through (l), “Executive agency” shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (i), (j), (k), or (l) is in effect shall not be considered an employee for purposes of this chapter or chapter 84 of this title.

**§8468. Annuities and pay on reemployment**

...

(f)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this

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section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(3) The Secretary of Defense may, acting through the Under Secretary of Defense for Acquisition, Technology and Logistics and the acquisition executives of the military departments, waive the application of the preceding provisions of this section on a case-by-case basis for up to ten employees of the Department of Defense serving in critical acquisition positions as designated under section 1733 of title 10, United States Code.

...

(i)(1) For purposes of this subsection—

(A) the term “head of an agency” means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (h)(2), other than the Government Accountability Office; and

(B) the term “limited time appointee” means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual’s annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(l) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(l) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage;

and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) shall terminate 510 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010.

(j)(1) For the purpose of subsections (f) through (i), “Executive agency” shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (f), (g), (h), or (i) is in effect shall not be considered an employee for purposes of this chapter or chapter 83 of this title.

### Fund Defense Acquisition Workforce Development

**Solution Proposal:** NDIA heard consistently from government and industry executives about the importance of the Defense Acquisition Workforce Development Fund (DAWDF). The DAWDF has proved itself to be an effective tool for managing recruiting, education, and retention of the acquisition workforce in an increasingly austere budget environment. Therefore we recommend making the authorization of the Fund permanent, crediting it with \$500 million annually, and relieving the fund from the requirement to collect funds from other accounts.

### **Legislative Proposal:**

#### **§1705. Department of Defense Acquisition Workforce Development Fund**

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

(b) Purpose.—The purpose of the Fund is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor per-

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formance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) Management.—The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for that purpose, from among persons with an extensive background in management relating to acquisition and personnel.

(d) Elements.—

(1) In general.—The Fund shall consist of amounts as follows:

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

~~(B) Amounts transferred to the Fund pursuant to paragraph (3):~~

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

(2) Credits to the fund.—(A) There shall be credited to the Fund \$500,000,000 for each fiscal year. ~~an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance:~~

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

~~(C) For purposes of this paragraph, the applicable percentage for a fiscal year is the percentage that results in the credit to the Fund in such fiscal year of an amount as follows:~~

~~(i) For fiscal year 2013, \$500,000,000.~~

~~(ii) For fiscal year 2014, \$800,000,000.~~

~~(iii) For fiscal year 2015, \$700,000,000.~~

~~(iv) For fiscal year 2016, \$600,000,000.~~

~~(v) For fiscal year 2017, \$500,000,000.~~

~~(vi) For fiscal year 2018, \$400,000,000.~~

~~(D)~~ The Secretary of Defense may reduce an amount specified in ~~sub~~paragraph ~~(E)~~ for a fiscal year if the Secretary determines that the amount is greater than is reasonably needed for purposes of the Fund for such fiscal year. The Secretary may not reduce the amount for a fiscal year to an amount that is less than 80 percent of ~~such the~~ amount. ~~otherwise specified in subparagraph (C) for such fiscal year.~~

(34) Transfer of certain unobligated balances.—To the extent provided in appropriations Acts, the Secretary of Defense may, during the 24-month period following the expiration of availability for obligation of any appropriations made to the Department of Defense for procurement, research, development, test, and evaluation, or operation and maintenance, transfer to the Fund any unobligated balance of such appropriations. Any amount so transferred shall be credited to the Fund.

~~(4) Additional requirements and limitations on remittances.—(A) In the event amounts are transferred to the Fund during a fiscal year pursuant to paragraph (1)(B) or appropriated to the Fund for a fiscal year pursuant to paragraph (1)(C), the aggregate amount otherwise required to be remitted to the Fund for that fiscal year pursuant to paragraph (2)(B) shall be reduced by the amount equal to the amounts so transferred or appropriated to the Fund during or for that fiscal year. Any reduction in the aggregate amount required to be remitted to the Fund for a fiscal year under this subparagraph shall be allocated as provided in applicable provisions of appropriations Acts or, absent such provisions, on a pro rata basis among the military departments and Defense Agencies required to make remittances to the Fund for that fiscal year under paragraph (2)(B), subject to any exclusions the Secretary of Defense determines to be necessary in the best interests of the Department of Defense:~~

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



~~availability of appropriations for that purpose.~~

(e) Availability of Funds.—

(1) In general.—Subject to the provisions of this subsection, amounts in the Fund shall be available to the Secretary of Defense for expenditure, or for transfer to a military department or Defense Agency, for the recruitment, training, and retention of acquisition personnel of the Department of Defense for the purpose of the Fund, including for the provision of training and retention incentives to the acquisition workforce of the Department. In the case of temporary members of the acquisition workforce designated pursuant to subsection (h)(2), such funds shall be available only for the limited purpose of providing training in the performance of acquisition-related functions and duties.

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

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

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

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

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

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

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

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

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

(4) Limitation on payments to or for contractors.—Amounts in the Fund shall not be available for payments to contractors or contractor employees, other than for the purpose of providing advanced training to Department of Defense employees.

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

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

(f) Annual Report.—Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report on the operation of the Fund during such fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

(1) A statement of the amounts ~~remitted to the Secretary for crediting to the Fund for such fiscal year by each military department and Defense Agency, and a statement of the amounts~~ credited to the Fund for such fiscal year.

(2) A description of the expenditures made from the Fund (including expenditures following a transfer of amounts in the Fund to a military department or Defense Agency) in such fiscal year, including the purpose of such expenditures.

(3) A description and assessment of improvements in the Department of Defense acquisition workforce resulting from such expenditures.

(4) Recommendations for additional authorities to fulfill the purpose of the Fund.

(5) A statement of the balance remaining in the Fund at the end of such fiscal year.

## II. MATCHING REQUIREMENTS TO RESOURCES

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(g) Expedited Hiring Authority.—

(1) For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—

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

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

~~(2) The Secretary may not appoint a person to a position of employment under this subsection after September 30, 2017.~~

~~(h) The requirement in subsection (f) shall not apply for any fiscal year for which the information has been provided to the congressional defense committees pursuant to the requirement in paragraph (b)(4) of section 115b of this title.~~

~~(hi) Acquisition Workforce Defined.—In this section, the term “acquisition workforce” means the following:~~

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

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

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

~~(B) are designated as temporary members of the acquisition workforce by the Under Secretary of Defense for Acquisition, Technology, and Logistics, or by the senior acquisition executive of a military department, for the limited purpose of receiving training for the performance of acquisition-related functions and duties.~~

~~(i) The requirement in subsection (f) shall not apply for any fiscal year for which the information has been provided to the congressional defense committee as part of a biennial strategic workforce plan required in section 115b of this title.~~

### Educate the Acquisition Workforce

**Solution Proposal:** Last, the feeling among some in industry is that the acquisition workforce is trained but not effectively educated in acquisition. The sentiment is also shared by many in government, including individuals closely affiliated with the workforce training programs of the Defense Acquisition University. Under Secretary Kendall alluded to this point when he subtitled Better Buying Power 2.0 “A guide to help you think.” The implication is that rote decisions and “school solutions” too often characterize the behavior of the workforce. The Department is currently embarking on a careful examination of whether the current training model adequately prepares the workforce apply appropriate judgment to complex acquisition decisions. If changes to the education and training model are needed to encourage the acquisition workforce to think critically, Congress should formalize the Department’s current review as a part of the Defense Acquisition Workforce Improvement Act (DAWIA) certification requirements model (10 USC Chapter 87) for the most senior critical acquisition positions and report to Congress about it.<sup>18</sup>

### **Legislative Proposal:**

#### **§1735. Education, training, and experience requirements for critical acquisition positions**

(a) Qualification Requirements.—In establishing the education, training, and experience requirements under section 1723 of this title for critical acquisition positions, the Secretary of Defense shall, at a minimum, include the requirements set forth in subsections (b) through (e).

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<sup>18</sup> See Witness Statement of the Honorable Frank Kendall, Under Secretary of Defense for Acquisition, Technology, and Logistics, before the House Committee on Armed Services, July 10, 2014, p. 3, for information about the current DoD review of the DAWIA requirements for senior officials in critical acquisition positions.

(b) Program Managers and Deputy Program Managers.—Before being assigned to a position as a program manager or deputy program manager of a major defense acquisition program or a significant nonmajor defense acquisition program, a person—

- (1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution determined to be comparable by the Secretary of Defense;
- (2) must have executed a written agreement as required in section 1734(b)(2); and
- (3) in the case of—
  - (A) a program manager of a major defense acquisition program, must have at least eight years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization;
  - (B) a program manager of a significant nonmajor defense acquisition program, must have at least six years of experience in acquisition;
  - (C) a deputy program manager of a major defense acquisition program, must have at least six years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization; and
  - (D) a deputy program manager of a significant nonmajor defense acquisition program, must have at least four years of experience in acquisition.

(c) Program Executive Officers.—Before being assigned to a position as a program executive officer, a person—

- (1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution in the private sector determined to be comparable by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics;
- (2) must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position; and
- (3) must have held a position as a program manager or a deputy program manager.

(d) General and Flag Officers and Civilians in Equivalent Positions.—Before a general or flag officer, or a civilian serving in a position equivalent in grade to the grade of such an officer, may be assigned to a critical acquisition position, the person must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position.

(e) Senior Contracting Officials.—Before a person may be assigned to a critical acquisition position as a senior contracting official, the person must have at least four years experience in contracting.

(f) Review required.—Not later than March 1, 2016, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake a review of the education, training, and experience requirements in this section as implemented in the Department of Defense are sufficient to ensure that individuals assigned to such position have all of the qualifications necessary to fully carry out the responsibilities of such positions.

(g) Report.—Not later than October 1, 2016, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall provide to the defense committees of the Senate and the House of Representatives a report with the results of the review required in subsection (f) and include in such report any specific recommendations for changes to the requirements in this section to ensure that education, training, and experience requirements for the positions covered in this subsection are sufficient to ensure that individuals assigned to such position have all of the qualifications necessary to fully carry out the responsibilities of such positions.

### 3) Improve the Management of the Military Acquisition Workforce

**Problem Description:** Acquisition roles are less desirable to the military workforce than operational roles and therefore in some cases may be less attractive to skilled military officers.

**Root Cause Analysis:** Acquisition functions are somewhat non-traditional military roles, and they presently do not offer incentives that could balance out the typical preference among most officers for line or operational military career fields that tend to attract talented individuals to the military, and which also tend to be the most heavily represented in the general and flag officer grades.

#### Hold the Service Chiefs Accountable for the Management of the Military Acquisition Workforce

**Solution Proposal:** At present, the Secretary of Defense is responsible for assuring that the military acquisition corps enjoys at least an equal promotion rate as compared to other military officers of the same Service in the same grade. Rather than limiting this promotion preference to particularly well-qualified military officers in the acquisition workforce, the responsibility should be delegated to the Military Service Chiefs (to further extend their responsibility for the acquisition functions of their Service) and should be extended to all military officers serving in positions covered by the Defense Acquisition Workforce Improvement Act (DAWIA). As the Defense Business Board's (DBB) 2012 report on the subject states,

The Service Chiefs should lead the military acquisition professionals as they do officers in operational career fields. They should manage career paths, training, and education that result in highly qualified and experienced professionals.

Very few outside the Military Departments realize that military personnel serving in the acquisition field are not being managed by the military personnel system that covers all other uniformed personnel. The current approach does not provide military officers with the requisite experience, skills, and qualifications needed for positions of increasing responsibility in the acquisition field.

A September 2010 study conducted by the RAND Corporation, "The Perfect Storm" found the implementation of the Acquisition Reforms in the Department of the Navy (DoN) had three undesirable consequences:

1. It erected an impenetrable wall between a military-controlled requirements process and a civilian-driven acquisition process to the overall detriment of acquisition in DoN.
2. Its personnel policies deprived the DoN of a blended acquisition workforce composed of line officers with extensive operational experience who provided valuable perspectives that those who spent most of their careers in acquisition assignments lacked.
3. It created a generation of line officers who had little or no understanding of or appreciation for the acquisition process.

#### **Legislative Proposal:**

##### **§2547. Acquisition-related functions of chiefs of the armed forces<sup>19</sup>**

<sup>19</sup> Because NDIA recommended changes to §2547 in its earlier recommendation, "Improved Acquisition Leadership by the Military Service Chiefs," we have quoted the section above includ-

(a) Sense of Congress.—It is the sense of the Congress that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps—

(1) are the only individuals able to link and streamline the requirements, acquisition, and budget processes as the senior uniformed officers responsible for their respective military services, given that the process of materiel requirements development is particularly unique to the uniformed services;

(2) are responsible, in coordination with the Defense Acquisition Executive and Service Acquisition Executive, for the performance of materiel programs under the purview of their respective military services; and

(3) shall be held accountable by the Congress in hearings and through oversight for the performance of those programs, and in particular for their role in promoting integration among the requirements, acquisition, and budget processes and workforces of their respective military services.

(b) Performance of Certain Acquisition-related Functions.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps are involved in, and provide leadership and accountability for the Secretary of the military department concerned in the performance of the following acquisition-related functions, to include requirements and budget preparation, of such department:

(1) The development of requirements for equipping the armed force concerned (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).

(2) The coordination and implementation of measures to control requirements creep in the defense acquisition system.

(3) The recommendation of trade-offs among life-cycle cost, schedule, and performance objectives, technical feasibility, and procurement quantity objectives, to ensure acquisition programs deliver best value in meeting the approved military requirements.

(4) Termination of development or procurement programs for which life-cycle cost, schedule, and performance expectations are no longer consistent with approved military requirements and levels of priority, or which no longer have approved military requirements.

(5) The development and management of career paths in acquisition for military personnel (as required by section 1722a of this title).

(6) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.

(7) The linking and streamlining of the requirements, acquisition, and budget processes.

(c) Management of the Military Acquisition Workforce.—The Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps shall ensure that the qualifications of officers assigned to positions under Chapter 87 of this Title are such that—

(1) officers who are serving in, or have served in, positions under Chapter 87 of this Title are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

(2) officers in the grade of major (or in the case of the Navy, lieutenant commander) or above who have been certified under Chapter 87 of this Title are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade.

(d) Annual Report.—Not later than January 1 of each year, the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps shall submit to Congress a report on the

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ing those other recommendations, not as it is currently written in law.

## II. MATCHING REQUIREMENTS TO RESOURCES

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promotion rates during the preceding fiscal year of officers who are serving in, or have served in, positions covered by Chapter 87 of this Title, and officers who have been certified under Chapter 87 of this Title in the grades of major (or in the case of the Navy, lieutenant commander) through colonel (or in the case of the Navy, captain), especially with respect to the record of officer selection boards in meeting the objectives of paragraphs (1) and (2) of subsection (c). If such promotion rates fail to meet such objectives for any fiscal year, the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps shall include in the report for that fiscal year information on such failure and on what action each has taken or plans to take to prevent further failures.

### §1731. Acquisition Corps: in general

(a) Acquisition Corps.—The Secretary of Defense shall ensure that an Acquisition Corps is established for the Department of Defense.

(b) Promotion Rate for Officers in Acquisition Corps.—The Secretary of Defense shall ensure that the qualifications of commissioned officers selected for the Acquisition Corps are such that those officers are expected, as a group, to be promoted ~~at a rate not less than the rate for all line (or the equivalent) officers of the same armed force (both in the zone and below the zone) in the same grade as required by Section 2547 of this Title.~~

### Dual-Track Military Professionals in Operational and Acquisition Specialties

**Solution Proposal:** To increase the cross-pollination of operational and acquisition specialties, the DBB recommended “restitut[ing] a dual tracking system of primary and functional/secondary career fields for officers and noncommissioned officers serving in acquisition positions” by “dual track[ing] a number of officers in operational career fields and acquisition under the shared accountability and responsibility of the Service Chiefs and Component Acquisition Executives for career path management and selections. This would create a needed balance of experience between acquisition and operations. The result would be an officer who understands both acquisition and operations and could help educate single-tracked officers and inform leaders at all levels throughout the acquisition process.”<sup>20</sup>

### **Legislative Proposal:**

#### §1722a. Special requirements for military personnel in the acquisition field

(a) Requirement for Policy and Guidance Regarding Military Personnel in Acquisition.—The Secretary of Defense shall require the Secretary of each military department (with respect to such military department), ~~in collaboration with the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps (with respect to the military service led by each),~~ and the Under Secretary of Defense for Acquisition, Technology, and Logistics (with respect to the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities) to establish policies and issue guidance to ensure the proper development, assignment, and employment of members of the armed forces in the acquisition field to achieve the objectives of this section as specified in subsection (b).

(b) Objectives.—Policies established and guidance issued pursuant to subsection (a) shall ensure, at a minimum, the following:

(1) A ~~single-tracked~~ career path in the acquisition field that attracts the highest quality officers and enlisted personnel.

(2) A ~~dual-tracked~~ career path that attracts the highest quality officers and enlisted personnel and allows them to ~~gain experience in and receive credit for a primary career in combat arms and a functional secondary career in the acquisi-~~

20 Defense Business Board, *Linking and Streamlining the Defense Requirements, Acquisition, and Budget Processes*, pp. 15-16. [http://dbb.defense.gov/Portals/35/Documents/Reports/2012/FY12-2\\_Linking\\_And\\_Streamlining\\_The\\_Defense\\_Requirements\\_Acquisition\\_Budget\\_Processes\\_2012-4.pdf](http://dbb.defense.gov/Portals/35/Documents/Reports/2012/FY12-2_Linking_And_Streamlining_The_Defense_Requirements_Acquisition_Budget_Processes_2012-4.pdf)



tion field in order to more closely align the military operational, requirements, and acquisition workforces of each military service.

(2)(3) A number of command positions and senior noncommissioned officer positions, including acquisition billets reserved for general officers and flag officers under subsection (c), sufficient to ensure that members of the armed forces have opportunities for promotion and advancement in the acquisition field.

(3)(4) A number of qualified, trained members of the armed forces eligible for and active in the acquisition field sufficient to ensure the optimum management of the acquisition functions of the Department of Defense and the appropriate use of military personnel in contingency contracting.

...

Provide Joint Credit for Acquisition Duty

**Solution Proposal:** In addition to broadening the promotion preference and career opportunities of military acquisition professionals, the Congress should make it easier for military acquisition professionals to receive joint credit. Because military acquisition professionals must meet the joint duty assignment requirement for promotion in addition to acquisition duty credit for DAWIA certification, they face double the experience requirements. Therefore the Congress should award joint duty assignment credit to officers who serve in acquisition positions in order to keep acquisition assignments from impeding career progression.

**Legislative Proposal:**

**§668. Definitions**

(a) Joint Matters.—(1) In this chapter, the term “joint matters” means matters related to the achievement of unified action by integrated military forces in operations conducted across domains such as land, sea, or air, in space, or in the information environment, including matters relating to—

- (A) national military strategy;
- (B) strategic planning and contingency planning;
- (C) command and control of operations under unified command;
- (D) national security planning with other departments and agencies of the United States; ~~or~~
- (E) combined operations with military forces of allied nations; ~~or~~
- (F) acquisition matters addressed by military personnel falling under Chapter 87 of this Title.

...

(b) Joint Duty Assignment.—(1) The Secretary of Defense shall by regulation define the term “joint duty assignment” for the purposes of this chapter. That definition—

- (A) shall be limited to—
  - (i) assignments in which the officer gains significant experience in joint matters; ~~and~~
  - (ii) assignments covered by Chapter 87 of this Title; ~~and~~
- (B) shall exclude student assignments for joint training and education.

...

Make Training with Industry Eligible for Credit Under Joint Professional Military Education Phase II

**Solution Proposal:** Last, as described in the “Government-Industry Dialog” section, the military acquisition workforce could substantially benefit from expanding Training with Industry programs. In order to incentivize such programs, they should be considered an alternative to Senior Service School. Therefore the Congress should award functional credit for in-residence Phase II joint professional military education if a military officer completes a Training with Industry program.

### Legislative Proposal:

#### §2151. Definitions

(a) Joint Professional Military Education.—Joint professional military education consists of the rigorous and thorough instruction and examination of officers of the armed forces in an environment designed to promote a theoretical and practical in-depth understanding of joint matters and, specifically, of the subject matter covered. The subject matter to be covered by joint professional military education shall include at least the following:

(1) Joint military subjects including—

- (A) National Military Strategy;:-
- (B) Joint planning at all levels of war;:-
- (C) Joint doctrine;:-
- (D) Joint command and control;:-
- (E) Joint force and joint requirements development;:-
- (F) Operational contract support;:- or

(2) Subjects addressed in training programs covered by Section 2013(a)(2)(D) of this Title.

(b) Other Definitions.—In this chapter:

(1) The term “senior level service school” means any of the following:

- (A) The Army War College.
- (B) The College of Naval Warfare.
- (C) The Air War College.
- (D) The Marine Corps War College.
- (E) Training programs covered by Section 2013(a)(2)(D) of this Title.

#### §2154. Joint professional military education: three-phase approach

(a) Three-Phase Approach.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school or at a joint intermediate level school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of a joint professional military education curriculum taught in residence at—

- (A) the Joint Forces Staff College; or
- (B) a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution; or

(C) Training programs covered by Section 2013(a)(2)(D) of this Title.

(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

(b) Sequenced Approach.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

**§2155. Joint professional military education Phase II program of instruction**

(a) Prerequisite of Completion of Joint Professional Military Education Phase I Program of Instruction.—(1) After September 30, 2009, an officer of the armed forces may not be accepted for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis under exceptional circumstances, as determined by the Chairman. An officer selected to receive such an exception shall have knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces Staff College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

(b) Phase II Requirements.—The Secretary shall require that the curriculum for Phase II joint professional military education at any school—

- (1) focus on developing joint operational expertise and perspectives and honing joint warfighting skills; and
- (2) be structured—
  - (A) so as to adequately prepare students to perform effectively in an assignment to a joint, multiservice organization; and
  - (B) so that students progress from a basic knowledge of joint matters learned in Phase I instruction to the level of expertise necessary for successful performance in the joint arena.

(c) Phase II Alternative.—Training programs covered by Section 2013(a)(2)(D) of this Title shall also be considered as a satisfactory Phase II program of instruction.

(d) Curriculum Content.—In addition to the subjects specified in section 2151(a) of this title, the curriculum for Phase II joint professional military education shall include the following:

- (1) National security strategy.
- (2) Theater strategy and campaigning.
- (3) Joint planning processes and systems.
- (4) Joint, interagency, and multinational capabilities and the integration of those capabilities.

(e) Student Ratio; Faculty Ratio.—Not later than September 30, 2009, for courses of instruction in a Phase II program of instruction that is offered at senior level service school that has been designated by the Secretary of Defense as a joint professional military education institution—

- (1) the percentage of students enrolled in any such course who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented; and
- (2) of the faculty at the school who are active-duty officers who provide instruction in such courses, the percentage who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented.

### 4) Reducing Inefficient Audit Practices

**Problem Description:** Inefficient audit practices are delaying the acquisition process and adding unnecessary overhead costs to the government and to industry support of the acquisition process.

**Root Cause Analysis:** In a compliance-driven process, audits are seen as key to successful system performance, but current audit requirements exceed Defense Contract Audit Agency (DCAA) capabilities and resources. Recent statements by DCAA leaders indicate that 40 percent of DCAA personnel have five or fewer years or less experience in government auditing, which, when combined with vigorous assertions of audit independence, can lead to wastefully expensive audit practices. Decentralized DCAA management allows variation in practice and culture among its auditors which can also be unhelpful.

**Solution Proposal:** Improving the relationship of government auditors with government vendors is one of the greatest challenges in acquisition policy, since auditors must simultaneously look for inaccuracies in vendor reporting or documentation to protect the taxpayer while also avoiding unnecessary waste caused by inefficient audit practices. Two general principles applied at the level of the individual auditor help to accomplish these goals: first, a risk-based approach to auditing that focuses on materiality, and second, an advisory approach to auditing that focuses on helping vendors come into full compliance rather than an adversarial approach that seeks to identify every possible error in vendor reporting and documentation and penalize them for it.

The law does not specify these practices, nor should it, since individual auditors ultimately need the flexibility to behave toward the vendor in the manner most befitting the given circumstances, which no law could be flexible enough to capture in its entirety. Instead, the problem is ripe for oversight and management, and therefore NDIA recommends an approach that combines the two.

10 U.S.C. §2313a, which establishes an annual reporting requirement for DCAA, should be amended to include a report of DCAA's efforts to align its audit policies and practices across its various regions. At the organizational level, increased commonality will encourage organizational learning as the regions connect with each other to identify and adopt best practices and to learn from mistakes.

Because most audit issues are unique to the company in question, the congressional defense committees should encourage DCAA to create outreach opportunities through meetings with companies, industry trade associations, and other contractor groups, to identify vendor complaints, review the facts, and resolve them effectively for both the vendor and auditors involved. Just as companies should not be treated as adversaries by auditors, neither should auditors be treated as adversaries by companies, and both should approach the audit process with a desire to learn and improve outcomes.

#### **Legislative Proposal:**

##### **§2313a. Defense Contract Audit Agency: annual report**

(a) Required Report.—The Director of the Defense Contract Audit Agency shall prepare an annual report of the activities of the Agency during the previous fiscal year. The report shall include, at a minimum—

(1) a description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits;

(2) statistical tables showing—

- (A) the total number of audit reports completed and pending;
- (B) the priority given to each type of audit;
- (C) the length of time taken for each type of audit;
- (D) the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs); and
- (E) an assessment of the number and types of audits pending for a period longer than allowed pursuant to guidance of the Defense Contract Audit Agency;
  - (3) a summary of any recommendations of actions or resources needed to improve the audit process; **and**
  - (4) **a description of actions taken to ensure alignment of policies and practices across the Defense Contract Audit Agency regional organizations, offices, individual auditors;**
  - (5) **outreach actions toward industry to promote more effective use of audit resources; and**
  - (46) any other matters the Director considers appropriate.

(b) Submission of Annual Report.—Not later than March 30 of each year, the Director shall submit to the congressional defense committees the report required by subsection (a).

(c) Public Availability.—Not later than 60 days after the submission of an annual report to the congressional defense committees under subsection (b), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

## 5) Raise the Simplified Acquisition Threshold

**Problem Description:** Because of small businesses' size, they are able to be much leaner than large businesses. Yet government acquisition requirements produce a much more significant overhead burden for small businesses, since the overhead burden cannot be economized by scale in a small business.

**Root Cause Analysis:** While small businesses could be tapped for lower threshold work subject to less government oversight, small business acquisition procedures above the simplified acquisition threshold are just as sclerotic as large business acquisition procedures.

**Solution Proposal:** Raise the Simplified Acquisition Threshold from \$150,000 to \$500,000. To balance the needs and interests of all businesses, including small businesses, maintain the small business reserve for simplified acquisitions below \$250,000, with amounts from \$250,000 to \$500,000 available for full and open competitive procurement. In NDIA's view, small business would also benefit from the opportunities in the simplified acquisition threshold contracts available for full and open competition as the streamlined process generally requires less overhead cost from offerors.

(The Defense Acquisition Regulations Council published a proposed rule on November 6, 2014, to adjust the Simplified Acquisition Threshold based on inflation from \$300,000 to \$400,000. Because our recommendation applies to the non-inflation adjusted Simplified Acquisition Threshold written in the law, the new recommended levels should be inflation adjusted when they are implemented by regulation to ensure that they are escalated properly, just as the current \$150,000 figure has been inflation adjusted to \$400,000.)

**Legislative Proposal:**

**15 U.S.C. §637. Additional powers**

...

(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed **one half of** the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

...

**41 U.S.C. §134. Simplified acquisition threshold**

In division B, the term “simplified acquisition threshold” means \$~~100,000~~**500,000**.



# III. Evidence-Based Decision Making

*Make decisions about how to design the Defense Acquisition System based on data and evidence.*

## 1) Have GAO Study Complex Systemic Acquisition Problems

**Problem Description:** Certain aspects of the acquisition system are considered problematic, but only anecdotes are provided as evidence.

**Root Cause Analysis:** No one has yet prepared or analyzed the data to confirm or dispel these claims, which is the first step toward productively addressing them.

### Study Bid Protests

**Solution Proposal:** The Government Accountability Office (GAO) should study certain areas of the acquisition system that are the subject of debate in terms of their costs and benefits to acquisition outcomes and the taxpayer.

One hotly contested issue is the role of bid protests in increasing costs and delays in the acquisition system. Some NDIA members expressed the strong opinion that the bid protest process is abused by certain companies, and that incumbents that lose a contract face a fiduciary responsibility to shareholders to protest the loss, even if the contracting officer's decision will be sustained, if the protest will yield additional months of contracted work. Other NDIA members argued with equal passion that the bid protest system is not broken and therefore does not need to be fixed. So far, neither of these claims has enterprise-wide data to support it. Data collected and analyzed by Professor Dan Gordon of the George Washington University Law School (a former Administrator of OFPP and, before that, head of the bid protest unit at GAO) suggests that bid protests are not problematic.<sup>21</sup> Nevertheless, because Professor Gordon's data do not specifically address the role incumbency plays in the likelihood of bid protest, it would be valuable to have GAO establish with data whether contract incumbents have abused the bid protest system, and therefore whether steps should be taken to give the government more flexibility in staying a contract extension to the incumbent under such circumstances.

### **Legislative Proposal:**

**Sec. \_\_. Government Accountability Office report on bid protests.**—(a) Report required.—Not later than 180 days after the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the prevalence of bid protests.

(b) Contents of the report.—The report required by subsection (a) shall include the following:

- (1) The prevalence of bid protests filed by a contract incumbent from the years 2009 through 2013.
- (2) The prevalence of bid protests filed by a non-incumbent bidder over the same period.
- (3) The discrepancy between the rates of subsections (b)(1) and (b)(2) and an analysis of the root causes of that discrepancy, if such a discrepancy exists.

### Study the Low Price, Technically Acceptable Source Selection Method

<sup>21</sup> See Dan Gordon, "Bid Protests: The Costs are Real, But the Benefits Outweigh Them," [http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1330&context=faculty\\_publications](http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1330&context=faculty_publications)

**Solution Proposal:** While GAO recently evaluated the government’s application of the Low Price, Technically Acceptable (LPTA) source selection method and found that LPTA is used in accordance with guidance,<sup>22</sup> GAO did not evaluate whether the system-wide nine percent increase in the prevalence of LPTA source selection had changed industry’s attitude toward investment in defense product offerings. Presumably, if companies believe there will be no return, they are unlikely to invest in better product offerings, and in capability areas where innovations could prove consequential, the continued use of LPTA could, in essence, hollow out future capabilities that industry might otherwise develop if it was confident in a return on its investment. Therefore NDIA recommends that GAO study whether the data support the claim that industry is reducing its research and development investment in capability areas most impacted by LPTA contracting and whether LPTA is systemically reducing capability across systems and services most subject to it.

#### **Legislative Proposal:**

**Sec. \_\_\_. Government Accountability Office report on the LPTA source selection method.**—(a) Report required.—Not later than one year after the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the whether the Lowest-Price, Technically-Acceptable (LPTA) source selection method is being properly used for defense contracts, what impact the LPTA source selection method is having on future defense capabilities and innovation, and whether the quality of services purchased by the Department of Defense using the LPTA source selection method is sufficient for the requirements of the contract.

(b) Proper use of LPTA as a source selection method.—The report required by subsection (a) shall include an analysis of a statistically significant sample of contract competitions using the LPTA source selection method to determine the percentage of such competitions that included offerings with meaningful distinctions in value above the threshold of technical acceptability.

(c) Impact of LPTA on defense innovation.—The report required by subsection (a) shall include an analysis and comparison of—

- (1) the dollar value of contractor investment in both reimbursable and non-reimbursable research and development toward product improvements for separate, statistically significant samples of contracts awarded using the—
- (A) LPTA source selection method; and
  - (B) best value source selection method.

(d) Impact of LPTA on service contract awards.—The report required by subsection (a) shall include an analysis and comparison of—

- (1) the average education and experience level, whether entry-level, mid-career, or senior-level, of the professional performing the contracted services for separate, statistically significant samples of contracts awarded—
- (A) using the LPTA source selection method;
  - (B) using the best value source selection method; and
  - (C) commercially by entities other than the Federal Government.

(e) Comparable contracts.—The samples of contracts analyzed under subsections (c) and (d) shall, to the extent possible, be comparable to the samples to which they are being compared, and the samples of contracts awarded using the LPTA source selection method shall not include contracts for basic commodities or administrative services.

*[Report language] The committee notes with growing concern the significant percentage increase reported by the Government Accountability Office (GAO) of the number of contracts awarded by the Department of Defense using the*

22 See GAO-14-584, “Defense Contracting: Factors DoD Considers When Choosing Best Value Processes Are Consistent with Guidance for Selected Acquisitions,” <http://www.gao.gov/assets/670/665124.pdf>

lowest-price, technically-acceptable (LPTA) source selection method. While the LPTA source selection method is proper for contracts to purchase basic commodities or services that do not require specialized experience or education, the committee fears that using LPTA for defense technology and for highly-technical professional services may be reducing future technology innovation and product and service quality improvements. Furthermore, the committee fears that the Department of Defense may be using LPTA as a source selection method when meaningful differences in value are offered by contractors, both in products and services.

In a July 2014 report, GAO concluded that the Department considered the appropriate factors when choosing the source selection method, but its study did not consider whether the actual application of the LPTA source selection method was appropriate, nor did it consider the second-order effects of the LPTA source selection method on defense innovation over time.

The study proposed by Sec. \_\_\_ would provide data to address those issues more conclusively. First, the required report will evaluate whether competitions using LPTA as the source selection method included offerings with meaningful distinctions in value above the threshold of technical acceptability. Second, the report will compare the investments of research and development in product offerings under LPTA and best value contracts to determine if there are meaningful differences in contractor behavior based on the source selection method. Third, the report will address the differences in education and experience of the professionals delivering contracted services, for LPTA contracts, for best value contracts, and for private contracts between companies, to determine what the variance is, if any, between the quality of professional services purchased using both source selection methods and the quality of similar professional services purchased commercially. For each of these inquiries, GAO will make an “apples-to-apples” comparison of a statistically significant sample of contracts, whenever possible.

In the aggregate, this data will help the committee determine whether contracting officers are properly using the LPTA source selection method or whether it is being overused and thus is disqualifying superior offerings while creating a competitive “race to the bottom” among contract offerings. These considerations should help inform both the Department of Defense and Congress about the appropriate future use of the LPTA source selection method across the entire portfolio of defense contracts.

#### Study the Costs and Benefits of Indefinite Delivery, Indefinite Quantity Multiple Award Contracts

**Solution Proposal:** The subject of Indefinite Delivery, Indefinite Quantity (IDIQ) Multiple Award Contracts (MACs) is ripe for investigation by GAO. NDIA found that government and industry often have opposing views of IDIQ MACs and their costs and benefits—largely because the costs are incurred by industry and billed back to the government as overhead and the benefits of time saved and process streamlining are enjoyed by the government at the expense of industry, which for all practical purposes must compete twice for one contract or task order. Since government and industry differ in how they view IDIQ MACs, GAO should study how much money the government is saving with the use of IDIQ MACs, and whether that amount is outweighed by the aggregate money spent by industry on bid and proposal costs for IDIQ MACs that would not be spent under a traditional contract competition. Furthermore, since reimbursable independent research and development costs are paid out of the same pool used for bid and proposal costs, are the increased costs resulting from IDIQ MACs negatively impacting industry’s ability to conduct independent research and development—and thus harming defense innovation?

#### **Legislative Proposal:**

**Sec. \_\_\_. Government Accountability Office report on IDIQ MACs.**—(a) Report required.—Not later than 180 days after the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the impact of the increasing use of indefinite delivery, indefinite quantity (IDIQ) multiple award contracts (MACs). (b) Cost-benefit analysis.—The report required by subsection (a) shall include an analysis of a representative sample of IDIQ MAC contracts to determine—

- (1) the savings incurred by the government through the use of IDIQ MACs in terms of:
  - (A) time to contract award; and
  - (B) full-time equivalent positions;
- (2) the additional fees charged by contractors and reimbursed by the government for bid and proposal costs as a result of IDIQ MACs; and
- (3) whether the savings identified under subsection (b)(1) outweigh the costs identified under subsection (b)(2), either qualitatively or quantitatively, or vice versa.

(c) Impact on independent research and development.—The report required by subsection (a) shall include an analysis of aggregate defense procurement data to determine if there is any relationship between changes in bid and proposal costs and changes in independent research and development costs, and what impact that relationship, if it exists, has on defense technology innovation.

#### Study the Possible Use of a Management Reserve

**Solution Proposal:** Last, GAO should study a point of debate between those seeking funding in the Pentagon and those authorizing and appropriating such funds on Capitol Hill: the Management Reserve Account. The responsible use of a management reserve account could potentially reduce program risks in selected cases, but management reserves can also become a slush fund if used inappropriately. GAO should evaluate whether there are instances of program inefficiencies that a management reserve could have alleviated, and whether such accounts, if they become more prevalent, are likely to be ripe for abuse. Last, GAO should identify the characteristics, if such characteristics exist, that would make a program appropriate or inappropriate for a management reserve so that the Congress can make judicious decisions about where to apply this tool should it choose to do so in the future.

**Sec. \_\_\_\_. Government Accountability Office report on a management reserve account.**—(a) Report required.—Not later than 180 days after the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the potential impact of management reserve accounts on program efficiency.

(b) Contents of the report.—The report required by subsection (a) shall analyze a representative sample of defense acquisition programs to identify—

- (1) how often programs behaved inefficiently due to an insufficient level of funding to manage unpredictable program risk, and whether a modest management reserve could have produced more efficient program performance in such cases;
- (2) how often programs behaved inefficiently due to an overabundance of funding, and whether a modest management reserve could have worsened inefficient program performance in such cases; and
- (3) any consistent and predictable characteristics of programs making them appropriate or inappropriate for the allotment of a management reserve.

## 2) Improve Acquisition Data Reporting By Leveraging Automated Data Collection and Analysis (“Big Data”) Tools

**Problem Description:** The oversight of the acquisition system has not led to the improvement of the acquisition system. The information provided by the acquisition system has not driven improvements to programs or to the acquisition system itself.

**Root Cause Analysis:** Current manual data reporting is time-consuming, burdensome, costly, and emphasizes oversight rather than insight. The management of acquisition information has substituted itself for the management of acquisition programs. Furthermore, decision makers at every level, up and down the chain of command, should feel empowered by relevant and useful information to make key, intelligent decisions—but many do not. The types, sources, and uses of acquisition information are so diverse and manifold that one cannot decide on a single list of limited data points that are most useful to everyone. Different individuals in different roles need different information, and they need that information to be as accurate and “real time” as it can possibly be to facilitate wise decision making.

**Solution Proposal:** The information challenges inherent in the Defense Acquisition System are similar to the information challenges faced in any highly complex environment where the effectiveness of decisions depends on the availability, accuracy, relevance, and timeliness of information. As with all other highly complex systems, the Defense Acquisition System is only slowly migrating from Industrial Age to Information Age processes—and straddling that transition has proved challenging.

The invention of instant communications technology has created an increased expectation for high-quality, relevant, and timely information, yet the processes used to harvest that information do not, by and large, leverage the automation made possible by Information Age advances. Information Age expectations have outpaced Industrial Age collection and analysis processes, creating a situational awareness gap that frustrates decision makers at every level, including in the Congress. Our appetite for information has dramatically increased without commensurate improvements to the processes we use to collect, analyze, and present that information to those who need it.

The so-called “Big Data” revolution of the last ten years or so has made key advances in automating the collection, analysis, and storage of large data sets, but their incorporation into government business processes lags far behind the commercial sector. Such “Big Data” systems are in use by the government on a large scale, and are hotly debated, as a component of our national security intelligence apparatus. Yet outside of the Intelligence Community, the incorporation of “Big Data” innovations into existing acquisition business systems and processes distantly trails what is possible due the relatively low level of emphasis placed on these advances as a core part of future acquisition improvement.

A couple recent examples—the 2013 and 2014 Performance of the Defense Acquisition System Annual Reports—demonstrate in a preliminary fashion what enterprise data collection and analysis can show us about relationships between practices and outcomes in the Defense Acquisition System. Both of these reports were made possible by enterprise-wide data collection on a large scale, and future reports will make similar advances as an increasing number of data sets are incorporated into the analytical process.

Beyond annual reports, expanding the automated collection of enterprise acquisition data will make it possible for leaders at all levels to measure and thereby monitor the performance of programs down to Acquisition Categories II and III and perhaps in services and product acquisitions as well. This expanded scope of data collection and analysis will dissolve the barrier of importance between high-cost and low-cost programs and allow acquisition executives to identify high-performing, valuable programs of small size where positive acquisition behaviors worth emulating are producing

outcomes worth recognizing. The ability to collect meaningful data and conduct analysis is one of the most significant factors that could enable fundamental transformation of the defense acquisition process.

A major challenge facing the rapid expansion in the automated collection and analysis of enterprise acquisition data is how to protect certain data from certain users who should not have it. Creating a single query system that incorporates an ever-increasing number of federated data sets is not a unique challenge, but characterizing each data set and also every user in order to prevent certain users from seeing certain sets of data is a perplexing but solvable challenge. Particularly when queried data sets include proprietary, business sensitive, government sensitive, pre-decisional, or other information that certain users should not access, correctly defining and authenticating a user's access rights presents risk of future liability.

Regardless, the solution to both the legal and technological challenges to "Big Data"-enabled acquisition is the same: emphasis in terms of funding and the attention of senior leaders. Over the last decade, it took the emphasis of senior leaders at the highest levels of the Intelligence Community to augment or replace Industrial Age data collection and analysis with Information Age tools. The same is required for acquisition business systems. We must also make adequate and even generous up-front investments in mapping, accessing, interpreting, and querying relevant data sets in order to reap the long term benefits. This problem truly is one where more investment will mean a faster and better solution, so long as the Department's leaders are prepared to successfully metabolize increased funding and convert it into faster data automation outcomes.

Investments in these systems should lead to their improvement over time. For example, as acquisition decision makers use the systems, they can identify needed data points that are not presently integrated into the system but should be and could be by the Department's data scientists and engineers. This continual effort to bring more federated sources of data into the system's query will mean an increasingly rich "heads up display" of user-defined information needs.

Because the system is set up to generate information and analyses based on users' queries, it can also monitor and track individual users' access to the information, identify patterns, and analyze those patterns for meaning. A learning system could identify not just patterns of data but also patterns of queries used to access that data. If, for example, certain types of queries were used most often by program officials of troubled or failing programs, the use of such a query for a given program could flag that program for higher-level authorities. On a simpler level, the tool itself could track how users access and analyze information and tailor how it presents "heads up display" information to a user's tastes over time.

**Funding Proposal:** The Congress should increase the funding of the "Acquisition Visibility" program in the OSD Operations & Maintenance account to expand reporting beyond ACAT I programs. This program supports all of the enterprise-wide automated data collection and analysis efforts and queries the data sets used in the last two Performance of the Defense Acquisition System Annual Reports. Regrettably, the Fiscal Year 2015 budget request decreased from the prior year actuals, from \$17.714M to \$15.411M. While we recognize the need to make reductions to overhead expenses, this program is one where increased current investment could lead to long-term reductions in spending as fewer personnel are needed to capture, record, and present information on individual programs. Therefore we recommend that Congress work with AT&L to determine the level of funding needed to expand automated data collection and analysis efforts into ACAT II and III programs.

**Long-Term Legislative and Policy Proposal:** As those responsible for the "Acquisition Visibility" program begin to automate the data collection and reporting process for reporting requirements established by law or policy, the Department's senior acquisition leaders should bring to an end the manual reporting requirement for each of these data points. According to the most recent update of DoD Instruction 5000.02, more than 50 reporting requirements exist for ACAT III, and more exist for ACATs I and II. In addition to focusing on those data sets that will help decision makers



draw informed conclusions about program performance, the “Acquisition Visibility” program should make one of its stated goals to alleviate the manual reporting burden on program managers and contracting officers, thereby freeing up time previously spent on gathering, analyzing, and reporting acquisition information to be spent on program management and contract formation. The Congress should partner with the Department in this effort by facilitating an end to manual reporting whenever a change of the law is needed.

### 3) Technology Domain Awareness

**Problem Description:** The Department is not leveraging commercial innovation in defense systems to the extent that it could, and the Department could better optimize the return on its public investment in public and private research and development.<sup>23</sup>

**Root Cause Analysis:** For research, development, and technology, the Department lacks a broad domain awareness that could help it make more informed investments, and, for requirements officials, could help steer them toward technology requirements that are realistic, feasible, and cost-effective.

**Solution Proposal:** Since the Congress included a mandate to do so in the Fiscal Year 1987 National Defense Authorization Act,<sup>24</sup> the Pentagon has made an effort to coordinate, collect and store its scientific and technical (including research and development) information in a single clearinghouse under the Defense Technical Information Center (DTIC).<sup>25</sup> The enduring requirement to coordinate innovation and technological efforts is enshrined in 10 U.S.C. § 2364. Yet the BBP 3.0 release on September 19 makes it clear that improvements can be made, with USD(AT&L) presenting a vision of enhanced access to commercial technology, improved return for DoD lab investments, and increased productivity of industry R&D activities, all of which involve improving and expanding defense technology innovation.

But being more “efficient” in R&D is not about increasing success by avoiding failure—the process of R&D and innovation is itself a process of iterative experimentation and controlled failure that eventually, through further experimentation and learning, produces success. R&D efficiency is therefore not about eliminating failure but lowering the costs of failure and learning from failures to drive future technology innovations. It is based on sharing experimental results as well as promoting visibility of technology opportunities and needs rather than creating (or re-creating) information in isolation. Improving Research and Development (R&D) efficiency means increasing R&D coordination and awareness of the technology and research space (defense and commercial) through information sharing. This awareness, coupled with a tolerance for acceptable technical risk, will result in innovation.

Prior to the explosion of R&D information in the U.S. government and in the global commercial and academic communities, a central repository and library for all defense-relevant technical information—DTIC—was an appropriate solution for coordinating R&D. Today, that solution is insufficient.

The premise of Technology Domain Awareness (TDA) is to treat the technology space much like we treat the intelligence space (the name itself is a reference to Maritime Domain Awareness, an effort to maintain universal or near-universal monitoring of maritime traffic), where knowledge and information are collected, analyzed, and promulgated to support key decisions. TDA is currently being developed by the DoD Information Analysis Centers (IACs), which report to the Assistant Secretary of Defense for Research and Engineering and are administratively supported by DTIC.

<sup>23</sup> See *Better Buying Power 3.0 White Paper*, September 19, 2014, pp. 5-6. [http://bbp.dau.mil/docs/2\\_Better\\_Buying\\_Power\\_3\\_0\(19\\_September\\_2014\).pdf](http://bbp.dau.mil/docs/2_Better_Buying_Power_3_0(19_September_2014).pdf)

<sup>24</sup> Public Law 99-661, Sec. 234

<sup>25</sup> See DoD Instruction 3200.14, “Principles and Operational Parameters of the DoD Scientific and Technical Information Program,” published May 13, 1997, revised June 28, 2001.

### III. EVIDENCE-BASED DECISION MAKING

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The basic premise of TDA is to collect and fuse R&D data sources to create a “user-defined operational picture” for both defense and commercial R&D activities from budget divisions 6.1 through 6.5. This collection and fusion of both commercial and government R&D data sources should be explicitly authorized by law, appropriately funded, and overseen to make sure that the proper outcomes are delivered. To the extent that R&D is occurring and isn’t being tracked or monitored as a data source, TDA should be authorized to function as a distributed platform that links emerging defense needs and commercial and government R&D efforts to drive defense technology innovation. Further, as it matures, TDA should become the tool of first resort for requirements officials to familiarize themselves with next generation capabilities from both commercial and government sources that may be able to satisfy current and future needs at a reasonable cost.

Last, to be successful, TDA cannot be considered a mandate for private industry but a process of attractive collaboration that presents clear incentives and rewards to private firms for providing visibility into their R&D efforts. This challenge is significant and will depend on the individual company involved and the safeguards built into the TDA system to protect intellectual property from theft. But it can and should be overcome by the government leaders who drive the TDA initiative and should be prohibited by law from becoming a mandatory and suboptimal process.

#### Legislative Proposal:

#### 10 U.S.C. § 2364. Coordination ~~and communication~~ of defense research activities and technology domain awareness.

(a) Coordination of ~~Department of Defense Research, Development, and Technological Data.~~—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of ~~research, development, and technological data—~~

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; ~~and~~

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters;—

(3) ~~among other research facilities and other offices, agencies, and bureaus of the Government that are engaged in research, development, and technological matters;~~

(4) ~~among private commercial, research institution, and university entities engaged in research, development, and technological matters potentially relevant to defense on a voluntary basis; and~~

(5) ~~to the extent practicable, to achieve full awareness of scientific and technological advancement and innovation wherever it may occur, whether funded by the United States Government or the Department of Defense, or other entities.~~

(b) Functions of Defense Research Facilities.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities ~~have broad latitude to~~ choose research and development projects ~~based on awareness of activities throughout the technology domain, including within the United States Government, the Department of Defense, public and private research institutions and universities, and the global commercial marketplace;~~

(4) that technology position papers prepared by Defense research facilities are readily available to all combatant commands and to contractors who submit bids or proposals for Department of Defense contracts; and

(5) that, in order to promote increased consideration of technological issues early in the development process, any position paper prepared by a Defense research facility on a technological issue relating to a major weapon system, and any technological assessment made by such facility in the case of such component, is made a part of the records considered for the purpose of making acquisition program decisions.

(c) Definitions.—In this section:

(1) The term “Defense research facility” means a Department of Defense facility which performs or contracts for the performance of—

(A) basic research; or

(B) applied research known as exploratory development.

(2) The term “acquisition program decision” has the meaning prescribed by the Secretary of Defense in regulations.

### **Proposed accompanying report language**

*The committee supports the efforts of the Department to gain what it calls “Technology Domain Awareness,” (TDA) or better global insight into research and development, both private and public. TDA should collect and fuse research and development (R&D) data sources into a user-defined operational picture for both defense and commercial R&D activities from 6.1-6.5.*

*The committee believes that to be successful, TDA cannot mandate private sector participation. TDA must offer a process of attractive collaboration that presents clear incentives and rewards to private firms for providing visibility into their R&D efforts. This challenge is significant and will depend on the individual company involved and the safeguards built into the TDA system to protect intellectual property from theft.*

*As it implements TDA, the Department should ensure that TDA: is a federated tool for querying existing databases, and when necessary, helping entities create their own R&D and technology databases when the information is not currently being tracked, not a single large database; applies the lessons of the Intelligence Community over the past decade in querying multiple independently owned and operated databases facilitated by data interoperability; presents the data in real time, as up to date as the data sources it queries; leverages the knowledge of commercial firms with demonstrated experience in the automated aggregation and analysis of large data sets; and is based not on a mandate to share information, but the cultivation of shared value that will keep partners engaged in the TDA process as time goes on oversight wanes.*

**Funding Proposal:** As implemented by the DoD IACs, TDA will not require a significant capital investment. Instead, TDA seeks to better organize preexisting assets, including data resources and infrastructure, acquisition authorities, and on-going and planned technology activities, to more effectively support DoD’s innovation objectives. TDA costs are underwritten by a combination of the DoD IACs’ baseline operating budget and DoD working capital funds. Congress should engage OSD to ensure that sufficient funds are available to support execution of the full range of activities required for this initiative to be successful.



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July 10, 2014

The Honorable Carl Levin  
Chairman  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510-6050

The Honorable Howard P. “Buck” McKeon  
Chairman  
House Committee on Armed Services  
2120 Rayburn House Office Building  
Washington, DC 20515-6035

The Honorable James M. Inhofe  
Ranking Member  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510-6050

The Honorable Adam Smith  
Ranking Member  
House Committee on Armed Services  
2120 Rayburn House Office Building  
Washington, DC 20515-6035

The Honorable Mac Thornberry  
Vice Chairman  
House Committee on Armed Services  
2120 Rayburn House Office Building  
Washington, DC 20515-6035

Dear Chairmen, Ranking Members, and Vice Chairman of the Committees on Armed Services:

On behalf of the National Defense Industrial Association (NDIA), a non-partisan, non-profit association of nearly 1,600 corporate members and 90,000 individual members, we thank the House and Senate Committees on Armed Services for requesting our views on how to improve the Defense Acquisition System. Since receiving your letter on March 31, NDIA has undertaken an in-depth and thorough process to respond to your request, and that process is still ongoing. We have sought to keep your professional staff members and acquisition leaders in the Department of Defense aware of our progress, and this letter provides a further update on the remaining steps, our anticipated timeline, and what we hope to deliver to your Committees.

We concur in the view expressed in your letter that the Weapons System Acquisition Reform Act (WSARA) of 2009 has made positive changes to the Defense Acquisition System, but room remains for further improvement. That improvement includes wringing unnecessary costs out of the Defense Acquisition System itself, expediting the delivery of capabilities, training and empowering our acquisition workforce to make intelligent purchasing decisions, emphasizing lifecycle cost considerations in the acquisition process, and improving oversight of acquisition decisions. In most cases, these improvements involve lessening the regulatory burden on our decision makers instead of forcing them to do their jobs by rote. While we cannot simply hope that good judgment will fill any void vacated by the rules, coupling a reduced



## Acquisition Reform Letter to the Committees on Armed Services, 7/10/14

administrative burden with a better-educated acquisition workforce and improved oversight could meaningfully improve acquisition outcomes. To that end, this letter will describe the principles, approach, and anticipated deliverable meant to support your Committees' acquisition review.

### Our Principles

To maintain the world's finest military, the Department of Defense needs three things: high quality people, realistic and constant training, and cutting-edge technology and support from industry. If we have the first two but not the last, we risk losing our ability to protect our national security interests around the world. Rapidly falling defense budgets underscore the need to achieve major reductions in the costs of what we acquire as well as the costs of acquisition processes and organizations themselves. Neither the current acquisition process nor its outcomes appear affordable in the long run.

Three basic principles should underpin our future efforts toward acquisition reform. First, acquisition decision-making should be based on evidence of strong performance and outcomes rather than on beliefs, opinions, or arbitrary preferences. Second, individual and organizational authority and accountability are better guarantors of performance than increasing compliance requirements. Third, process requirements should be matched with the resources available to properly implement them, particularly in the domains of human capital, performance measurement systems, and program funding.

**Evidence-based decision making.** Successful acquisition reform will require evidence-based decision-making. In the past, it was difficult to know exactly what outcomes resulted from acquisition strategies and behaviors in specific circumstances. Today we have analytical tools and "Big Data" capabilities to track and understand the real cost and savings drivers in the acquisition system on a systemic, scientific, and statistically-significant basis rather than by anecdote or even individual case study. If fully implemented, analytical tools can measure the value of different acquisition approaches across the federal enterprise. The Pentagon and Congress no longer need to guess at solutions to the problems of the Defense Acquisition System when both can measure the costs of particular practices compared to their outcomes in order to promote success and learn from failure. Because these emerging tools track, record, and analyze data continuously, continuous improvement of the acquisition process is now a possibility.

We must use emerging capabilities to analyze the performance of the acquisition system beyond major defense acquisition programs. These analyses should rely on data already collected and analysis already performed, or data collection and analysis capabilities already planned for incorporation in defense business systems. Further, the Department and Congress should use these tools to capture and weigh different approaches to complying with new overhead requirements and the cost of alternative approaches to audits and oversight. Not only will this data offer keen insight into the most efficient way to meet new requirements, it will enable better cost-benefit analyses of current and future legislation and regulation. The aggressive and systematic deployment of evidence-based analysis is the single greatest tool for overcoming institutional opposition to transformative change of the federal acquisition process.

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**Authority and accountability.** Of all the acquisition reforms attempted by Congress and the Administration during the 1990s, arguably the least successful were those meant to transform the acquisition culture. Laws were enacted that sought to encourage and reward acquisition professionals for using innovative as opposed to rule-based approaches. For example, Congress created various pilot program authorities to allow agencies to experiment with innovative strategies in larger programs, but these either did not establish successful models for broader agency use, as in the case of the Defense Enterprise Programs that were intended to streamline the management of major defense acquisition programs, or were never used at all. Most of these authorities were later repealed.

Those reforms that did work focused on simplifying the acquisition process and thereby increasing individual and organizational authority and accountability for success or failure. Expanding acquisition professionals' authority to acquire commercial items has likely saved the government tens of billions of dollars at least and gave the Department of Defense and civilian agencies access to commercial technologies they could not afford to research and develop in-house. The simplified procedures for low-dollar procurements significantly reduced the paperwork burden. Many redundant, costly statutory requirements were eliminated.

Future acquisition reform efforts should advance these reforms. Congress should reaffirm and even expand commercial item preference, both as a way to maintain access to cutting-edge technology during a period of shrinking defense research and development and as a way to avoid substantial overhead and compliance costs. And the Congress should explicitly require the Service Chiefs to be responsible for linking and streamlining the requirements, acquisition, and budget processes within their Service and hold them accountable for the outcome. In addition, Congress should explicitly require greater involvement of the Service Chiefs in acquisition decisions, as well as the management of Service acquisition personnel.

**Matching requirements to resources.** As Congress passed the major acquisition reform legislation of the '90s, the Department of Defense cut the acquisition workforce quickly and drastically as part of the National Performance Review. For example, the acquisition workforce in the Department dropped from 460,516 in Fiscal Year 1990 to 230,556 in Fiscal Year 1999. While some reduction was certainly warranted, these reductions went too far and jettisoned too many of our seasoned professionals. Further, the laws did not reconfigure the workforce to effectively manage a process that significantly streamlined contract formation and administration, and needed correspondingly greater oversight of the requirements determination process to maximize competition and provide for effective contract management.

In the '90s, the theory behind workforce reform was that removing rules would cause judgment and discretion to fill the void. That theory did not play out in practice. Despite passionate cheerleading from the top, agencies did not develop or fund the education programs and opportunities needed to equip the workforce for the new acquisition model. Most of the oversight community still assessed performance in terms of compliance with rules and procedures, countermanding the emphasis on increased authority and accountability.

The lesson from the 1990s for our current efforts is that Congress and the Pentagon must fully fund the training and other workforce initiatives to transform the acquisition process. The



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success of defense acquisition will always depend on the capability of a limited number of people inside and outside government whose resources of time and attention are finite. Increased skill, relevant experiences, and cultural adjustment of the workforce will occur only gradually and only with adequate funding and congressional oversight. In addition, the Congress should consider novel approaches to funding, such as creating a separate stable program funding account based on capital budgeting at Milestone A for each major program. The Department should budget for, and the Congress should fund, a management reserve in this account. Providing educated talent and secure program funding will almost certainly improve acquisition outcomes.

### Our Approach

To realize these principles, NDIA's approach to reform involves two parallel processes. The first process adapts the findings of past studies of the Defense Acquisition System. In many cases, the proverbial wheel already exists: reports and studies have already identified the problems, and have done so with a high degree of consistency. Consolidating those problem statements, identifying their root causes, proposing solutions, and describing how those solutions will be enacted through law, regulation, or policy provides one set of inputs. In the second process, NDIA has engaged our members on a voluntary basis through working groups. No one can provide the views of industry better than industry, so these working groups will ensure that our response to your Committees is based on industry views.

Our final product will aim for clear, specific, actionable recommendations. We hope to provide a fully peer-reviewed response in late September. Anyone who might wish to do so can track our progress at <http://www.ndia.org/Advocacy/AcquisitionReformInitiative/Pages/default.aspx>, a website we update regularly with new products and background information.

We see this round of acquisition change less as sweeping reform and more as an early installment of long-term, continuous improvement. Lasting change will require prolonged effort and attention, and all parties must be prepared to accept criticism and reconsider policy approaches as the evidence dictates. There is reasonable hope that, with patience, collaboration, and the steady application of new information, fundamental change may result.

**Prior studies.** To comprehensively review past acquisition reform efforts, NDIA gathered studies dating back to the Hoover Commissions of 1949 and 1955, the Fitzhugh Commission, and the Grace Commission. While these older studies provide historical context, we concluded that the most applicable problem statements would come from more contemporary studies, beginning with the Packard Commission of 1986. Studies guiding our review include the 2006 Defense Acquisition Performance Assessment, the Report of the Acquisition Advisory Panel commissioned by the Services Acquisition Reform Act of 2003, and the Defense Business Board's 2012 Report on Linking and Streamlining the Defense Requirements, Acquisition, and Budget Processes, among others. We chose these studies because they represent the most authoritative and wide-ranging perspectives of acquisition reform. They reflect input from both the legislative and executive branches of government as well as the defense industry and broadly represent stakeholders' views.

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The reports demonstrate a remarkable consistency in what they describe as the major problems of defense acquisition. Each report identified a number of challenges generally falling within one of the following twelve problem statements:

1. Coordination between the requirements, budget, and acquisition processes is inadequate.
2. Overly complex acquisition laws, regulations, and bureaucracy create unclear lines of authority and accountability.
3. The acquisition workforce is not sufficiently staffed, trained, or experienced.
4. The current acquisition system discourages an open and honest working relationship between government and industry.
5. The acquisition workforce is not empowered to make use of all available options when making acquisition decisions.
6. Congressional approval of defense budgets on year-to-year basis hinders long-term planning and execution of programs.
7. Acquisition processes have not adapted to new technologies and a changing national security environment.
8. Performance-based acquisition initiatives have not succeeded in shifting the focus from acquisition inputs to acquisition outcomes.
9. Contractors are reluctant to make long-term investments in defense contracts.
10. The oversight of acquisition inhibits improvements to the acquisition system.
11. The acquisition system is unable to consistently and successfully predict the cost, schedule, and performance of defense systems.
12. Lifecycle management of programs is inefficient and creates higher-than-necessary costs.

The next phase will use these prior studies as a starting point, identify root causes, and develop recommendations for addressing them. In accordance with your letter, those recommendations will propose specific changes to law, regulation, or policy and how the performance of each recommendation might be measured over time.

**Working groups.** Parallel to the effort of reviewing prior studies, NDIA has organized working groups to study areas of inquiry identified at our Acquisition Reform Kick-Off Event on May 29. After that event, 45 NDIA members volunteered to participate in one of nine working groups conducting in-depth analyses of specific issue areas. The working groups are organized to tackle the following issue areas: leadership and accountability; capabilities of the acquisition workforce; measuring the performance of the acquisition system; divergence of government-unique and general private-sector practices; contract strategy; services, information technology, and cyber acquisition; effectiveness of small business programs; contract finance, payment, incentives, and profit; and boundary conditions. Within their issue areas, the working groups are tasked to research their own problem statements, root causes for those problems, and recommendations on how to address those root causes by changes to law, regulation, or policy. Each working group will present its findings at a second acquisition reform large group event on July 29.

To give your Committees a sense of the working groups' efforts, we have included a brief example. The Divergence of Government-Unique and General Private Sector Practices Working Group has identified as one of its problems that "current policies actively discourage self-funded

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development of commercial products with military applications.” The working group prospectively identified four root causes, including the narrowing of commercial item acquisition, cost analyses that do not compensate industry for self-funded investments, increased aggressiveness by the government in pursuit of technical data rights to items developed largely or entirely at private expense, and the categorical refusal to accept price analyses based on prior governmental purchases, contrary to the Federal Acquisition Regulation Sec. 15.404-1.

Based on these root causes, the working group has developed a set of recommendations. First, the group believes the government should use price analysis only to confirm that a proposed price is fair and reasonable for a product developed at private expense. That change could be accomplished by expanding commercial item purchasing authority under the rubric of military purpose non-developmental items (as authorized in a pilot program under Sec. 866 of the Fiscal Year 2011 National Defense Authorization Act). For dual use items developed primarily at private expense, the working group recommends using price analysis for the base product, with cost analysis for any military-specific changes to the product. Prior government purchases of the same or similar items should be considered an adequate basis for price analysis, absent any material change in circumstances or an indication that earlier pricing was unfair or unreasonable. The basic premise is to consider value first: does the increase in product value outweigh the increase in cost? This reflects the principle that “institutional performance is all about getting value” (*Performance of the Defense Acquisition System: 2014 Annual Report*, p. 6). A better product at a better price is always priced fairly and reasonably, regardless of its profit margin. If the price of a product outstrips its value, that fact becomes the basis of a negotiation.

### Our Report

Following the reports of the working groups on July 29, NDIA’s next steps will be to merge our prior study and working group processes into a coherent set of inputs. Following that merger, NDIA will draft our report in August. In September, NDIA will share a draft report with our membership and subject it to a peer review, including a third large group event to discuss, revise, and finalize it. In late September we will provide the final report to NDIA members and deliver it to your Committees and the Pentagon. After the final report is circulated, we hope to work with you and with the Pentagon to assist in the implementation of those of our proposals you find worthy of consideration and further development.

We plan for our final product to include sufficient detail to be actionable, yet also to be clear and brief. Our goal is to provide something approximately 50 pages in length that can be reviewed and understood easily but includes proposals we are confident will yield the desired results. Like each of you, we do not believe that omnibus legislation is the order of the day and will likely avoid sweeping changes in favor of more incremental proposals as stages toward a longer-term transformation.

Again, we are honored to be consulted by you and your Committees in the pursuit of improved acquisition. NDIA is committed to providing you with the voice of industry in response to your questions. We look forward to the continued partnership with each of you, your Committees, and your professional staff members as this process unfolds. Thank you again for the opportunity to participate, and for your leadership, patriotism, and service to our country.



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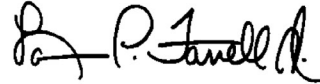
Sincerely and respectfully,



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- The Honorable Heidi Shyu, Assistant Secretary of the Army (ALT)
- The Honorable Sean Stackley, Assistant Secretary of the Navy (RDA)
- RADM (Ret.) Dick Ginman, Director of Procurement and Acquisition Policy

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