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{ Part 1

IMPLEMENTING MANAGEMENT FOR PERFORMANCE  
AND RELATED REFORMS TO OBTAIN VALUE IN  
EVERY ACQUISITION ACT OF 2010

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R E P O R T

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ON

H.R. 5013

together with

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]



APRIL 23, 2010.—Ordered to be printed

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IMPLEMENTING MANAGEMENT FOR PERFORMANCE AND  
RELATED REFORMS TO OBTAIN VALUE IN EVERY AC-  
QUISITION ACT OF 2010

APRIL 23, 2010.—Ordered to be printed

Mr. SKELTON, from the Committee on Armed Services,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5013]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 5013) to amend title 10, United States Code, to provide for performance management of the defense acquisition system, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010”.

**SEC. 2. DEFINITION OF CONGRESSIONAL DEFENSE COMMITTEES.**

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

**SEC. 3. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Definition of congressional defense committees.
- Sec. 3. Table of contents.

## TITLE I—DEFENSE ACQUISITION SYSTEM

- Sec. 101. Performance management of the defense acquisition system.
- Sec. 102. Meaningful consideration by Joint Requirements Oversight Council of input from certain officials.
- Sec. 103. Performance management for the Joint Capabilities Integration and Development System.
- Sec. 104. Requirements for the acquisition of services.
- Sec. 105. Joint evaluation task forces.
- Sec. 106. Review of defense acquisition guidance.
- Sec. 107. Requirement to include references to services contracting throughout the Federal Acquisition Regulation.
- Sec. 108. Procurement of military purpose nondevelopmental items.

## TITLE II—DEFENSE ACQUISITION WORKFORCE

- Sec. 201. Acquisition workforce excellence.
- Sec. 202. Amendments to the acquisition workforce demonstration project.
- Sec. 203. Incentive programs for civilian and military personnel in the acquisition workforce.
- Sec. 204. Career development for civilian and military personnel in the acquisition workforce.
- Sec. 205. Recertification and training requirements.
- Sec. 206. Information technology acquisition workforce.
- Sec. 207. Definition of acquisition workforce.
- Sec. 208. Defense Acquisition University curriculum review.
- Sec. 209. Cost estimating internship and scholarship programs.

## TITLE III—FINANCIAL MANAGEMENT

- Sec. 301. Incentives for achieving auditability.
- Sec. 302. Measures required after failure to achieve auditability.
- Sec. 303. Review of obligation and expenditure thresholds.

## TITLE IV—INDUSTRIAL BASE

- Sec. 401. Expansion of the industrial base.
- Sec. 402. Commercial pricing analysis.
- Sec. 403. Contractor and grantee disclosure of delinquent Federal tax debts.
- Sec. 404. Independence of contract audits and business system reviews.
- Sec. 405. Blue ribbon panel on eliminating barriers to contracting with the Department of Defense.
- Sec. 406. Inclusion of the providers of services and information technology in the national technology and industrial base.

## TITLE I—DEFENSE ACQUISITION SYSTEM

### SEC. 101. PERFORMANCE MANAGEMENT OF THE DEFENSE ACQUISITION SYSTEM.

#### (a) PERFORMANCE MANAGEMENT OF THE DEFENSE ACQUISITION SYSTEM.—

(1) IN GENERAL.—Part IV of title 10, United States Code, is amended by inserting after chapter 148 the following new chapter:

#### “CHAPTER 149—PERFORMANCE MANAGEMENT OF THE DEFENSE ACQUISITION SYSTEM

“Sec.

“2545. Performance assessment of the defense acquisition system.

“2546. Audits of performance assessment.

“2547. Use of performance assessments for managing performance.

“2548. Acquisition-related functions of the Chiefs of Staff of the armed forces.

#### “§ 2545. Performance assessment of the defense acquisition system

“(a) PERFORMANCE ASSESSMENTS REQUIRED.—(1) The Secretary of Defense shall ensure that all elements of the defense acquisition system are subject to regular performance assessments—

“(A) to determine the extent to which such elements deliver appropriate value to the Department of Defense; and

“(B) to enable senior officials of the Department of Defense to manage the elements of the defense acquisition system to maximize their value to the Department.

“(2) The performance of each element of the defense acquisition system shall be assessed as needed, but not less often than annually.

“(3) The Secretary shall ensure that the performance assessments required by this subsection are appropriately tailored to reflect the diverse nature of defense acquisition so that the performance assessment of each element of the defense acquisition system accurately reflects the work performed by such element.

“(b) SYSTEMWIDE CATEGORIES.—(1) The Secretary of Defense shall establish categories of metrics for the defense acquisition system, including, at a minimum, categories relating to cost, quality, delivery, workforce, and policy implementation that apply to all elements of the defense acquisition system.

“(2) The Secretary of Defense shall issue guidance for service acquisition executives within the Department of Defense on the establishment of metrics, and goals and standards relating to such metrics, within the categories established by the Secretary under paragraph (1) to ensure that there is sufficient uniformity in perform-

ance assessments across the defense acquisition system so that elements of the defense acquisition system can be meaningfully compared.

“(c) METRICS, GOALS, AND STANDARDS.—(1) Each service acquisition executive of the Department of Defense shall establish metrics to be used in the performance assessments required by subsection (a) for each element of the defense acquisition system for which such executive is responsible within the categories established by the Secretary under subsection (b). Such metrics shall be appropriately tailored pursuant to subsection (a)(3) and may include measures of—

“(A) cost, quality, and delivery;

“(B) contractor performance;

“(C) excessive use of contract bundling and availability of non-bundled contract vehicles;

“(D) workforce quality and program manager tenure (where applicable);

“(E) the quality of market research;

“(F) appropriate use of integrated testing;

“(G) appropriate consideration of long-term sustainment; and

“(H) appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment.

“(2) Each service acquisition executive within the Department of Defense shall establish goals and standards (including, at a minimum, a threshold standard and an objective goal) for each metric established under paragraph (1) by the executive. In establishing the goals and standards for an element of the defense acquisition system, a service acquisition executive shall consult with the head of the element to the maximum extent practicable, but the service acquisition executive shall retain the final authority to determine the goals and standards established. The service acquisition executive shall update the goals and standards as necessary and appropriate consistent with the guidance issued under subsection (b)(2).

“(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall periodically review the metrics, goals, and standards established by service acquisition executives under this subsection to ensure that they are consistent with the guidance issued under subsection (b)(2).

“(d) RESPONSIBILITY FOR OVERSIGHT AND DIRECTION OF PERFORMANCE ASSESSMENTS.—(1) Performance assessments required by subsection (a) shall either be carried out by, or shall be subject to the oversight of, the Director of the Office of Performance Assessment and Root Cause Analysis. The authority and responsibility granted by this subsection is in addition to any other authority or responsibility granted to the Director of the Office of Performance Assessment and Root Cause Analysis by the Secretary of Defense or by any other provision of law. In the performance of duties pursuant to this section, the Director of the Office of Performance Assessment and Root Cause analysis shall coordinate with the Deputy Chief Management Officer to ensure that performance assessments carried out pursuant to this section are consistent with the performance management initiatives of the Department of Defense.

“(2) A performance assessment may be carried out by an organization under the control of the service acquisition executive of a military department if—

“(A) the assessment fulfills the requirements of subsection (a);

“(B) the organization is approved to carry out the assessment by the Director of the Office of Performance Assessment and Root Cause Analysis; and

“(C) the assessment is subject to the oversight of the Director of the Office of Performance Assessment and Root Cause Analysis in accordance with paragraph (1).

“(e) RETENTION AND ACCESS TO RECORDS OF PERFORMANCE ASSESSMENTS WITHIN THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.—The Secretary of Defense shall ensure that information from performance assessments of all elements of the defense acquisition system are retained electronically and that the Director of the Office of Performance Assessment and Root Cause Analysis—

“(1) promptly receives the results of all performance assessments conducted by an organization under the control of the service acquisition executive of a military department; and

“(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to perform or oversee performance assessments pursuant to this section.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘defense acquisition system’ means the acquisition workforce; the process by which the Department of Defense manages the acquisition of goods and services, including weapon systems, commodities, commercial and military unique services, and information technology; and the management

structure for carrying out the acquisition function within the Department of Defense.

“(2) The term ‘element of the defense acquisition system’ means an organization that operates within the defense acquisition system and that focuses primarily on acquisition.

“(3) The term ‘metric’ means a specific measure that serves as a basis for comparison.

“(4) The term ‘threshold performance standard’ means the minimum acceptable level of performance in relation to a metric.

“(5) The term ‘objective performance goal’ means the most desired level of performance in relation to a metric.

“(6) The term ‘Office of Performance Assessment and Root Cause Analysis’ means the office reporting to the senior official designated by the Secretary of Defense under section 103(a) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23, 10 U.S.C. 2430 note).

**“§ 2546. Audits of performance assessment**

“(a) AUDITS REQUIRED.—The Secretary of Defense shall ensure that the performance assessments of the defense acquisition system required by section 2545 of this title are subject to periodic audits to determine the accuracy, reliability, and completeness of such assessments.

“(b) STANDARDS AND APPROACH.—In performing the audits required by subsection (a), the Secretary shall ensure that such audits—

“(1) comply with generally accepted government auditing standards issued by the Comptroller General;

“(2) use a risk-based approach to audit planning; and

“(3) appropriately account for issues associated with auditing assessments of activities occurring in a contingency operation.

**“§ 2547. Use of performance assessments for managing performance**

“(a) IN GENERAL.—The Secretary of Defense shall ensure that the results of performance assessments are used in the management of elements of the defense acquisition system through direct linkages between the results of a performance assessment and the following:

“(1) The size of the bonus pool available to the workforce of an element of the defense acquisition system.

“(2) Rates of promotion in the workforce of an element of the defense acquisition system.

“(3) Awards for acquisition excellence.

“(4) The scope of work assigned to an element of the defense acquisition system.

“(b) ADDITIONAL REQUIREMENTS.—The Secretary of Defense shall ensure that actions taken to manage the acquisition workforce pursuant to subsection (a) are undertaken in accordance with the requirements of subsections (c) and (d) of section 1701a of this title.

**“§ 2548. Acquisition-related functions of the Chiefs of Staff of the armed forces**

“(a) ASSISTANCE.—The Secretary of Defense shall ensure, notwithstanding section 3014(c)(1)(A), section 5014(c)(1)(A), and section 8014(c)(1)(A) of this title, 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 Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

“(1) The development of requirements relating to the defense acquisition system.

“(2) The development of measures to control requirements creep in the defense acquisition system.

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

“(4) 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.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘requirements creep’ means the addition of new technical or operational specifications after a requirements document is approved.

“(2) The term ‘requirements document’ means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—



“(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

“(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

“(C) identifies production attributes required for a single increment of a program.”.

(2) CLERICAL AMENDMENTS.—The table of chapters at the beginning of subtitle A of title 10, United States Code, and at the beginning of part IV of such subtitle, are each amended by inserting after the item relating to chapter 148 the following new item:

“149. Performance Management of the Defense Acquisition System ..... 2545”.

(b) PHASED IMPLEMENTATION OF PERFORMANCE ASSESSMENTS.—The Secretary of Defense shall implement the requirements of chapter 149 of title 10, United States Code, as added by subsection (a), in a phased manner while guidance is issued, and categories, metrics, goals, and standards are established. Implementation shall begin with a cross section of elements of the defense acquisition system representative of the entire system and shall be completed for all elements not later than two years after the date of the enactment of this Act.

**SEC. 102. MEANINGFUL CONSIDERATION BY JOINT REQUIREMENTS OVERSIGHT COUNCIL OF INPUT FROM CERTAIN OFFICIALS.**

(a) ADVISORS TO THE JOINT REQUIREMENTS OVERSIGHT COUNCIL.—

(1) ADDITIONAL CIVILIAN ADVISORS.—Subsection (d)(1) of section 181 of title 10, United States Code, is amended by striking “The Under Secretary” and all that follows through “and expertise.” and inserting the following: “The following officials of the Department of Defense shall serve as advisors to the Council on matters within their authority and expertise:

“(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(B) The Under Secretary of Defense (Comptroller).

“(C) The Under Secretary of Defense for Policy.

“(D) The Director of Cost Assessment and Program Evaluation.”.

(2) ROLE OF COMBATANT COMMANDERS AS MEMBERS OF THE JROC.—Paragraph (1) of subsection (c) of such section is amended—

(A) by striking “and” at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(F) when directed by the chairman, the commander of any combatant command (or, as directed by that commander, the deputy commander of that command) when matters related to the area of responsibility or functions of that command will be under consideration by the Council.”.

(b) AMENDMENT RELATED TO REPORT.—Paragraph (2) of section 105(c) of the Weapon System Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1718) is amended to read as follows:

“(2) MATTERS COVERED.—The report shall include, at a minimum, an assessment of—

“(A) the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements;

“(B) the extent to which the Council has meaningfully considered the input and expertise of the Under Secretary of Defense for Acquisition, Technology, and Logistics in its discussions;

“(C) the extent to which the Council has meaningfully considered the input and expertise of the Director of Cost Assessment and Program Evaluation in its discussions;

“(D) the quality and effectiveness of efforts to estimate the level of resources needed to fulfill joint military requirements; and

“(E) the extent to which the Council has considered trade-offs among cost, schedule, and performance objectives.”.

**SEC. 103. PERFORMANCE MANAGEMENT FOR THE JOINT CAPABILITIES INTEGRATION AND DEVELOPMENT SYSTEM.**

(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall ensure that the Department of Defense develops and implements a program to manage performance in establishing joint military requirements pursuant to section 181 of title 10, United States Code.

(b) **LEADERS.**—The Secretary of Defense shall designate an officer identified or designated as a joint qualified officer to serve as leader of a joint effort to develop the performance management program required by subsection (a). The Secretary shall also designate an officer from each Armed Force to serve as leader of the effort within the Armed Force concerned. Officers designated pursuant to this section shall have the seniority and authority necessary to oversee and direct all personnel engaged in establishing joint military requirements within the Joint Staff or within the Armed Force concerned.

(c) **MATTERS COVERED.**—The program developed pursuant to subsection (a) shall:

(1) Measure the following in relation to each joint military requirement:

(A) The time a requirements document takes to receive validation through the requirements process.

(B) The quality of cost information associated with the requirement and the extent to which cost information was considered during the requirements process.

(C) The extent to which the requirements process established a meaningful level of priority for the requirement.

(D) The extent to which the requirements process considered trade-offs between cost, schedule, and performance objectives.

(E) The quality of information on sustainment associated with the requirement and the extent to which sustainment information was considered during the requirements process.

(F) Such other matters as the Secretary shall determine appropriate.

(2) Achieve, to the maximum extent practicable, the following outcomes in the requirements process:

(A) Timeliness in delivering capability to the warfighter.

(B) Mechanisms for controlling requirements creep.

(C) Responsiveness to fact-of-life changes occurring after the approval of a requirements document, including changes to the threat environment, the emergence of new capabilities, or changes in the resources estimated to procure or sustain a capability.

(D) The development of the personnel skills, capacity, and training needed for an effective and efficient requirements process.

(E) Such other outcomes as the Secretary shall determine appropriate.

(d) **IMPLEMENTATION.**—The program required by subsection (a) shall be developed and initially implemented not later than one year after the date of the enactment of this Act and shall apply to requirements documents entering the requirements process after the date of initial implementation.

(e) **INITIAL REPORT.**—Not later than 90 days after the initial implementation of the program required by subsection (a), the Secretary shall submit to the congressional defense committees a report on the steps taken to develop and implement the performance management program for joint military requirements. The report shall address the measures specified in subsection (c)(1).

(f) **FINAL REPORT.**—Not later than four years after the initial implementation of the program required by subsection (a), the Secretary shall submit to the congressional defense committees a report on the effectiveness of the program for joint military requirements in achieving the outcomes specified in subsection (c)(2).

(g) **DEFINITIONS.**—In this section:

(1) **REQUIREMENTS PROCESS.**—The term “requirements process” means the Joint Capabilities Integration and Development System (JCIDS) process or any successor to such process established by the Chairman of the Joint Chiefs of Staff to support the statutory responsibility of the Joint Requirements Oversight Council in advising the Chairman and the Secretary of Defense in identifying, assessing, and validating joint military capability needs, with their associated operational performance criteria, in order to successfully execute missions.

(2) **REQUIREMENTS DOCUMENT.**—The term “requirements document” means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) **REQUIREMENTS CREEP.**—The term “requirements creep” means the addition of new technical or operational specifications after a requirements document is approved.

(h) **DISCRETIONARY IMPLEMENTATION AFTER 5 YEARS.**—After the date that is five years after the initial implementation of the performance management program under this section, the requirement to implement a program under this section shall be at the discretion of the Secretary of Defense.

**SEC. 104. REQUIREMENTS FOR THE ACQUISITION OF SERVICES.**

(a) **PROCESS REQUIRED.**—The Secretary of Defense shall ensure that each military department establishes a process for identifying, assessing, and approving requirements for the acquisition of services, and that commanders of unified combatant commands and other officers identified or designated as joint qualified officers have an opportunity to participate in the process of each military department to provide input on joint requirements for the acquisition of services.

(b) **GUIDANCE AND PLAN REQUIRED.**—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—

(1) issue and maintain guidance relating to each process established under subsection (a); and

(2) develop a plan to implement each process established under subsection (a).

(c) **MATTERS REQUIRED IN GUIDANCE.**—The guidance issued under subsection (b) shall establish, in relation to a process for identifying, assessing, and approving requirements for the acquisition of services, the following:

(1) Organization of such process.

(2) The level of command responsibility required for identifying and validating requirements for the acquisition of services in accordance with the categories established under section 2330(a)(1)(C) of title 10, United States Code.

(3) The composition of billets necessary to operate such process.

(4) The training required for personnel engaged in such process.

(5) The relationship between doctrine and such process.

(6) Methods of obtaining input on joint requirements for the acquisition of services.

(7) Procedures for coordinating with the acquisition process.

(8) Considerations relating to opportunities for strategic sourcing.

(d) **MATTERS REQUIRED IN IMPLEMENTATION PLAN.**—Each plan required under subsection (b) shall provide for initial implementation of a process for identifying, assessing, and approving requirements for the acquisition of services not later than 180 days after the date of the enactment of this Act and shall provide for full implementation of such process at the earliest date practicable.

(e) **CONSISTENCY WITH JOINT GUIDANCE.**—Whenever, at any time, guidance is issued by the Chairman of the Joint Chiefs of Staff relating to requirements for the acquisition of services, each process established under subsection (a) shall be revised in accordance with such joint guidance.

(f) **DEFINITION.**—The term “requirements for the acquisition of services” means objectives to be achieved through acquisitions primarily involving the procurement of services.

**SEC. 105. JOINT EVALUATION TASK FORCES.**

(a) **TASK FORCES REQUIRED.**—For each joint military requirement involving a materiel solution for which the Chairman of the Joint Requirements Oversight Council is the validation authority, the Chairman shall designate a commander of a unified combatant command to provide a joint evaluation task force to participate in such materiel solution. Such task force shall—

(1) come from a military unit or units designated by the combatant commander concerned;

(2) be selected based on the relevance of such materiel solution to the mission of the unit; and

(3) participate consistent with its operational obligations.

(b) **RESPONSIBILITIES.**—A task force provided pursuant to subsection (a) shall, for the materiel solution concerned—

(1) provide input to the analysis of alternatives;

(2) participate in testing (including limited user tests and prototype testing);

(3) provide input on a concept of operations and doctrine;

(4) provide end user feedback to the resource sponsor; and

(5) participate, through the combatant commander concerned, in any alteration of the requirement for such solution.

(c) **ADMINISTRATIVE SUPPORT.**—The resource sponsor for the joint military requirement shall provide administrative support to the joint evaluation task force for purposes of carrying out this section.

## (d) DEFINITIONS.—In this section:

(1) RESOURCE SPONSOR.—The term “resource sponsor” means the organization responsible for all common documentation, periodic reporting, and funding actions required to support the capabilities development and acquisition process for the materiel solution.

(2) MATERIEL SOLUTION.—The term “materiel solution” means the development, acquisition, procurement, or fielding of a new item, or of a modification to an existing item, necessary to equip, operate, maintain, and support military activities.

## SEC. 106. REVIEW OF DEFENSE ACQUISITION GUIDANCE.

(a) REVIEW OF GUIDANCE.—The Secretary of Defense shall review the acquisition guidance of the Department of Defense, including, at a minimum, the guidance contained in Department of Defense Instruction 5000.02 entitled “Operation of the Defense Acquisition System”.

(b) MATTERS CONSIDERED.—The review performed under subsection (a) shall consider—

(1) the extent to which it is appropriate to apply guidance relating to the acquisition of weapon systems to acquisitions not involving weapon systems (including the acquisition of commercial goods and commodities, commercial and military unique services, and information technology);

(2) whether long-term sustainment of weapon systems is appropriately emphasized;

(3) whether appropriate mechanisms exist to communicate information relating to the mission needs of the Department of Defense to the industrial base in a way that allows the industrial base to make appropriate investments in infrastructure, capacity, and technology development to help meet such needs;

(4) the extent to which earned value management should be required on acquisitions not involving the acquisition of weapon systems and whether measures of quality and technical performance should be included in any earned value management system;

(5) the extent to which it is appropriate to apply processes primarily relating to the acquisition of weapon systems to the acquisition of information technology systems, consistent with the requirement to develop an alternative process for such systems contained in section 804 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2401; 10 U.S.C. 2225 note); and

(6) such other matters as the Secretary considers appropriate.

(c) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report detailing any changes in the acquisition guidance of the Department of Defense identified during the review required by subsection (a), and any actions taken, or planned to be taken, to implement such changes

## SEC. 107. REQUIREMENT TO INCLUDE REFERENCES TO SERVICES CONTRACTING THROUGHOUT THE FEDERAL ACQUISITION REGULATION.

(a) FINDINGS.—Congress finds the following:

(1) The acquisition of services can be extremely complex, and program management skills, tools, and processes need to be applied to services acquisitions.

(2) An emphasis on the concept of “services” throughout the Federal Acquisition Regulation would enhance and support the procurement and project management community in all aspects of the acquisition planning process, including requirements development, assessment of reasonableness, and post-award management and oversight.

(b) REQUIREMENT FOR CHANGES TO FAR.—The Federal Acquisition Regulation shall be revised to provide, throughout the Regulation, appropriate references to services contracting that are in addition to references provided in part 37 (which relates specifically to services contracting).

(c) DEADLINE.—This section shall be carried out within 270 days after the date of the enactment of this Act.

## SEC. 108. PROCUREMENT OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS.

(a) IN GENERAL.—

(1) PROCUREMENT OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2410r. Military purpose nondevelopmental items**

“(a) DEFINITIONS.—In this section:

“(1) The term ‘military purpose nondevelopmental item’ means an item—

- “(A) developed exclusively at private expense;
- “(B) that meets a validated military requirement and for which the United States has rights in technical data as prescribed in section 2320(a)(2)(B) of this title, as certified in writing by the responsible program manager;
- “(C) for which delivery of an initial lot of production-representative items may be made within nine months after contract award; and
- “(D) for which the unit cost is less than \$10,000,000.
- “(2) The term ‘item’ has the meaning provided in section 2302(3) of this title.
- “(b) REQUIREMENTS.—The Secretary of Defense shall ensure that, with respect to a contract for the acquisition of a military purpose nondevelopmental item, the following requirements apply:
- “(1) The contract shall be awarded using competitive procedures in accordance with section 2304 of this title.
- “(2) Certain contract clauses, as specified in regulations prescribed under subsection (c), shall be included in each such contract.
- “(3) The type of contract used shall be a firm, fixed price type contract.
- “(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. At a minimum, the regulations shall include—
- “(1) a list of contract clauses to be included in each contract for the acquisition of a military purpose nondevelopmental item;
- “(2) definitions for the terms ‘developed’ and ‘exclusively at private expense’ that—
- “(A) are consistent with the definitions developed for such terms in accordance with 2320(a)(3) of this title; and
- “(B) also exclude an item developed in part or in whole with—
- “(i) foreign government funding; or
- “(ii) foreign or Federal Government loan financing at nonmarket rates; and
- “(3) standards for evaluating the reasonableness of price for the military purpose nondevelopmental item, in lieu of certified cost or pricing data.”
- (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:
- “2410r. Military purpose nondevelopmental items.”.
- (b) COST OR PRICING DATA EXCEPTION.—Section 2306a(b)(1) of title 10, United States Code, is amended—
- (1) by striking “or” at the end of subparagraph (B);
- (2) by striking the period at the end of subparagraph (C) and inserting “; or”;
- and
- (3) by adding at the end the following new subparagraph:
- “(D) for the acquisition of a military purpose nondevelopmental item, as defined in section 2410r of this title, if the contracting officer determines in writing that—
- “(i) the contract, subcontract or modification will be a firm, fixed price type contract; and
- “(ii) the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the military purpose nondevelopmental item.”.
- (c) EFFECTIVE DATE.—Section 2410r of title 10, United States Code, as added by subsection (a), and the amendment made by subsection (b), shall apply with respect to contracts entered into after the date that is 120 days after the date of the enactment of this Act.

## TITLE II—DEFENSE ACQUISITION WORKFORCE

### SEC. 201. ACQUISITION WORKFORCE EXCELLENCE.

#### (a) IN GENERAL.—

- (1) ACQUISITION WORKFORCE EXCELLENCE.—Subchapter I of chapter 87 of title 10, United States Code, is amended by inserting after section 1701 the following new section:

#### “§ 1701a. Management for acquisition workforce excellence

- “(a) PURPOSE.—The purpose of this chapter is to require the Department of Defense to develop and manage a highly skilled professional acquisition workforce—

- “(1) in which excellence and contribution to mission is rewarded;
- “(2) which has the technical expertise and business skills to ensure the Department receives the best value for the expenditure of public resources;
- “(3) which serves as a model for performance management of employees of the Department; and
- “(4) which is managed in a manner that complements and reinforces the performance management of the defense acquisition system pursuant to chapter 149 of this title.
- “(b) PERFORMANCE MANAGEMENT.—In order to achieve the purpose set forth in subsection (a), the Secretary of Defense shall—
- “(1) use the full authorities provided in subsections (a) through (d) of section 9902 of title 5, including flexibilities related to performance management and hiring and to training of managers;
- “(2) require managers to develop performance plans for individual members of the acquisition workforce in order to give members an understanding of how their performance contributes to their organization’s mission and the success of the defense acquisition system (as defined in section 2545 of this title);
- “(3) to the extent appropriate, use the lessons learned from the acquisition demonstration project carried out under section 1762 of this title related to contribution-based compensation and appraisal, and how those lessons may be applied within the General Schedule system;
- “(4) develop attractive career paths;
- “(5) encourage continuing education and training;
- “(6) develop appropriate procedures for warnings during performance evaluations and due process for members of the acquisition workforce who consistently fail to meet performance standards;
- “(7) take full advantage of the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010, (Public Law 111–84; 123 Stat. 2496; 10 U.S.C. 1580 note prec.);
- “(8) use the authorities for highly qualified experts under section 9903 of title 5, to hire experts who are skilled acquisition professionals to—
- “(A) serve in leadership positions within the acquisition workforce to strengthen management and oversight;
- “(B) provide mentors to advise individuals within the acquisition workforce on their career paths and opportunities to advance and excel within the acquisition workforce; and
- “(C) assist with the design of education and training courses and the training of individuals in the acquisition workforce; and
- “(9) use the authorities for expedited security clearance processing pursuant to section 1564 of this title.
- “(c) NEGOTIATIONS.—Any action taken by the Secretary under this section, or to implement this section, shall be subject to the requirements of chapter 71 of title 5.
- “(d) REGULATIONS.—Any rules or regulations prescribed pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2) of title 5, and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1) of such title.”.
- (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 1701 the following new item:
- “1701a. Management for acquisition workforce excellence.”.
- (b) AUTHORITY TO APPOINT HIGHLY QUALIFIED EXPERTS ON PART-TIME BASIS.—Section 9903(b)(1) of title 5, United States Code, is amended by inserting “, on a full-time or part-time basis,” after “positions in the Department of Defense” the first place it appears.
- SEC. 202. AMENDMENTS TO THE ACQUISITION WORKFORCE DEMONSTRATION PROJECT.**
- (a) CODIFICATION INTO TITLE 10.—
- (1) IN GENERAL.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1761 the following new section:
- “§ 1762. Demonstration project relating to certain acquisition personnel management policies and procedures**
- “(a) COMMENCEMENT.—The Secretary of Defense is encouraged to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

“(b) TERMS AND CONDITIONS.—(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

“(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—

“(A) ‘180 days’ in subsection (b)(4) of such section shall be deemed to read ‘120 days’;

“(B) ‘90 days’ in subsection (b)(6) of such section shall be deemed to read ‘30 days’; and

“(C) subsection (d)(1) of such section shall be disregarded.

“(3) Paragraph (2) shall not apply with respect to a demonstration project unless—

“(A) for each organization or team participating in the demonstration project—

“(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

“(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

“(B) the demonstration project commences before October 1, 2007.

“(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in the demonstration project under this section may not exceed 120,000.

“(d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

“(e) ASSESSMENT.—(1) The Secretary of Defense shall designate an independent organization to review the acquisition workforce demonstration project described in subsection (a).

“(2) Such assessment shall include:

“(A) A description of the workforce included in the project.

“(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran’s preferences.

“(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

“(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

“(E) How the project allows the organization to better meet mission needs.

“(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

“(G) Whether there is a process for (i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period, and (ii) setting timetables for performance appraisals.

“(H) The project’s impact on career progression.

“(I) The project’s appropriateness or inappropriateness in light of the complexities of the workforce affected.

“(J) The project’s sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

“(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

“(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

“(3) The first such assessment under this subsection shall be completed not later than September 30, 2011, and subsequent assessments shall be completed every two years thereafter until the termination of the project. The Secretary shall submit to the covered congressional committees a copy of the assessment within 30 days after receipt by the Secretary of the assessment.

“(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term ‘covered congressional committees’ means—

“(1) the Committees on Armed Services of the Senate and the House of Representatives;

“(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(3) the Committee on Oversight and Government Reform of the House of Representatives.

“(g) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration program under this section shall terminate on September 30, 2017.

“(h) CONVERSION.—Within six months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of chapter 87 of title 10, United States Code, is amended by inserting after the item relating to section 1761 the following new item:

“1762. Demonstration project relating to certain acquisition personnel management policies and procedures.”

(b) CONFORMING REPEAL.—Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 1701 note) is repealed.

**SEC. 203. INCENTIVE PROGRAMS FOR CIVILIAN AND MILITARY PERSONNEL IN THE ACQUISITION WORKFORCE.**

(a) IN GENERAL.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1762, as added by section 202, the following new section:

**“§ 1763. Incentive programs for civilian and military personnel in the acquisition workforce**

“(a) CIVILIAN ACQUISITION WORKFORCE INCENTIVES.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce by providing rewards for employees who contribute to achieving the agency’s performance goals. The system of incentives shall include provisions that—

“(1) relate salary increases, bonuses, and awards to performance and contribution to the agency mission (including the extent to which the performance of personnel in such workforce contributes to achieving the goals and standards established for acquisition programs pursuant to section 2545 of this title;

“(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such goals and standards;

“(3) use the Department of Defense Civilian Workforce Incentive Fund established pursuant to section 9902(a) of title 5; and

“(4) provide opportunities for career broadening experiences for high performers.

“(b) MILITARY ACQUISITION WORKFORCE INCENTIVES.—The Secretaries of the military departments shall fully use and enhance incentive programs that reward individuals, through recognition certificates or cash awards, for suggestions of process improvements that contribute to improvements in efficiency and economy and a better way of doing business.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of chapter 87 of title 10, United States Code, is amended by inserting after the item relating to section 1762, as added by section 202, the following new item:

“1763. Incentive programs for civilian and military personnel in the acquisition workforce.”

**SEC. 204. CAREER DEVELOPMENT FOR CIVILIAN AND MILITARY PERSONNEL IN THE ACQUISITION WORKFORCE.**

(a) CAREER PATHS.—

(1) AMENDMENT.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1722a the following new section:

**“§ 1722b. Special requirements for civilian employees in the acquisition field**

“(a) REQUIREMENT FOR POLICY AND GUIDANCE REGARDING CIVILIAN PERSONNEL IN ACQUISITION.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish policies and issue guidance to ensure the proper development, assignment, and employment of civilian members of the acquisition workforce to achieve the objectives specified in subsection (b).

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

“(1) A career path in the acquisition field that attracts the highest quality civilian personnel, from either within or outside the Federal Government.



“(2) A deliberate workforce development strategy that increases attainment of key experiences that contribute to a highly qualified acquisition workforce.

“(3) Sufficient opportunities for promotion and advancement in the acquisition field.

“(4) A sufficient number of qualified, trained members eligible for and active in the acquisition field to ensure adequate capacity, capability, and effective succession for acquisition functions, including contingency contracting, of the Department of Defense.

“(c) INCLUSION OF INFORMATION IN ANNUAL REPORT.—The Secretary of Defense shall include in the report to Congress required under section 115b(d) of this title the following information related to the acquisition workforce for the period covered by the report (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, Marine Corps, Defense Agencies, and Office of the Secretary of Defense):

“(1) The total number of persons serving in the Acquisition Corps, set forth separately for members of the armed forces and civilian employees, by grade level and by functional specialty.

“(2) The total number of critical acquisition positions held, set forth separately for members of the armed forces and civilian employees, by grade level and by other appropriate categories (including by program manager, deputy program manager, and division head positions). For each such category, the report shall specify the number of civilians holding such positions compared to the total number of positions filled.

“(3) The number of employees to whom the requirements of subsections (b)(2)(A) and (b)(2)(B) of section 1732 of this title did not apply because of the exceptions provided in paragraphs (1) and (2) of section 1732(c) of this title, set forth separately by type of exception.

“(4) The number of program managers and deputy program managers who were reassigned after completion of a major milestone occurring closest in time to the date on which the person has served in the position for four years (as required under section 1734(b) of this title), and the proportion of those reassignments to the total number of reassignments of program managers and deputy program managers, set forth separately for program managers and deputy program managers. The Secretary also shall include the average length of assignment served by program managers and deputy program managers so reassigned.

“(5) The number of persons, excluding those reported under paragraph (4), in critical acquisition positions who were reassigned after a period of three years or longer (as required under section 1734(a) of this title), and the proportion of those reassignments to the total number of reassignments of persons, excluding those reported under paragraph (4), in critical acquisition positions.

“(6) The number of times a waiver authority was exercised under section 1724(d), 1732(d), 1734(d), or 1736(c) of this title or any other provision of this chapter (or other provision of law) which permits the waiver of any requirement relating to the acquisition workforce, and in the case of each such authority, the reasons for exercising the authority. The Secretary may present the information provided under this paragraph by category or grouping of types of waivers and reasons.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of chapter 87 of title 10, United States Code, is amended by inserting after the item relating to section 1722a the following new item:

“1722b. Special requirements for civilian employees in the acquisition field.”.

(b) CAREER EDUCATION AND TRAINING.—Chapter 87 of title 10, United States Code, is amended in section 1723 by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection:

“(b) CAREER PATH REQUIREMENTS.—For each career path, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics shall establish requirements for the completion of course work and related on-the-job training and demonstration of qualifications in the critical acquisition-related duties and tasks of the career path. The Secretary of Defense, acting through the Under Secretary, shall also—

“(1) encourage individuals in the acquisition workforce to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities; and

“(2) develop key work experiences, including the creation of a program sponsored by the Department of Defense that facilitates the periodic interaction between individuals in the acquisition workforce and the end user in such end

user’s environment to enhance the knowledge base of such workforce, for individuals in the acquisition workforce so that the individuals may gain in-depth knowledge and experience in the acquisition process and become seasoned, well-qualified members of the acquisition workforce.”.

**SEC. 205. RECERTIFICATION AND TRAINING REQUIREMENTS.**

(a) CONTINUING EDUCATION.—Section 1723 of title 10, United States Code, as amended by section 204, is further amended by amending subsection (a) to read as follows:

“(a) QUALIFICATION REQUIREMENTS.—(1) The Secretary of Defense shall establish education, training and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements, the Secretary shall ensure the availability and sufficiency of training in all areas of acquisition, including additional training courses with an emphasis on services contracting, long-term sustainment strategies, information technology, and rapid acquisition.

“(2) In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.

“(3) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish requirements for continuing education and periodic renewal of an individual’s certification. Any requirement for a certification renewal shall not require a renewal more often than once every five years.”.

(b) STANDARDS FOR TRAINING.—

(1) IN GENERAL.—Subchapter IV of Chapter 87 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 1748. Guidance and standards for acquisition workforce training**

“(a) FULFILLMENT STANDARDS.—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 of sections 1723, 1724, and 1735 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.

“(b) GUIDANCE AND STANDARDS RELATING TO CONTRACTS FOR TRAINING.—The Secretary of Defense shall develop appropriate guidance and standards to ensure that the Department of Defense will continue, where appropriate and cost-effective, to enter into contracts for the training requirements of sections 1723, 1724, and 1735 of this title, while maintaining appropriate control over the content and quality of such training.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“1748. Guidance and standards for acquisition workforce training.”.

(3) DEADLINE FOR FULFILLMENT STANDARDS.—The fulfillment standards required under section 1748(a) of title 10, United States Code, as added by paragraph (1), shall be developed not later than 90 days after the date of the enactment of this Act.

(4) CONFORMING REPEAL.—Section 853 of Public Law 105–85 (111 Stat. 1851) is repealed.

**SEC. 206. INFORMATION TECHNOLOGY ACQUISITION WORKFORCE.**

(a) IN GENERAL.—

(1) INFORMATION TECHNOLOGY.—Subchapter II of chapter 87 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 1725. Information technology acquisition positions**

“(a) PLAN REQUIRED.—The Secretary of Defense shall develop and carry out a plan to strengthen the part of the acquisition workforce that specializes in information technology. The plan shall include the following:

“(1) Defined targets for billets devoted to information technology acquisition.

“(2) Specific certification requirements for individuals in the acquisition workforce who specialize in information technology acquisition.

“(3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘information technology’ has the meaning provided such term in section 11101 of title 40 and includes information technology incorporated into a major weapon system.

“(2) The term ‘major weapon system’ has the meaning provided such term in section 2379(f) of this title.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“1725. Information technology acquisition positions.”.

(b) DEADLINE.—The Secretary of Defense shall develop the plan required under section 1725 of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.

**SEC. 207. DEFINITION OF ACQUISITION WORKFORCE.**

Section 101(a) of title 10, United States Code, is amended by inserting after paragraph (17) the following new paragraph:

“(18) The term ‘acquisition workforce’ means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.”.

**SEC. 208. DEFENSE ACQUISITION UNIVERSITY CURRICULUM REVIEW.**

(a) CURRICULUM REVIEW.—Not later than one year after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall lead a review of the curriculum offered by the Defense Acquisition University to ensure it adequately supports the training and education requirements of acquisition professionals, particularly in service contracting, long term sustainment strategies, information technology, and rapid acquisition. The review shall also involve the service acquisition executives of each military department.

(b) ANALYSIS OF FUNDING REQUIREMENTS FOR TRAINING.—Following the review conducted under subsection (a), the Secretary of Defense shall analyze the most recent future-years defense program to determine the amounts of estimated expenditures and proposed appropriations necessary to support the training requirements of the amendments made by section 205 of this Act, including any new training requirements determined after the review conducted under subsection (a). The Secretary shall identify any additional funding needed for such training requirements in the separate chapter on the defense acquisition workforce required in the next annual strategic workforce plan under 115b of title 10, United States Code.

(c) REQUIREMENT FOR ONGOING CURRICULUM DEVELOPMENT WITH CERTAIN SCHOOLS.—

(1) REQUIREMENT.—Section 1746 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) CURRICULUM DEVELOPMENT.—The President of the Defense Acquisition University shall work with the relevant professional schools and degree-granting institutions of the Department of Defense and military departments to ensure that best practices are used in curriculum development to support acquisition workforce positions.”.

(2) AMENDMENT TO SECTION HEADING.—(A) The heading of section 1746 of such title is amended to read as follows:

**“§ 1746. Defense Acquisition University”.**

(B) The item relating to section 1746 in the table of sections at the beginning of subchapter IV of chapter 87 of such title is amended to read as follows:

“1746. Defense Acquisition University.”.

**SEC. 209. COST ESTIMATING INTERNSHIP AND SCHOLARSHIP PROGRAMS.**

(a) PURPOSE.—The purpose of this section is to require the Department of Defense to develop internship and scholarship programs in cost estimating to underscore the importance of cost estimating, as a core acquisition function, to the acquisition process.

(b) REQUIREMENT.—The Secretary of Defense shall develop intern and scholarship programs in cost estimating for purposes of improving education and training in cost estimating and providing an opportunity to meet any certification requirements in cost estimating.

(c) IMPLEMENTATION.—Such programs shall be established not later than 270 days after the date of the enactment of this Act and shall be implemented for a four-year period following establishment of the programs.

## TITLE III—FINANCIAL MANAGEMENT

### SEC. 301. INCENTIVES FOR ACHIEVING AUDITABILITY.

(a) **PREFERENTIAL TREATMENT AUTHORIZED.**—The Under Secretary of Defense (Comptroller) shall ensure that any component of the Department of Defense that the Under Secretary determines has financial statements validated as ready for audit earlier than September 30, 2017, shall receive preferential treatment, as the Under Secretary determines appropriate—

- (1) in financial matter matters, including—
  - (A) consistent with the need to fund urgent warfighter requirements and operational needs, priority in the release of appropriated funds to such component;
  - (B) relief from the frequency of financial reporting of such component in cases in which such reporting is not required by law;
  - (C) relief from departmental obligation and expenditure thresholds to the extent that such thresholds establish requirements more restrictive than those required by law; or
  - (D) such other measures as the Under Secretary considers appropriate; and
- (2) in the availability of personnel management incentives, including—
  - (A) the size of the bonus pool available to the financial and business management workforce of the component;
  - (B) the rates of promotion within the financial and business management workforce of the component;
  - (C) awards for excellence in financial and business management; or
  - (D) the scope of work assigned to the financial and business management workforce of the component.

(b) **INCLUSION OF INFORMATION IN REPORT.**—The Under Secretary shall include information on any measure initiated pursuant to this section in the next semiannual report pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note) after such measure is initiated.

(c) **EXPIRATION.**—This section shall expire on September 30, 2017.

(d) **DEFINITION.**—In this section, the term “component of the Department of Defense” means any organization within the Department of Defense that is required to submit an auditable financial statement to the Secretary of Defense.

### SEC. 302. MEASURES REQUIRED AFTER FAILURE TO ACHIEVE AUDITABILITY.

(a) **IN GENERAL.**—The Secretary of Defense shall ensure that corrective measures are immediately taken to address the failure of a component of the Department of Defense to achieve a financial statement validated as ready for audit by September 30, 2017.

(b) **MEASURES REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall develop and issue guidance detailing measures to be taken in accordance with subsection (a). Such measures shall include—

- (1) the development of a remediation plan to ensure the component can achieve a financial statement validated as ready for audit within one year;
- (2) additional reporting requirements that may be necessary to mitigate financial risk to the component;
- (3) delaying the release of appropriated funds to such component, consistent with the need to fund urgent warfighter requirements and operational needs, until such time as the Secretary is assured that the component will achieve a financial statement validated as ready for audit within one year;
- (4) specific consequences for key personnel in order to ensure accountability within the leadership of the component; and
- (5) such other measures as the Secretary considers appropriate.

(c) **DEFINITION.**—The term “component” of the Department of Defense means any organization within the Department of Defense that is required to submit an auditable financial statement to the Secretary of Defense.

### SEC. 303. REVIEW OF OBLIGATION AND EXPENDITURE THRESHOLDS.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

- (1) Department of Defense program managers should be encouraged to place a higher priority on seeking the best value for the Government than on meeting arbitrary benchmarks for spending; and
- (2) actions to carry out paragraph (1) should be supported by the Department’s leadership at every level.

(b) **POLICY REVIEW.**—Not later than 180 days after the date of the enactment of this Act, the Chief Management Officer of the Department of Defense, in coordina-

tion with the Chief Management Officer of each military department, shall review and update as necessary all relevant policy and instruction regarding obligation and expenditure benchmarks to ensure that such guidance does not inadvertently prevent achieving the best value for the Government in the obligation and expenditure of funds.

(c) **PROCESS REVIEW.**—Not later than one year after the date of the enactment of this Act, the Chief Management Officer, in coordination with the Chief Management Officer of each military department, the Director of the Office of Performance Assessment and Root Cause Analysis, the Under Secretary of Defense (Comptroller), and the Comptrollers of the military departments, shall conduct a comprehensive review of the use and value of obligation and expenditure benchmarks and propose new benchmarks or processes for tracking financial performance, including, as appropriate—

(1) increased reliance on individual obligation and expenditure plans for measuring program financial performance;

(2) mechanisms to improve funding stability and to increase the predictability of the release of funding for obligation and expenditure; and

(3) streamlined mechanisms for a program manager to submit an appeal for funding changes and to have such appeal evaluated promptly.

(d) **TRAINING.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller) shall ensure that as part of the training required for program managers and business managers, an emphasis is placed on obligating and expending appropriated funds in a manner that achieves the best value for the Government and that the purpose and limitations of obligation and expenditure benchmarks are made clear.

## **TITLE IV—INDUSTRIAL BASE**

### **SEC. 401. EXPANSION OF THE INDUSTRIAL BASE.**

(a) **PROGRAM TO EXPAND INDUSTRIAL BASE REQUIRED.**—The Secretary of Defense shall establish a program to expand the industrial base of the Department of Defense to increase the Department's access to innovation and the benefits of competition.

(b) **IDENTIFYING AND COMMUNICATING WITH NONTRADITIONAL SUPPLIERS.**—The program established under subsection (a) shall use tools and resources available within the Federal Government and available from the private sector, to provide a capability for identifying and communicating with nontraditional suppliers, including commercial firms and firms of all business sizes, that are engaged in markets of importance to the Department of Defense.

(c) **INDUSTRIAL BASE REVIEW.**—The program required by subsection (a) shall include a continuous effort to review the industrial base supporting the Department of Defense, including the identification of markets of importance to the Department of Defense.

(d) **DEFINITION.**—In this section:

(1) **NONTRADITIONAL SUPPLIERS.**—The term “nontraditional suppliers” means firms that have received contracts from the Department of Defense with a total value of not more than \$100,000 in the previous 5 years.

(2) **MARKETS OF IMPORTANCE TO THE DEPARTMENT OF DEFENSE.**—The term “markets of importance to the Department of Defense” means industrial sectors in which the Department of Defense spends more than \$500,000,000 annually.

### **SEC. 402. COMMERCIAL PRICING ANALYSIS.**

Section 803(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 10 U.S.C. 2306a note) is amended to read as follows:

“(c) **COMMERCIAL PRICE TREND ANALYSIS.**—

“(1) The Secretary of Defense shall develop and implement procedures that, to the maximum extent practicable, provide for the collection and analysis of information on price trends for categories of exempt commercial items described in paragraph (2).

“(2) A category of exempt commercial items referred to in paragraph (1) consists of exempt commercial items that are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends.

“(3) The analysis of information on price trends under paragraph (1) shall include, in any category in which significant escalation in prices is identified, a more detailed examination of the causes of escalation for such prices within the

category and whether such price escalation is consistent across the Department of Defense.

“(4) The head of a Department of Defense agency or the Secretary of a military department shall take appropriate action to address any unjustified escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

“(5) Not later than April 1 of each of year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken to identify and address any unjustified price escalation for the categories of items.

“(6) This subsection shall not be in effect on and after April 1, 2013.”.

**SEC. 403. CONTRACTOR AND GRANTEE DISCLOSURE OF DELINQUENT FEDERAL TAX DEBTS.**

(a) REQUIREMENT.—

(1) IN GENERAL.—Chapter 37 of title 31, United States Code, is amended by adding at the end of subchapter II the following new section:

**“§ 3720F. Contractor and grantee disclosure of delinquent Federal tax debts**

“(a) REQUIREMENT RELATING TO CONTRACTS.—The head of any executive agency that issues an invitation for bids or a request for proposals for a contract in an amount greater than the simplified acquisition threshold shall require each person that submits a bid or proposal to submit with the bid or proposal a form—

“(1) certifying that the person does not have a seriously delinquent tax debt; and

“(2) authorizing the Secretary of the Treasury to disclose to the head of the agency information strictly limited to verifying whether the person has a seriously delinquent tax debt.

“(b) REQUIREMENT RELATING TO GRANTS.—The head of any executive agency that offers a grant in excess of an amount equal to the simplified acquisition threshold may not award such grant to any person unless such person submits with the application for such grant a form—

“(1) certifying that the person does not have a seriously delinquent tax debt; and

“(2) authorizing the Secretary of the Treasury to disclose to the head of the executive agency information strictly limited to verifying whether the person has a seriously delinquent tax debt.

“(c) FORM FOR RELEASE OF INFORMATION.—The Secretary of the Treasury shall make available to all executive agencies a standard form for the certification and authorization described in subsections (a) and (b).

“(d) DEFINITIONS.—In this section:

“(1) CONTRACT.—The term ‘contract’ means a binding agreement entered into by an executive agency for the purpose of obtaining property or services, but does not include—

“(A) a contract for property or services that is intended to be entered into through the use of procedures other than competitive procedures by reason of section 2304(c)(2) of this title; or

“(B) a contract designated by the head of the agency as necessary to the national security of the United States.

“(2) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

“(3) PERSON.—The term ‘person’ includes—

“(A) an individual;

“(B) a partnership; and

“(C) a corporation.

“(4) SERIOUSLY DELINQUENT TAX DEBT.—The term ‘seriously delinquent tax debt’—

“(A) means any Federal tax liability—

“(i) that exceeds \$3,000;

“(ii) that has been assessed by the Secretary of the Treasury and not paid; and

“(iii) for which a notice of lien has been filed in public records; and

“(B) does not include any Federal tax liability—

“(i) being paid in a timely manner under an offer-in-compromise or installment agreement;

“(ii) with respect to which collection due process proceedings are not completed; or

“(iii) with respect to which collection due process proceedings are completed and no further payment is required.

“(5) SIMPLIFIED ACQUISITION THRESHOLD.—The term ‘simplified acquisition threshold’ has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

“(e) REGULATIONS.—The Administrator for Federal Procurement Policy, in consultation with the Secretary of the Treasury, shall promulgate regulations that—

“(1) treat corporations and partnerships as having a seriously delinquent tax debt if such corporation or partnership is controlled (directly or indirectly) by persons who have a seriously delinquent tax debt;

“(2) provide for the proper application of subsections (a)(2) and (b)(2) in the case of corporations and partnerships; and

“(3) provide for the proper application of subsection (a) to first-tier subcontractors that are identified in a bid or proposal and are a significant part of a bid or proposal team.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 of such title is amended by adding after the item relating to section 3720E the following new item:

“3720F. Contractor and grantee disclosure of delinquent Federal tax debts.”.

(b) REVISION OF FEDERAL ACQUISITION REGULATION.—Not later than 90 days after the final promulgation of regulations under section 3720F(e) of title 31, United States Code, as added by subsection (a), the Federal Acquisition Regulation shall be revised to incorporate the requirements of section 3720F of such title.

**SEC. 404. INDEPENDENCE OF CONTRACT AUDITS AND BUSINESS SYSTEM REVIEWS.**

(a) DEFENSE CONTRACT AUDIT AGENCY GENERAL COUNSEL.—

(1) IN GENERAL.—Subchapter II of chapter 8 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 204. Defense Contract Audit Agency general counsel**

“(a) GENERAL COUNSEL.—The Director of the Defense Contract Audit Agency shall appoint a General Counsel of the Defense Contract Audit Agency.

“(b) DUTIES.—(1) The General Counsel shall perform such functions as the Director may prescribe and shall serve at the discretion of the Director.

“(2) Notwithstanding section 140(b) of this title, the General Counsel shall be the chief legal officer of the Defense Contract Audit Agency.

“(3) The Defense Contract Audit Agency shall be the exclusive legal client of the General Counsel.

“(c) OFFICE OF THE GENERAL COUNSEL.—There is established an Office of the General Counsel within the Defense Contract Audit Agency. The Director may appoint to the Office to serve as staff of the General Counsel such legal counsel as the Director determines is appropriate.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of chapter 8 of such title is amended by adding at the end the following new item:

“204. Defense Contract Audit Agency general counsel.”.

(b) CRITERIA FOR BUSINESS SYSTEM REVIEWS.—

(1) IN GENERAL.—Chapter 131 of title 10, United States Code, is amended by inserting after section 2222 the following new section:

**“§ 2222a. Criteria for business system reviews**

“(a) CRITERIA FOR BUSINESS SYSTEM REVIEWS.—The Secretary of Defense shall ensure that any contractor business system review carried out by a military department, a Defense Agency, or a Department of Defense Field Activity—

“(1) complies with generally accepted government auditing standards issued by the Comptroller General;

“(2) is performed by an audit team that does not engage in any other official activity (audit-related or otherwise) involving the contractor concerned;

“(3) is performed in a time and manner consistent with a documented assessment of the risk to the Federal Government; and

“(4) involves testing on a representative sample of transactions sufficient to fully examine the integrity of the contractor business system concerned.

“(b) CONTRACTOR BUSINESS SYSTEM REVIEW DEFINED.—In this section, the term ‘contractor business system review’ means an audit of policies, procedures, and internal controls relating to accounting and management systems of a contractor.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by inserting after the item relating to section 2222 the following new item:

“2222a. Criteria for business system reviews.”.

(c) CONTRACT AUDIT GUIDANCE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance relating to contract audits carried out by a military department, a defense agency, or a Department of Defense field activity that are not contractor business system reviews, as described under section 2222a of title 10, United States Code, that—

(1) requires that such audits comply with generally accepted government auditing standards issued by the Comptroller General and are performed in a time and manner consistent with a documented assessment of risk to the Federal Government;

(2) establishes guidelines for discussions of the scope of the audit with the contractor concerned that ensure that such scope is not improperly influenced by the contractor;

(3) provides for withholding of contract payments when necessary to compel the submission of documentation from the contractor; and

(4) requires that the results of contract audits performed on behalf of an agency of the Department of Defense be shared with other Federal agencies upon request, without reimbursement.

(d) EFFECTIVE DATES.—

(1) SECTION 204.—Section 204 of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act.

(2) SECTION 2222A.—Section 2222a of title 10, United States Code, as added by subsection (b), shall take effect 180 days after the date of the enactment of this Act.

**SEC. 405. BLUE RIBBON PANEL ON ELIMINATING BARRIERS TO CONTRACTING WITH THE DEPARTMENT OF DEFENSE.**

(a) REQUIREMENT TO ESTABLISH.—The Secretary of Defense shall establish a panel consisting of owners of large and small businesses that are not traditional defense suppliers, for purposes of creating a set of recommendations on eliminating barriers to contracting with the Department of Defense and its defense supply centers.

(b) MEMBERS.—The panel shall consist of nine members, of whom—

(1) three shall be appointed by the Secretary of the Army;

(2) three shall be appointed by the Secretary of the Navy; and

(3) three shall be appointed by the Secretary of the Air Force.

(c) APPOINTMENT DEADLINE.—Members shall be appointed to the panel not later than 180 days after the date of the enactment of this Act.

(d) DUTIES.—The panel shall be responsible for developing a set of recommendations on eliminating barriers to contracting with the Department of Defense and its defense supply centers.

(e) REPORT.—Not later than one year after the date of the enactment of this Act, the panel shall submit to Congress a report containing its recommendations.

**SEC. 406. INCLUSION OF THE PROVIDERS OF SERVICES AND INFORMATION TECHNOLOGY IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.**

(a) REVISED DEFINITIONS.—Section 2500 of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “or maintenance” and inserting “integration, services, or information technology”;

(2) in paragraph (4), by striking “or production” and inserting “production, integration, services, or information technology”;

(3) in paragraph (9)(A), by striking “and manufacturing” and inserting “manufacturing, integration, services, and information technology”; and

(4) by adding at the end the following new paragraph:

“(15) The term ‘integration’ means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy contract requirements.”.

(b) REVISED OBJECTIVES.—Section 2501(a) of such title is amended—

(1) in paragraph (1), by striking “Supplying and equipping” and inserting “Supplying, equipping, and supporting”;

(2) in paragraph (2), by striking “and logistics for” and inserting “logistics, and other activities in support of”;

(3) in paragraph (4), by striking “and produce” and inserting “, produce, and support”; and

(4) by redesignating paragraph (6) as paragraph (8) and inserting after paragraph (5) the following new paragraphs:



“(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

“(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.”

(c) REVISED ASSESSMENTS.—Section 2505(b)(4) of such title is amended by inserting after “of this title)” the following “or major automated information systems (as defined in section 2445a of this title)”.

(d) REVISED POLICY GUIDANCE.—Section 2506(a) of such title is amended by striking “budget allocation, weapons” and inserting “strategy, management, budget allocation,”.

#### PURPOSE AND BACKGROUND

The purpose of H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010, is to amend title 10, United States Code, and to establish other new statutory requirements, to improve performance and the quality of outcomes in the defense acquisition system. On March 17, 2009, Chairman Ike Skelton and then-Ranking Member John McHugh appointed a Panel on Defense Acquisition Reform from among members of the committee to carry out a comprehensive review of the defense acquisition system. The review was motivated by a general sense that the Department of Defense’s (DOD) acquisition system was not responsive enough to today’s mission needs, not rigorous enough in protecting taxpayers, and not disciplined enough in the acquisition of weapon systems for tomorrow’s wars.

A central finding of this review was that while the nature of defense acquisition has substantially changed in the last two decades, the defense acquisition system has not kept pace. The system remains structured primarily for the acquisition of weapon systems at a time when services represent a much larger share of the Department’s acquisitions. As a result, the Department’s formal acquisition policy has limited application to the majority of the Department’s acquisitions. Furthermore, while the Department is currently working to modernize in the “information age,” the acquisition system is particularly poorly designed for the acquisition of information technology. Even in the acquisition of weapon systems, the Department’s historical strength, the system continues to generate development timeframes for major systems measured in decades, an approach which has resulted in unacceptable cost growth, negative effects on industry, and in too many cases, a failure to timely meet warfighter needs.

The acquisition of weapon systems, the acquisition of commercial goods and commodities, the acquisition of services, and the acquisition of information technology have diverse features and challenges. Across all categories of acquisition, however, significant improvements can be made in: managing the acquisition system; improving the requirements process; developing and incentivizing the highest quality acquisition workforce; reforming financial management; and getting the best from the industrial base. This bill would put in place the statutory framework needed to achieve these improvements.

For most categories of acquisition, only anecdotal information exists about instances where the system either performed well, or poorly. Even where real performance metrics currently exist, they are not sufficient. H.R. 5013 would establish a performance man-

agement program that would allow DOD's senior leaders to identify and correct problems in the defense acquisition system, and reinforce and reward success. This bill would expand the mandate of the Office of Performance Assessment and Root Cause Analysis (PARCA) to serve a performance assessment function for the acquisition system. PARCA would track organizations throughout the defense acquisition system in meeting pre-negotiated goals for acquisition performance. Organizations would see real consequences for both success and failure in meeting their goals.

In addition to instituting performance management for the acquisition system, this bill would establish a performance management approach for the requirements processes upon which the acquisition process depends. Challenges with the requirements process are a major factor in poor acquisition outcomes. Most concerning is that the requirements process for the acquisition of services, the largest category of acquisition, is almost entirely ad hoc. The process for developing requirements for the acquisition of weapon systems is overly cumbersome, but also lacking in the expertise and capacity required to truly vet joint military requirements. This bill would substantially improve both processes.

H.R. 5013 would establish the acquisition workforce as a model within the Department for more flexible personnel management that rewards success and includes accountability. The Department's Acquisition Workforce Demonstration Project and the authorities in section 1113 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84) provide a solid foundation for creating an acquisition workforce that can obtain the value the Department needs. The Department requires flexibility to efficiently hire qualified new employees, and to manage its workforce in a manner that promotes superior performance. This bill provides these tools so that the Department can develop new regulations for the civilian workforce including fair, credible, and transparent methods for hiring and assigning personnel, and for appraising and incentivizing employee performance.

Underlying the success of the defense acquisition system is the Department's financial management system. The inability to provide accurate and timely financial information prevents the Department from adequately managing its acquisition programs and from implementing true acquisition reform. The implications of poor financial management stretch beyond the Department of Defense. Indeed, given that the Department is the largest agency in the federal government, owning 86 percent of the government's assets (estimated at \$4.6 trillion), it is essential that the Department maintain strong financial management and business systems. This bill would provide incentives to DOD components that are able to obtain clean audit opinions before the statutory deadline of September 30, 2017, and also imposes consequences if this deadline is not met.

H.R. 5013 also focuses on how to get the most out of the industrial base. The Department has long worked to protect those elements of the defense industrial base that are perishable and unique to the Department. The committee supports this priority. However, the committee believes that the Department can enhance competition and gain access to more innovative technology by developing measures to utilize more of the industrial base, especially

small- and mid-tier businesses. The committee also believes that the Department is best served when it deals with responsible contractors. Contracting officers need access to accurate information on contractors that are known to be in violation of the law in making the determination about whether a contractor is responsible.

#### LEGISLATIVE HISTORY

H.R. 5013 was introduced on April 14, 2010, and referred to the Committee on Armed Services, and in addition to the Committee on Oversight and Government Reform.

On April 21, 2010, the Committee on Armed Services held a mark-up session to consider H.R. 5013, as introduced. The committee, a quorum being present, ordered reported H.R. 5013, as amended, to the House with a favorable recommendation by a record vote of 56–0.

#### HEARINGS

Committee consideration of the matters contained in H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010, was informed by multiple committee hearings. The committee's Panel on Defense Acquisition Reform held 14 hearings and 2 briefings on various aspects of the defense acquisition system. These hearings involved testimony from many current and former officials of the Department of Defense who are knowledgeable on acquisition matters as well as representatives of industry and of the acquisition workforce. The panel's work culminated in a hearing on March 11, 2010, with the Honorable Ashton Carter, Under Secretary of Defense for Acquisition, Technology, and Logistics, the Honorable Robert Hale, Under Secretary of Defense (Comptroller), Ms. Elizabeth A. McGrath, Acting Deputy Chief Management Officer, Department of Defense, and Mr. Shay Assad, Acting Assistant Secretary of Defense for Acquisition and Director, Defense Procurement and Acquisition Policy, on Administration perspectives on managing the defense acquisition system and the defense acquisition workforce. The witnesses provided testimony on the panel's interim findings and recommendations allowing the committee to gain the Administration's views on the matters that form the core of H.R. 5013.

#### SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of those sections of H.R. 5013, as amended, by the Committee on Armed Services.

##### Section 1—Short Title

This section would establish the short title of the bill as the “Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010.”

##### Section 2—Definition of Congressional Defense Committees

This section would define the term “congressional defense committee” as it is defined in section 101 of title 10, United States Code. The term would include the Senate Armed Services Com-

mittee, the House Armed Services Committee, the Subcommittee on Defense of the Senate Appropriations Committee, and the Subcommittee on Defense of the House Appropriations Committee.

### Section 3—Table of Contents

This section would contain the table of contents for the bill.

## TITLE I—DEFENSE ACQUISITION SYSTEM

### OVERVIEW

Although Department of Defense policy and the name of this title refer explicitly to a “defense acquisition system,” there is in fact very little of the unity in the system that such a term implies. The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) exercises direct oversight over a relatively small percentage of acquisitions, mostly major defense acquisition programs, and recently, very large service contracts. Likewise, the bulk of overarching defense acquisition policy and congressional oversight focus applies to this portion of the defense acquisition system. The rest of the system, representing a majority of acquisition spending, is largely outside the day to day purview of USD(AT&L) and many of the most well known acquisition statutes do not apply. Much of the defense acquisition system is run entirely by the military departments and is not centrally managed. Furthermore, the character of the defense acquisition system varies greatly depending on the nature of the item being acquired. Acquisition at the Department of Defense (DOD) is funded, managed, overseen, and operated according to notably different processes depending on whether the category of item being acquired is a weapon system; a commercial good or commodity; an item being acquired rapidly in response to an urgent operational need; a military-unique or commercial service; or information technology.

The diversity in the acquisition system is in many cases appropriate. It does, however, present a significant management challenge, one that the Department is often unable to meet. Two of the major purposes of this title are to create a structure flexible enough to be used in managing the entire defense acquisition system, and to manage the system to achieve specific performance goals.

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.

Obtaining consistent, realistic requirements able to serve as a basis for the acquisition process is a critical problem in the defense acquisition system. Requirements in the weapon system acquisition context are governed by the Joint Capabilities Integration and Development System (JCIDS). The committee has received significant feedback about problems with the JCIDS process and its ability to

coordinate with acquisition. While the challenges in JCIDS are concerning, an even greater challenge exists in the context of requirements for the acquisition of services which are determined almost entirely in an ad hoc process. This title is intended to create a tool for improving JCIDS and requires the Department to establish a workable process for identifying, assessing, and approving requirements for the acquisition of services.

The Department's policy guidance on acquisition is found primarily in DOD Instruction (DODI) 5000.02, "Operation of the Defense Acquisition System." DODI 5000.02 was revised in December 2008 and again in December 2009 to reflect passage of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23). It is in many ways an excellent document with significant improvements in the areas of weapon systems acquisition and in establishing a policy for the acquisition of services. However, the Department needs to improve the communication of its policy guidance on service contracting and reexamine DODI 5000.02 and related guidance to ensure that mandates and requirements that are particular to the acquisition of weapon systems are not being inappropriately applied to other areas of acquisition, particularly the acquisition of services and information technology. The committee also recognizes that there will be acquisitions involving one or more categories of acquisition, such as a contract involving hardware and information technology elements. The Department should ensure that its acquisition professionals have sufficient guidance and expertise in all categories of acquisition to best meet the needs of the government. The Department should also develop guidance for formally communicating information on the Department's mission needs with industry that is independent of specific acquisition program and contracts. The purpose of this dialogue would be to provide industry with the insight needed to make necessary investments in capacity, infrastructure, and technology development to meet the Department's needs. Therefore, the committee urges the Department to involve the commercial and defense industrial bases in the assessment of mechanisms to communicate information to industry. This title would require the Department to review its acquisition policy guidance to address these matters.

#### ITEMS OF SPECIAL INTEREST

##### Acquisition Process for Information Technology

The National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84) included section 804, which called for an alternative acquisition process for information technology (IT) systems. The committee's Panel on Defense Acquisition Reform held a detailed hearing on issues in the acquisition of IT as part of its comprehensive review of the defense acquisition system.

The committee endorses the panel's IT acquisition-related findings, and encourages the Department of Defense to integrate these findings into its implementation plan for section 804. The panel's full set of findings can be found in its report, and includes recommendations that an alternative process for IT acquisition:

- (1) Determine clear performance metrics for specific programs from the start;

- (2) Foster an ongoing dialogue during the technology development process between the system developers and the warfighters;
- (3) Promote an open architecture approach that allows for more modularization of hardware and software;
- (4) Develop a plan for how to strengthen the IT acquisition workforce;
- (5) Implement alternative milestone decision points that are more consistent with commercial product development for IT;
- (6) Develop a process for competitive prototyping in the IT environment;
- (7) Develop a new test and evaluation approach that merges developmental and operational testing in a parallel fashion;
- (8) Place greater emphasis on the up-front market analysis; and
- (9) Conduct a rigorous analysis of contracting mechanisms and contract incentive structures to determine which work best for IT acquisitions.

#### Military Purpose Non-Developmental Items

The committee is aware of firms who develop products exclusively for the military, but accept no government research and development funding. These are typically smaller firms motivated to keep overhead costs to a minimum, much like firms competing in the commercial market. The committee notes that section 108 of this Act is intended to provide the Department of Defense with another tool to gain access to the country's total industrial base, especially smaller and non-traditional suppliers, as recommended by the Panel on Defense Acquisition Reform. The proposed military purpose non-developmental item exception to the submission of certified cost or pricing data, which is similar in effect to an existing exception for commercial items, is narrowly focused. The committee urges the Department to appropriately utilize this authority to eliminate the need for government research and development in cases where industry can and will develop its own solutions for military requirements and to speed the delivery of components and products to the warfighter.

#### Tailoring of Metrics

The proposed new performance assessment system that would be established by section 101 of this Act includes a list of potential metrics. This list is illustrative of the kinds of metrics the committee intends the Department of Defense to address. The committee notes that metrics relating to contract bundling and the acquisition of technical data were added to the list by a vote of the committee. The committee has provided the Secretary of Defense with discretion in the use of these metrics so that the system retains the flexibility to tailor metrics to each element of the defense acquisition system as the section requires. The committee recognizes that some metrics could not be usefully applied across the entire defense acquisition system. However, the committee intends that these metrics should be applied where their application is relevant.

The committee also urges the Department, in implementing a performance assessment system, to include a metric or metrics relating to small business utilization wherever appropriate for elements of the defense acquisition system. As with other metrics, a metric relating to small business utilization would require each applicable element of the defense acquisition system to develop a minimum standard and an objective goal for small business utilization. The committee notes that while the totality of the goals and standards for the defense acquisition system should support the Department in achieving its overall goals for small business utilization, goals and standards for different elements of the defense acquisition system can and should vary widely from each other and from the overall Department of Defense goal for utilization of small businesses.

#### Treatment of Services Acquisition in the Federal Acquisition Regulation

The committee recognizes that while specific rules have been created over the last few decades on government purchases and practices, the focus in the past primarily has been on goods, hardware, and real property, which has resulted in a culture that failed to fully recognize the applicability of certain regulatory principles to services acquisitions. As highlighted in the report of the Panel on Defense Acquisition Reform, “services require at least the same level of discipline as weapon systems acquisition. Such discipline is critical for planning, requirements definition, market research, price reasonableness determinations, and project management and oversight.” While the Federal Acquisition Regulation (FAR) now includes references to the term “services”, the committee believes that a more focused emphasis on services acquisition throughout the FAR would enhance and support the procurement and project management community in all aspects of the acquisition planning process. The congressional findings in section 107 of this Act would reinforce this view by noting that specific program management skills, tools, and processes need to be applied to services acquisitions. Appropriate cross references within FAR Part 37 (which specifically covers services acquisition) to other relevant parts of the FAR, as well as additional references to services throughout the remainder of the FAR, would facilitate this focus.

### LEGISLATIVE PROVISIONS

#### Section 101—Performance Management of the Defense Acquisition System

This section would create a new chapter 149 in title 10, United States Code, entitled “Performance Management of the Defense Acquisition System”, adding the following new sections: section 2545, relating to performance assessments of the defense acquisition system; section 2546, relating to audits of performance assessments; section 2547, relating to the use of performance assessments for managing performance; and section 2548, relating to the acquisition-related functions of the Chiefs of Staff of the Armed Forces. This section would direct the Secretary of Defense to implement

the requirements of the new chapter 149 in a phased manner over a 2 year period beginning on the date of enactment of this Act.

Section 2545, as added by this section, would require the Secretary of Defense to ensure that all elements of the defense acquisition system are subject to regular performance assessments at least annually. It would require each service acquisition executive within the Department of Defense to create metrics for each element of the defense acquisition system within system-wide categories developed by the Secretary. Each metric would be associated with specific goals and standards. The metrics, goals, and standards would be tailored to, and negotiated with, the specific element of the defense acquisition system being assessed. The Director of the Office of Performance Assessment and Root Cause Analysis (PARCA) would be responsible for overseeing all performance assessments in the Department and this section would provide PARCA with the authority to access and retain all records necessary to fulfill this function.

Section 2546, as added by this section, would require that the performance assessments performed under the new section 2545 be subjected to periodic audits to determine their accuracy, reliability, and completeness. Audits under this section would be required to meet generally accepted government auditing standards; use a risk based approach to audit planning; and appropriately account for issues associated with auditing assessments of activities occurring in a contingency operation.

Section 2547, as added by this section, would require that the results of the performance assessments performed under the new section 2545 be used in the management of elements of the defense acquisition system through: adjustments to the size of bonus pools available to the workforce of an element of the defense acquisition system; changes in rates of promotion; awards for acquisition excellence; and changes in the scope of work assigned to the organization. Section 2547 would require that actions taken to manage the acquisition workforce under such section would be subject to existing requirements relating to labor negotiations and the issuance of regulations, as referenced in subsections (c) and (d) of section 1701a of title 10, United States Code, as added by section 201 of this Act.

Section 2548, as added by this section, would clarify that the Chiefs of Staff of the Armed Forces may assist the secretaries of their respective military departments in the following acquisition-related functions: the development of requirements; the development of measures to control requirements creep; the development of career paths in acquisition for military personnel; and the assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces.

#### Section 102—Meaningful Consideration by Joint Requirements Oversight Council of Input from Certain Officials

This section would amend section 181 of title 10, United States Code, to add the Under Secretary of Defense for Policy to the list of civilian advisors to the Joint Requirements Oversight Council (JROC) and to allow the Chairman of the JROC to invite a combatant commander, or the deputy commander, to serve as a member



of the JROC when matters related to such command are under discussion. This section would also require the Government Accountability Office (GAO) to assess whether the JROC is giving meaningful consideration to the input of: combatant commanders; the Under Secretary of Defense for Acquisition, Technology, and Logistics; and the Director of Cost Assessment and Performance Evaluation. This section would require GAO to assess the extent to which consideration is being given to input from these officials during the evaluation of joint military requirements and report its findings, along with a report on related matters, to be submitted to the Senate Committee on Armed Services and the House Committee on Armed Services by May 22, 2011, in accordance with section 105 of the Weapon System Acquisition Reform Act of 2009 (Public Law 111–23).

#### Section 103—Performance Management for the Joint Capabilities Integration and Development System

This section would require the Secretary of Defense to develop a performance management program for the Joint Capabilities Integration and Development System (JCIDS) to measure performance in JCIDS and to ensure that JCIDS: delivers timely capability to the warfighter; controls requirements creep (including the growth of requirements at a level below those specified in the requirements documents considered by JCIDS); is responsive to changes in threats, emerging capabilities, and costs; and develops skilled requirements personnel. The program required by this section would be initially implemented within one year after the date of enactment of this Act and would apply to requirements documents entering JCIDS after that date. This section would require an initial report on measures of performance for JCIDS within 90 days after initial implementation and a final report on the outcomes of the performance management program four years after the date of initial implementation. This section would make continuation of the performance management program subject to the Secretary of Defense's discretion five years after the date of enactment of this Act.

#### Section 104—Requirements for the Acquisition of Services

This section would require each of the Chiefs of Staff of the Armed Forces to establish a process for identifying, assessing, and approving requirements for the acquisition of services. This section would require that each process provide an opportunity for combatant commanders to provide input on their joint requirements and that each process be revised to be consistent with any future guidance issued by the Chairman of the Joint Chiefs of Staff relating to joint requirements for the acquisition of services. This section would require the issuance of guidance for each military service relating to: the organization of the requirements process; the level of command responsibility required to validate requirements for each category of services acquisition; the composition of billets necessary to operate the requirements process; the training required; the relationship to doctrine; methods of obtaining input on joint requirements for services; procedures for coordinating with the acquisition process; and opportunities for strategic sourcing. This section would require that such processes be initially implemented within 180

days after the date of enactment of this Act and fully implemented at the earliest date practicable. Lastly, the committee expects that such processes be consistent with the management structure for the procurement of services, as required by section 2330 of title 10, United States Code, and to provide for appropriate interaction and communication with the senior officials designated by section 2330 as responsible for the management of acquisition of contract services.

#### Section 105—Joint Evaluation Task Forces

This section would require the Chairman of the Joint Requirements Oversight Council to designate the commander of a unified combatant command to provide a joint evaluation task force to participate in each major defense acquisition program. The task force would come from a military unit selected by the combatant commander, based on the relevance of the program to the unit's mission, and consistent with the unit's operational obligations. The task force would participate in all stages of the development and low rate initial production of the program and would provide user feedback to the resource sponsor for the program. This section would require that the task force receive administrative support from the program's resource sponsor.

#### Section 106—Review of Defense Acquisition Guidance

This section would require the Secretary of Defense to review the acquisition guidance of the Department of Defense (DOD) to consider the extent to which guidance related to weapon systems acquisition is appropriately applied to other areas of acquisition; whether long-term sustainment of weapon systems is appropriately emphasized; whether appropriate mechanisms exist to communicate information relating to DOD's mission needs to the industrial base; the extent to which earned value management (as described in the Office of Management and Budget circular A-11) should be required on non-weapon systems and whether measures of quality and technical performance should be included in the Department's implementation of earned value management; and the extent to which weapon systems processes should apply to the acquisition of information technology. This section would require that a report on the review and all actions taken, be submitted to the Senate Committee on Armed Services and the House Committee on Armed Services within 270 days of the date of enactment of this Act. Finally, the committee does not intend for this review to unnecessarily impose additional government unique requirements on the acquisition of commercial and commodity items.

#### Section 107—Requirement To Include References to Services Contracting Throughout the Federal Acquisition Regulation

This section includes congressional findings related to the complexity of services acquisition. This section would require that the Federal Acquisition Regulation (FAR) be revised to provide appropriate references to services contracting throughout the FAR within 270 days after the date of enactment of this Act.

### Section 108—Procurement of Military Purpose Nondevelopmental Items

This section would create an exception to the requirement for an offer or to submit certified cost or pricing data with a bid or proposal in accordance with section 2306a of title 10, United States Code, in certain circumstances involving the acquisition of a military purpose non-developmental item (MPNDI). This section would also amend chapter 141 of title 10, United States Code, by inserting a new section 2410r, which would define a MPNDI as an item developed exclusively at private expense; that meets a validated military requirement; that can be delivered in production quantities within nine months of contract award; and has a unit cost less than \$10.0 million. Additionally, section 2410r, as added by this section, would require the Secretary of Defense to issue regulations regarding the procurement of a MPNDI, specifying at a minimum, that a contract for a MPNDI be awarded utilizing competitive procedures in accordance with section 2304 of title 10, United States Code; that the contract be a firm fixed price contract; that an item developed exclusively at private expense may not have been funded in whole or in part with funding from a foreign government or through a government sponsored loan whose terms are more favorable than the prevailing market terms for a similar loan; and standards to evaluate price reasonableness in lieu of certified cost or pricing data from the contractor. The amendments to title 10 made by this section would apply with respect to contracts entered into 120 days after the date of enactment of this Act.

## TITLE II—DEFENSE ACQUISITION WORKFORCE

### OVERVIEW

The Department of Defense (DOD) acquisition workforce is at the heart of the Department's acquisition system. The committee recognizes, however, that the size of the acquisition workforce was significantly downsized in the post-cold war drawdown and has remained relatively steady, at the decreased levels, despite significant increases during the last decade in the number and complexity of DOD contract actions, and the higher dollar values of DOD contracts.

The committee notes that a consistent theme throughout the hearings held by the Panel on Defense Acquisition Reform was the need for a renewed emphasis on the DOD acquisition workforce, both military and civilian. As stated in the panel's report, "Ensuring that the acquisition workforce is adequately staffed, skilled and trained, and improving the workforce's quality and performance are as important as improvements to acquisition processes and structures." This is particularly important given that the Government Accountability Office, since 1992, has identified the Department's contract management as a high-risk area and cited problems caused by an inadequate acquisition workforce, such as unmet expectations, contract overpayment, and increased exposure to potential waste, fraud and abuse.

The committee agrees with the panel's assessment that "the Department should establish the acquisition workforce as a model within the Department for more flexible personnel management

that rewards success and includes accountability.” The committee notes that the authorities and flexibilities provided under section 9902 of title 5, United States Code, and the Department’s Acquisition Workforce Demonstration Project provide a solid foundation for creating an acquisition workforce that will provide the value the Department needs. According to the panel’s findings and recommendations, “to achieve this, the Department requires flexibility to efficiently hire qualified new employees, and to manage its workforce in a manner that promotes superior performance. Using these tools the Department can develop new regulations for the civilian workforce which include fair, credible, and transparent methods for hiring and assigning personnel, and for appraising and incentivizing employee performance.” To that end, the committee recommends legislation, elsewhere in this title, that would require the Department to develop and manage a highly skilled professional acquisition workforce. This title would build upon the original foundation for a professional acquisition workforce established pursuant to the Defense Acquisition Workforce Improvement Act, codified at chapter 87 of title 10, United States Code. It also would reinforce the management, hiring, and training flexibilities enacted last year in the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) and codified as section 9902 of title 5, United States Code.

The panel’s report also stated that “the Department’s need for acquisition personnel extends beyond contracting officials to systems engineers, development planners, software engineers, cost estimators, developmental testers, product support managers, and other highly skilled professionals. The quality of the new employees is at least as important as the quantity.” Therefore, the Panel recommended in its report that the military services be given a clearer responsibility for staffing, training and rewarding their buying activities to meet performance standards, including developing individual and organizational goals to achieve cost savings and efficiency improvements.

To ensure that the Department has the most effective workforce possible, this title also would provide additional tools to the Department to rebuild its acquisition workforce. These provisions are based on the panel’s recommendations that called for the development of career paths, and requirements for continuing education, including obtaining key work experiences, and periodic recertification. Finally, this title would enact recommendations made by the panel regarding the need to strengthen the information technology (IT) workforce in order to improve outcomes for IT acquisitions.

## LEGISLATIVE PROVISIONS

### Section 201—Acquisition Workforce Excellence

This section would amend title 10, United States Code by inserting a new section 1701a, that would require the Department of Defense (DOD) to develop and manage a highly skilled professional acquisition workforce. This section would implement the recommendations of the Panel on Defense Acquisition Reform by authorizing the Secretary of Defense to develop a system focused on rewarding, when appropriate, the acquisition workforce for its ex-

cellence and contribution to mission, ensuring that the technical expertise and business skills needed to obtain best value are resident within the workforce, and managing the workforce in a manner that complements and reinforces the performance management of the defense acquisition system pursuant to section 101 of this Act.

This section would require the Department of Defense to use several existing authorities. The committee notes that the most significant of these authorities are the flexibilities provided pursuant to section 9902 of title 5, United States Code, related to performance management, hiring, and training of managers within the General Schedule (GS) system. The committee further notes that the defense acquisition demonstration project, which is extended for an additional five years elsewhere under this Act, may provide some important lessons for the Department's efforts to develop a DOD-wide performance management program within the GS system. This section also would direct the Secretary of Defense to require managers to develop individual performance plans for members of the acquisition workforce as well as appropriate procedures for due process for members of the acquisition workforce who consistently fail to meet performance standards. This section also would authorize additional actions to be taken to restore the focus on professionalizing the acquisition workforce through the development of attractive career paths, encouraging continuing education and training, and utilizing the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). In order to facilitate the hiring for positions within the acquisition workforce, this section would allow the use of expedited security clearance processing as authorized pursuant to section 1564 of title 10, United States Code.

The committee recognizes that while the Department is aggressively moving forward with hiring new personnel within the acquisition workforce, there still may be a significant gap in personnel with relevant knowledge and experience. Therefore, this section would provide the Department with greater authority to hire highly qualified experts, pursuant to section 9903 of title 5, United States Code, for temporary leadership roles in critical positions, providing mentors to advise employees on their career paths and opportunities to advance and excel in the acquisition profession, and assist with the design of education and training programs for the acquisition workforce. This section would clarify that highly qualified experts hired by the Department could be hired on a part-time basis.

Finally, actions taken under this section would be subject to the requirements of chapter 71 of title 5, United States Code, and would be deemed an agency rule or regulation under section 7177(a)(2) of title 5, United States Code.

#### Section 202—Amendments to the Acquisition Workforce Demonstration Project

This section would amend title 10, United States Code, by inserting a new section 1762 that would codify the authority for the Department of Defense Acquisition Workforce Demonstration (DAWD) Project, which originally was established pursuant to section 4303

of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106). The original authority was to expire on September 30, 2012. The committee recognizes that the organizations that had transitioned to the DAWD project had limited experience with the project before they were converted to the National Security Personnel System (NSPS). Now that the authority for NSPS has been repealed, pursuant to section 1113 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), those organizations that had been in the DAWD project previously will be converted back to the project. However, the committee is aware of the stress that may be imposed on the personnel system and the individual employees if they were converted from NSPS back to the DAWD project and, within less than two years, converted to the General Schedule (GS) system. Therefore, this section would extend the authority for the project to September 30, 2017; within six months after the authority terminates, all employees within the acquisition demonstration project must be transferred to the performance management system, under the GS system, that is being developed pursuant to section 9902 of title 5, United States Code. This is intended to provide a more orderly transition for the affected employees. However, the committee intends that the extension of this authority is only for those organizations that had fully implemented a defense acquisition workforce demonstration project, pursuant to Office of Personnel Management regulations, including the issuance of a Federal Register notice that such project would be initiated.

This section also would require the Secretary of Defense to undertake an independent assessment of the project to capture the lessons learned from it and the adequacy of the project in establishing career paths, promoting training, and protecting diversity in promotion. A copy of the assessment would be provided to the Senate Committee on Armed Services, the House Committee on Armed Services, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform beginning in 2011, and every two years thereafter, until the termination of the DAWD project.

#### Section 203—Incentive Programs for Civilian and Military Personnel in the Acquisition Workforce

This section would amend title 10, United States Code, by inserting a new section 1763 that would require the Secretary of Defense to develop an enhanced system of incentives for the encouragement of excellence in the civilian acquisition workforce, including connecting salary increases, bonuses, promotions and awards to performance and contribution to agency mission. In addition to other incentives that may be considered, this section also would direct the Secretary to use the Department of Defense Civilian Workforce Incentive Fund established pursuant to section 9902 of title 5, United States Code. This section would encourage opportunities for special career broadening experiences for high performers. The committee intends that such experiences would include broad opportunities, to include but not be limited to, educational sabbaticals, or attendance at acquisition relevant seminars or conferences both within the United States or overseas.

This section also would direct the military departments to enhance their existing incentive programs. The committee is aware that at least the Defense Logistics Agency, the Department of the Navy, and Department of the Air Force each have programs that make cash awards or personal decorations to employees that make suggestions for savings or process improvements that benefit their organization. This section would encourage the Secretary of Defense to extend such incentives to members of the military in the acquisition workforce wherever possible.

#### Section 204—Career Development for Civilian and Military Personnel in the Acquisition Workforce

This section would amend title 10, United States Code, by inserting a new section 1722b that would require the Secretary of Defense to develop attractive career paths for civilians in the acquisition workforce. The committee agrees with the assessment of the Panel on Defense Acquisition Reform that a renewed focus on career development for civilians in the acquisition workforce is necessary. Similar action already was taken for military personnel in the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417). This section would require the Secretary of Defense to issue guidance to fulfill this requirement to ensure career paths exist that attract the highest quality civilian personnel, are consistent with a deliberate workforce development strategy, provide sufficient opportunities for promotion and advancement, and provide a sufficient number of trained and qualified people in the workforce. This section would require detailed information on the status of the civilian and military acquisition workforce, including information on this effort, be included in the Department's strategic human capital management plan, required by section 115b of title 10, United States Code.

This section also would amend section 1723 of title 10, United States Code, to require the Secretary to develop and support career training and development for each career path (for both civilian and military career paths), including key work experiences that allow individuals to develop in-depth knowledge in the acquisition process. Key work experiences for members of the acquisition workforce would include periodic interaction with the end-user community to develop greater knowledge and understanding of how the hardware or service provided is used in the field.

#### Section 205—Recertification and Training Requirements

This section would further amend section 1723 of title 10, United States Code, by requiring the Secretary of Defense to increase training for members of the acquisition workforce, with additional emphasis on the acquisition of services, long term sustainment strategies, acquisition of information technology, and rapid acquisition. With regard specifically to services acquisition, the committee is aware that while the volume of service contracting has grown, services contracting training has not kept pace. The committee recognizes that Defense Acquisition University has created the Learning Center of Excellence for Service Acquisition, but is concerned that adequate professional-level courses for services program managers continue to be lacking.

This section also would direct the Secretary to establish requirements for continuing education and periodic recertification. The committee notes that currently the Department makes its training investment up front for certification, which means that once an individual obtains a level three certification (currently, the highest certification level), that individual retains that certification for the remainder of his or her career. The committee believes that periodic recertification, not more than every five years, would add value to ensuring the professionalism of the acquisition workforce, as well as currency of their knowledge, similar to that afforded other professions that have continuing education and recertification requirements.

This section would further amend title 10, United States Code, by inserting a new section 1748 that would require the Secretary to establish fulfillment standards to supplement this training that takes into account an individual's demonstrated competencies in certain areas, as well as creating standards relating to the appropriate use of private sector contractors to provide training.

#### Section 206—Information Technology Acquisition Workforce

This section would amend title 10, United States Code, by inserting a new section 1725 that would require the Secretary of Defense to strengthen the part of the acquisition workforce that specializes in information technology (IT), including establishing defined targets for billets for IT acquisition, defined career paths in IT acquisition and specific certification requirements for IT acquisition. This section would require that such actions be taken within 180 days of enactment of this Act. These actions would implement the recommendations of the Panel on Defense Acquisition Reform for the Department to “develop a plan for how to strengthen the IT acquisition workforce, especially as it increases the size of the overall acquisition workforce in the coming years.” The committee urges the Secretary to ensure the plan for the IT workforce developed in accordance with this section is tied to key attributes of any new IT acquisition system, as required by section 804 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), and is integrated into the Department's overall acquisition workforce strategic plan.

#### Section 207—Definition of Acquisition Workforce

This section would add a definition of the acquisition workforce to section 101 of title 10, United States Code. The acquisition workforce is defined as those designated pursuant to section 1721(a) of title 10, United States Code.

#### Section 208—Defense Acquisition University Curriculum Review

This section would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to conduct a review of the curriculum offered by the Defense Acquisition University (DAU), not later than one year following the date of enactment of this Act, to ensure its support for the training and education of members of the acquisition workforce. The review would include a focus on education and training courses developed in services contracting, long-term sustainment strategies, information technology and rapid ac-



quisition. This section also would require the Secretary of Defense, following the review of the Under Secretary of Defense for Acquisition, Technology, and Logistics, to determine the adequacy of funding for training and education and identify any additional funding needed in the next annual strategic workforce plan required by section 115(b) of title 10, United States Code.

This section also would amend 1746 of title 10, United States Code, to require the DAU president to coordinate with the relevant professional schools and degree granting institutions within the Department of the Defense and the military departments on best practices for curriculum development. This section is intended to improve the interaction between the various educational entities within the Department related to training and education of the acquisition workforce.

#### Section 209—Cost Estimating Internship and Scholarship Programs

This section would require the Secretary of Defense to establish internship and scholarship programs in cost estimating within 270 days after the date of enactment of this Act. As noted in the report of the Panel on Defense Acquisition Reform, courses taught on financial economics do not address the underlying sources for cost estimating. Yet sound cost estimating is essential to the acquisition process and should be considered a core acquisition function. As recommended by the panel, the committee agrees that internship and scholarship programs specifically focused on cost estimating will benefit the acquisition process. The programs established by this section would be for a four year period.

### TITLE III—FINANCIAL MANAGEMENT

#### OVERVIEW

The committee remains concerned that the inability to provide accurate and timely financial information prevents the Department of Defense from adequately managing its acquisition programs and from implementing true acquisition reform. The Government Accountability Office (GAO) has repeatedly reported on the vulnerability of the Department's financial management systems. In its most recent update to its high-risk series, GAO found that, "Weaknesses in DOD's financial management adversely affect not only the reliability of reported financial data, but also the efficiency and effectiveness of its business operations. Transforming DOD's financial management operations to provide timely, reliable, accurate, and useful information for management operations, including financial reporting and decision making, is a significant challenge."

Several major pieces of legislation, such as the Chief Financial Officers Act of 1990 (Public Law 101-576) and the Federal Financial Management Improvement Act of 1996 (Title VIII of Public Law 104-208) have required published audits of financial statements, reporting by auditors regarding whether the Department's financial management systems comply substantially with federal accounting standards, and other measures intended to ensure financial management systems provide accurate, reliable, and timely financial management information. In response to a congressional

mandate, the Department issued its first biennial Financial Improvement and Audit Readiness Plan in December 2005, to delineate its strategy for addressing financial management challenges and achieving clean audit opinions. This 2005 report projected that 69 percent of assets and 80 percent of liabilities would be “clean” by 2009; yet in the March 2009 report, the Department projects it will have only achieved an unqualified audit on 45 percent of its assets and liabilities by 2009. The Department appears to be falling behind its original plan to achieve full compliance with the law by 2017.

In response to these concerns, in section 1003 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84), Congress adopted a more detailed statutory requirement for the Secretary of Defense to develop a plan to ensure that the financial statements of the Department are validated as ready for audit by September 30, 2017. The committee’s recommendations in this title are intended to provide both organizational and personal incentives to the defense financial and business management workforce to not only meet this deadline, but to accelerate preparation of such financial statements in order to provide greater accountability and minimize fraud, waste, and abuse. Finally, the committee intends for the Department to make the necessary improvements in its own financial control systems in order to comply with the law by 2017 and notes that compliance cannot be achieved by simply passing these requirements to industry without addressing the Department’s internal problems.

## LEGISLATIVE PROVISIONS

### Section 301—Incentives for Achieving Auditability

This section would require the Under Secretary of Defense (Comptroller) to extend preferential treatment, as the Under Secretary considers appropriate, to a Department of Defense component that has financial statements validated as ready for audit earlier than the current statutory deadline of September 30, 2017. Such preferential treatment may include priority in the release of appropriated funds; relief from non-statutory financial reporting; relief from departmental obligation and expenditure thresholds, the size of the bonus pools available to the component’s financial and business management workforce; the rates of promotion for such workforce; awards for excellence for such workforce; and the scope of work assigned to such workforce. This section would require that actions taken by the Under Secretary be reported as part of the existing report on financial audit improvement efforts, pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84). The authority to provide such preferential treatment would expire in 2017.

### Section 302—Measures Required after Failure To Achieve Auditability

This section would require the Secretary of Defense to take corrective measures to immediately address the failure of a Department of Defense component to achieve a financial statement validated as ready for audit by September 30, 2017. This section would

further require the Secretary to issue guidance within 180 days after the date of enactment of this Act detailing corrective measures to be taken, including the development of a one-year remediation plan; additional financial reporting consistent with the level of financial risk to the component; the delay of release of appropriated funds, consistent with warfighting requirements and operational needs; and specific consequences for key personnel to ensure accountability within the leadership of the component.

#### Section 303—Review of Obligation and Expenditure Thresholds

This section would express the sense of Congress that program managers should be encouraged to place higher priority on seeking and obtaining best value than on meeting arbitrary benchmarks for spending, and that Department of Defense leaders at every level should support this priority. This section also would require that the Chief Management Officer (CMO) of the Department of Defense review existing policy regarding obligation and expenditure benchmarks, within 180 days after the date of enactment of this Act, to ensure that such guidance does not inadvertently prevent the Department from obtaining best value. Further, this section would require the CMO, within one year after the date of enactment of this Act and in coordination with additional officials, to conduct a comprehensive review of the use and value of obligation and expenditure benchmarks. This review would consider new benchmarks or processes for tracking financial performance, including: an increased reliance on individual obligation and expenditure plans for measuring programs' financial performance; mechanisms to improve funding stability; and streamlined mechanisms for a program manager to submit an appeal for funding changes. Lastly, this section would require the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller) to ensure that training for program managers and business managers emphasizes obligating and expending funds in a manner that achieves best value for the government.

## TITLE IV—INDUSTRIAL BASE

### OVERVIEW

The management of the defense industrial base has been a challenge for the Department dating back to the creation of the armed forces. Discussions of the industrial base often focus on retaining unique and perishable defense industrial capabilities. The committee supports this important strategic priority for the Department. However, the committee believes that priority also must be placed on giving the Department access to as much of the country's total industrial base as possible, including business firms of all sizes. The committee notes that many innovative technologies are being developed at smaller firms, and that even among larger firms, companies that are primarily commercial in nature have been technology leaders in recent years.

Federal agencies, with certain exceptions, are required to provide public notice of solicitations for contracts. However, the simple posting of a solicitation notice on a website does not represent a concerted effort to push information about potential contracts to

relevant firms. The committee acknowledges that industry also bears a responsibility to develop its own business. Firms interested in doing business with the Department must cultivate relationships within industry and the Department, attend conferences and industry days, and utilize other methods to proactively gain insight into the Department's future needs, rather than waiting for a notice of solicitation. However, the committee believes that the Department of Defense would benefit by utilizing resources from the Department of Commerce, Small Business Administration, General Service Administration, and the private sector to directly notify firms in relevant industrial classifications of upcoming contract awards. A small investment in additional outreach to industry could demonstrate a large return in increased competition, lower prices, and innovation. This title is intended to impel the Department of Defense to expand the defense industrial base to increase competition and expand the Department of Defense's access to innovation. It would also expand the Department of Defense's efforts to monitor the industrial base by increasing the focus on providers of services and information technology.

While expanding the industrial base is an important goal, it supports the mission of the Department of Defense only to the extent that firms obtaining defense contracts are responsible, high-quality suppliers. The Government Accountability Office reported that in 2007, more than 60,000 federal contractors have tax debts totaling \$7.7 billion. This title would provide the Department of Defense with additional tools to identify irresponsible contractors and to detect unjustifiable price escalation.

#### ITEMS OF SPECIAL INTEREST

##### Contract Payment Withholding

The committee concurs with the assessment of the Panel on Defense Acquisition Reform that Congress created a new obstacle to federal agencies accessing the commercial marketplace by establishing a requirement that agencies withhold three percent of all contract payments in anticipation of taxes owed to the Treasury in section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222). This requirement is currently scheduled to take effect in 2012. The committee is concerned that this requirement would place an unfair burden on tax compliant firms and will discourage such firms from bidding on defense contracts. The committee supports repeal of the three percent contract payment withholding requirement for defense contracts. The committee addresses concerns about contractors with seriously delinquent tax debts in a more targeted and effective way in section 403 of this Act.

##### Department of Defense Utilization of Service Disabled Veteran-Owned Small Businesses

The committee notes that the Government Accountability Office (GAO) released a report on October 23, 2009, entitled, "Service Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts" which identified \$100.0 million of contracts

awarded to firms under the set-aside program for Service Disabled Veteran-Owned Small Businesses (SDVOB) even though the firms did not actually qualify to participate in the program. The committee supports the SDVOB program and is concerned that the award of contracts to ineligible firms denied actual SDVOBs the opportunity to obtain these contracts. The committee notes that the Department of Veterans Affairs maintains a Vendor Information Pages database that has been designated by the Office of Federal Procurement Policy as a definitive source of information on veterans in business and urges the Department of Defense to utilize this resource in determining eligibility for SDVOB set-asides awarded by the Department. The committee directs the Secretary of Defense to review the issues identified in the GAO report and determine whether any measures should be taken by the Department to address them, and further directs the Secretary to submit a report to the Senate Committee on Armed Services and the House Committee on Armed Services on what, if any, measures the Secretary has taken or intends to take as a result of the review by April 1, 2011.

#### Multiyear Procurement Authority

The committee concurs with the assessment of the Panel on Defense Acquisition Reform that multiyear procurement contracts are a potentially useful tool that allows the Department of Defense to reduce procurement costs and provide funding stability for defense acquisition programs. The committee also notes that multiyear procurement contracts should not be entered into frivolously, as such contracts commit taxpayers to significant liability in the event the Department changes its procurement plans and substantially alters the terms of such a contract or terminates the contract. Subsection 2306b(a) of title 10, United States Code, provides a description of the numerous factors to be considered prior to entering into a multiyear procurement contract. In particular, paragraph (1) of subsection 2306b(a) requires the potential for “substantial savings” for a multiyear contract in comparison to single-year procurements. During consideration of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181), Congress debated and ultimately declined to set a statutory definition for the term “substantial savings”. Instead, the conferees stated in the conference report (H. Rept. 110–477) accompanying the National Defense Authorization Act for Fiscal Year 2008 that the term “means savings that exceed 10 percent of the total costs of carrying out the program through annual contracts, except that multiyear contracts for major systems providing savings estimated at less than 10 percent should only be considered if the Department presents an exceptionally strong case that the proposal meets the other requirements of section 2306b(a).” The committee is concerned that although Congress explicitly declined to impose criteria for “substantial savings”, the Department may be rigidly applying a 10 percent savings standard as the threshold for “substantial savings”.

Therefore, the committee urges the Secretary of Defense to consider the totality of the factors required to be considered under subsection 2306b(a) of title 10, United States Code, when deciding whether to request multiyear procurement authority. Further, the committee discourages the Secretary from applying a universal

standard for savings to be achieved in a multiyear procurement contract. Finally, the committee directs the Secretary to conduct an assessment of ongoing defense procurements for property to identify those procurements that meet the criteria of paragraphs (2), (3), (4), and (6) of subsection 2306b(a) of title 10 and subparagraphs (1)(C) and (1)(D) of subsection 2306b(i), United States Code, to determine which procurements may merit further evaluation to assess the benefits of a multiyear procurement contract. The committee further directs the Secretary to submit a report on the assessment to the Senate Armed Services Committee and the House Armed Services Committee by April 1, 2011.

### LEGISLATIVE PROVISIONS

#### Section 401—Expansion of the Industrial Base

This section would require the Secretary of Defense to establish a program to expand the defense industrial base by identifying and communicating with non-traditional suppliers using tools and resources available within the federal government and in the private sector. The program would include a continuous effort to review the defense industrial base and identify markets of importance to Department of Defense. The committee notes that for the purposes of such a review, the defense industrial base should include systems integrators, suppliers of services and information technology, consistent with the revision of the definition of the national technology and industrial base required by section 406 of this Act.

#### Section 402—Commercial Pricing Analysis

This section would revise and extend an existing report on commercial price trends established in section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) to identify and evaluate cases where the Department of Defense is facing unjustified price escalation for a category of commercial items. This section would require the report to be submitted annually on April 1 to the Senate Armed Services Committee and the House Armed Services Committee. The reporting requirement would expire on April 1, 2013.

#### Section 403—Contractor and Grantee Disclosure of Delinquent Federal Tax Debts

This section would require potential federal contractors and grantees to submit certifications as to whether they have a seriously delinquent tax debt during the bid proposal and grant application processes and to authorize the Secretary of the Treasury to verify these certifications. This section would require the Secretary of the Treasury to develop and disseminate a standard authorization form for this purpose. The requirement for disclosure would apply to individuals, partnerships, and corporations. This section defines a seriously delinquent tax debt as a debt exceeding \$3,000; which has been assessed by the Secretary of the Treasury and not paid; and for which a notice of lien has been filed in public records. A seriously delinquent tax debt would not include a tax liability being paid in a timely manner in accordance with an agreement with the Department of Treasury; a liability still involved in collec-

tion due process proceedings; or an assessed liability for which no further payment is required at the end of a collection due process proceeding. This section would require the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of the Treasury, to promulgate regulations that would also cover corporations and partnerships controlled by individuals, partnerships, or corporations with a seriously delinquent tax debt and would apply the requirements of this section to first-tier subcontractors that are a significant part of a bid proposal team. The Federal Acquisition Regulation (FAR) would be revised 90 days after such regulations are finalized.

The committee is aware that FAR part 52.209–5 currently requires an offeror to certify whether it has been notified of any delinquent federal taxes within a three-year period preceding an offer. The committee did not include a time limit on a look-back period for the disclosure required by this section. The committee intends for an offeror or grant applicant to disclose any tax liability that meets the definition of a seriously delinquent tax debt. However, the committee notes that a previous tax liability that has been paid would not constitute a seriously delinquent tax debt. Further, the committee intends for the regulations promulgated in accordance with subsection (e)(1) to apply to individuals, partnerships, or corporations that have a controlling ownership stake in an offeror or grant applicant. The committee does not intend for such regulations to compel the disclosure of a personal tax liability for an individual who is an officer or an employee of a partnership or corporation, but who has no controlling equity. Lastly, the committee intends that the FAR be revised to remove any requirement that principals without control of a partnership or corporation disclose personal tax information.

#### Section 404—Independence of Contract Audits and Business System Reviews

This section would add a new section 204 to title 10, United States Code, to provide for an independent General Counsel within the Defense Contract Audit Agency (DCAA) to serve as DCAA's chief legal officer effective on the date of enactment of this Act. This section would also add new section 2222a to title 10, United States Code, to require the Department of Defense, effective 180 days after the date of enactment of this Act, to carry out reviews of contractor business systems: in accordance with generally accepted government auditing standards; using an independent audit team; using risk-based audit planning; and by performing testing on a representative sample sufficient to fully validate the integrity of the systems concerned. This section would further require the Secretary of Defense to issue guidance within 180 days of the date of enactment of this Act relating to contract audits that are not business system reviews. Such guidance should require contract audits to comply with generally accepted government auditing standards; establish guidelines for discussions of audit scope with the contractor; provide for withholding of contract payments when necessary to compel the submission of documentation; and require that the results of contract audits be shared with other federal agencies upon request without reimbursement.

Section 405—Blue Ribbon Panel on Eliminating Barriers to Contracting with the Department of Defense

This section would require the Secretary of Defense to establish a panel consisting of owners of large and small businesses that are not traditional defense suppliers to formulate recommendations on eliminating barriers to contracting with the Department of Defense and its supply centers. The panel would consist of a total of nine members, three members appointed by the secretaries of each of the military departments. The appointments would be made within 180 days of the date of enactment of this Act. This section would require the panel to submit a report to Congress within one year of the date of enactment of this Act.

Section 406—Inclusion of the Providers of Services and Information Technology in the National Technology and Industrial Base

This section would insert references to services and information technology in several places in chapter 148 of title 10, United States Code, which relates to the National Technology and Industrial Base, including: the definition of the industrial base; the national security objectives for the industrial base; assessments of the industrial base; and industrial base policy. This section would also add references to integration as an important industrial capability.

COMMUNICATIONS FROM OTHER COMMITTEES

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC, April 22, 2010.*

Hon. IKE SKELTON,  
*Chairman, Committee on Armed Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing about H.R. 5013, the “Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010”, which the Committee on Armed Services ordered reported on April 21, 2010.

I appreciate your efforts to consult with the Committee on Oversight and Government Reform regarding those provisions of H.R. 5013 that fall within the Oversight Committee’s jurisdiction. These provisions involve the federal workforce and federal acquisition policy.

In the interest of expediting consideration of H.R. 5013, the Oversight Committee will not object to its consideration in the House. I would, however, request your support for the appointment of conferees from the Oversight Committee should H.R. 5013 or a similar Senate bill be considered in conference with the Senate. Moreover, this letter should not be construed to prejudice the Oversight Committee’s jurisdictional interest or prerogatives in the subject matter of H.R. 5013, or any other similar legislation.

I request that you include our exchange of letters on this matter in the Congressional Record during consideration of this legislation on the House floor.



With warm regards, I am  
Sincerely,

EDOLPHUS TOWNS,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC, April 23, 2010.*

Hon. EDOLPHUS TOWNS,  
*Chairman, Committee on Oversight and Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010.

I appreciate your willingness to support expediting floor consideration of this important legislation. I acknowledge that H.R. 5013 contains provisions under the jurisdiction of the Committee on Oversight and Government Reform. I understand and agree that your willingness to waive further consideration of the bill is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the Congressional Record in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Very truly yours,

IKE SKELTON,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
*Washington, DC, April 21, 2010.*

Hon. IKE SKELTON,  
*Chairman, Committee on Armed Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for working with the Committee on Ways and Means ("Committee") on H.R. 5013, the "Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010." As you know, section 403 of H.R. 5013 is of jurisdictional interest to the Committee as it would require tax return information to be supplied by the Internal Revenue Service ("IRS").

Generally, tax return information is confidential. However, Section 6103(c) of the Internal Revenue Code permits the Secretary of the Treasury to disclose the tax return information of a taxpayer to such person as the taxpayer designates. The Committee continues to monitor the expanding IRS workload and remains concerned about programs that greatly increase the agency's workload outside of its core mission. In calendar year 2009, the IRS made nearly 11,000 tax disclosures under section 6103(c). It is unknown how many additional disclosures will be made under H.R. 5013. As

such, the Committee worked with the Armed Services Committee to develop a provision that is administrable by the IRS. The Committee remains committed to ensuring that any additional responsibilities imposed on the IRS do not strain agency resources and welcomes the opportunity to re-evaluate this provision in the future.

As we have discussed, this exchange of letters will be placed in the Committee Report on H.R. 5013 and inserted in the Congressional Record as part of the consideration of this legislation in the House. Thank you for the cooperative spirit in which you have worked with the Committee regarding this matter.

Sincerely,

SANDER M. LEVIN,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC, April 23, 2010.*

Hon. SANDER LEVIN,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010. I agree that the Committee on Ways and Means has valid jurisdictional claims to certain provisions in this important legislation, and I am most appreciative of your decision not to schedule a mark-up of this bill in the interest of expediting consideration. I agree that by agreeing to waive consideration of certain provisions of the bill, the Committee on Ways and Means is not waiving its jurisdiction over these matters.

This exchange of letters will be included in the committee report of the bill and inserted in the Congressional Record as part of consideration of the bill in the House. Thank you for your cooperation as we work towards enactment of this legislation.

Very truly yours,

IKE SKELTON,  
*Chairman.*

#### COMMITTEE POSITION

On April 21, 2010, the Committee on Armed Services, a quorum being present, ordered reported H.R. 5013, as amended, to the House with a favorable recommendation by a record vote of 56–0.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington DC, April 23, 2010.

Hon. IKE SKELTON,  
 Chairman, Committee on Armed Services,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Newman.

Sincerely,

DOUGLAS W. ELMENDORF,  
 Director.

Enclosure.

*H.R. 5013—Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010*

Summary: H.R. 5013 would require the Department of Defense (DoD) to use performance management techniques to improve the defense acquisition system and the acquisition workforce. The bill also would require new standards and techniques for training and rewarding that workforce.

CBO estimates that implementing H.R. 5013 would cost about \$250 million over the 2011–2015 period, assuming the appropriation of the necessary amounts. That estimate reflects the direct costs of implementing H.R. 5013. Although the bill might yield improvements in the efficiency and effectiveness of DoD’s acquisition system, CBO has no basis for determining whether such improvements would occur or to what extent they might result in savings to the government to offset some or all of the above implementation cost.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 5013 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5013 is shown in the following table. The costs of this legislation fall within budget function 050 (national defense).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Performance Management and Assessments:						
Estimated Authorization Level .....	4	8	8	8	9	37
Estimated Outlays .....	3	8	8	8	9	36
Increased Bonuses:						
Estimated Authorization Level .....	0	7	7	7	7	28
Estimated Outlays .....	0	7	7	7	7	28
Training and Recertification:						
Estimated Authorization Level .....	12	23	45	45	45	170

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
Estimated Outlays .....	10	21	42	45	45	163
Scholarships for Cost Estimators:						
Estimated Authorization Level .....	0	2	3	4	5	14
Estimated Outlays .....	0	2	3	4	5	14
General Counsel:						
Estimated Authorization Level .....	1	1	1	1	1	5
Estimated Outlays .....	1	1	1	1	1	5
Total Changes:						
Estimated Authorization Level .....	17	41	64	65	67	254
Estimated Outlays .....	14	39	61	65	67	246

Basis of estimate: For this estimate, CBO assumes that H.R. 5013 will be enacted near the start of fiscal year 2011 and that the estimated authorization amounts will be appropriated starting in that year.

#### TITLE I—PERFORMANCE MANAGEMENT AND ASSESSMENTS

Section 101 would require DoD to establish performance metrics and specific goals for the defense acquisition system and would require the Office of Performance Assessment and Root Cause Analysis (PARCA) to assess whether those metrics and goals were being achieved. PARCA was established in May 2009, and under current law, will grow to a staff of about 30 people that will assess the performance of the acquisition system in developing and procuring major weapon systems. Under section 101, PARCA's assessment responsibilities would expand to other areas such as the acquisition of information technology systems and of contracts for services. On the basis of information from DoD, CBO estimates that accomplishing those additional oversight responsibilities could require another 25 personnel. CBO expects those additional personnel would be hired over the 2011–2012 period at a cost of \$3 million in 2011 and \$36 million over the 2011–2015 period.

#### TITLE II—THE DEFENSE ACQUISITION WORKFORCE

Title II includes several provisions that would require DoD to improve the skills and performance of the acquisition workforce.

**Increased Bonuses.** Under section 203, DoD would be required to develop an enhanced system of incentives to encourage excellence in and improve the performance of the acquisition workforce. Such incentives include providing attractive career paths for acquisition personnel, tying promotions to accomplishments, and connecting bonuses and awards to personnel performance and agency outcomes. It would direct DoD to extend such incentives to military personnel to the extent possible. CBO expects that such a system could result in the payment of additional bonuses. In 2008, the last year for which such data is available, DoD paid an average of about \$1,000 in bonuses for each DoD civilian. Because it would take time to develop performance standards and the criteria to connect those standards to enhanced bonus payments, such payments probably would not begin before 2012. Assuming bonuses then increased modestly (for example, by about 5 percent), the 136,000-person acquisition workforce could receive additional payments of

\$7 million in 2012 and \$28 million over the 2012–2015 period, assuming appropriation of the necessary amounts.

**Training and Recertification.** Section 205 would require that DoD provide more training for the defense acquisition workforce and would institute a requirement for periodic recertification of acquisition personnel.

The bill would direct DoD to provide additional training on the acquisition of services and information technology systems, and on the use of rapid acquisition authorities. To meet that directive, the Defense Acquisition University would need to develop and deliver three new curricula for those subjects consisting of three online courses each (one for entry-level personnel, one for mid-career personnel, and one for senior management) at a total cost of about \$5 million per year, CBO estimates.

Under section 205, acquisition personnel would be required to recertify their qualifications every five years and that recertification process would require attendance at one resident course and one online course, CBO estimates. Some personnel would advance to the next level of acquisition workforce certification, rather than recertify at their current level. Others would not recertify because of noncompliance or attrition from the workforce. CBO estimates that about 25 percent of the acquisition workforce would pursue recertification every five years at an annual cost of about \$40 million. CBO expects that the recertification process would not begin in full until 2013 to allow time for the development of course materials.

In total, additional training for and recertification of acquisition workforce personnel would cost \$10 million in 2011 and \$163 million over the 2011–2015 period, assuming appropriation of the necessary amounts.

**Scholarships for Cost Estimators.** Title 2 also would direct DoD to establish a program to provide scholarships and internships in cost estimating for acquisition workforce personnel. CBO estimates that DoD would provide scholarships of around \$15,000 annually for masters degree programs to 100 students in 2012, and to 250 students a year by 2015. Such a program would cost \$2 million in 2012 and \$14 million over the 2012–2015 period, CBO estimates.

#### TITLE IV—EXPANSION AND ASSESSMENT OF THE INDUSTRIAL BASE

Title IV includes provisions to expand the base of companies and industries that supply goods and services to DoD, and to improve the way that those industries are monitored.

**General Counsel’s Office.** Section 404 would establish a dedicated office of the general counsel for the Defense Contract Audit Agency at a cost of \$1 million per year and a total of \$5 million over the 2011–2015 period, CBO estimates.

Pay-as-you-go considerations: None.

**Intergovernmental and private-sector impact:** H.R. 5013 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

**Estimate prepared by:** Federal Costs: David B. Newman. Impact on State, Local, and Tribal Governments: Burke Doherty. Impact on the Private Sector: Elizabeth Bass.

**Estimate approved by:** Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee generally concurs with the estimate as contained in the report of the Congressional Budget Office.

## COMPLIANCE WITH HOUSE RULE XXI

H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill does not authorize specific program funding.

## GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 5013 is to overhaul the defense acquisition system to clean up waste, fraud, and abuse through the following four objectives: (1) introducing real accountability standards in the acquisition process; (2) improving the management of the acquisition workforce; (3) reforming the Department of Defense's financial management; and (4) expanding and strengthening the industrial base.

To introduce real accountability standards in the acquisition process, this bill would require the Department of Defense to apply performance management to the defense acquisition system, create metrics with specific goals and standards, better manage requirements for weapons, and create a requirements process for the acquisition of services, and establish a joint evaluation task force to bring a greater operational perspective to acquisition.

To improve the management of the acquisition workforce, this bill would require the Department of Defense to develop and manage a highly skilled, performance-based workforce focused on creating incentives for and rewarding excellence. It would require the Department to develop attractive career paths for acquisition personnel, increase training opportunities and recertification requirements, and strengthen the information technology portion of the workforce.

To reform the Department of Defense's financial management system, the bill would require the Department to develop meaningful consequences for success and failure in financial management in order to achieve a clean audit by September 2017, and encour-

age program managers to place a higher priority on achieving best value rather than meeting arbitrary benchmarks for spending.

To expand and strengthen the industrial base, this bill would require the Secretary of Defense to establish a program that would identify and communicate with non-traditional suppliers and continually review the industrial base and identify markets of importance. It would create a blue ribbon panel of businesses to provide recommendations for eliminating barriers to working with the Department. Additionally, it would require federal contractors to disclose any seriously delinquent tax debt and require the Department of Defense to review contractor business systems using an independent audit team.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, Section 8 of the United States Constitution.

#### FEDERAL ADVISORY COMMITTEE STATEMENT

The committee finds that this legislation establishes or authorizes the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The committee finds that this legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

#### STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104-4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

#### RECORD VOTE

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, a record vote was taken with respect to the committee's consideration of H.R. 5013. The record of this vote is included in this report.

The committee ordered reported H.R. 5013, as amended, to the House with a favorable recommendation by a record vote of 56-0, a quorum being present.

**COMMITTEE ON ARMED SERVICES  
111TH CONGRESS  
ROLL CALL**

Date: April 21, 2010

Description: Final passage of H.R. 5013 as amended, ordering to be reported favorably

Rep.	Aye	No	Present	Rep.	Aye	No	Present
Mr. Skelton	x			Mr. McKeon	x		
Mr. Spratt	x			Mr. Bartlett	x		
Mr. Ortiz	x			Mr. Thornberry	x		
Mr. Taylor	x			Mr. Jones	x		
Mr. Reyes	x			Mr. Akin	x		
Dr. Snyder	x			Mr. Forbes	x		
Mr. Smith	x			Mr. Miller	x		
Ms. Sanchez	x			Mr. Wilson	x		
Mr. McIntyre	x			Mr. LoBiondo	x		
Mr. Brady	x			Mr. Bishop			
Mr. Andrews	x			Mr. Turner	x		
Mrs. Davis	x			Mr. Kline	x		
Mr. Langevin				Mr. Rogers	x		
Mr. Larsen	x			Mr. Franks	x		
Mr. Cooper	x			Mr. Shuster	x		
Mr. Marshall	x			Mrs. McMorris Rodgers	x		
Ms. Bordallo	x			Mr. Conaway	x		
Mr. Ellsworth	x			Mr. Lamborn	x		
Mr. Murphy (PA)	x			Mr. Wittman	x		
Mr. Johnson	x			Ms. Fallin	x		
Ms. Shea-Porter	x			Mr. Hunter	x		
Mr. Courtney	x			Dr. Fleming	x		
Mr. Loeb sack	x			Mr. Coffman	x		
Mr. Sestak	x			Mr. Rooney	x		
Ms. Giffords	x			Mr. Platts	x		
Ms. Tsongas	x						
Mr. Nye							
Ms. Pingree	x						
Mr. Kissell	x						
Mr. Heinrich	x						
Mr. Kratovil	x						
Mr. Bright	x						
Mr. Murphy (NY)	x						
Mr. Owens	x						
Mr. Boren							

Roll Call Vote Total: Ayes 56 Noes 0 Present



CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 10, UNITED STATES CODE**

**Subtitle A—General Military Law**

PART I. ORGANIZATION AND GENERAL MILITARY POWERS	
Chapter	Sec.
1. Definitions .....	101
* * * * *	
PART IV. SERVICE, SUPPLY, AND PROCUREMENT	
131. Planning and Coordination .....	2201
* * * * *	
149. <i>Performance Management of the Defense Acquisition System</i> .....	2545
* * * * *	

**PART I—ORGANIZATION AND GENERAL MILITARY POWERS**

\* \* \* \* \*

**CHAPTER 1—DEFINITIONS**

**§ 101. Definitions**

(a) IN GENERAL.—The following definitions apply in this title:

(1) \* \* \*

\* \* \* \* \*

(18) *The term “acquisition workforce” means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.*

\* \* \* \* \*

**CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES**

\* \* \* \* \*

**§ 181. Joint Requirements Oversight Council**

(a) \* \* \*

\* \* \* \* \*

(c) COMPOSITION.—(1) The Joint Requirements Oversight Council is composed of—

(A) \* \* \*

\* \* \* \* \*

(D) an Air Force officer in the grade of general; [and]

(E) a Marine Corps officer in the grade of general[.]; and

*(F) when directed by the chairman, the commander of any combatant command (or, as directed by that commander, the deputy commander of that command) when matters related to the area of responsibility or functions of that command will be under consideration by the Council.*

\* \* \* \* \*

(d) ADVISORS.—(1) [The Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Director of Cost Assessment and Program Evaluation shall serve as advisors to the Council on matters within their authority and expertise.] *The following officials of the Department of Defense shall serve as advisors to the Council on matters within their authority and expertise:*

*(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.*

*(B) The Under Secretary of Defense (Comptroller).*

*(C) The Under Secretary of Defense for Policy.*

*(D) The Director of Cost Assessment and Program Evaluation.*

\* \* \* \* \*

**CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD**

\* \* \* \* \*

**SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS**

Sec  
201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance.

\* \* \* \* \*

204. *Defense Contract Audit Agency general counsel.*

\* \* \* \* \*

**§ 204. *Defense Contract Audit Agency general counsel***

*(a) GENERAL COUNSEL.—The Director of the Defense Contract Audit Agency shall appoint a General Counsel of the Defense Contract Audit Agency.*

*(b) DUTIES.—(1) The General Counsel shall perform such functions as the Director may prescribe and shall serve at the discretion of the Director.*

*(2) Notwithstanding section 140(b) of this title, the General Counsel shall be the chief legal officer of the Defense Contract Audit Agency.*

*(3) The Defense Contract Audit Agency shall be the exclusive legal client of the General Counsel.*

*(c) OFFICE OF THE GENERAL COUNSEL.—There is established an Office of the General Counsel within the Defense Contract Audit Agency. The Director may appoint to the Office to serve as staff of the General Counsel such legal counsel as the Director determines is appropriate.*

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## PART II—PERSONNEL

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### CHAPTER 87—DEFENSE ACQUISITION WORKFORCE

#### SUBCHAPTER I—GENERAL AUTHORITIES AND RESPONSIBILITIES

Sec.

1701. Management policies.

1701a. *Management for acquisition workforce excellence.*

\* \* \* \* \*

#### **§ 1701a. Management for acquisition workforce excellence**

(a) *PURPOSE.*—*The purpose of this chapter is to require the Department of Defense to develop and manage a highly skilled professional acquisition workforce—*

(1) *in which excellence and contribution to mission is rewarded;*

(2) *which has the technical expertise and business skills to ensure the Department receives the best value for the expenditure of public resources;*

(3) *which serves as a model for performance management of employees of the Department; and*

(4) *which is managed in a manner that complements and reinforces the performance management of the defense acquisition system pursuant to chapter 149 of this title.*

(b) *PERFORMANCE MANAGEMENT.*—*In order to achieve the purpose set forth in subsection (a), the Secretary of Defense shall—*

(1) *use the full authorities provided in subsections (a) through (d) of section 9902 of title 5, including flexibilities related to performance management and hiring and to training of managers;*

(2) *require managers to develop performance plans for individual members of the acquisition workforce in order to give members an understanding of how their performance contributes to their organization's mission and the success of the defense acquisition system (as defined in section 2545 of this title);*

(3) *to the extent appropriate, use the lessons learned from the acquisition demonstration project carried out under section 1762 of this title related to contribution-based compensation and appraisal, and how those lessons may be applied within the General Schedule system;*

(4) *develop attractive career paths;*

(5) *encourage continuing education and training;*

(6) *develop appropriate procedures for warnings during performance evaluations and due process for members of the acquisition workforce who consistently fail to meet performance standards;*

(7) *take full advantage of the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010, (Public Law 111-84; 123 Stat. 2496; 10 U.S.C. 1580 note prec.);*

(8) use the authorities for highly qualified experts under section 9903 of title 5, to hire experts who are skilled acquisition professionals to—

(A) serve in leadership positions within the acquisition workforce to strengthen management and oversight;

(B) provide mentors to advise individuals within the acquisition workforce on their career paths and opportunities to advance and excel within the acquisition workforce; and

(C) assist with the design of education and training courses and the training of individuals in the acquisition workforce; and

(9) use the authorities for expedited security clearance processing pursuant to section 1564 of this title.

(c) **NEGOTIATIONS.**—Any action taken by the Secretary under this section, or to implement this section, shall be subject to the requirements of chapter 71 of title 5.

(d) **REGULATIONS.**—Any rules or regulations prescribed pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2) of title 5, and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1) of such title.

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**SUBCHAPTER II—DEFENSE ACQUISITION POSITIONS**

Sec

1721. Designation of acquisition positions.

\* \* \* \* \*

1722b. *Special requirements for civilian employees in the acquisition field.*

\* \* \* \* \*

1725. *Information technology acquisition positions.*

\* \* \* \* \*

**§ 1722b. *Special requirements for civilian employees in the acquisition field***

(a) **REQUIREMENT FOR POLICY AND GUIDANCE REGARDING CIVILIAN PERSONNEL IN ACQUISITION.**—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish policies and issue guidance to ensure the proper development, assignment, and employment of civilian members of the acquisition workforce to achieve the objectives specified in subsection (b).

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

(1) A career path in the acquisition field that attracts the highest quality civilian personnel, from either within or outside the Federal Government.

(2) A deliberate workforce development strategy that increases attainment of key experiences that contribute to a highly qualified acquisition workforce.

(3) Sufficient opportunities for promotion and advancement in the acquisition field.

(4) A sufficient number of qualified, trained members eligible for and active in the acquisition field to ensure adequate capacity, capability, and effective succession for acquisition functions,

*including contingency contracting, of the Department of Defense.*

(c) *INCLUSION OF INFORMATION IN ANNUAL REPORT.—The Secretary of Defense shall include in the report to Congress required under section 115b(d) of this title the following information related to the acquisition workforce for the period covered by the report (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, Marine Corps, Defense Agencies, and Office of the Secretary of Defense):*

(1) *The total number of persons serving in the Acquisition Corps, set forth separately for members of the armed forces and civilian employees, by grade level and by functional specialty.*

(2) *The total number of critical acquisition positions held, set forth separately for members of the armed forces and civilian employees, by grade level and by other appropriate categories (including by program manager, deputy program manager, and division head positions). For each such category, the report shall specify the number of civilians holding such positions compared to the total number of positions filled.*

(3) *The number of employees to whom the requirements of subsections (b)(2)(A) and (b)(2)(B) of section 1732 of this title did not apply because of the exceptions provided in paragraphs (1) and (2) of section 1732(c) of this title, set forth separately by type of exception.*

(4) *The number of program managers and deputy program managers who were reassigned after completion of a major milestone occurring closest in time to the date on which the person has served in the position for four years (as required under section 1734(b) of this title), and the proportion of those reassignments to the total number of reassignments of program managers and deputy program managers, set forth separately for program managers and deputy program managers. The Secretary also shall include the average length of assignment served by program managers and deputy program managers so reassigned.*

(5) *The number of persons, excluding those reported under paragraph (4), in critical acquisition positions who were reassigned after a period of three years or longer (as required under section 1734(a) of this title), and the proportion of those reassignments to the total number of reassignments of persons, excluding those reported under paragraph (4), in critical acquisition positions.*

(6) *The number of times a waiver authority was exercised under section 1724(d), 1732(d), 1734(d), or 1736(c) of this title or any other provision of this chapter (or other provision of law) which permits the waiver of any requirement relating to the acquisition workforce, and in the case of each such authority, the reasons for exercising the authority. The Secretary may present the information provided under this paragraph by category or grouping of types of waivers and reasons.*

**§ 1723. General education, training, and experience requirements**

[(a) **QUALIFICATION REQUIREMENTS.**—The Secretary of Defense shall establish education, training, and experience requirements for

each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.】

(a) *QUALIFICATION REQUIREMENTS.*—(1) *The Secretary of Defense shall establish education, training and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements, the Secretary shall ensure the availability and sufficiency of training in all areas of acquisition, including additional training courses with an emphasis on services contracting, long-term sustainment strategies, information technology, and rapid acquisition.*

(2) *In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.*

(3) *The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish requirements for continuing education and periodic renewal of an individual's certification. Any requirement for a certification renewal shall not require a renewal more often than once every five years.*

(b) *CAREER PATH REQUIREMENTS.*—*For each career path, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics shall establish requirements for the completion of course work and related on-the-job training and demonstration of qualifications in the critical acquisition-related duties and tasks of the career path. The Secretary of Defense, acting through the Under Secretary, shall also—*

(1) *encourage individuals in the acquisition workforce to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities; and*

(2) *develop key work experiences, including the creation of a program sponsored by the Department of Defense that facilitates the periodic interaction between individuals in the acquisition workforce and the end user in such end user's environment to enhance the knowledge base of such workforce, for individuals in the acquisition workforce so that the individuals may gain in-depth knowledge and experience in the acquisition process and become seasoned, well-qualified members of the acquisition workforce.*

【(b)】 (c) *LIMITATION ON CREDIT FOR TRAINING OR EDUCATION.*—*Not more than one year of a period of time spent pursuing a program of academic training or education in acquisition may be counted toward fulfilling any requirement established under this chapter for a certain period of experience.*

\* \* \* \* \*

### **§ 1725. Information technology acquisition positions**

(a) *PLAN REQUIRED.*—*The Secretary of Defense shall develop and carry out a plan to strengthen the part of the acquisition workforce*

that specializes in information technology. The plan shall include the following:

- (1) Defined targets for billets devoted to information technology acquisition.
- (2) Specific certification requirements for individuals in the acquisition workforce who specialize in information technology acquisition.
- (3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

(b) DEFINITIONS.—In this section:

- (1) The term “information technology” has the meaning provided such term in section 11101 of title 40 and includes information technology incorporated into a major weapon system.
- (2) The term “major weapon system” has the meaning provided such term in section 2379(f) of this title.

\* \* \* \* \*

SUBCHAPTER IV—EDUCATION AND TRAINING

Sec

1741. Policies and programs: establishment and implementation.

\* \* \* \* \*

**[1746. Defense acquisition university structure.]**

1746. *Defense Acquisition University.*

\* \* \* \* \*

1748. *Guidance and standards for acquisition workforce training.*

\* \* \* \* \*

**[§ 1746. Defense acquisition university structure]**

**§ 1746. Defense Acquisition University**

(a)\* \* \*

\* \* \* \* \*

(c) CURRICULUM DEVELOPMENT.—The President of the Defense Acquisition University shall work with the relevant professional schools and degree-granting institutions of the Department of Defense and military departments to ensure that best practices are used in curriculum development to support acquisition workforce positions.

\* \* \* \* \*

**§ 1748. Guidance and standards for acquisition workforce training**

(a) FULFILLMENT STANDARDS.—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 of sections 1723, 1724, and 1735 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.

(b) *GUIDANCE AND STANDARDS RELATING TO CONTRACTS FOR TRAINING.*—The Secretary of Defense shall develop appropriate guidance and standards to ensure that the Department of Defense will continue, where appropriate and cost-effective, to enter into contracts for the training requirements of sections 1723, 1724, and 1735 of this title, while maintaining appropriate control over the content and quality of such training.

#### SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.

1761. Management information system.

1762. *Demonstration project relating to certain acquisition personnel management policies and procedures.*

1763. *Incentive programs for civilian and military personnel in the acquisition workforce.*

\* \* \* \* \*

#### **§ 1762. *Demonstration project relating to certain acquisition personnel management policies and procedures***

(a) *COMMENCEMENT.*—The Secretary of Defense is encouraged to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) *TERMS AND CONDITIONS.*—(1) *Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.*

(2) *Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—*

(A) *“180 days” in subsection (b)(4) of such section shall be deemed to read “120 days”;*

(B) *“90 days” in subsection (b)(6) of such section shall be deemed to read “30 days”;* and

(C) *subsection (d)(1) of such section shall be disregarded.*

(3) *Paragraph (2) shall not apply with respect to a demonstration project unless—*

(A) *for each organization or team participating in the demonstration project—*

(i) *at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and*

(ii) *at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and*

(B) *the demonstration project commences before October 1, 2007.*

(c) *LIMITATION ON NUMBER OF PARTICIPANTS.*—The total number of persons who may participate in the demonstration project under this section may not exceed 120,000.



(d) *EFFECT OF REORGANIZATIONS.*—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

(e) *ASSESSMENT.*—(1) The Secretary of Defense shall designate an independent organization to review the acquisition workforce demonstration project described in subsection (a).

(2) Such assessment shall include:

(A) A description of the workforce included in the project.

(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.

(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

(E) How the project allows the organization to better meet mission needs.

(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

(G) Whether there is a process for (i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period, and (ii) setting timetables for performance appraisals.

(H) The project's impact on career progression.

(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

(3) The first such assessment under this subsection shall be completed not later than September 30, 2011, and subsequent assessments shall be completed every two years thereafter until the termination of the project. The Secretary shall submit to the covered congressional committees a copy of the assessment within 30 days after receipt by the Secretary of the assessment.

(f) *COVERED CONGRESSIONAL COMMITTEES.*—In this section, the term "covered congressional committees" means—

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

(g) *TERMINATION OF AUTHORITY.*—The authority to conduct a demonstration program under this section shall terminate on September 30, 2017.

(h) *CONVERSION.*—Within six months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

**§ 1763. Incentive programs for civilian and military personnel in the acquisition workforce**

(a) *CIVILIAN ACQUISITION WORKFORCE INCENTIVES.*—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce by providing rewards for employees who contribute to achieving the agency’s performance goals. The system of incentives shall include provisions that—

(1) relate salary increases, bonuses, and awards to performance and contribution to the agency mission (including the extent to which the performance of personnel in such workforce contributes to achieving the goals and standards established for acquisition programs pursuant to section 2545 of this title;

(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such goals and standards;

(3) use the Department of Defense Civilian Workforce Incentive Fund established pursuant to section 9902(a) of title 5; and

(4) provide opportunities for career broadening experiences for high performers.

(b) *MILITARY ACQUISITION WORKFORCE INCENTIVES.*—The Secretaries of the military departments shall fully use and enhance incentive programs that reward individuals, through recognition certificates or cash awards, for suggestions of process improvements that contribute to improvements in efficiency and economy and a better way of doing business.

\* \* \* \* \*

**PART IV—SERVICE, SUPPLY, AND PROCUREMENT**

Chapter	Sec.
131. Planning and Coordination .....	2201
* * * * *	
149. Performance Management of the Defense Acquisition System .....	2545
* * * * *	

**CHAPTER 131—PLANNING AND COORDINATION**

Sec.

2201. Apportionment of funds: authority for exemption; excepted expenses.

\* \* \* \* \*

2222a. Criteria for business system reviews.

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**§ 2222a. Criteria for business system reviews**

(a) *CRITERIA FOR BUSINESS SYSTEM REVIEWS.—The Secretary of Defense shall ensure that any contractor business system review carried out by a military department, a Defense Agency, or a Department of Defense Field Activity—*

*(1) complies with generally accepted government auditing standards issued by the Comptroller General;*

*(2) is performed by an audit team that does not engage in any other official activity (audit-related or otherwise) involving the contractor concerned;*

*(3) is performed in a time and manner consistent with a documented assessment of the risk to the Federal Government; and*

*(4) involves testing on a representative sample of transactions sufficient to fully examine the integrity of the contractor business system concerned.*

(b) *CONTRACTOR BUSINESS SYSTEM REVIEW DEFINED.—In this section, the term “contractor business system review” means an audit of policies, procedures, and internal controls relating to accounting and management systems of a contractor.*

\* \* \* \* \*

**CHAPTER 137—PROCUREMENT GENERALLY**

\* \* \* \* \*

**§ 2306a. Cost or pricing data: truth in negotiations**

(a) \* \* \*

(b) **EXCEPTIONS.—**

(1) **IN GENERAL.—**Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

(A) \* \* \*

(B) for the acquisition of a commercial item; **[or]**

(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination~~].~~; *or*

(D) *for the acquisition of a military purpose nondevelopmental item, as defined in section 2410r of this title, if the contracting officer determines in writing that—*

*(i) the contract, subcontract or modification will be a firm, fixed price type contract; and*

*(ii) the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the military purpose nondevelopmental item.*

\* \* \* \* \*

**CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS**

Sec						
2381.	Contracts: regulations for bids.	*	*	*	*	*
2410r.	<i>Military purpose nondevelopmental items.</i>	*	*	*	*	*

**§ 2410r. Military purpose nondevelopmental items**

(a) **DEFINITIONS.**—*In this section:*

(1) *The term “military purpose nondevelopmental item” means an item—*

*(A) developed exclusively at private expense;*

*(B) that meets a validated military requirement and for which the United States has rights in technical data as prescribed in section 2320(a)(2)(B) of this title, as certified in writing by the responsible program manager;*

*(C) for which delivery of an initial lot of production-representative items may be made within nine months after contract award; and*

*(D) for which the unit cost is less than \$10,000,000.*

(2) *The term “item” has the meaning provided in section 2302(3) of this title.*

(b) **REQUIREMENTS.**—*The Secretary of Defense shall ensure that, with respect to a contract for the acquisition of a military purpose nondevelopmental item, the following requirements apply:*

*(1) The contract shall be awarded using competitive procedures in accordance with section 2304 of this title.*

*(2) Certain contract clauses, as specified in regulations prescribed under subsection (c), shall be included in each such contract.*

*(3) The type of contract used shall be a firm, fixed price type contract.*

(c) **REGULATIONS.**—*The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. At a minimum, the regulations shall include—*

*(1) a list of contract clauses to be included in each contract for the acquisition of a military purpose nondevelopmental item;*

*(2) definitions for the terms “developed” and “exclusively at private expense” that—*

*(A) are consistent with the definitions developed for such terms in accordance with 2320(a)(3) of this title; and*

*(B) also exclude an item developed in part or in whole with—*

*(i) foreign government funding; or*

*(ii) foreign or Federal Government loan financing at nonmarket rates; and*

*(3) standards for evaluating the reasonableness of price for the military purpose nondevelopmental item, in lieu of certified cost or pricing data.*

\* \* \* \* \*

**CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION**

\* \* \* \* \*

**SUBCHAPTER I—DEFINITIONS**

**§ 2500. Definitions**

In this chapter:

(1) The term “national technology and industrial base” means the persons and organizations that are engaged in research, development, production, [or maintenance] *integration, services, or information technology* activities conducted within the United States and Canada.

\* \* \* \* \*

(4) The term “technology and industrial base sector” means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, [or production] *production, integration, services, or information technology* activities.

\* \* \* \* \*

(9) The term “eligible firm” means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, [and manufacturing] *manufacturing, integration, services, and information technology* activities in the United States; and

\* \* \* \* \*

(15) *The term “integration” means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy contract requirements.*

**SUBCHAPTER II—POLICIES AND PLANNING**

**§ 2501. National security objectives concerning national technology and industrial base**

(a) NATIONAL SECURITY OBJECTIVES FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—It is the policy of Congress that the national technology and industrial base be capable of meeting the following national security objectives:

(1) [Supplying and equipping] *Supplying, equipping, and supporting* the force structure of the armed forces that is necessary to achieve—

(A) \* \* \*

\* \* \* \* \*

(2) Sustaining production, maintenance, repair, [and logistics for] *logistics, and other activities in support of* military operations of various durations and intensity.

\* \* \* \* \*

(4) Reconstituting within a reasonable period the capability to develop ~~and produce~~, *produce, and support* supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

\* \* \* \* \*

(6) *Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.*

(7) *Providing for the development, production, and integration of information technology within the national technology and industrial base.*

~~[(6)]~~ (8) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.

\* \* \* \* \*

**§ 2505. National technology and industrial base: periodic defense capability assessments**

(a) \* \* \*

(b) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that technology and industrial capability assessments—

(1) \* \* \*

\* \* \* \* \*

(4) consider the effects of the termination of major defense acquisition programs (as the term is defined in section 2430 of this title) *or major automated information systems (as defined in section 2445a of this title)* in the previous fiscal year on the sectors and capabilities in the assessment.

\* \* \* \* \*

**§ 2506. Department of Defense technology and industrial base policy guidance**

(a) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in section 2501(a) of this title. Such guidance shall provide for technological and industrial capability considerations to be integrated into the ~~budget allocation, weapons~~ *strategy, management, budget allocation*, acquisition, and logistics support decision processes.

\* \* \* \* \*

**CHAPTER 149—PERFORMANCE MANAGEMENT OF THE DEFENSE ACQUISITION SYSTEM**

- Sec.  
 2545. *Performance assessment of the defense acquisition system.*  
 2546. *Audits of performance assessment.*  
 2547. *Use of performance assessments for managing performance.*  
 2548. *Acquisition-related functions of the Chiefs of Staff of the armed forces.*

**§2545. Performance assessment of the defense acquisition system**

(a) *PERFORMANCE ASSESSMENTS REQUIRED.*—(1) *The Secretary of Defense shall ensure that all elements of the defense acquisition system are subject to regular performance assessments—*

(A) *to determine the extent to which such elements deliver appropriate value to the Department of Defense; and*

(B) *to enable senior officials of the Department of Defense to manage the elements of the defense acquisition system to maximize their value to the Department.*

(2) *The performance of each element of the defense acquisition system shall be assessed as needed, but not less often than annually.*

(3) *The Secretary shall ensure that the performance assessments required by this subsection are appropriately tailored to reflect the diverse nature of defense acquisition so that the performance assessment of each element of the defense acquisition system accurately reflects the work performed by such element.*

(b) *SYSTEMWIDE CATEGORIES.*—(1) *The Secretary of Defense shall establish categories of metrics for the defense acquisition system, including, at a minimum, categories relating to cost, quality, delivery, workforce, and policy implementation that apply to all elements of the defense acquisition system.*

(2) *The Secretary of Defense shall issue guidance for service acquisition executives within the Department of Defense on the establishment of metrics, and goals and standards relating to such metrics, within the categories established by the Secretary under paragraph (1) to ensure that there is sufficient uniformity in performance assessments across the defense acquisition system so that elements of the defense acquisition system can be meaningfully compared.*

(c) *METRICS, GOALS, AND STANDARDS.*—(1) *Each service acquisition executive of the Department of Defense shall establish metrics to be used in the performance assessments required by subsection (a) for each element of the defense acquisition system for which such executive is responsible within the categories established by the Secretary under subsection (b). Such metrics shall be appropriately tailored pursuant to subsection (a)(3) and may include measures of—*

(A) *cost, quality, and delivery;*

(B) *contractor performance;*

(C) *excessive use of contract bundling and availability of non-bundled contract vehicles;*

(D) *workforce quality and program manager tenure (where applicable);*

(E) *the quality of market research;*

(F) *appropriate use of integrated testing;*

(G) *appropriate consideration of long-term sustainment; and*

(H) *appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment.*

(2) *Each service acquisition executive within the Department of Defense shall establish goals and standards (including, at a minimum, a threshold standard and an objective goal) for each metric established under paragraph (1) by the executive. In establishing the goals and standards for an element of the defense acquisition system, a service acquisition executive shall consult with the head of the element to the maximum extent practicable, but the service ac-*

quisition executive shall retain the final authority to determine the goals and standards established. The service acquisition executive shall update the goals and standards as necessary and appropriate consistent with the guidance issued under subsection (b)(2).

(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall periodically review the metrics, goals, and standards established by service acquisition executives under this subsection to ensure that they are consistent with the guidance issued under subsection (b)(2).

(d) **RESPONSIBILITY FOR OVERSIGHT AND DIRECTION OF PERFORMANCE ASSESSMENTS.**—(1) Performance assessments required by subsection (a) shall either be carried out by, or shall be subject to the oversight of, the Director of the Office of Performance Assessment and Root Cause Analysis. The authority and responsibility granted by this subsection is in addition to any other authority or responsibility granted to the Director of the Office of Performance Assessment and Root Cause Analysis by the Secretary of Defense or by any other provision of law. In the performance of duties pursuant to this section, the Director of the Office of Performance Assessment and Root Cause analysis shall coordinate with the Deputy Chief Management Officer to ensure that performance assessments carried out pursuant to this section are consistent with the performance management initiatives of the Department of Defense.

(2) A performance assessment may be carried out by an organization under the control of the service acquisition executive of a military department if—

(A) the assessment fulfills the requirements of subsection (a);

(B) the organization is approved to carry out the assessment by the Director of the Office of Performance Assessment and Root Cause Analysis; and

(C) the assessment is subject to the oversight of the Director of the Office of Performance Assessment and Root Cause Analysis in accordance with paragraph (1).

(e) **RETENTION AND ACCESS TO RECORDS OF PERFORMANCE ASSESSMENTS WITHIN THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.**—The Secretary of Defense shall ensure that information from performance assessments of all elements of the defense acquisition system are retained electronically and that the Director of the Office of Performance Assessment and Root Cause Analysis—

(1) promptly receives the results of all performance assessments conducted by an organization under the control of the service acquisition executive of a military department; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to perform or oversee performance assessments pursuant to this section.

(f) **DEFINITIONS.**—In this section:

(1) The term “defense acquisition system” means the acquisition workforce; the process by which the Department of Defense manages the acquisition of goods and services, including weapon systems, commodities, commercial and military unique services, and information technology; and the management struc-



ture for carrying out the acquisition function within the Department of Defense.

(2) The term “element of the defense acquisition system” means an organization that operates within the defense acquisition system and that focuses primarily on acquisition.

(3) The term “metric” means a specific measure that serves as a basis for comparison.

(4) The term “threshold performance standard” means the minimum acceptable level of performance in relation to a metric.

(5) The term “objective performance goal” means the most desired level of performance in relation to a metric.

(6) The term “Office of Performance Assessment and Root Cause Analysis” means the office reporting to the senior official designated by the Secretary of Defense under section 103(a) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23, 10 U.S.C. 2430 note).

#### **§ 2546. Audits of performance assessment**

(a) **AUDITS REQUIRED.**—The Secretary of Defense shall ensure that the performance assessments of the defense acquisition system required by section 2545 of this title are subject to periodic audits to determine the accuracy, reliability, and completeness of such assessments.

(b) **STANDARDS AND APPROACH.**—In performing the audits required by subsection (a), the Secretary shall ensure that such audits—

- (1) comply with generally accepted government auditing standards issued by the Comptroller General;
- (2) use a risk-based approach to audit planning; and
- (3) appropriately account for issues associated with auditing assessments of activities occurring in a contingency operation.

#### **§ 2547. Use of performance assessments for managing performance**

(a) **IN GENERAL.**—The Secretary of Defense shall ensure that the results of performance assessments are used in the management of elements of the defense acquisition system through direct linkages between the results of a performance assessment and the following:

- (1) The size of the bonus pool available to the workforce of an element of the defense acquisition system.
- (2) Rates of promotion in the workforce of an element of the defense acquisition system.
- (3) Awards for acquisition excellence.
- (4) The scope of work assigned to an element of the defense acquisition system.

(b) **ADDITIONAL REQUIREMENTS.**—The Secretary of Defense shall ensure that actions taken to manage the acquisition workforce pursuant to subsection (a) are undertaken in accordance with the requirements of subsections (c) and (d) of section 1701a of this title.

#### **§ 2548. Acquisition-related functions of the Chiefs of Staff of the armed forces**

(a) **ASSISTANCE.**—The Secretary of Defense shall ensure, notwithstanding section 3014(c)(1)(A), section 5014(c)(1)(A), and section

8014(c)(1)(A) of this title, 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 Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

- (1) The development of requirements relating to the defense acquisition system.
- (2) The development of measures to control requirements creep in the defense acquisition system.
- (3) The development of career paths in acquisition for military personnel (as required by section 1722a of this title).
- (4) 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.

(b) DEFINITIONS.—In this section:

- (1) The term “requirements creep” means the addition of new technical or operational specifications after a requirements document is approved.
- (2) The term “requirements document” means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—
  - (A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;
  - (B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or
  - (C) identifies production attributes required for a single increment of a program.

\* \* \* \* \*

**SECTION 105 OF THE WEAPON SYSTEM ACQUISITION REFORM ACT OF 2009**

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

(a) \* \* \*

\* \* \* \* \*

(c) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.—

(1) \* \* \*

[(2) MATTERS COVERED.—The report shall include, at a minimum, an assessment of—

[(A) the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements;

[(B) the quality and effectiveness of efforts to estimate the level of resources needed to fulfill joint military requirements; and

[(C) the extent to which the Council has considered trade-offs among cost, schedule, and performance objectives.]

(2) *MATTERS COVERED.*—The report shall include, at a minimum, an assessment of—

(A) the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements;

(B) the extent to which the Council has meaningfully considered the input and expertise of the Under Secretary of Defense for Acquisition, Technology, and Logistics in its discussions;

(C) the extent to which the Council has meaningfully considered the input and expertise of the Director of Cost Assessment and Program Evaluation in its discussions;

(D) the quality and effectiveness of efforts to estimate the level of resources needed to fulfill joint military requirements; and

(E) the extent to which the Council has considered trade-offs among cost, schedule, and performance objectives.

\* \* \* \* \*

**TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**SUBPART I—MISCELLANEOUS**

\* \* \* \* \*

**CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM**

\* \* \* \* \*

**§ 9903. Attracting highly qualified experts**

(a) \* \* \*

(b) *AUTHORITY.*—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense, *on a full-time or part-time basis*, without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

\* \* \* \* \*

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 1996**

**DIVISION D—FEDERAL ACQUISITION REFORM**

\* \* \* \* \*

**TITLE XLIII—ADDITIONAL REFORM  
PROVISIONS**

\* \* \* \* \*

**[(SEC. 4308. DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES.**

**[(a) COMMENCEMENT.—**The Secretary of Defense is encouraged to take such steps as may be necessary to provide for the commencement of a demonstration project, the purpose of which would be to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

**[(b) TERMS AND CONDITIONS.—**

**[(1) IN GENERAL.—**Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5, United States Code, and all other provisions of such title that apply with respect to any demonstration project under such section.

**[(2) EXCEPTIONS.—**Subject to paragraph (3), in applying section 4703 of title 5, United States Code, with respect to a demonstration project described in subsection (a)—

**[(A) “180 days”** in subsection (b)(4) of such section shall be deemed to read “120 days”;

**[(B) “90 days”** in subsection (b)(6) of such section shall be deemed to read “30 days”; and

**[(C) subsection (d)(1)** of such section shall be disregarded.

**[(3) CONDITIONS.—**Paragraph (2) shall not apply with respect to a demonstration project unless—

**[(A) for each organization or team participating in the demonstration project—**

**[(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and**

**[(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and**

**[(B) the demonstration project commences before October 1, 2007.**

**[(c) DEFINITION.—**For purposes of this section, the term “acquisition workforce” refers to the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of title 10, United States Code.

[(d) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in the demonstration project under this section may not exceed 120,000.]

[(e) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.]

[(f) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration program under this section shall terminate on September 30, 2012.]

\* \* \* \* \*

**SECTION 853 OF THE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 1998**

(Public Law 105–85)

**ISEC. 853. GUIDANCE AND STANDARDS FOR DEFENSE ACQUISITION  
WORKFORCE TRAINING REQUIREMENTS.**

[The Secretary of Defense shall develop appropriate guidance and standards to ensure that the Department of Defense will continue, where appropriate and cost-effective, to enter into contracts for the training requirements of sections 1723, 1724, and 1735 of title 10, United States Code, while maintaining appropriate control over the content and quality of such training.]

**STROM THURMOND NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 1999**

**DIVISION A—DEPARTMENT OF  
DEFENSE AUTHORIZATIONS**

\* \* \* \* \*

**TITLE VIII—ACQUISITION POLICY, AC-  
QUISITION MANAGEMENT, AND RE-  
LATED MATTERS**

\* \* \* \* \*

**SEC. 803. DEFENSE COMMERCIAL PRICING MANAGEMENT IMPROVE-  
MENT.**

(a)\* \* \*

\* \* \* \* \*

[(c) COMMERCIAL PRICE TREND ANALYSIS.—(1) The Secretary of Defense shall develop and implement procedures that, to the maximum extent that is practicable and consistent with the efficient

operation of the Department of Defense, provide for the collection and analysis of information on price trends for categories of exempt commercial items described in paragraph (2).

[(2) A category of exempt commercial items referred to in paragraph (1) consists of exempt commercial items—

[(A) that are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends; and

[(B) for which there is a potential for the price paid to be significantly higher (on a percentage basis) than the prices previously paid in procurements of the same or similar items for the Department of Defense, as determined by the head of the procuring Department of Defense agency or the Secretary of the procuring military department on the basis of criteria prescribed by the Secretary of Defense.

[(3) The head of a Department of Defense agency or the Secretary of a military department shall take appropriate action to address any unreasonable escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

[(4) Not later than April 1 of each of fiscal years 2000 through 2009, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted by the Secretary of each military department and the Director of the Defense Logistics Agency for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken by each Secretary and the Director to identify and address any unreasonable price escalation for the categories of items.]

(c) *COMMERCIAL PRICE TREND ANALYSIS.*—

(1) *The Secretary of Defense shall develop and implement procedures that, to the maximum extent practicable, provide for the collection and analysis of information on price trends for categories of exempt commercial items described in paragraph (2).*

(2) *A category of exempt commercial items referred to in paragraph (1) consists of exempt commercial items that are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends.*

(3) *The analysis of information on price trends under paragraph (1) shall include, in any category in which significant escalation in prices is identified, a more detailed examination of the causes of escalation for such prices within the category and whether such price escalation is consistent across the Department of Defense.*

(4) *The head of a Department of Defense agency or the Secretary of a military department shall take appropriate action to address any unjustified escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).*

(5) Not later than April 1 of each of year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken to identify and address any unjustified price escalation for the categories of items.

(6) This subsection shall not be in effect on and after April 1, 2013.

\* \* \* \* \*

**TITLE 31, UNITED STATES CODE**

\* \* \* \* \*

**Subtitle III—FINANCIAL MANAGEMENT**

\* \* \* \* \*

**CHAPTER 37—CLAIMS**

SUBCHAPTER I—GENERAL

Sec.

3701. Definitions and application.

\* \* \* \* \*

SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

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3720F. Contractor and grantee disclosure of delinquent Federal tax debts.

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SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

\* \* \* \* \*

**§3720F. Contractor and grantee disclosure of delinquent Federal tax debts**

(a) *REQUIREMENT RELATING TO CONTRACTS.*—The head of any executive agency that issues an invitation for bids or a request for proposals for a contract in an amount greater than the simplified acquisition threshold shall require each person that submits a bid or proposal to submit with the bid or proposal a form—

(1) certifying that the person does not have a seriously delinquent tax debt; and

(2) authorizing the Secretary of the Treasury to disclose to the head of the agency information strictly limited to verifying whether the person has a seriously delinquent tax debt.

(b) *REQUIREMENT RELATING TO GRANTS.*—The head of any executive agency that offers a grant in excess of an amount equal to the simplified acquisition threshold may not award such grant to any person unless such person submits with the application for such grant a form—

(1) certifying that the person does not have a seriously delinquent tax debt; and

(2) authorizing the Secretary of the Treasury to disclose to the head of the executive agency information strictly limited to verifying whether the person has a seriously delinquent tax debt.

(c) *FORM FOR RELEASE OF INFORMATION.*—The Secretary of the Treasury shall make available to all executive agencies a standard form for the certification and authorization described in subsections (a) and (b).

(d) *DEFINITIONS.*—In this section:

(1) *CONTRACT.*—The term “contract” means a binding agreement entered into by an executive agency for the purpose of obtaining property or services, but does not include—

(A) a contract for property or services that is intended to be entered into through the use of procedures other than competitive procedures by reason of section 2304(c)(2) of this title; or

(B) a contract designated by the head of the agency as necessary to the national security of the United States.

(2) *EXECUTIVE AGENCY.*—The term “executive agency” has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(3) *PERSON.*—The term “person” includes—

(A) an individual;

(B) a partnership; and

(C) a corporation.

(4) *SERIOUSLY DELINQUENT TAX DEBT.*—The term “seriously delinquent tax debt”—

(A) means any Federal tax liability—

(i) that exceeds \$3,000;

(ii) that has been assessed by the Secretary of the Treasury and not paid; and

(iii) for which a notice of lien has been filed in public records; and

(B) does not include any Federal tax liability—

(i) being paid in a timely manner under an offer-in-compromise or installment agreement;

(ii) with respect to which collection due process proceedings are not completed; or

(iii) with respect to which collection due process proceedings are completed and no further payment is required.

(5) *SIMPLIFIED ACQUISITION THRESHOLD.*—The term “simplified acquisition threshold” has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(e) *REGULATIONS.*—The Administrator for Federal Procurement Policy, in consultation with the Secretary of the Treasury, shall promulgate regulations that—

(1) treat corporations and partnerships as having a seriously delinquent tax debt if such corporation or partnership is controlled (directly or indirectly) by persons who have a seriously delinquent tax debt;



*(2) provide for the proper application of subsections (a)(2) and (b)(2) in the case of corporations and partnerships; and*  
*(3) provide for the proper application of subsection (a) to first-tier subcontractors that are identified in a bid or proposal and are a significant part of a bid or proposal team.*

\* \* \* \* \*

## ADDITIONAL VIEWS

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### ADDITIONAL VIEWS OF REPRESENTATIVE K. MICHAEL CONAWAY

I strongly support H.R. 5013. It will be instrumental in improving the full range of the defense acquisition system and I am particularly pleased that the measure takes bold steps towards improving financial management within the Department of Defense. The bill is the culmination of a year's worth of effort by the Committee's Panel on Defense Acquisition Reform, established by Chairman Skelton and former Ranking Member McHugh in March, 2009. The members of the panel, led by Chairman Rob Andrews, approached their work in a nonpartisan basis and delivered a comprehensive report. I am pleased to have been associated with this endeavor and thank the Chairman and Ranking Member McKeon for acting so quickly to translate the Panel's recommendations into legislation.

I believe this bill will go a long way to improving the way we measure value in acquisition, creating a more responsive requirements process, managing elements of the acquisition system other than major weapon systems, and sustaining the acquisition workforce. But this bill also plays a critical role in improving the financial management practices of the Department of Defense (DOD) by incentivizing the Department to obtain an unqualified audit opinion. The publication of a clean audit of DOD would finally give the American people confidence that their tax dollars are being accounted for and spent wisely in the defense of this great nation.

Since 1990, there has been a requirement for the Federal Government to publish audited financial statements. But the Federal Government has not complied. A large share of the responsibility for this circumstance rests with DOD. The Department of Defense is the largest agency in the Federal Government, owning 86 percent of the Government's assets, estimated at \$4.6 trillion. Over the last two decades millions of dollars have been spent by DOD in the quest to obtain auditable financial statements. It will not be an easy task, but it is possible and it is necessary to implement the financial control systems necessary to generate auditable data. This bill ensures that DOD is not held to a separate standard from public business and the rest of government.

The reliability of financial data is crucial to improve acquisition outcomes. Without understanding where the Department's money is being spent or understanding what assets it owns, there will never be any accountability for acquisition costs or new requirements. Perhaps every dime they spend is being well spent. But we will never know and neither will DOD, unless financial accountability becomes a priority for the Department.

If correctly implemented, this timely legislation will allow America's tax dollars to be stretched further by yielding greater savings and will have a substantial impact on reducing waste, fraud and abuse.

I applaud the Panel and the House Armed Services Committee for adopting these recommendations and encourage each of the components of the Department of Defense to take full advantage of the incentives provided in this bill to accelerate the publication of auditable financial statements.

K. MICHAEL CONAWAY.

#### ADDITIONAL VIEWS OF REPRESENTATIVE RICK LARSEN

Mr. Chairman, I strongly support the IMPROVE Acquisition Act (H.R. 5013) and the efforts of the House Armed Services Committee and Defense Acquisition Reform Panel to ensure that the Department of Defense is spending taxpayer dollars wisely. I would like to thank you, Ranking Member McKeon, Congressman Andrews, and Congressman Mike Conaway for all of your diligent work in drafting this legislation.

We are all aware that many major systems purchased by the Department of Defense have experienced cost overruns and delays; the Government Accountability Office has found that 95 major weapons programs were a combined \$295 billion over-budget and on average 21 months behind schedule. This is unacceptable.

Last year, Congress passed and the President signed into law the Weapon Systems Acquisition Reform Act, which addresses deep-seated and systemic problems in how we procure major weapons systems. This law requires the Department of Defense to provide more realistic estimates of how much weapons will cost and punish those programs that are failing to meet schedule and cost goals. This law also demands additional focus during the early stages of weapons development, when small program changes can have major long-term consequences. When it comes to defense procurement, an ounce of oversight is worth a pound of cure.

While the Weapon Systems Acquisition Reform Act centered on the problems associated with acquiring major weapons systems, which comprise only about 20% of the Department of Defense's acquisition budget, the IMPROVE Acquisition Act builds on this work and focuses on making sure that the remaining 80% of acquisition dollars are providing the best value for taxpayers. This legislation will require the Department of Defense to strengthen its acquisition workforce, ensure accountability in its financial management system, and responsibly expand the industrial base to foster competition that benefits taxpayers and service members alike. I encourage my colleagues in the Senate to consider similar legislation to drive cost savings for taxpayers and achieve better results for our men and women in uniform.

I recognize that the hard work of reforming defense acquisition does not end with this legislation. The House Armed Services Committee must continue to engage in active oversight to ensure that taxpayer dollars are well spent and our military service members have access to the weapons and equipment they need to do their job. I look forward to working with you and other members of the Committee to achieve these goals.

RICK LARSEN.

ADDITIONAL VIEWS OF REPRESENTATIVE JAMES R.  
LANGEVIN

I would like to express my support for passage of H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every Acquisition Act of 2010. This legislation reflects the hard work of the Committee's Acquisition Reform Panel and goes a long way to reforming our defense acquisition system to better serve and protect our nation. Due to unavoidable circumstances, I regrettably missed casting a vote in favor of the bill in the Committee. I look forward to supporting it once it is considered on the floor of the House of Representatives.

JAMES R. LANGEVIN.

