H. R. 5013

AN ACT

To amend title 10, United States Code, to provide for performance management of the defense acquisition system, 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,
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.

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1 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

§ 2545. Performance assessments 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 appro
appropriately tailored pursuant to subsection (a)(3) and may include measures of—

“(A) cost, quality, and delivery;

“(B) contractor performance, including compliance with the Department of Defense policy regarding the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals, veteran-owned small businesses, service-disabled, veteran-owned small businesses, and women-owned small businesses;

“(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 energy efficiency; 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 para-
graph (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) INCLUSION IN ANNUAL REPORT.—The Director of the Office of Performance Assessment and Root Cause Analysis shall include information on the activities undertaken by the Director under this section in the annual report of the Director required under section 103(f) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23; 123 Stat. 1716), including information on any performance assessment required by subsection (a) with significant findings. In addition, if a performance assessment uncovers particularly egregious problems, as identified by the Director, the Director shall submit to the Committees on Armed Services of the Senate and the
House of Representatives a report on such problems within 30 days after the problems are identified.

“(g) 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 re-
porting 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 assessments

“(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 (e) 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(e)(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 2 years after
the date of the enactment of this Act.

SEC. 102. MEANINGFUL CONSIDERATION BY JOINT RE-
QUIREMENTS OVERSIGHT COUNCIL OF
INPUT FROM CERTAIN OFFICIALS.

(a) Advisors to the Joint Requirements Over-
sight Council.—

(1) Additional civilian advisors.—Sub-
section (d)(1) of section 181 of title 10, United
States Code, is amended by striking “The Under
Secretary” and all that follows through “and exper-
tise.” and inserting the following: “The following of-
ficials of the Department of Defense shall serve as
advisors to the Council on matters within their au-
thority and expertise:

“(A) The Under Secretary of Defense for Ac-
quision, Technology, and Logistics.

“(B) The Under Secretary of Defense (Com-
troller).

“(C) The Under Secretary of Defense for Pol-
icy.

“(D) The Director of Cost Assessment and Pro-
gram 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 Systems 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, meaning-
ful 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.”.

(c) Assessment of Independence of Cost Estimators and Cost Analysts Required in Next Annual Report on Cost Assessment Activities.—In the next annual report prepared by the Director of Cost Assessment and Program Evaluation under section 2334(e) of title 10, United States Code, the Director shall include an assessment of whether and to what extent personnel responsible for cost estimates or cost analysis devel-
operated by a military department or defense agency for a major defense acquisition program are independent and whether their independence or lack thereof affects their ability to generate reliable cost estimates.

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 1 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 4 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 (e)(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 5 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 com-  
mander concerned, in any alteration of the require-  
ment for such solution.

(c) ADMINISTRATIVE SUPPORT.—The resource spon-  
sor for the joint military requirement shall provide admin-  
istrative support to the joint evaluation task force for pur-  
poses 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, proc-  
curement, or fielding of a new item, or of a modi-
fication 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 primarily 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 and energy efficiency 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, ca-
pacity, 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 ACQUISITION 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 acquisition that are in addition to references provided in part 37 (which relates specifically to services acquisition).

(e) 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 NON-
DEVELOPMENTAL 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 nondevelopment-
mental item’ means an item—

“(A) developed exclusively at private ex-
pense;

“(B) that meets a validated military re-
quirement, as certified in writing by the respon-
sible 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 acqui-
situation of a military purpose nondevelopmental item, the
following requirements apply:

“(1) The contract shall be awarded using com-
petitive 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.

“(4) Nothing in the contract shall further re-
strict or otherwise affect the rights in technical data
of the Government, the contractor, or any subcon-
tractor of the contractor for items developed by the
contractor or any such subcontractor exclusively at
private expense, as prescribed in regulations imple-
menting section 2320(a)(2)(B) of this title.

“(c) REGULATIONS.—The Secretary of Defense shall
prescribe regulations to carry out this section. Such regu-
lations 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 pur-
pose 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 under-
standing 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 train-
ing;

“(6) develop appropriate procedures for warn-
ings during performance evaluations and due process
for members of the acquisition workforce who con-
sistently 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 ex-
perts 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 amend-
ed 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 ac-
quision personnel management policies
and procedures

“(a) COMMENCEMENT.—The Secretary of Defense is.encouraged to carry out a demonstration project, the pur-
pose of which is to determine the feasibility or desirability
of one or more proposals for improving the personnel man-
agement 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 work-
force 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.

“(5) A deliberate workforce development strategy that ensures diversity in promotion, advancement, and experiential opportunities commensurate with the general workforce outlined in this section.

“(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, market research strategies (including assessments of local contracting capabilities), 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 1 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 sub-
section (a), the Secretary of Defense shall analyze the
most recent future-years defense program to determine
the amounts of estimated expenditures and proposed ap-
propriations necessary to support the training require-
ments 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 de-
fense acquisition workforce required in the next annual
strategic workforce plan under 115b of title 10, United
States Code.

(c) Requirement for Ongoing Curriculum De-
velopment 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 institu-
tions of the Department of Defense and military depart-
ments 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 fol-
lows:

“1746. Defense Acquisition University.”.

SEC. 209. COST ESTIMATING INTERNSHIP AND SCHOLAR-
SHIP PROGRAMS.

(a) Purpose.—The purpose of this section is to re-
quire 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 esti-
mating 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 es-
tablished not later than 270 days after the date of the
enactment of this Act and shall be implemented for a 4-year period following establishment of the programs.

SEC. 210. PROHIBITION ON PERSONAL SERVICES CONTRACTS FOR SENIOR MENTORS.

(a) Prohibition.—The Secretary of Defense shall prohibit the award of a contract for personal services by any component of the Department of Defense for the purpose of obtaining the services of a senior mentor.

(b) Interpretation.—Nothing in this section shall be interpreted to prohibit the employment of a senior mentor as a highly qualified expert pursuant to section 9903 of title 5, United States Code, subject to the pay and term limitations of that section. A senior mentor employed as a highly qualified expert shall be required to submit a financial disclosure report and comply with all conflict of interest laws and regulations applicable to other Federal employees with similar conditions of service.

(c) Definitions.—In this section:

(1) The term “contract for personal services” means a contract awarded under the authority of section 129b(a) of title 10, United States Code, or section 3109 of title 5, United States Code.

(2) The term “component of the Department of Defense” means a military department, a defense
agency, a Department of Defense field activity, a
unified combatant command, or the joint staff.

(3) The term “senior mentor” means any per-
son—

(A)(i) who has served as a general or flag
officer in the Armed Forces; or

(ii) who has served in a position at a level
at or above the level of the senior executive
service;

(B) has retired within the 10 years pre-
ceding the award of a contract; and

(C) who serves as a mentor, teacher, train-
er, or advisor to government personnel on mat-
ters pertaining to the former official duties of
such person.

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 ur-
gent 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 restric-
tive 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 work-
force of the component;

(B) the rates of promotion within the fi-
nancial 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 1 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 1 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.

(e) 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 coordination 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.

(e) PROCESS REVIEW.—Not later than 1 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.

SEC. 304. DISCLOSURE AND TRACEABILITY OF THE COST OF DEPARTMENT OF DEFENSE HEALTH CARE CONTRACTS.

(a) Disclosure Requirement.—The Secretary of Defense shall require—

(1) an offeror that submits a bid or proposal in response to an invitation for bids or a request for proposals issued by a component of the Department of Defense for a health care contract to submit with the bid or proposal a disclosure of the additional cost, if any, contained in such bid or proposal associated with compliance with the Patient Protection and Affordable Care Act (Public Law 111–148) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152); and

(2) a contractor for a health care contract awarded following the date of the enactment of this Act to disclose on an annual basis the additional cost, if any, incurred for such contract associated with compliance with the Patient Protection and Affordable Care Act (Public Law 111–148) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152).
(b) Report.—

(1) Requirement.—Not later than April 1, 2011, and each April 1st thereafter until April 1, 2016, 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 detailed report on the additional cost to the Department of Defense associated with compliance with the Patient Protection and Affordable Care Act (Public Law 111–148) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152).

(2) Matters Covered.—The report required by paragraph (1) shall include—

(A) the projected costs of compliance for all health care contracts awarded during the preceding year, as disclosed in a bid or proposal in accordance with subsection (a)(1);

(B) for all other health care contracts, the incurred cost of compliance for the preceding year, as disclosed in accordance with subsection (a)(2); and

(C) any additional costs to the Department of Defense necessary to comply with such Acts.
(c) Health Care Contract Defined.—In this section, the term “health care contract” means a contract in an amount greater than the simplified acquisition threshold for the acquisition of any of the following:

1. Medical supplies.
2. Health care services and administration, including the services of medical personnel.
3. Durable medical equipment.
4. Pharmaceuticals.
5. Health care-related information technology.

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. The program shall be limited to firms within the national technology and industrial base (as defined in section 2500(1) of title 10, United States Code).

(b) Identifying and Communicating with Non-Traditional 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
grounded in markets of importance to the Department of
Defense.

(c) OUTREACH TO LOCAL FIRMS NEAR DEFENSE INSTALLATIONS.—The program established under sub-
section (a) shall include outreach, using procurement tech-
nical assistance centers, to notify firms of all business
sizes in the vicinity of Department of Defense installations
of opportunities to obtain contracts and subcontracts to
perform work at such installations.

(d) INDUSTRIAL BASE REVIEW.—The program re-
quired by subsection (a) shall include a continuous effort
to review the industrial base supporting the Department
of Defense, including the identification of markets of im-
portance to the Department of Defense.

(e) DEFINITION.—In this section:

(1) NONTRADITIONAL SUPPLIERS.—The term
“nontraditional suppliers” means firms that have re-
ceived 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 DE-
PARTMENT 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.

(3) Procurement technical assistance center.—The term “procurement technical assistance center” means a center operating under a cooperative agreement with the Defense Logistics Agency to provide procurement technical assistance pursuant to the authority provided in chapter 142 of title 10, United States Code.

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 li-
ability—

“(i) being paid in a timely manner
under an offer-in-compromise or install-
ment 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 iden-
tified in a bid or proposal and are a significant part
of a bid or proposal team.”.

(2) CLERICAL AMENDMENT.—The table of sec-
tions 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 REGULA-
tion.—Not later than 90 days after the final promulga-
tion of regulations under section 3720F(e) of title 31,
United States Code, as added by subsection (a), the Fed-
eral Acquisition Regulation shall be revised to incorporate
the requirements of section 3720F of such title.

SEC. 404. INDEPENDENCE OF CONTRACT AUDITS AND BUSI-
NESS 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 add-
ing at the end the following new section:

“§ 204. Defense Contract Audit Agency general coun-
sel

“(a) GENERAL COUNSEL.—The Director of the De-
fense Contract Audit Agency shall appoint a General
“(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.


“(e) 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 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.”.
(e) 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 1 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 manufac-
turing” and inserting “manufacturing, integra-
tion, 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 direc-
tion for a system for the purpose of achieving capa-
bilities that satisfy program 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 para-
graph (8) and inserting after paragraph (5) the fol-
lowing new paragraphs:

“(6) Providing for the generation of services ca-
pabilities 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,”.

SEC. 407. CONSTRUCTION OF ACT ON COMPETITION REQUIREMENTS FOR THE ACQUISITION OF SERVICES.

Nothing in this Act or the amendments made by this Act shall be construed to affect the competition requirements of section 2304 of title 10, United States Code, with respect to the acquisition of services.

SEC. 408. ACQUISITION SAVINGS PROGRAM.

(a) Program Required.—

(1) In general.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry
out a program to provide opportunities to provide
cost-savings on nondevelopmental items.

(2) SAVINGS.—The program, to be known as
the Acquisition Savings Program, shall provide any
person or activity within or outside the Department
of Defense with the opportunity to offer a proposal
to provide savings in excess of 15 percent, to be
known as an acquisition savings proposal, for cov-
ered contracts.

(3) SUNSET.—The program shall cease to be
required on September 30, 2013.

(b) QUALIFYING ACQUISITION SAVINGS PRO-
POSALS.—A proposal shall qualify as an acquisition sav-
ings proposal for purposes of this section if it offers to
supply a nondevelopmental item that is identical to, or
equivalent to (under a performance specification or rel-
evant commercial standard), an item being procured under
a covered contract.

(c) REVIEW BY CONTRACTING OFFICER.—Each ac-
quision savings proposal shall be reviewed by the con-
tracting officer for the covered contract concerned to de-
termine if such proposal qualifies under this section and
to calculate the savings provided by such proposal.

(d) ACTIONS UPON FAVORABLE REVIEW.—If the
contracting officer for a covered contract determines after
review of an acquisition savings proposal that the proposal would provide an identical or equivalent nondevelopmental item at a savings in excess of 15 percent, and that a contract award to the offeror of the proposal would not result in the violation of a minimum purchase agreement or otherwise cause a breach of contract for the covered contract, the contracting officer may make an award under the covered contract to the offeror of the acquisition savings proposal or otherwise award a contract for the nondevelopmental item concerned to such offeror.

(e) ACTIONS UPON UNFAVORABLE REVIEW.—If a contracting officer determines after review of an acquisition savings proposal that the proposal would not satisfy the requirements of this section, the contracting officer shall debrief the person or activity offering such proposal within 30 days after completion of the review.

(f) REPORT.—Not later than March 1, 2013, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report regarding the program, including the number of acquisition savings proposals submitted, the number favorably reviewed, the cumulative savings, and any further recommendations for the program.

(g) DEFINITIONS.—In this section:
(1) NONDEVELOPMENTAL ITEM.—The term “nondevelopmental item” has the meaning provided for such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) COVERED CONTRACT.—The term “covered contract”—

(A) means an indefinite delivery indefinite quantity contract for property as defined in section 2304d(2) of title 10, United States Code; and

(B) does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.)

(3) PERFORMANCE SPECIFICATION.—The term “performance specification” means a specification of required item functional characteristics.

(4) COMMERCIAL STANDARD.—The term “commercial standard” means a standard used in industry promulgated by an accredited standards organizations that is not a Federal entity.
SEC. 409. SENSE OF CONGRESS REGARDING COMPLIANCE WITH THE BERRY AMENDMENT, THE BUY AMERICAN ACT, AND LABOR STANDARDS OF THE UNITED STATES.

In order to create jobs, level the playing field for domestic manufacturers, and strengthen economic recovery, it is the sense of Congress that the Department of Defense should—

(1) ensure full contractor and subcontractor compliance with the Berry Amendment (10 U.S.C. 2533a) and the Buy American Act (41 U.S.C. 10a et seq.); and

(2) not procure products made by manufacturers in the United States that violate labor standards as defined under the laws of the United States.

SEC. 410. INDUSTRIAL BASE COUNCIL AND FUND.

(a) INDUSTRIAL BASE COUNCIL.—

(1) IN GENERAL.—Chapter 7 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 188. Industrial Base Council

“(a) COUNCIL ESTABLISHED.—There is in the Department of Defense an Industrial Base Council.

“(b) MISSION.—The mission of the Industrial Base Council is to assist the Secretary in all matters pertaining to the industrial base of the Department of Defense, in-
including matters pertaining to the national defense technology and industrial base included in chapter 148 of this title.

“(c) MEMBERSHIP.—The following officials of the Department of Defense shall be members of the Council:

“(1) The Chairman of the Council, who shall be the Under Secretary of Defense for Acquisition, Technology, and Logistics, the functions of which may be delegated by the Under Secretary only to the Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(2) The Executive Director of the Council, who shall be an official from within the Office of the Under Secretary responsible for industrial base matters and who shall report directly to the Under Secretary or the Principal Deputy Under Secretary.

“(3) Officials from within the Office of the Secretary of Defense, as designated by the Secretary, with direct responsibility for matters pertaining to following areas:

“(A) Manufacturing.

“(B) Research and development.

“(C) Systems engineering and system integration.

“(D) Services.
“(E) Information Technology.

“(F) Sustainment and logistics.

“(4) The Director of the Defense Logistics Agency.

“(5) Officials from the military departments, as designated by the Secretary of each military department, with responsibility for industrial base matters relevant to the military department concerned.

“(d) DUTIES.—The Council shall assist the Secretary in the following:

“(1) Providing input on industrial base matters to strategy reviews, including quadrennial defense reviews performed pursuant to section 118 of this title.

“(2) Managing the industrial base.

“(3) Providing recommendations to the Secretary on budget matters pertaining to the industrial base.

“(4) Providing recommendations to the Secretary on supply chain management and supply chain vulnerability.

“(5) Providing input on industrial base matters to defense acquisition policy guidance.
“(6) Issuing and revising the Department of Defense technology and industrial base guidance required by section 2506 of this title.

“(7) Such other duties as are assigned by the Secretary.

“(e) REPORTING OF ACTIVITIES.—The Secretary shall include a section describing the activities of the Council in the annual report to Congress required by section 2505 of this title.”.

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

“188. Industrial Base Council.”.

(b) INDUSTRIAL BASE FUND.—

(1) IN GENERAL.—Chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2508. Industrial Base Fund

“(a) Establishment.—The Secretary of Defense shall establish an Industrial Base Fund (in this section referred to as the ‘Fund’).

“(b) Control of Fund.—The Fund shall be under the control of the Industrial Base Council established pursuant to section 188 of this title.
“(c) AMOUNTS IN FUND.—The Fund shall consist of amounts appropriated or otherwise made available to the Fund.

“(d) USE OF FUND.—Subject to subsection (e), the Fund shall be used—

“(1) to support the monitoring and assessment of the industrial base required by this chapter;

“(2) to address critical issues in the industrial base relating to urgent operation needs;

“(3) to support efforts to expand the industrial base; and

“(4) to address supply chain vulnerabilities.

“(e) USE OF FUND SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to use the Fund under this section in any fiscal year is subject to the availability of appropriations for that purpose.

“(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:

“(1) Direct obligations from the Fund.

“(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.”.
(2) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2508. Industrial Base Fund.”

TITLE V—OTHER MATTERS

SEC. 501. CLOTHING ALLOWANCE REQUIREMENT.

The Comptroller General shall conduct a study of the items purchased under section 418 of title 37, United States Code, to determine if there is sufficient domestic production of such items to adequately supply members of the Armed Forces and shall transmit the results of such study to the Secretary of Defense. Not later than 6 months after receiving the results of such study, the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and the House of Representa-tives an evaluation on whether such items under the study should be considered subject to section 2533a of title 10, United States Code (popularly known as the “Berry Amendment”).

SEC. 502. REQUIREMENT THAT COST OR PRICE TO THE FEDERAL GOVERNMENT BE GIVEN AT LEAST EQUAL IMPORTANCE AS TECHNICAL OR OTHER CRITERIA IN EVALUATING COMPETITIVE PROPOSALS FOR DEFENSE CONTRACTS.

(a) Requirement.—Subparagraph (A) of section 2305(a)(3) of title 10, United States Code, is amended
by striking “proposals; and” at the end of clause (ii) and all that follows through the end of the subparagraph and inserting the following: “proposals and that must be assigned importance at least equal to all evaluation factors other than cost or price when combined.”.

(b) WAIVER.—Section 2305(a)(3) of such title is further amended by striking subparagraph (B) and inserting the following:

“(B) The requirement of subparagraph (A)(ii) relating to assigning at least equal importance to evaluation factors of cost or price may be waived by the head of the agency. The authority to issue a waiver under this subparagraph may not be delegated.”.

(c) REPORT.—Section 2305(a)(3) of such title is further amended by adding at the end the following new subparagraph:

“(C) Not later than 180 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress, and post on a publicly available website of the Department of Defense, a report containing a list of each
waiver issued by the head of an agency under subpara-
graph (B) during the preceding fiscal year.”.

Passed the House of Representatives April 28, 2010.

Attest:

Clerk.
111TH CONGRESS
2D SESSION
H. R. 5013
AN ACT
To amend title 10, United States Code, to provide for performance management of the defense acquisition system; and for other purposes.