

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 454

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## AN ACT

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Weapon Systems Acquisition Reform Act of 2009”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

**TITLE I—ACQUISITION ORGANIZATION**

Sec. 101. Reports on systems engineering capabilities of the Department of De-  
fense.

Sec. 102. Director of Developmental Test and Evaluation.

Sec. 103. Assessment of technological maturity of critical technologies of major  
defense acquisition programs by the Director of Defense Re-  
search and Engineering.

Sec. 104. Director of Independent Cost Assessment.

Sec. 105. Role of the commanders of the combatant commands in identifying  
joint military requirements.

Sec. 106. Clarification of submittal of certification of adequacy of budgets by  
the Director of the Department of Defense Test Resource  
Management Center.

**TITLE II—ACQUISITION POLICY**

Sec. 201. Consideration of trade-offs among cost, schedule, and performance in  
the acquisition of major weapon systems.

Sec. 202. Preliminary design review and critical design review for major defense  
acquisition programs.

Sec. 203. Ensuring competition throughout the life cycle of major defense ac-  
quisition programs.

Sec. 204. Critical cost growth in major defense acquisition programs.

Sec. 205. Organizational conflicts of interest in the acquisition of major weapon  
systems.

Sec. 206. Awards for Department of Defense personnel for excellence in the ac-  
quisition of products and services.

Sec. 207. Earned Value Management.

Sec. 208. Expansion of national security objectives of the national technology  
and industrial base.

Sec. 209. Plan for elimination of weaknesses in operations that hinder capacity  
to assemble and assess reliable cost information on acquired  
assets under major defense acquisition programs.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) The term “congressional defense commit-  
2           tees” has the meaning given that term in section  
3           101(a)(16) of title 10, United States Code.

4           (2) The term “major defense acquisition pro-  
5           gram” has the meaning given that term in section  
6           2430 of title 10, United States Code.

7                           **TITLE I—ACQUISITION**  
8                           **ORGANIZATION**

9   **SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILI-**  
10                           **TIES OF THE DEPARTMENT OF DEFENSE.**

11           (a) **REPORTS BY SERVICE ACQUISITION EXECU-**  
12           **TIVES.**—Not later than 180 days after the date of the en-  
13           actment of this Act, the service acquisition executive of  
14           each military department shall submit to the Under Sec-  
15           retary of Defense for Acquisition, Technology, and Logis-  
16           tics a report setting forth the following:

17                   (1) A description of the extent to which such  
18           military department has in place development plan-  
19           ning organizations and processes staffed by adequate  
20           numbers of personnel with appropriate training and  
21           expertise to ensure that—

22                           (A) key requirements, acquisition, and  
23           budget decisions made for each major weapon  
24           system prior to Milestones A and B are sup-

1           ported by a rigorous systems analysis and sys-  
2           tems engineering process;

3           (B) the systems engineering strategy for  
4           each major weapon system includes a robust  
5           program for improving reliability, availability,  
6           maintainability, and sustainability as an inte-  
7           gral part of design and development; and

8           (C) systems engineering requirements, in-  
9           cluding reliability, availability, maintainability,  
10          and sustainability requirements, are identified  
11          during the Joint Capabilities Integration Devel-  
12          opment System process and incorporated into  
13          contract requirements for each major weapon  
14          system.

15          (2) A description of the actions that such mili-  
16          tary department has taken, or plans to take, to—

17               (A) establish needed development planning  
18               and systems engineering organizations and  
19               processes; and

20               (B) attract, develop, retain, and reward  
21               systems engineers with appropriate levels of  
22               hands-on experience and technical expertise to  
23               meet the needs of such military department.

24          (b) REPORT BY UNDER SECRETARY OF DEFENSE  
25          FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not

1 later than 270 days after the date of the enactment of  
2 this Act, the Under Secretary of Defense for Acquisition,  
3 Technology, and Logistics shall submit to the Committee  
4 on Armed Services of the Senate and the Committee on  
5 Armed Services of the House of Representatives a report  
6 on the system engineering capabilities of the Department  
7 of Defense. The report shall include, at a minimum, the  
8 following:

9           (1) An assessment by the Under Secretary of  
10 the reports submitted by the service acquisition ex-  
11 ecutives pursuant to subsection (a) and of the ade-  
12 quacy of the actions that each military department  
13 has taken, or plans to take, to meet the systems en-  
14 gineering and development planning needs of such  
15 military department.

16           (2) An assessment of each of the recommenda-  
17 tions of the report on Pre-Milestone A and Early-  
18 Phase Systems Engineering of the Air Force Studies  
19 Board of the National Research Council, including  
20 the recommended checklist of systems engineering  
21 issues to be addressed prior to Milestones A and B,  
22 and the extent to which such recommendations  
23 should be implemented throughout the Department  
24 of Defense.

1 **SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVAL-**  
2 **UATION.**

3 (a) ESTABLISHMENT OF POSITION.—

4 (1) IN GENERAL.—Chapter 4 of title 10, United  
5 States Code, is amended by inserting after section  
6 139b the following new section:

7 **“§ 139c. Director of Developmental Test and Evalua-**  
8 **tion**

9 “(a) There is a Director of Developmental Test and  
10 Evaluation, who shall be appointed by the Secretary of De-  
11 fense from among individuals with an expertise in acquisi-  
12 tion and testing.

13 “(b)(1) The Director of Developmental Test and  
14 Evaluation shall be the principal advisor to the Secretary  
15 of Defense and the Under Secretary of Defense for Acqui-  
16 sition, Technology, and Logistics on developmental test  
17 and evaluation in the Department of Defense.

18 “(2) The individual serving as the Director of Devel-  
19 opmental Test and Evaluation may also serve concurrently  
20 as the Director of the Department of Defense Test Re-  
21 source Management Center under section 196 of this title.

22 “(3) The Director shall be subject to the supervision  
23 of the Under Secretary of Defense for Acquisition, Tech-  
24 nology, and Logistics and shall report to the Under Sec-  
25 retary.

1       “(4)(A) The Under Secretary shall provide guidance  
2 to the Director to ensure that the developmental test and  
3 evaluation activities of the Department of Defense are  
4 fully integrated into and consistent with the systems engi-  
5 neering and development processes of the Department.

6       “(B) The guidance under this paragraph shall en-  
7 sure, at a minimum, that—

8           “(i) developmental test and evaluation require-  
9 ments are fully integrated into the Systems Engi-  
10 neering Master Plan for each major defense acquisi-  
11 tion program; and

12           “(ii) systems engineering and development plan-  
13 ning requirements are fully considered in the Test  
14 and Evaluation Master Plan for each major defense  
15 acquisition program.

16       “(c) The Director of Developmental Test and Evalua-  
17 tion shall—

18           “(1) develop policies and guidance for the devel-  
19 opmental test and evaluation activities of the De-  
20 partment of Defense (including integration and de-  
21 velopmental testing of software);

22           “(2) monitor and review the developmental test  
23 and evaluation activities of the major defense acqui-  
24 sition programs and major automated information  
25 systems programs of the Department of Defense;

1           “(3) review and approve the test and evaluation  
2           master plan for each major defense acquisition pro-  
3           gram of the Department of Defense;

4           “(4) supervise the activities of the Director of  
5           the Department of Defense Test Resource Manage-  
6           ment Center under section 196 of this title, or carry  
7           out such activities if serving concurrently as the Di-  
8           rector of Developmental Test and Evaluation and  
9           the Director of the Department of Defense Test Re-  
10          source Management Center under subsection (b)(2);

11          “(5) review the organizations and capabilities of  
12          the military departments with respect to develop-  
13          mental test and evaluation and identify needed  
14          changes or improvements to such organizations and  
15          capabilities; and

16          “(6) perform such other activities relating to  
17          the developmental test and evaluation activities of  
18          the Department of Defense as the Under Secretary  
19          of Defense for Acquisition, Technology, and Logis-  
20          tics may prescribe.

21          “(d) The Director of Developmental Test and Eval-  
22          uation shall have access to all records and data of the De-  
23          partment of Defense (including the records and data of  
24          each military department) that the Director considers nec-



1 essary in order to carry out the Director's duties under  
2 this section.

3 “(e)(1) The Director of Developmental Test and  
4 Evaluation shall submit to Congress each year a report  
5 on the developmental test and evaluation activities of the  
6 major defense acquisition programs and major automated  
7 information system programs of the of the Department  
8 of Defense. Each report shall include, at a minimum, the  
9 following:

10 “(A) A discussion of any waivers to testing ac-  
11 tivities included in the Test and Evaluation Master  
12 Plan for a major defense acquisition program in the  
13 preceding year.

14 “(B) An assessment of the organization and ca-  
15 pabilities of the Department of Defense for test and  
16 evaluation.

17 “(2) The Secretary of Defense may include in any  
18 report submitted to Congress under this subsection such  
19 comments on such report as the Secretary considers ap-  
20 propriate.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-  
22 tions at the beginning of chapter 4 of such title is  
23 amended by inserting after the item relating to sec-  
24 tion 139b the following new item:

“139e. Director of Developmental Test and Evaluation.”.

25 (3) CONFORMING AMENDMENTS.—

1 (A) Section 196(f) of title 10, United  
2 States Code, is amended by striking “the Under  
3 Secretary of Defense for Acquisition, Tech-  
4 nology, and Logistics” and all that follows and  
5 inserting “the Under Secretary of Defense for  
6 Acquisition, Technology, and Logistics and the  
7 Director of Developmental Test and Evalua-  
8 tion.”.

9 (B) Section 139(b) of such title is amend-  
10 ed—

11 (i) by redesignating paragraphs (4)  
12 through (6) as paragraphs (5) through (7),  
13 respectively; and

14 (ii) by inserting after paragraph (3)  
15 the following new paragraph (4):

16 “(4) review and approve the test and evaluation  
17 master plan for each major defense acquisition pro-  
18 gram of the Department of Defense;”.

19 (b) REPORTS ON DEVELOPMENTAL TESTING ORGA-  
20 NIZATIONS AND PERSONNEL.—

21 (1) REPORTS BY SERVICE ACQUISITION EXECU-  
22 TIVES.—Not later than 180 days after the date of  
23 the enactment of this Act, the service acquisition ex-  
24 ecutive of each military department shall submit to  
25 the Director of Developmental Test and Evaluation

1 a report on the extent to which the test organiza-  
2 tions of such military department have in place, or  
3 have effective plans to develop, adequate numbers of  
4 personnel with appropriate expertise for each pur-  
5 pose as follows:

6 (A) To ensure that testing requirements  
7 are appropriately addressed in the translation  
8 of operational requirements into contract speci-  
9 fications, in the source selection process, and in  
10 the preparation of requests for proposals on all  
11 major defense acquisition programs.

12 (B) To participate in the planning of de-  
13 velopmental test and evaluation activities, in-  
14 cluding the preparation and approval of a test  
15 and evaluation master plan for each major de-  
16 fense acquisition program.

17 (C) To participate in and oversee the con-  
18 duct of developmental testing, the analysis of  
19 data, and the preparation of evaluations and re-  
20 ports based on such testing.

21 (2) FIRST ANNUAL REPORT BY DIRECTOR OF  
22 DEVELOPMENTAL TEST AND EVALUATION.—The  
23 first annual report submitted to Congress by the Di-  
24 rector of Developmental Test and Evaluation under  
25 section 139c(e) of title 10, United States Code (as

1 added by subsection (a)), shall be submitted not  
2 later than one year after the date of the enactment  
3 of this Act, and shall include an assessment by the  
4 Director of the reports submitted by the service ac-  
5 quisition executives to the Director under paragraph  
6 (1).

7 **SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**  
8 **CRITICAL TECHNOLOGIES OF MAJOR DE-**  
9 **FENSE ACQUISITION PROGRAMS BY THE DI-**  
10 **RECTOR OF DEFENSE RESEARCH AND ENGI-**  
11 **NEERING.**

12 (a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-  
13 SEARCH AND ENGINEERING.—

14 (1) IN GENERAL.—Section 139a of title 10,  
15 United States Code, is amended by adding at the  
16 end the following new subsection:

17 “(c)(1) The Director of Defense Research and Engi-  
18 neering shall, in consultation with the Director of Develop-  
19 mental Test and Evaluation, periodically review and assess  
20 the technological maturity and integration risk of critical  
21 technologies of the major defense acquisition programs of  
22 the Department of Defense and report on the findings of  
23 such reviews and assessments to the Under Secretary of  
24 Defense for Acquisition, Technology, and Logistics.

1       “(2) The Director shall submit to the Secretary of  
2 Defense and to Congress each year a report on the techno-  
3 logical maturity and integration risk of critical tech-  
4 nologies of the major defense acquisition programs of the  
5 Department of Defense.”.

6           (2) FIRST ANNUAL REPORT.—The first annual  
7 report under subsection (c)(2) of section 139a of  
8 title 10, United States Code (as added by paragraph  
9 (1)), shall be submitted to Congress not later than  
10 March 1, 2011, and shall address the results of re-  
11 views and assessments conducted by the Director of  
12 Defense Research and Engineering pursuant to sub-  
13 section (c)(1) of such section (as so added) during  
14 the preceding calendar year.

15       (b) REPORT ON RESOURCES FOR IMPLEMENTA-  
16 TION.—Not later than 120 days after the date of the en-  
17 actment of this Act, the Director of Defense Research and  
18 Engineering shall submit to the congressional defense  
19 committees a report describing any additional resources,  
20 including specialized workforce, that may be required by  
21 the Director, and by other science and technology elements  
22 of the Department of Defense, to carry out the following:

23           (1) The requirements under the amendment  
24 made by subsection (a).

1           (2) The technological maturity assessments re-  
2           quired by section 2366b(a) of title 10, United States  
3           Code, as amended by section 202 of this Act.

4           (3) The requirements of Department of Defense  
5           Instruction 5000, as revised.

6           (c) **TECHNOLOGICAL MATURITY STANDARDS.**—For  
7           purposes of the review and assessment conducted by the  
8           Director of Defense Research and Engineering in accord-  
9           ance with subsection (c) of section 139a of title 10, United  
10          States Code (as added by subsection (a)), a critical tech-  
11          nology is considered to be mature—

12           (1) in the case of a major defense acquisition  
13          program that is being considered for Milestone B  
14          approval, if the technology has been demonstrated in  
15          a relevant environment; and

16           (2) in the case of a major defense acquisition  
17          program that is being considered for Milestone C ap-  
18          proval, if the technology has been demonstrated in  
19          a realistic environment.

20 **SEC. 104. DIRECTOR OF INDEPENDENT COST ASSESSMENT.**

21          (a) **DIRECTOR OF INDEPENDENT COST ASSESS-**  
22 **MENT.**—

23           (1) **IN GENERAL.**—Chapter 4 of title 10, United  
24          States Code, as amended by section 102 of this Act,

1 is further amended by inserting after section 139c  
2 the following new section:

3 **“§ 139d. Director of Independent Cost Assessment**

4 “(a) There is a Director of Independent Cost Assess-  
5 ment in the Department of Defense, appointed by the  
6 President, by and with the advice and consent of the Sen-  
7 ate. The Director shall be appointed without regard to po-  
8 litical affiliation and solely on the basis of fitness to per-  
9 form the duties of the Director.

10 “(b) The Director is the principal advisor to the Sec-  
11 retary of Defense, the Under Secretary of Defense for Ac-  
12 quisition, Technology, and Logistics, and the Under Sec-  
13 retary of Defense (Comptroller) on cost estimation and  
14 cost analyses for the acquisition programs of the Depart-  
15 ment of Defense and the principal cost estimation official  
16 within the senior management of the Department of De-  
17 fense. The Director shall—

18 “(1) prescribe, by authority of the Secretary of  
19 Defense, policies and procedures for the conduct of  
20 cost estimation and cost analysis for the acquisition  
21 programs of the Department of Defense;

22 “(2) provide guidance to and consult with the  
23 Secretary of Defense, the Under Secretary of De-  
24 fense for Acquisition, Technology, and Logistics, the  
25 Under Secretary of Defense (Comptroller), and the

1 Secretaries of the military departments with respect  
2 to cost estimation in the Department of Defense in  
3 general and with respect to specific cost estimates  
4 and cost analyses to be conducted in connection with  
5 a major defense acquisition program under chapter  
6 144 of this title or a major automated information  
7 system program under chapter 144A of this title;

8 “(3) establish guidance on confidence levels for  
9 cost estimates on major defense acquisition pro-  
10 grams, require that all such estimates include con-  
11 fidence levels compliant with such guidance, and re-  
12 quire the disclosure of all such confidence levels (in-  
13 cluding through Selected Acquisition Reports sub-  
14 mitted pursuant to section 2432 of this title);

15 “(4) monitor and review all cost estimates and  
16 cost analyses conducted in connection with major de-  
17 fense acquisition programs and major automated in-  
18 formation system programs; and

19 “(5) conduct independent cost estimates and  
20 cost analyses for major defense acquisition programs  
21 and major automated information system programs  
22 for which the Under Secretary of Defense for Acqui-  
23 sition, Technology, and Logistics is the Milestone  
24 Decision Authority—

25 “(A) in advance of—



1                   “(i) any certification under section  
2                   2366a or 2366b of this title;

3                   “(ii) any certification under section  
4                   2433(e)(2) of this title; and

5                   “(iii) any report under section  
6                   2445c(f) of this title; and

7                   “(B) whenever necessary to ensure that an  
8                   estimate or analysis under paragraph (4) is un-  
9                   biased, fair, and reliable.

10                  “(c)(1) The Director may communicate views on mat-  
11                  ters within the responsibility of the Director directly to  
12                  the Secretary of Defense and the Deputy Secretary of De-  
13                  fense without obtaining the approval or concurrence of any  
14                  other official within the Department of Defense.

15                  “(2) The Director shall consult closely with, but the  
16                  Director and the Director’s staff shall be independent of,  
17                  the Under Secretary of Defense for Acquisition, Tech-  
18                  nology, and Logistics, the Under Secretary of Defense  
19                  (Comptroller), and all other officers and entities of the De-  
20                  partment of Defense responsible for acquisition and budg-  
21                  eting.

22                  “(d)(1) The Secretary of a military department shall  
23                  report promptly to the Director the results of all cost esti-  
24                  mates and cost analyses conducted by the military depart-  
25                  ment and all studies conducted by the military department

1 in connection with cost estimates and cost analyses for  
2 major defense acquisition programs of the military depart-  
3 ment.

4 “(2) The Director may make comments on cost esti-  
5 mates and cost analyses conducted by a military depart-  
6 ment for a major defense acquisition program, request  
7 changes in such cost estimates and cost analyses to ensure  
8 that they are fair and reliable, and develop or require the  
9 development of independent cost estimates or cost anal-  
10 yses for such program, as the Director determines to be  
11 appropriate.

12 “(3) The Director shall have access to any records  
13 and data in the Department of Defense (including the  
14 records and data of each military department) that the  
15 Director considers necessary to review in order to carry  
16 out the Director’s duties under this section.

17 “(e)(1) The Director shall prepare an annual report  
18 summarizing the cost estimation and cost analysis activi-  
19 ties of the Department of Defense during the previous  
20 year and assessing the progress of the Department in im-  
21 proving the accuracy of its costs estimates and analyses.  
22 The report shall include an assessment of—

23 “(A) the extent to which each of the military  
24 departments have complied with policies, procedures,

1 and guidance issued by the Director with regard to  
2 the preparation of cost estimates; and

3 “(B) the overall quality of cost estimates pre-  
4 pared by each of the military departments.

5 “(2) Each report under this subsection shall be sub-  
6 mitted concurrently to the Secretary of Defense, the  
7 Under Secretary of Defense for Acquisition, Technology,  
8 and Logistics, the Under Secretary of Defense (Comp-  
9 troller), and Congress not later than 10 days after the  
10 transmission of the budget for the next fiscal year under  
11 section 1105 of title 31. The Director shall ensure that  
12 a report submitted under this subsection does not include  
13 any information, such as proprietary or source selection  
14 sensitive information, that could undermine the integrity  
15 of the acquisition process. Each report submitted to Con-  
16 gress under this subsection shall be posted on an Internet  
17 website of the Department of Defense that is available to  
18 the public.

19 “(3) The Secretary may comment on any report of  
20 the Director to Congress under this subsection.

21 “(f) The President shall include in the budget trans-  
22 mitted to Congress pursuant to section 1105 of title 31  
23 for each fiscal year a separate statement of estimated ex-  
24 penditures and proposed appropriations for that fiscal  
25 year for the Director of Independent Cost Assessment in

1 carrying out the duties and responsibilities of the Director  
2 under this section.

3 “(g) The Secretary of Defense shall ensure that the  
4 Director has sufficient professional staff of military and  
5 civilian personnel to enable the Director to carry out the  
6 duties and responsibilities of the Director under this sec-  
7 tion.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-  
9 tions at the beginning of chapter 4 of such title, as  
10 so amended, is further amended by inserting after  
11 the item relating to section 139c the following new  
12 item:

“139d. Director of Independent Cost Assessment.”.

13 (3) EXECUTIVE SCHEDULE LEVEL IV.—Section  
14 5315 of title 5, United States Code, is amended by  
15 inserting after the item relating to the Director of  
16 Operational Test and Evaluation, Department of  
17 Defense the following new item:

18 “Director of Independent Cost Assessment, De-  
19 fense of Defense.”.

20 (b) REPORT ON MONITORING OF OPERATING AND  
21 SUPPORT COSTS FOR MDAPs.—

22 (1) REPORT TO SECRETARY OF DEFENSE.—Not  
23 later than one year after the date of the enactment  
24 of this Act, the Director of Independent Cost Assess-  
25 ment under section 139d of title 10 United States

1 Code (as added by subsection (a)), shall review exist-  
2 ing systems and methods of the Department of De-  
3 fense for tracking and assessing operating and sup-  
4 port costs on major defense acquisition programs  
5 and submit to the Secretary of Defense a report on  
6 the finding and recommendations of the Director as  
7 a result of the review, including an assessment by  
8 the Director of the feasibility and advisability of es-  
9 tablishing baselines for operating and support costs  
10 under section 2435 of title 10, United States Code.

11 (2) TRANSMITTAL TO CONGRESS.—Not later  
12 than 30 days after receiving the report required by  
13 paragraph (1), the Secretary shall transmit the re-  
14 port to the congressional defense committees, to-  
15 gether with any comments on the report the Sec-  
16 retary considers appropriate.

17 (c) TRANSFER OF PERSONNEL AND FUNCTIONS OF  
18 COST ANALYSIS IMPROVEMENT GROUP.—The personnel  
19 and functions of the Cost Analysis Improvement Group  
20 of the Department of Defense are hereby transferred to  
21 the Director of Independent Cost Assessment under sec-  
22 tion 139d of title 10, United States Code (as so added),  
23 and shall report directly to the Director.

24 (d) CONFORMING AMENDMENTS.—

1           (1) Section 181(d) of title 10, United States  
2 Code, is amended by inserting “the Director of Inde-  
3 pendent Cost Assessment,” before “and the Direc-  
4 tor”.

5           (2) Section 2306b(i)(1)(B) of such title is  
6 amended by striking “Cost Analysis Improvement  
7 Group of the Department of Defense” and inserting  
8 “Director of Independent Cost Assessment”.

9           (3) Section 2366a(a)(4) of such title is amend-  
10 ed by striking “has been submitted” and inserting  
11 “has been approved by the Director of Independent  
12 Cost Assessment”.

13           (4) Section 2366b(a)(1)(C) of such title is  
14 amended by striking “have been developed to exe-  
15 cute” and inserting “have been approved by the Di-  
16 rector of Independent Cost Assessment to provide  
17 for the execution of”.

18           (5) Section 2433(e)(2)(B)(iii) of such title is  
19 amended by striking “are reasonable” and inserting  
20 “have been determined by the Director of Inde-  
21 pendent Cost Assessment to be reasonable”.

22           (6) Subparagraph (A) of section 2434(b)(1) of  
23 such title is amended to read as follows:

24                   “(A) be prepared or approved by the Di-  
25 rector of Independent Cost Assessment; and”.

1           (7) Section 2445c(f)(3) of such title is amended  
2           by striking “are reasonable” and inserting “have  
3           been determined by the Director of Independent  
4           Cost Assessment to be reasonable”.

5           (e) COMPTROLLER GENERAL OF THE UNITED  
6 STATES REVIEW OF OPERATING AND SUPPORT COSTS OF  
7 MAJOR WEAPON SYSTEMS.—

8           (1) IN GENERAL.—Not later than one year  
9           after the date of the enactment of this Act, the  
10          Comptroller General of the United States shall sub-  
11          mit to the congressional defense committees a report  
12          on growth in operating and support costs for major  
13          weapon systems.

14          (2) ELEMENTS.—In preparing the report re-  
15          quired by paragraph (1), the Comptroller General  
16          shall, at a minimum—

17                (A) identify the original estimates for oper-  
18                ating and support costs for major weapon sys-  
19                tems selected by the Comptroller General for  
20                purposes of the report;

21                (B) assess the actual operating and sup-  
22                port costs for such major weapon systems;

23                (C) analyze the rate of growth for oper-  
24                ating and support costs for such major weapon  
25                systems;

1 (D) for such major weapon systems that  
2 have experienced the highest rate of growth in  
3 operating and support costs, assess the factors  
4 contributing to such growth;

5 (E) assess measures taken by the Depart-  
6 ment of Defense to reduce operating and sup-  
7 port costs for major weapon systems; and

8 (F) make such recommendations as the  
9 Comptroller General considers appropriate.

10 (3) MAJOR WEAPON SYSTEM DEFINED.—In this  
11 subsection, the term “major weapon system” has the  
12 meaning given that term in 2379(d) of title 10,  
13 United States Code.

14 **SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT**  
15 **COMMANDS IN IDENTIFYING JOINT MILITARY**  
16 **REQUIREMENTS.**

17 (a) IN GENERAL.—Section 181 of title 10, United  
18 States Code, as amended by section 104(d)(1) of this Act,  
19 is further amended—

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

22 (2) by adding after subsection (d) the following  
23 new subsection (e):

24 “(e) INPUT FROM COMBATANT COMMANDERS ON  
25 JOINT MILITARY REQUIREMENTS.—The Council shall



1 seek and consider input from the commanders of the com-  
2 batant commands in carrying out its mission under para-  
3 graphs (1) and (2) of subsection (b) and in conducting  
4 periodic reviews in accordance with the requirements of  
5 subsection (f). Such input may include, but is not limited  
6 to, an assessment of the following:

7           “(1) Any current or projected missions or  
8 threats in the theater of operations of the com-  
9 mander of a combatant command that would justify  
10 a new joint military requirement.

11           “(2) The necessity and sufficiency of a pro-  
12 posed joint military requirement in terms of current  
13 and projected missions or threats.

14           “(3) The relative priority of a proposed joint  
15 military requirement in comparison with other joint  
16 military requirements.

17           “(4) The ability of partner nations in the the-  
18 ater of operations of the commander of a combatant  
19 command to assist in meeting the joint military re-  
20 quirement or to partner in using technologies devel-  
21 oped to meet the joint military requirement.”.

22       (b) COMPTROLLER GENERAL OF THE UNITED  
23 STATES REVIEW OF IMPLEMENTATION.—Not later than  
24 two years after the date of the enactment of this Act, the  
25 Comptroller General of the United States shall submit to

1 the Committees on Armed Services of the Senate and the  
2 House of Representatives a report on the implementation  
3 of the requirements of subsection (e) of section 181 of title  
4 10, United States Code (as amended by subsection (a)),  
5 for the Joint Requirements Oversight Council to solicit  
6 and consider input from the commanders of the combatant  
7 commands. The report shall include, at a minimum, an  
8 assessment of the extent to which the Council has effec-  
9 tively sought, and the commanders of the combatant com-  
10 mands have provided, meaningful input on proposed joint  
11 military requirements.

12 **SEC. 106. CLARIFICATION OF SUBMITTAL OF CERTIFI-**  
13 **CATION OF ADEQUACY OF BUDGETS BY THE**  
14 **DIRECTOR OF THE DEPARTMENT OF DE-**  
15 **FENSE TEST RESOURCE MANAGEMENT CEN-**  
16 **TER.**

17 Section 196(e)(2) of title 10, United States Code, is  
18 amended—

19 (1) by redesignating subparagraph (B) as sub-  
20 paragraph (C); and

21 (2) by inserting after subparagraph (A) the fol-  
22 lowing new subparagraph (B):

23 “(B) If the Director of the Center is not serving con-  
24 currently as the Director of Developmental Test and Eval-  
25 uation under subsection (b)(2) of section 139e of this title,

1 the certification of the Director of the Center under sub-  
2 paragraph (A) shall, notwithstanding subsection (c)(4) of  
3 such section, be submitted directly and independently to  
4 the Secretary of Defense.”.

## 5 **TITLE II—ACQUISITION POLICY**

### 6 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,** 7 **SCHEDULE, AND PERFORMANCE IN THE AC-** 8 **QUISITION OF MAJOR WEAPON SYSTEMS.**

9 (a) CONSIDERATION OF TRADE-OFFS.—

10 (1) IN GENERAL.—The Secretary of Defense  
11 shall develop and implement mechanisms to ensure  
12 that trade-offs between cost, schedule, and perform-  
13 ance are considered as part of the process for devel-  
14 oping requirements for major weapon systems.

15 (2) ELEMENTS.—The mechanisms required  
16 under this subsection shall ensure, at a minimum,  
17 that—

18 (A) Department of Defense officials re-  
19 sponsible for acquisition, budget, and cost esti-  
20 mating functions are provided an appropriate  
21 opportunity to develop estimates and raise cost  
22 and schedule matters before performance re-  
23 quirements are established for major weapon  
24 systems; and

1 (B) consideration is given to fielding major  
2 weapon systems through incremental or spiral  
3 acquisition, while deferring technologies that  
4 are not yet mature, and capabilities that are  
5 likely to significantly increase costs or delay  
6 production, until later increments or spirals.

7 (3) MAJOR WEAPONS SYSTEM DEFINED.—In  
8 this subsection, the term “major weapon system”  
9 has the meaning given that term in section 2379(d)  
10 of title 10, United States Code.

11 (b) DUTIES OF JOINT REQUIREMENTS OVERSIGHT  
12 COUNCIL.—Section 181(b)(1) of title 10, United States  
13 Code, is amended—

14 (1) in subparagraph (A), by striking “and” at  
15 the end;

16 (2) in subparagraph (B), by striking the period  
17 at the end and inserting “; and”; and

18 (3) by adding at the end the following new sub-  
19 paragraph:

20 “(C) in ensuring the consideration of  
21 trade-offs among cost, schedule and perform-  
22 ance for joint military requirements in consulta-  
23 tion with the advisors specified in subsection  
24 (d);”.

25 (c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

1           (1) JROC SUBMITTAL OF RECOMMENDED RE-  
2           QUIREMENTS TO UNDER SECRETARY FOR ATL.—

3           Upon recommending a new joint military require-  
4           ment, the Joint Requirements Oversight Council  
5           shall transmit the recommendation to the Under  
6           Secretary of Defense for Acquisition, Technology,  
7           and Logistics for review and concurrence or non-con-  
8           currence in the recommendation.

9           (2) REVIEW OF RECOMMENDED REQUIRE-  
10          MENTS.—The Under Secretary for Acquisition,  
11          Technology, and Logistics shall review each rec-  
12          ommendation transmitted under paragraph (1) to  
13          determine whether or not the Joint Requirements  
14          Oversight Council has, in making such recommenda-  
15          tion—

16                 (A) taken appropriate action to solicit and  
17                 consider input from the commanders of the  
18                 combatant commands in accordance with the  
19                 requirements of section 181(e) of title 10,  
20                 United States Code (as amended by section  
21                 105);

22                 (B) given appropriate consideration to  
23                 trade-offs among cost, schedule, and perform-  
24                 ance in accordance with the requirements of

1 section 181(b)(1)(C) of title 10, United States  
2 Code (as amended by subsection (b)); and

3 (C) given appropriate consideration to  
4 issues of joint portfolio management, including  
5 alternative material and non-material solutions,  
6 as provided in Chairman of the Joint Chiefs of  
7 Staff Instruction 3170.01G.

8 (3) NON-CONCURRENCE OF UNDER SECRETARY  
9 FOR ATL.—If the Under Secretary for Acquisition,  
10 Technology, and Logistics determines that the Joint  
11 Requirements Oversight Council has failed to take  
12 appropriate action in accordance with subparagraphs  
13 (A), (B), and (C) of paragraph (2) regarding a joint  
14 military requirement, the Under Secretary shall re-  
15 turn the recommendation to the Council with spe-  
16 cific recommendations as to matters to be considered  
17 by the Council to address any shortcoming identified  
18 by the Under Secretary in the course of the review  
19 under paragraph (2).

20 (4) NOTICE ON CONTINUING DISAGREEMENT  
21 ON REQUIREMENT.—If the Under Secretary for Ac-  
22 quisition, Technology, and Logistics and the Joint  
23 Requirements Oversight Council are unable to reach  
24 agreement on a joint military requirement that has  
25 been returned to the Council by the Under Secretary

1 under paragraph (4), the Under Secretary shall  
2 transmit notice of lack of agreement on the require-  
3 ment to the Secretary of Defense.

4 (5) RESOLUTION OF CONTINUING DISAGREEE-  
5 MENT.—Upon receiving notice under paragraph (4)  
6 of a lack of agreement on a joint military require-  
7 ment, the Secretary of Defense shall make a final  
8 determination on whether or not to validate the re-  
9 quirement.

10 (d) ANALYSIS OF ALTERNATIVES.—

11 (1) REQUIREMENT AT MATERIAL SOLUTION  
12 ANALYSIS PHASE.—The Under Secretary of Defense  
13 for Acquisition, Technology, and Logistics shall en-  
14 sure that Department of Defense guidance on major  
15 defense acquisition programs requires the Milestone  
16 Decision Authority to conduct an analysis of alter-  
17 natives (AOA) during the Material Solution Analysis  
18 Phase of each major defense acquisition program.

19 (2) ELEMENTS.—Each analysis of alternatives  
20 under paragraph (1) shall, at a minimum—

21 (A) solicit and consider alternative ap-  
22 proaches proposed by the military departments  
23 and Defense Agencies to meet joint military re-  
24 quirements; and

1 (B) give full consideration to possible  
2 trade-offs between cost, schedule, and perform-  
3 ance for each of the alternatives so considered.

4 (e) DUTIES OF MILESTONE DECISION AUTHORITY.—  
5 Section 2366b(a)(1)(B) of title 10, United States Code,  
6 is amended by inserting “appropriate trade-offs between  
7 cost, schedule, and performance have been made to ensure  
8 that” before “the program is affordable”.

9 **SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DE-**  
10 **SIGN REVIEW FOR MAJOR DEFENSE ACQUISI-**  
11 **TION PROGRAMS.**

12 (a) PRELIMINARY DESIGN REVIEW.—Section  
13 2366b(a) of title 10, United States Code, as amended by  
14 section 201(d) of this Act, is further amended—

15 (1) in paragraph (1), by striking “and” at the  
16 end;

17 (2) by redesignating paragraph (2) as para-  
18 graph (3);

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

21 “(2) has received a preliminary design review  
22 (PDR) and conducted a formal post-preliminary de-  
23 sign review assessment, and certifies on the basis of  
24 such assessment that the program demonstrates a



1 high likelihood of accomplishing its intended mis-  
2 sion; and”;

3 (4) in paragraph (3), as redesignated by para-  
4 graph (2) of this section—

5 (A) in subparagraph (D), by striking the  
6 semicolon and inserting “, as determined by the  
7 Milestone Decision Authority on the basis of an  
8 independent review and assessment by the Di-  
9 rector of Defense Research and Engineering;  
10 and”;

11 (B) by striking subparagraph (E); and

12 (C) by redesignating subparagraph (F) as  
13 subparagraph (E).

14 (b) CRITICAL DESIGN REVIEW.—The Under Sec-  
15 retary of Defense for Acquisition, Technology, and Logis-  
16 tics shall ensure that Department of Defense guidance on  
17 major defense acquisition programs requires a critical de-  
18 sign review and a formal post-critical design review assess-  
19 ment for each major defense acquisition program to en-  
20 sure that such program has attained an appropriate level  
21 of design maturity before such program is approved for  
22 System Capability and Manufacturing Process Develop-  
23 ment.

1 **SEC. 203. ENSURING COMPETITION THROUGHOUT THE**  
2 **LIFE CYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.**  
3

4 (a) **ENSURING COMPETITION.**—The Secretary of De-  
5 fense shall ensure that the acquisition plan for each major  
6 defense acquisition program includes measures to ensure  
7 competition, or the option of competition, at both the  
8 prime contract level and the subcontract level of such pro-  
9 gram throughout the life cycle of such program as a means  
10 to incentivize contractor performance.

11 (b) **MEASURES TO ENSURE COMPETITION.**—The  
12 measures to ensure competition, or the option of competi-  
13 tion, utilized for purposes of subsection (a) may include,  
14 but are not limited to, measures to achieve the following,  
15 in appropriate cases where such measures are cost-effec-  
16 tive:

17 (1) Competitive prototyping.

18 (2) Dual-sourcing.

19 (3) Funding of a second source for interchange-  
20 able, next-generation prototype systems or sub-  
21 systems.

22 (4) Utilization of modular, open architectures  
23 to enable competition for upgrades.

24 (5) Periodic competitions for subsystem up-  
25 grades.

26 (6) Licensing of additional suppliers.

1           (7) Requirements for Government oversight or  
2 approval of make or buy decisions to ensure com-  
3 petition at the subsystem level.

4           (8) Periodic system or program reviews to ad-  
5 dress long-term competitive effects of program deci-  
6 sions.

7           (9) Consideration of competition at the sub-  
8 contract level and in make or buy decisions as a fac-  
9 tor in proposal evaluations.

10       (c) COMPETITIVE PROTOTYPING.—The Secretary of  
11 Defense shall modify the acquisition regulations of the De-  
12 partment of Defense to ensure with respect to competitive  
13 prototyping for major defense acquisition programs the  
14 following:

15           (1) That the acquisition strategy for each major  
16 defense acquisition program provides for two or  
17 more competing teams to produce prototypes before  
18 Milestone B approval (or Key Decision Point B ap-  
19 proval in the case of a space program) unless the  
20 milestone decision authority for such program waives  
21 the requirement on the basis of a determination  
22 that—

23           (A) but for such waiver, the Department  
24 would be unable to meet critical national secu-  
25 rity objectives; or

1 (B) the cost of producing competitive pro-  
2 totypes exceeds the potential life-cycle benefits  
3 of such competition, including the benefits of  
4 improved performance and increased techno-  
5 logical and design maturity that may be  
6 achieved through prototyping.

7 (2) That if the milestone decision authority  
8 waives the requirement for prototypes produced by  
9 two or more teams for a major defense acquisition  
10 program under paragraph (1), the acquisition strat-  
11 egy for the program provides for the production of  
12 at least one prototype before Milestone B approval  
13 (or Key Decision Point B approval in the case of a  
14 space program) unless the milestone decision author-  
15 ity waives such requirement on the basis of a deter-  
16 mination that—

17 (A) but for such waiver, the Department  
18 would be unable to meet critical national secu-  
19 rity objectives; or

20 (B) the cost of producing a prototype ex-  
21 ceeds the potential life-cycle benefits of such  
22 prototyping, including the benefits of improved  
23 performance and increased technological and  
24 design maturity that may be achieved through  
25 prototyping.

1           (3) That whenever a milestone decision author-  
2           ity authorizes a waiver under paragraph (1) or (2),  
3           the waiver, the determination upon which the waiver  
4           is based, and the reasons for the determination are  
5           submitted in writing to the congressional defense  
6           committees not later than 30 days after the waiver  
7           is authorized.

8           (4) That prototypes may be required under  
9           paragraph (1) or (2) for the system to be acquired  
10          or, if prototyping of the system is not feasible, for  
11          critical subsystems of the system.

12          (d) COMPTROLLER GENERAL OF THE UNITED  
13 STATES REVIEW OF CERTAIN WAIVERS.—

14           (1) NOTICE TO COMPTROLLER GENERAL.—

15          Whenever a milestone decision authority authorizes  
16          a waiver of the requirement for prototypes under  
17          paragraph (1) or (2) of subsection (c) on the basis  
18          of excessive cost, the milestone decision authority  
19          shall submit a notice on the waiver, together with  
20          the rationale for the waiver, to the Comptroller Gen-  
21          eral of the United States at the same time a report  
22          on the waiver is submitted to the congressional de-  
23          fense committees under paragraph (3) of that sub-  
24          section.

1           (2) COMPTROLLER GENERAL REVIEW.—Not  
 2 later than 60 days after receipt of a notice on a  
 3 waiver under paragraph (1), the Comptroller Gen-  
 4 eral shall—

5           (A) review the rationale for the waiver; and

6           (B) submit to the congressional defense  
 7 committees a written assessment of the ration-  
 8 ale for the waiver.

9           (e) APPLICABILITY.—This section shall apply to any  
 10 acquisition plan for a major defense acquisition program  
 11 that is developed or revised on or after the date that is  
 12 60 days after the date of the enactment of this Act.

13 **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**  
 14 **QUISITION PROGRAMS.**

15           (a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL  
 16 COST GROWTH.—Section 2433(e)(2) of title 10, United  
 17 States Code, is amended—

18           (1) by redesignating subparagraph (C) as sub-  
 19 paragraph (E);

20           (2) by striking subparagraph (B); and

21           (3) by inserting after subparagraph (A) the fol-  
 22 lowing new subparagraphs (B), (C), and (D):

23           “(B) terminate such acquisition program and  
 24 submit the report required by subparagraph (D), un-  
 25 less the Secretary determines that the continuation

1 of such program is essential to the national security  
2 of the United States and submits a written certifi-  
3 cation in accordance with subparagraph (C)(i) ac-  
4 companied by a report setting forth the assessment  
5 carried out pursuant to subparagraph (A) and the  
6 basis for each determination made in accordance  
7 with clauses (I) through (IV) of subparagraph  
8 (C)(i), together with supporting documentation;

9 “(C) if the program is not terminated—

10 “(i) submit to Congress, before the end of  
11 the 60-day period beginning on the day the Se-  
12 lected Acquisition Report containing the infor-  
13 mation described in subsection (g) is required  
14 to be submitted under section 2432(f) of this  
15 title, a written certification stating that—

16 “(I) such acquisition program is es-  
17 sential to national security;

18 “(II) there are no alternatives to such  
19 acquisition program which will provide  
20 equal or greater capability to meet a joint  
21 military requirement (as that term is de-  
22 fined in section 181(h)(1) of this title) at  
23 less cost;

24 “(III) the new estimates of the pro-  
25 gram acquisition unit cost or procurement

1 unit cost were arrived at in accordance  
2 with the requirements of section 139d of  
3 this title and are reasonable; and

4 “(IV) the management structure for  
5 the acquisition program is adequate to  
6 manage and control program acquisition  
7 unit cost or procurement unit cost;

8 “(ii) rescind the most recent Milestone ap-  
9 proval (or Key Decision Point approval in the  
10 case of a space program) for such program and  
11 withdraw any associated certification under sec-  
12 tion 2366a or 2366b of this title; and

13 “(iii) require a new Milestone approval (or  
14 Key Decision Point approval in the case of a  
15 space program) for such program before enter-  
16 ing into a new contract, exercising an option  
17 under an existing contract, or otherwise extend-  
18 ing the scope of an existing contract under such  
19 program;

20 “(D) if the program is terminated, submit to  
21 Congress a written report setting forth—

22 “(i) an explanation of the reasons for ter-  
23 minating the program;

24 “(ii) the alternatives considered to address  
25 any problems in the program; and



1           “(iii) the course the Department plans to  
2           pursue to meet any continuing joint military re-  
3           quirements otherwise intended to be met by the  
4           program; and”.

5           (b) **TOTAL EXPENDITURE FOR PROCUREMENT RE-**  
6 **SULTING IN TREATMENT AS MDAP.**—Section 2430(a)(2)  
7 of such title is amended by inserting “, including all  
8 planned increments or spirals,” after “an eventual total  
9 expenditure for procurement”.

10 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**  
11 **THE ACQUISITION OF MAJOR WEAPON SYS-**  
12 **TEMS.**

13           (a) **REVISED REGULATIONS REQUIRED.**—Not later  
14 than 180 days after the date of the enactment of this Act,  
15 the Under Secretary of Defense for Acquisition, Tech-  
16 nology, and Logistics shall revise the Defense Supplement  
17 to the Federal Acquisition Regulation to address organiza-  
18 tional conflicts of interest by contractors in the acquisition  
19 of major weapon systems.

20           (b) **ELEMENTS.**—The revised regulations required by  
21 subsection (a) shall, at a minimum—

22           (1) ensure that the Department of Defense re-  
23 ceives advice on systems architecture and systems  
24 engineering matters with respect to major weapon  
25 systems from federally funded research and develop-

1       ment centers or other sources independent of the  
2       prime contractor;

3               (2) require that a contract for the performance  
4       of systems engineering and technical assistance  
5       (SETA) functions with regard to a major weapon  
6       system contains a provision prohibiting the con-  
7       tractor or any affiliate of the contractor from having  
8       a direct financial interest in the development or con-  
9       struction of the weapon system or any component  
10       thereof;

11              (3) provide for an exception to the requirement  
12       in paragraph (2) for an affiliate that is separated  
13       from the contractor by structural mechanisms, ap-  
14       proved by the Secretary of Defense, that are similar  
15       to those required for special security agreements  
16       under rules governing foreign ownership, control, or  
17       influence over United States companies that have  
18       access to classified information, including, at a min-  
19       imum—

20                   (A) establishment of the affiliate as a sepa-  
21                   rate business entity, geographically separated  
22                   from related entities, with its own employees  
23                   and management and restrictions on transfers  
24                   for personnel;

1           (B) a governing board for the affiliate that  
2           has organizational separation from related enti-  
3           ties and governance procedures that require the  
4           board to act solely in the interest of the affil-  
5           iate, without regard to the interests of related  
6           entities, except in specified circumstances;

7           (C) complete informational separation, in-  
8           cluding the execution of non-disclosure agree-  
9           ments;

10          (D) initial and recurring training on orga-  
11          nizational conflicts of interest and protections  
12          against organizational conflicts of interest; and

13          (E) annual compliance audits in which De-  
14          partment of Defense personnel are authorized  
15          to participate;

16          (4) prohibit the use of the exception in para-  
17          graph (3) for any category of systems engineering  
18          and technical assistance functions (including, but  
19          not limited to, advice on source selection matters)  
20          for which the potential for an organizational conflict  
21          of interest or the appearance of an organizational  
22          conflict of interest makes mitigation in accordance  
23          with that paragraph an inappropriate approach;

1           (5) authorize waiver of the requirement in para-  
2 graph (2) in cases in which the agency head deter-  
3 mines in writing that—

4           (A) the financial interest of the contractor  
5 or its affiliate in the development or construc-  
6 tion of the weapon system is not substantial  
7 and does not include a prime contract, a first-  
8 tier subcontract, or a joint venture or similar  
9 relationship with a prime contractor or first-tier  
10 subcontractor; or

11           (B) the contractor—

12           (i) has unique systems engineering ca-  
13 pabilities that are not available from other  
14 sources;

15           (ii) has taken appropriate actions to  
16 mitigate any organizational conflict of in-  
17 terest; and

18           (iii) has made a binding commitment  
19 to comply with the requirement in para-  
20 graph (2) by not later than January 1,  
21 2011; and

22           (6) provide for fair and objective “make-buy”  
23 decisions by the prime contractor on a major weapon  
24 system by—

1           (A) requiring prime contractors to give full  
2           and fair consideration to qualified sources other  
3           than the prime contractor for the development  
4           or construction of major subsystems and com-  
5           ponents of the weapon system;

6           (B) providing for government oversight of  
7           the process by which prime contractors consider  
8           such sources and determine whether to conduct  
9           such development or construction in-house or  
10          through a subcontract;

11          (C) authorizing program managers to dis-  
12          approve the determination by a prime con-  
13          tractor to conduct development or construction  
14          in-house rather than through a subcontract in  
15          cases in which—

16                 (i) the prime contractor fails to give  
17                 full and fair consideration to qualified  
18                 sources other than the prime contractor; or

19                 (ii) implementation of the determina-  
20                 tion by the prime contractor is likely to un-  
21                 dermine future competition or the defense  
22                 industrial base; and

23          (D) providing for the consideration of  
24          prime contractors “make-buy” decisions in past  
25          performance evaluations.

1       (c) ORGANIZATIONAL CONFLICT OF INTEREST RE-  
2 VIEW BOARD.—

3           (1) ESTABLISHMENT REQUIRED.—Not later  
4 than 90 days after the date of the enactment of this  
5 Act, the Secretary of Defense shall establish within  
6 the Department of Defense a board to be known as  
7 the “Organizational Conflict of Interest Review  
8 Board”.

9           (2) DUTIES.—The Board shall have the fol-  
10 lowing duties:

11           (A) To advise the Under Secretary of De-  
12 fense for Acquisition, Technology, and Logistics  
13 on policies relating to organizational conflicts of  
14 interest in the acquisition of major weapon sys-  
15 tems.

16           (B) To advise program managers on steps  
17 to comply with the requirements of the revised  
18 regulations required by this section and to ad-  
19 dress organizational conflicts of interest in the  
20 acquisition of major weapon systems.

21           (C) To advise appropriate officials of the  
22 Department on organizational conflicts of inter-  
23 est arising in proposed mergers of defense con-  
24 tractors.

1 (d) MAJOR WEAPON SYSTEM DEFINED.—In this sec-  
2 tion, the term “major weapon system” has the meaning  
3 given that term in section 2379(d) of title 10, United  
4 States Code.

5 **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**  
6 **SONNEL FOR EXCELLENCE IN THE ACQUISI-**  
7 **TION OF PRODUCTS AND SERVICES.**

8 (a) IN GENERAL.—Not later than 180 days after the  
9 date of the enactment of this Act, the Secretary of Defense  
10 shall commence carrying out a program to recognize excel-  
11 lent performance by individuals and teams of members of  
12 the Armed Forces and civilian personnel of the Depart-  
13 ment of Defense in the acquisition of products and serv-  
14 ices for the Department of Defense.

15 (b) ELEMENTS.—The program required by sub-  
16 section (a) shall include the following:

17 (1) Procedures for the nomination by the per-  
18 sonnel of the military departments and the Defense  
19 Agencies of individuals and teams of members of the  
20 Armed Forces and civilian personnel of the Depart-  
21 ment of Defense for eligibility for recognition under  
22 the program.

23 (2) Procedures for the evaluation of nomina-  
24 tions for recognition under the program by one or  
25 more panels of individuals from the government,

1       academia, and the private sector who have such ex-  
2       pertise, and are appointed in such manner, as the  
3       Secretary shall establish for purposes of the pro-  
4       gram.

5       (c) AWARD OF CASH BONUSES.—As part of the pro-  
6       gram required by subsection (a), the Secretary may award  
7       to any individual recognized pursuant to the program a  
8       cash bonus authorized by any other provision of law to  
9       the extent that the performance of such individual so rec-  
10      ognized warrants the award of such bonus under such pro-  
11      vision of law.

12   **SEC. 207. EARNED VALUE MANAGEMENT.**

13       (a) ENHANCED TRACKING OF CONTRACTOR PER-  
14      FORMANCE.—Not later than 180 days after the date of  
15      the enactment of this Act, the Under Secretary of Defense  
16      for Acquisition, Technology, and Logistics shall review the  
17      existing guidance and, as necessary, prescribe additional  
18      guidance governing the implementation of the Earned  
19      Value Management (EVM) requirements and reporting for  
20      contracts to ensure that the Department of Defense—

21           (1) applies uniform EVM standards to reliably  
22           and consistently measure contract or project per-  
23           formance;



1           (2) applies such standards to establish appro-  
2           priate baselines at the award of a contract or com-  
3           mencement of a program, whichever is earlier;

4           (3) ensures that personnel responsible for ad-  
5           ministering and overseeing EVM systems have the  
6           training and qualifications needed to perform this  
7           function; and

8           (4) has appropriate mechanisms in place to en-  
9           sure that contractors establish and use approved  
10          EVM systems.

11         (b) ENFORCEMENT MECHANISMS.—For the purposes  
12         of subsection (a)(4), mechanisms to ensure that contrac-  
13         tors establish and use approved EVM systems shall in-  
14         clude—

15           (1) consideration of the quality of the contrac-  
16           tors' EVM systems and the timeliness of the con-  
17           tractors' EVM reporting in any past performance  
18           evaluation for a contract that includes an EVM re-  
19           quirement; and

20           (2) increased government oversight of the cost,  
21           schedule, scope, and performance of contractors that  
22           do not have approved EVM systems in place.

1 **SEC. 208. EXPANSION OF NATIONAL SECURITY OBJECTIVES**  
2 **OF THE NATIONAL TECHNOLOGY AND INDUS-**  
3 **TRIAL BASE.**

4 (a) IN GENERAL.—Subsection (a) of section 2501 of  
5 title 10, United States Code, is amended by adding at the  
6 end the following new paragraph:

7 “(6) Maintaining critical design skills to ensure  
8 that the armed forces are provided with systems ca-  
9 pable of ensuring technological superiority over po-  
10 tential adversaries.”.

11 (b) NOTIFICATION OF CONGRESS UPON TERMI-  
12 NATION OF MDAPS OF EFFECTS ON NATIONAL SECURITY  
13 OBJECTIVES.—Such section is further amended by adding  
14 at the end the following new subsection:

15 “(c) NOTIFICATION OF CONGRESS UPON TERMI-  
16 NATION OF MAJOR DEFENSE ACQUISITION PROGRAM OF  
17 EFFECTS ON OBJECTIVES.—(1) Upon the termination of  
18 a major defense acquisition program, the Secretary of De-  
19 fense shall notify Congress of the effects of such termi-  
20 nation on the national security objectives for the national  
21 technology and industrial base set forth in subsection (a),  
22 and the measures, if any, that have been taken or should  
23 be taken to mitigate those effects.

24 “(2) In this subsection, the term ‘major defense ac-  
25 quisition program’ has the meaning given that term in sec-  
26 tion 2430 of this title.”.

1 **SEC. 209. PLAN FOR ELIMINATION OF WEAKNESSES IN OP-**  
2 **ERATIONS THAT HINDER CAPACITY TO AS-**  
3 **SEMBLE AND ASSESS RELIABLE COST INFOR-**  
4 **MATION ON ACQUIRED ASSETS UNDER**  
5 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

6 (a) IN GENERAL.—Not later than 180 days after the  
7 date of the enactment of this Act, the Chief Management  
8 Officer of the Department of Defense shall submit to Con-  
9 gress a report setting forth a plan to identify and address  
10 weaknesses in operations that hinder the capacity to as-  
11 semble and assess reliable cost information on the systems  
12 and assets to be acquired under major defense acquisition  
13 programs.

14 (b) ELEMENTS.—The report required under sub-  
15 section (a) shall include the following:

16 (1) Mechanisms to identify any weaknesses in  
17 operations under major defense acquisition programs  
18 that hinder the capacity to assemble and assess reli-  
19 able cost information on the systems and assets to  
20 be acquired under such programs in accordance with  
21 applicable accounting standards.

22 (2) Mechanisms to address weaknesses in oper-  
23 ations under major defense acquisition programs  
24 identified pursuant to the utilization of the mecha-  
25 nisms set forth under paragraph (1).

1           (3) A description of the proposed implementa-  
2           tion of the mechanisms set forth pursuant to para-  
3           graph (2) to address the weaknesses described in  
4           that paragraph, including—

5                   (A) the actions to be taken to implement  
6                   such mechanisms;

7                   (B) a schedule for carrying out such mech-  
8                   anisms; and

9                   (C) metrics for assessing the progress  
10                  made in carrying out such mechanisms.

11          (4) A description of the organization and re-  
12          sources required to carry out mechanisms set forth  
13          pursuant to paragraphs (1) and (2).

14          (5) In the case of the financial management  
15          practices of each military department applicable to  
16          major defense acquisition programs—

17                   (A) a description of any weaknesses in  
18                   such practices; and

19                   (B) a description of the actions to be taken  
20                   to remedy such weaknesses.

21          (c) CONSULTATION.—

22                  (1) IN GENERAL.—In preparing the report re-  
23                  quired by subsection (a), the Chief Management Of-  
24                  ficer of the Department of Defense shall seek and  
25                  consider input from each of the following:

1           (A) The Chief Management Officer of the  
2           Department of the Army.

3           (B) The Chief Management Officer of the  
4           Department of the Navy.

5           (C) The Chief Management Officer of the  
6           Department of the Air Force.

7           (2) FINANCIAL MANAGEMENT PRACTICES.—In  
8           preparing for the report required by subsection (a)  
9           the matters covered by subsection (b)(5) with re-  
10          spect to a particular military department, the Chief  
11          Management Officer of the Department of Defense  
12          shall consult specifically with the Chief Management  
13          Officer of the military department concerned.

Passed the Senate May 7, 2009.

Attest:

*Secretary.*

11TH CONGRESS  
1ST SESSION

**S. 454**

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**AN ACT**

To improve the organization and procedures of the  
Department of Defense for the acquisition of  
major weapon systems, and for other purposes.