

“(e) PERSONS EXPERIENCING HOMELESSNESS.—Any references in this Act to homeless individuals (including homeless persons) or homeless groups (including homeless persons) shall be considered to include, and to refer to, individuals experiencing homelessness or groups experiencing homelessness, respectively.”.

(c) RURAL HOUSING STABILITY ASSISTANCE.—Title IV of the McKinney-Vento Homeless Assistance Act is amended by redesignating subtitle G (42 U.S.C. 11408 et seq.), as amended by the preceding provisions of this division, as subtitle D.

SEC. 1503. EFFECTIVE DATE.

Except as specifically provided otherwise in this division, this division and the amendments made by this division shall take effect on, and shall apply beginning on—

(1) the expiration of the 18-month period beginning on the date of the enactment of this division, or

(2) the expiration of the 3-month period beginning upon publication by the Secretary of Housing and Urban Development of final regulations pursuant to section 1504, whichever occurs first.

SEC. 1504. REGULATIONS.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this division, the Secretary of Housing and Urban Development shall promulgate regulations governing the operation of the programs that are created or modified by this division.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this division.

SEC. 1505. AMENDMENT TO TABLE OF CONTENTS.

The table of contents in section 101(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 note) is amended by striking the item relating to the heading for title IV and all that follows through the item relating to section 492 and inserting the following new items:

“TITLE IV—HOUSING ASSISTANCE
“Subtitle A—General Provisions
“Sec. 401. Definitions.
“Sec. 402. Collaborative applicants.
“Sec. 403. Housing affordability strategy.
“Sec. 404. Preventing involuntary family separation
“Sec. 405. Technical assistance.
“Sec. 406. Discharge coordination policy.
“Sec. 407. Protection of personally identifying information by victim service providers.
“Sec. 408. Authorization of appropriations.
“Subtitle B—Emergency Solutions Grants Program
“Sec. 411. Definitions.
“Sec. 412. Grant assistance.
“Sec. 413. Amount and allocation of assistance.
“Sec. 414. Allocation and distribution of assistance.
“Sec. 415. Eligible activities.
“Sec. 416. Responsibilities of recipients.
“Sec. 417. Administrative provisions.
“Sec. 418. Administrative costs.
“Subtitle C—Continuum of Care Program
“Sec. 421. Purposes.
“Sec. 422. Continuum of care applications and grants.
“Sec. 423. Eligible activities.
“Sec. 424. Incentives for high-performing communities.
“Sec. 425. Supportive services.
“Sec. 426. Program requirements.
“Sec. 427. Selection criteria.
“Sec. 428. Allocation of amounts and incentives for specific eligible activities.
“Sec. 429. Renewal funding and terms of assistance for permanent housing.

“Sec. 430. Matching funding.
“Sec. 431. Appeal procedure.
“Sec. 432. Regulations.
“Sec. 433. Reports to Congress.
“Subtitle D—Rural Housing Stability Assistance Program
“Sec. 491. Rural housing stability assistance.
“Sec. 492. Use of FHMA inventory for transitional housing for homeless persons and for turnkey housing.”.

Mr. DODD. Mr. President, I move to reconsider that vote and to lay the motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Presiding Officer, the floor staff, and others for their work. I thank my colleagues and the staff as well for the tremendous work on this bill over the last several days.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WEAPON SYSTEMS ACQUISITION REFORM ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 454, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 454) to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ACQUISITION ORGANIZATION

Sec. 101. Reports on systems engineering capabilities of the Department of Defense.

Sec. 102. Director of Developmental Test and Evaluation.

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

Sec. 104. Director of Independent Cost Assessment.

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

TITLE II—ACQUISITION POLICY

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

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

Sec. 203. Ensuring competition throughout the life cycle of major defense acquisition programs.

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

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

Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) The term “major defense acquisition program” has the meaning given that term in section 2430 of title 10, United States Code.

TITLE I—ACQUISITION ORGANIZATION

SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILITIES OF THE DEPARTMENT OF DEFENSE.

(a) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act, the service acquisition executive of each military department shall submit to the Under Secretary of Defense for Acquisition, Technology, and Logistics a report setting forth the following:

(1) A description of the extent to which such military department has in place development planning organizations and processes staffed by adequate numbers of personnel with appropriate training and expertise to ensure that—

(A) key requirements, acquisition, and budget decisions made for each major weapon system prior to Milestones A and B are supported by a rigorous systems analysis and systems engineering process;

(B) the systems engineering strategy for each major weapon system includes a robust program for improving reliability, availability, maintainability, and sustainability as an integral part of design and development; and

(C) systems engineering requirements, including reliability, availability, maintainability, and sustainability requirements, are identified during the Joint Capabilities Integration Development System process and incorporated into contract requirements for each major weapon system.

(2) A description of the actions that such military department has taken, or plans to take, to—

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

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

(b) REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics 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 system engineering capabilities of the Department of Defense. The report shall include, at a minimum, the following:

(1) An assessment by the Under Secretary of the reports submitted by the service acquisition executives pursuant to subsection (a) and of the adequacy of the actions that each military department has taken, or plans to take, to meet the systems engineering and development planning needs of such military department.

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

SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.

(a) ESTABLISHMENT OF POSITION.—

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

“§139c. Director of Developmental Test and Evaluation

“(a) There is a Director of Developmental Test and Evaluation, who shall be appointed by the Secretary of Defense from among individuals with an expertise in acquisition and testing.

“(b)(1) The Director of Developmental Test and Evaluation shall be the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on developmental test and evaluation in the Department of Defense.

“(2) The individual serving as the Director of Developmental Test and Evaluation may also serve concurrently as the Director of the Department of Defense Test Resource Management Center under section 196 of this title.

“(3) The Director shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics and shall report to the Under Secretary.

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

“(B) The guidance under this paragraph shall ensure, at a minimum, that—

“(i) developmental test and evaluation requirements are fully integrated into the Systems Engineering Master Plan for each major defense acquisition program; and

“(ii) systems engineering and development planning requirements are fully considered in the Test and Evaluation Master Plan for each major defense acquisition program.

“(c) The Director of Developmental Test and Evaluation shall—

“(1) develop policies and guidance for the developmental test and evaluation activities of the Department of Defense (including integration and developmental testing of software);

“(2) monitor and review the developmental test and evaluation activities of the major defense acquisition programs and major automated information systems programs of the Department of Defense;

“(3) review and approve the test and evaluation master plan for each major defense acquisition program of the Department of Defense;

“(4) supervise the activities of the Director of the Department of Defense Test Resource Management Center under section 196 of this title, or carry out such activities if serving concurrently as the Director of Developmental Test and Evaluation and the Director of the Department of Defense Test Resource Management Center under subsection (b)(2);

“(5) review the organizations and capabilities of the military departments with respect to developmental test and evaluation and identify needed changes or improvements to such organizations and capabilities; and

“(6) perform such other activities relating to the developmental test and evaluation activities of the Department of Defense as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

“(d) The Director of Developmental Test and Evaluation shall have access to all records and data of the Department of Defense (including

the records and data of each military department) that the Director considers necessary in order to carry out the Director's duties under this section.

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

“(A) A discussion of any waivers to testing activities included in the Test and Evaluation Master Plan for a major defense acquisition program in the preceding year.

“(B) An assessment of the organization and capabilities of the Department of Defense for test and evaluation.

“(2) The Secretary of Defense may include in any report submitted to Congress under this subsection such comments on such report as the Secretary considers appropriate.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title is amended by inserting after the item relating to section 139b the following new item:

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

(3) CONFORMING AMENDMENTS.—

(A) Section 196(f) of title 10, United States Code, is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and all that follows and inserting “the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of Developmental Test and Evaluation.”.

(B) Section 139(b) of such title is amended—

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

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

“(4) review and approve the test and evaluation master plan for each major defense acquisition program of the Department of Defense.”.

(b) REPORTS ON DEVELOPMENTAL TESTING ORGANIZATIONS AND PERSONNEL.—

(1) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act, the service acquisition executive of each military department shall submit to the Director of Developmental Test and Evaluation a report on the extent to which the test organizations of such military department have in place, or have effective plans to develop, adequate numbers of personnel with appropriate expertise for each purpose as follows:

(A) To ensure that testing requirements are appropriately addressed in the translation of operational requirements into contract specifications, in the source selection process, and in the preparation of requests for proposals on all major defense acquisition programs.

(B) To participate in the planning of developmental test and evaluation activities, including the preparation and approval of a test and evaluation master plan for each major defense acquisition program.

(C) To participate in and oversee the conduct of developmental testing, the analysis of data, and the preparation of evaluations and reports based on such testing.

(2) FIRST ANNUAL REPORT BY DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.—The first annual report submitted to Congress by the Director of Developmental Test and Evaluation under section 139c(e) of title 10, United States Code (as added by subsection (a)), shall be submitted not later than one year after the date of the enactment of this Act, and shall include an assessment by the Director of the reports submitted by the service acquisition executives to the Director under paragraph (1).

SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF CRITICAL TECHNOLOGIES OF MAJOR DEFENSE ACQUISITION PROGRAMS BY THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

(a) ASSESSMENT BY DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.—

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

“(c)(1) The Director of Defense Research and Engineering shall periodically review and assess the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense and report on the findings of such reviews and assessments to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(2) The Director shall submit to the Secretary of Defense and to Congress each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense.”.

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

(b) REPORT ON RESOURCES FOR IMPLEMENTATION.—Not later than 120 days after the date of the enactment of this Act, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report describing any additional resources, including specialized workforce, that may be required by the Director, and by other science and technology elements of the Department of Defense, to carry out the following:

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

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

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

SEC. 104. DIRECTOR OF INDEPENDENT COST ASSESSMENT.

(a) DIRECTOR OF INDEPENDENT COST ASSESSMENT.—

(1) IN GENERAL.—Chapter 4 of title 10, United States Code, as amended by section 102 of this Act, is further amended by inserting after section 139c the following new section:

“§139d. Director of Independent Cost Assessment

“(a) There is a Director of Independent Cost Assessment in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the Director.

“(b) The Director is the principal advisor to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Under Secretary of Defense (Comptroller) on cost estimation and cost analyses for the acquisition programs of the Department of Defense and the principal cost estimation official within the senior management of the Department of Defense. The Director shall—

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

“(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of

Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Secretaries of the military departments with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program under chapter 144 of this title or a major automated information system program under chapter 144A of this title;

“(3) establish guidance on confidence levels for cost estimates on major defense acquisition programs and require the disclosure of all such confidence levels;

“(4) monitor and review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated information system programs; and

“(5) conduct independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—

“(A) in advance of—

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

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

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

“(B) whenever necessary to ensure that an estimate or analysis under paragraph (4) is unbiased, fair, and reliable.

“(c)(1) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.

“(2) The Director shall consult closely with, but the Director and the Director's staff shall be independent of, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and all other officers and entities of the Department of Defense responsible for acquisition and budgeting.

“(d)(1) The Secretary of a military department shall report promptly to the Director the results of all cost estimates and cost analyses conducted by the military department and all studies conducted by the military department in connection with cost estimates and cost analyses for major defense acquisition programs of the military department.

“(2) The Director may make comments on cost estimates and cost analyses conducted by a military department for a major defense acquisition program, request changes in such cost estimates and cost analyses to ensure that they are fair and reliable, and develop or require the development of independent cost estimates or cost analyses for such program, as the Director determines to be appropriate.

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

“(e)(1) The Director shall prepare an annual report summarizing the cost estimation and cost analysis activities of the Department of Defense during the previous year and assessing the progress of the Department in improving the accuracy of its cost estimates and analyses.

“(2) Each report under this subsection shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and Congress not later than 10 days after the transmission of the budget for the next fiscal year under section 1105 of title 31. The Director shall ensure that a report submitted under this subsection does not include any information, such as proprietary or source selection sensitive information, that could undermine the integrity of the acquisition process.

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

“(f) The President shall include in the budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the Director of Independent Cost Assessment in carrying out the duties and responsibilities of the Director under this section.

“(g) The Secretary of Defense shall ensure that the Director has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title, as so amended, is further amended by inserting after the item relating to section 139c the following new item:

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

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

“Director of Independent Cost Assessment, Defense of Defense.”.

(b) REPORT ON MONITORING OF OPERATING AND SUPPORT COSTS FOR MDAPS.—

(1) REPORT TO SECRETARY OF DEFENSE.—Not later than one year after the date of the enactment of this Act, the Director of Independent Cost Assessment under section 139d of title 10 United States Code (as added by subsection (a)), shall review existing systems and methods of the Department of Defense for tracking and assessing operating and support costs on major defense acquisition programs and submit to the Secretary of Defense a report on the finding and recommendations of the Director as a result of the review.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report required by paragraph (1), the Secretary shall transmit the report to the congressional defense committees, together with any comments on the report the Secretary considers appropriate.

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

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by inserting “the Director of Independent Cost Assessment,” before “and the Director”.

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

(3) Section 2366a(a)(4) of such title is amended by striking “has been submitted” and inserting “has been approved by the Director of Independent Cost Assessment”.

(4) Section 2366b(a)(1)(C) of such title is amended by striking “have been developed to execute” and inserting “have been approved by the Director of Independent Cost Assessment to provide for the execution of”.

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

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

“(A) be prepared or approved by the Director of Independent Cost Assessment; and”.

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

SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT COMMANDS IN IDENTIFYING JOINT MILITARY REQUIREMENTS.

Section 181 of title 10, United States Code, as amended by section 104(d)(1) of this Act, is further amended—

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

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

“(e) INPUT FROM COMBATANT COMMANDERS ON JOINT MILITARY REQUIREMENTS.—The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b) and in conducting periodic reviews in accordance with the requirements of subsection (f).”.

TITLE II—ACQUISITION POLICY

SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.

(a) CONSIDERATION OF TRADE-OFFS.—

(1) IN GENERAL.—The Secretary of Defense shall develop and implement mechanisms to ensure that trade-offs between cost, schedule, and performance are considered as part of the process for developing requirements for major weapon systems.

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

(A) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance requirements are established for major weapon systems; and

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

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

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

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

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

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

“(C) in ensuring the consideration of trade-offs among cost, schedule and performance for joint military requirements in consultation with the advisors specified in subsection (d);”.

(c) ANALYSIS OF ALTERNATIVES.—

(1) REQUIREMENT AT MATERIAL SOLUTION ANALYSIS PHASE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense guidance on major defense acquisition programs requires the Milestone Decision Authority to conduct an analysis of alternatives (AOA) during the Material Solution Analysis Phase of each major defense acquisition program.

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

(A) solicit and consider alternative approaches proposed by the military departments and Defense Agencies to meet joint military requirements; and

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

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

SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DESIGN REVIEW FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

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

(1) in paragraph (1), by striking ‘‘and’’ at the end;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following new paragraph (2):

“(2) has received a preliminary design review (PDR) and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission; and”;

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

(A) in subparagraph (D), by striking the semi-colon and inserting ‘‘, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and’’;

(B) by striking subparagraph (E); and

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

(b) CRITICAL DESIGN REVIEW.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense guidance on major defense acquisition programs requires a critical design review and a formal post-critical design review assessment for each major defense acquisition program to ensure that such program has attained an appropriate level of design maturity before such program is approved for System Capability and Manufacturing Process Development.

SEC. 203. ENSURING COMPETITION THROUGHOUT THE LIFE CYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ENSURING COMPETITION.—The Secretary of Defense shall ensure that the acquisition plan for each major defense acquisition program includes measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level of such program throughout the life cycle of such program as a means to incentivize contractor performance.

(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, utilized for purposes of subsection (a) may include, but are not limited to, measures to achieve the following, in appropriate cases where such measures are cost-effective:

(1) Competitive prototyping.

(2) Dual-sourcing.

(3) Funding of a second source for interchangeable, next-generation prototype systems or subsystems.

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

(5) Periodic competitions for subsystem upgrades.

(6) Licensing of additional suppliers.

(7) Requirements for Government oversight or approval of make or buy decisions to ensure competition at the subsystem level.

(8) Periodic system or program reviews to address long-term competitive effects of program decisions.

(9) Consideration of competition at the subcontract level and in make or buy decisions as a factor in proposal evaluations.

(c) COMPETITIVE PROTOTYPING.—The Secretary of Defense shall modify the acquisition regulations of the Department of Defense to ensure with respect to competitive prototyping for

major defense acquisition programs the following:

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

(A) but for such waiver, the Department would be unable to meet critical national security objectives; or

(B) the cost of producing competitive prototypes exceeds the potential life-cycle benefits of such competition, including the benefits of improved performance and increased technological and design maturity that may be achieved through prototyping.

(2) That if the milestone decision authority waives the requirement for prototypes produced by two or more teams for a major defense acquisition program under paragraph (1), the acquisition strategy for the program provides for the production of at least one prototype before Milestone B approval (or Key Decision Point B approval in the case of a space program) unless the milestone decision authority waives such requirement on the basis of a determination that—

(A) but for such waiver, the Department would be unable to meet critical national security objectives; or

(B) the cost of producing a prototype exceeds the potential life-cycle benefits of such prototyping, including the benefits of improved performance and increased technological and design maturity that may be achieved through prototyping.

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

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

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

SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE ACQUISITION PROGRAMS.

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

(1) by redesignating subparagraph (C) as subparagraph (D);

(2) by striking subparagraph (B); and

(3) by inserting after subparagraph (A) the following new subparagraphs (B) and (C):

“(B) terminate such acquisition program, unless the Secretary determines that the continuation of such program is essential to the national security of the United States and submits a written certification in accordance with subparagraph (C)(i) accompanied by a report setting forth the assessment carried out pursuant to subparagraph (A) and the basis for each determination made in accordance with clauses (I) through (IV) of subparagraph (C)(i), together with supporting documentation;

“(C) if the program is not terminated—

“(i) submit to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title, a written certification stating that—

“(I) such acquisition program is essential to national security;

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

“(III) the new estimates of the program acquisition unit cost or procurement unit cost were arrived at in accordance with the requirements of section 139d of this title and are reasonable; and

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

“(ii) rescind the most recent Milestone approval (or Key Decision Point approval in the case of a space program) for such program and withdraw any associated certification under section 2366a or 2366b of this title; and

“(iii) require a new Milestone approval (or Key Decision Point approval in the case of a space program) for such program before entering into a new contract, exercising an option under an existing contract, or otherwise extending the scope of an existing contract under such program; and”.

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

SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.

(a) REVISED REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall revise the Defense Supplement to the Federal Acquisition Regulation to address organizational conflicts of interest by contractors in the acquisition of major weapon systems.

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

(1) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major weapon systems from federally funded research and development centers or other sources independent of the prime contractor;

(2) require that a contract for the performance of systems engineering and technical assistance (SETA) functions with regard to a major weapon system contains a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in the development or construction of the weapon system or any component thereof;

(3) provide for an exception to the requirement in paragraph (2) for an affiliate that is separated from the contractor by structural mechanisms, approved by the Secretary of Defense, that are similar to those required under rules governing foreign ownership, control, or influence over United States companies that have access to classified information, including, at a minimum—

(A) establishment of the affiliate as a separate business entity, geographically separated from related entities, with its own employees and management and restrictions on transfers for personnel;

(B) a governing board for the affiliate that has organizational separation from related entities and governance procedures that require the board to act solely in the interest of the affiliate, without regard to the interests of related entities, except in specified circumstances;

(C) complete informational separation, including the execution of non-disclosure agreements;

(D) initial and recurring training on organizational conflicts of interest and protections against organizational conflicts of interest; and

(E) annual compliance audits in which Department of Defense personnel are authorized to participate;

(4) prohibit the use of the exception in paragraph (3) for any category of systems engineering and technical assistance functions (including, but not limited to, advice on source selection matters) for which the potential for an organizational conflict of interest or the appearance of an organizational conflict of interest

makes mitigation in accordance with that paragraph an inappropriate approach;

(5) authorize waiver of the requirement in paragraph (2) in cases in which the agency head determines in writing that—

(A) the financial interest of the contractor or its affiliate in the development or construction of the weapon system is not substantial and does not include a prime contract, a first-tier subcontract, or a joint venture or similar relationship with a prime contractor or first-tier subcontractor; or

(B) the contractor—

(i) has unique systems engineering capabilities that are not available from other sources;

(ii) has taken appropriate actions to mitigate any organizational conflict of interest; and

(iii) has made a binding commitment to comply with the requirement in paragraph (2) by not later than January 1, 2011; and

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

(A) requiring prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of the weapon system;

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

(C) authorizing program managers to disapprove the determination by a prime contractor to conduct development or construction in-house rather than through a subcontract in cases in which—

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

(ii) implementation of the determination by the prime contractor is likely to undermine future competition or the defense industrial base; and

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

(c) ORGANIZATIONAL CONFLICT OF INTEREST REVIEW BOARD.—

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

(2) DUTIES.—The Board shall have the following duties:

(A) To advise the Under Secretary of Defense for Acquisition, Technology, and Logistics on policies relating to organizational conflicts of interest in the acquisition of major weapon systems.

(B) To advise program managers on steps to comply with the requirements of the revised regulations required by this section and to address organizational conflicts of interest in the acquisition of major weapon systems.

(C) To advise appropriate officials of the Department on organizational conflicts of interest arising in proposed mergers of defense contractors.

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

SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

(b) ELEMENTS.—The program required by subsection (a) shall include the following:

(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.

Mr. LEVIN. Mr. President, on behalf of the Senate Armed Services Committee, we are pleased to bring S. 454, the Weapon Systems Acquisition Reform Act of 2009 to the Senate floor. I introduced this bill with Senator McCAIN on February 23 to address problems in the performance of the major defense acquisition programs of the Department of Defense at a time when the cost growth on these programs has reached levels we simply cannot afford.

Five weeks later, the bill was unanimously approved by the Armed Services Committee, and just last week the President called on Congress to act quickly on the bill. Report after report has shown that there are fundamental problems with the way we buy major weapons systems. In the last month alone, we received three major reports documenting problems with the acquisition system.

First, the Government Accountability Office reported that the cost overruns of the Department’s 97 largest acquisition programs now total almost \$300 billion over the original program estimates, and the programs are an average of 22 months behind schedule. That is true even though the Department has cut unit quantities and reduced performance expectations on many programs in an effort to expedite production and hold costs down.

Second, we got a report from the Business Executives for National Security, BENS. They reported:

We have an acquisition system at odds with the best practices in the business world: insufficient systems engineering capability [and] unrealistic cost estimating that injects too much optimism in early program execution. . . .

Then, thirdly, there was a Defense Science Board report that said:

Today, the defense acquisition process takes too long to produce weapons that are too expensive. . . .

As Secretary Gates pointed out in his testimony before our committee earlier this year:

The list of big-ticket weapons systems that have experienced contract or program performance problems spans the services.

Here are just a few examples of the kind of problems the Department of Defense’s major acquisition programs have encountered. The

Navy initially established a goal of \$220 million and a 2-year construction cycle for the two lead ships on the Littoral Combat Ship, the LCS program. Those goals ran counter to the Navy’s historic experience in building new ships and were inconsistent with the complexity of the design required to make the program successful. As a result, program costs have tripled and the program is almost 4 years behind schedule.

Next, the Air Force initially estimated that commonality between the three variants, threat varieties, of the Joint Strike Fighter would significantly reduce development costs. However, that level of commonality has proven impossible to achieve. Twelve years after the program started, three of the JSF’s eight critical technologies are still not mature. Its production processes are not mature, and its designs are still not fully proven and tested.

As a result, the program is now expected to exceed its original budget by almost 40 percent. That is \$40 billion. The Army underestimated the lines of code needed to support the Future Combat System’s software development by a factor of three. That led to an increase in software development costs that now approaches \$8 billion. So 8 years after the program started, only three of the Future Combat System’s 44 critical technologies are fully mature. GAO tells us that the Army has not advanced the maturity of 11 critical technologies since 2003, and that 2 other technologies, which are central to the Army’s plans, are now rated less mature than when the program began. As a result, the program is now expected to exceed its original budget by about 45 percent or \$40 billion. It is as much as 5 years behind schedule and is likely to be substantially restructured.

There is a set of common problems underlying all these program failures. As a general rule, when the Department of Defense acquisition program fails, it is because the Department relies on unreasonable costs and schedule estimates; establishes unrealistic performance expectations; insists on the use of immature technologies; and adopts costly changes to program requirements, production quantities and funding levels in the middle of ongoing programs.

The bill we bring before the Senate today is designed to address these problems and to help put major defense acquisition programs on a sound footing from the outset by addressing program shortcomings in the early phases of the acquisition process. Our bill is going to address problems with unreasonable performance requirements and immature technologies by requiring the Department of Defense to reestablish systems engineering organizations and developmental testing capabilities that were downsized or eliminated as a result of reductions in the acquisition workforce in the late 1990s; periodically review and assess the maturity of critical technologies; and make greater use of prototypes, including competitive prototypes, to prove that new

technologies work before trying to produce them.

Our bill will address problems with unreasonable cost and schedule estimates by establishing an independent cost estimating office headed by a Senate-confirmed director of independent cost assessment in an effort to ensure that the budget assumptions underlying acquisition programs are sound.

We deal with a similar problem in the Congress by using an independent office, the Congressional Budget Office, to tell us how much direct spending programs are really going to cost. Those of us who have tangled with the CBO over the years know how tough and independent that office can be in insisting on its estimates. We can decide to spend the money anyway, but we do so with our eyes wide open because the cost estimator is not going to back down.

The Department of Defense itself has a model for this type of independence in the Director of Operational Test and Evaluation, the DOT&E. For the last 25 years, that Director, who is appointed by the President, confirmed by the Senate, and reports directly to the Secretary of Defense, has ensured that weapons systems are adequately tested before they are deployed by providing independent certifications as to whether new military systems are effective and suitable for combat. Program officials and contractors may disagree with the Director, but they have discovered they cannot go around him.

Section 104 of our bill would ensure comparable discipline when it comes to cost estimating by establishing a new director of independent cost assessment. Like the DOT&E, a new director will be appointed by the President, confirmed by the Senate, and will report directly to the Secretary of Defense. Like the Director of Test and Evaluation, this official would have the independence and the clout within the Department to make objective determinations and stick to them. A truly independent cost estimating director will not be popular within the Department, as the DOT&E is not popular often, but he will make our acquisition system work better by forcing the Department to recognize the real cost of what our Secretary of Defense has called “exquisite requirements.”

Only when the Department faces up to these costs will it become more realistic in its requirements and start to make the necessary tradeoffs between cost, schedule, and performance.

Section 104 makes the Director responsible for all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated systems programs in the Department of Defense. Under section 104, the Director is required to perform his own cost estimates at four separate points in the life of each program for which the Under Secretary is the milestone decision authority. On other programs, he may rely on an independent cost esti-

mate produced by one of the military departments but only if he determines that the service's independent estimate is unbiased, fair, and reliable.

Our bill would also address problems with costly changes in the middle of a program by putting teeth in the Nunn-McCurdy requirements that currently exist for troubled acquisition programs.

We will establish a presumption that any program that exceeds its original baseline by more than 50 percent will be terminated unless it can be justified—be “justified;” and this is critically important—from the ground up.

Finally, our bill would address an inherent conflict of interest we see on a number of programs today, when a contractor hired to give us an independent assessment of an acquisition program is participating in the development or construction side of the same program.

We held a hearing back in March on S. 454, at which four witnesses, including two former Under Secretaries of Defense for Acquisition, Technology, and Logistics, endorsed the committee's acquisition reform effort. The new Under Secretary for Acquisition, Technology, and Logistics added his support at his March 26 nomination hearing. In addition, we have since received extensive comments on the bill from the Department of Defense, from the defense industry, and from independent experts on the acquisition system.

Senator McCAIN and I took those comments into consideration and we offered a number of modifications to the bill, which were adopted by the Armed Services Committee at our April 2 markup. We did not make all of the changes requested by the Department or the contractor community. For example, the Department would like to eliminate the provision on the Director of Independent Cost Assessment. Many contractors would prefer we not tighten the rules for organizational conflicts of interest. And both the Department and industry would like us to drop our Nunn-McCurdy amendments, which place tough new requirements on failing programs. We have not done that. These provisions are tough medicine, but the acquisition system needs tough medicine.

In January, Secretary Gates told our committee that we must work together to address the “repeated—and unacceptable—problems with requirements, schedule, cost, and performance” from which too many of our defense acquisition programs suffer. On March 4, the President endorsed the goals of the bill, telling the press that “It's time to end the extra costs and long delays that are all too common in our defense contracting.” Last week, the President reiterated his position that the bill has his full support, and he urged us to act quickly.

I hope our colleagues will join us. Senator McCAIN has been instrumental in making this happen, and we and the Nation are appreciative to him for so many things, but we can add this now

to the list. Also, our full committee endorsed this bill. It was adopted unanimously in committee. It is a bipartisan bill.

We look forward to beginning consideration of this legislation. And to those Senators who have amendments, we hope they will let us know about them to see if we can work them out, and, if not, arrange a time for their consideration.

Again, I thank my friend from Arizona for all his work on this matter.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I wish to begin by thanking my friend from Michigan, the distinguished chairman of the committee, whom I have had the great honor of working with for many years. Senator LEVIN and I have not always agreed on every issue; we are of different parties. But we have had, in my view, a great opportunity to work together for the good of this Nation and its security and the men and women who serve it.

I again thank Senator LEVIN for his leadership in bringing this legislation quickly through our committee in a unanimous, bipartisan fashion, and bringing it to the floor.

As Senator LEVIN has mentioned, there may be some amendments or some modifications that our colleagues want to make, but I am confident we can get this bill done, into conference, and on the desk of the President. I am happy to say the President is very supportive. A meeting he and Senator LEVIN and I had with the leaders in the House Armed Services Committee indicates the President and the administration's commitment.

I also want to say Secretary Gates—a man who I believe is one of the outstanding Secretaries of Defense in the history of our country—has always been forcefully in support of this legislation. There obviously is more to do because we have a broken system, a system that is broken so badly that in our attempt to provide a replacement for the President's helicopter—which is some 30 years old, known as Marine One—we came to a point where the helicopter costs more than Air Force One.

You cannot make it up—where we have a future combat system with cost overruns of tens of billions of dollars; a joint strike fighter program that is completely out of control; and contracts—and there are many areas to place the blame and responsibility—but contracts that are let at certain cost estimates and then lose all touch with the original realities.

Is there anybody who is an expert on defense acquisition, weapons systems acquisition, who believes the final cost will be anything near what the initial cost was as presented to Congress and the American people? Of course not. Of course not.

So the title of this legislation is the “Weapon Systems Acquisition Reform Act of 2009”—perhaps not a very exciting title. But the fact is, we have out-

of-control costs of our weapons systems, which we cannot afford. We are expanding our Army and Marine Corps. We have increased obligations in Afghanistan, which has certainly been highlighted by the recent events in Pakistan, as well as Afghanistan. We cannot afford it.

We cannot afford to take care of our obligations in at least two wars, and potential flashpoints all over the world, and continue the spending spree we are on on weapons systems acquisition. This is timely. It is needed.

I again thank the chairman of the committee, Senator LEVIN, for his leadership in seeing this bill from introduction through floor consideration today. It shows, I think—and I do not want to make too much of it, but it does show when there is an issue that cries out for bipartisan action, this one can be an example now and in the future.

I do not want to get into a lot of the details of how all this came about. But I would remind my colleagues that back some years ago, we used to have a thing called fixed-cost contracts. Those were the majority of the contracts that were let when we wanted to build a new weapons system: a new airplane, a new ship, a new tank. For many years, we were almost able to stay within those costs.

There were some dramatic exceptions. I can remember back in the 1970s the cost escalation associated with new nuclear submarines. And I can remember some others. But, generally speaking, we built weapons systems and gave them to the military at very close to their original cost estimates. That is not the case today.

Some will argue—as I have heard in the industry—well, there are technical changes that are ordered by the military which increase the cost. I think Secretary Gates pointed out some months ago: Are we allowing the perfect to be the enemy of the good? Are we getting a weapon system which achieves 80 to 90 percent of what we want—which, it seems to me, is under reasonable costs—or are we making all these technical changes, which cause the cost of these systems to go up in the most dramatic fashion?

We cannot afford to continue to do it. We cannot. I think this is an important step. I know the chairman would agree with me. This is not the only step that needs to be taken to bring an out-of-control system under some kind of control and accountability to the American taxpayer.

In its most recent assessment of the Department of Defense's major weapons systems, the General Accountability Office observed that “the overall performance of weapon system programs is poor [and] the time for change is now.”

So I say to my colleagues, as they come to the floor with amendments and debate—and we need to discuss this—we should keep in mind the General Accountability Office's observation that “the time for change is now.”

I would also remind my colleagues and the American people this legislation has to pass through the House. We have to then go to conference. We then have to have the President sign it. And then the changes have to be implemented. So we are not seeing even an immediate turnaround with the rapid consideration of this legislation, as I think we can achieve today.

I would ask my colleagues on this side of the aisle, if they have amendments, if they would notify the cloakroom, and we will make time for them. I know the chairman and I can enter into time agreements so we can dispense with the legislation in an expeditious way as possible, but also taking into consideration any concerns, amendments, our colleagues on both sides of the aisle have.

The chairman has described, I think, this bill very well, and I do not want to repeat his assessment. But I do want to point out a couple things or emphasize a couple points the chairman made.

The bill improves how the Department of Defense manages probably the single most significant driver of cost growth in our largest weapons procurement programs: technology risk. Basically, it does so by starting programs off right—with sound systems engineering, developmental testing, and independent cost estimates early in the program. We have seen these cost estimates particularly being unrealistic because we have not done the proper sound systems engineering and developmental testing that is necessary to get a correct assessment of costs.

The bill, among many other things, requires the Department of Defense to assess each department's ability to conduct early stage systems engineering and fill in any gaps in that important capability.

The bill provides for the creation or resumption of key oversight positions, including a Director of Independent Cost Assessment and a Director of Developmental Testing and Evaluation. I am not one who believes in creating new positions. I think our bureaucracy over on the other side of the river is big enough. But I do believe we need to create and resume key oversight functions, and those do require a Director of Independent Cost Assessment and a Director of Developmental Testing and Evaluation.

The relationship between those who are doing the contracting, other contractors, and the awardee is way too close today for us to get truly independent assessments and cost controls.

The bill requires that preliminary design and critical design reviews are completed early in a program's acquisition cycle so as to inform go/no-go purchase decisions on major weapons systems.

The bill requires that the Department's budget, requirements, and acquisitions community consult with each other and make tradeoffs between cost, schedule, and performance early in the procurement process, and get

combatant commanders more involved in the requirements process.

I want to emphasize that last point. The combatant commanders are the end users of the equipment we provide them with. Unfortunately, on many occasions, the combatant commanders have not been involved in the requirements process early enough on or too late, to the point where they cannot make significant changes. What we want to do is give the Department, under the leadership of our great Secretary of Defense and the Congress, a big stick—bigger than anything available under current law—to wield against the very worst performing programs.

On the broadest level, this bill recognizes that only when a program is predictable; that is, when milestones are being met, estimated costs are actual costs, and performance-to-contract specifications and “key performance parameters” are achieved, only then can we rely on the acquisition process to provide the joint warfighter with timely optimal capability at the most reasonable cost to the taxpayer.

The approach provided for in this bill, which allows the Department of Defense to manage technology risks effectively, should help it move away from cost-reimbursable contracts and instead maximize its use of fixed price-type contracts. When coupled with initiatives that subject programs to full and open competition, this approach could save taxpayers billions of dollars.

While we do not intend this bill as a panacea that will cure all that ails the defense procurement process, as it is, it constitutes an important next step in Congress's continuing effort to help the Department reform itself.

Two final points.

Since the chairman and I originally introduced the bill, the Department of Defense and others have raised various concerns about discrete elements of the bill. The bill now under consideration has benefited from that dialog as it addresses their reasonable concerns, without undermining the underlying intent of the bill, to put in place an evolutionary, knowledge-based acquisition process that metes out technology risks early in a program.

I note for the record that we received testimony on this bill in our March 3, 2009, hearing. A day later, the President came out in support of the bill's underlying principles. Just a few days ago, he offered an unqualified endorsement. In addition, Secretary Gates and Dr. Ashton Carter, the new Under Secretary of Defense for Acquisition, Technology and Logistics, have spoken approvingly of the bill. Also, the General Accountability Office, two former Defense acquisition chiefs, and various taxpayer advocacy and think tank organizations, including the Center for American Progress, Business Executives for National Security, the Project on Government Oversight, known as POGO, the National Taxpayers Union, NTU, the U.S. Public Interest Research

Group, PIRG, and Taxpayers for Common Sense, have also weighed in in support of the bill.

I ask unanimous consent to have their statements printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. CARL LEVIN,
Chairman, U.S. Senate Committee on Armed Services, Washington, DC.

Hon. JOHN McCAIN,
Ranking Member, U.S. Senate Committee on Armed Services, Washington, DC.

DEAR CHAIRMAN LEVIN AND RANKING MEMBER McCAIN, The undersigned groups applaud your commitment to reforming and improving the Department of Defense's (DoD's) acquisition system through the Weapons Acquisition Reform Act of 2009 (S. 454) and the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight (WASTE TKO) Act of 2009 (H.R. 2101). Both pieces of legislation include important provisions to restore discipline to DoD's procurement process. As the final legislation is worked out in conference, we believe that the following principles should be preserved:

Ensuring only programs with design maturity move forward—Programs that enter production before their designs are mature are vulnerable to gross schedule and cost overruns. The Senate bill advocates a strategy that would significantly improve programs by requiring design reviews to certify that programs have attained an appropriate level of design maturity before a program is approved for System Capability and Manufacturing Process Development. As a result of this reform, program and cost risk could be significantly reduced.

Elevating independent cost estimates—We support the establishment of a Director of Independent Cost Assessment to provide oversight and implement policies and procedures to make sure that the cost estimation process is reliable and objective. Creating this new, independent position is important to prevent the cycle of costs that exceed estimates due to insufficient knowledge of accurate requirements.

Increasing accountability for programs that experience critical cost growth—Both bills propose language that place additional and needed scrutiny on programs that experience critical cost growth. The House bill seeks to increase accountability by asking for an assessment of the root cause of growth, program validity, the viability of program strategy, and the quality of program management to determine whether a program should be terminated. But we believe the more aggressive strategy advocated by the Senate will do more to increase program discipline by requiring that a program be terminated unless the Secretary determines that it is essential to national security, and includes documentation that also states that 1) there are no alternatives to the acquisition program "which will provide equal or greater capability to meet a joint military requirement"; 2) the new acquisition cost or procurement unit costs are reasonable; and 3) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost. By also rescinding the most recent Milestone approval and requiring a new approval, we believe program management for programs that experience critical cost growth will be improved.

Reducing organizational conflicts of interest—Independent analysis is key to ensuring that DoD decision makers are given unbiased, accurate information upon which to base program decisions. While we applaud

the House for calling for a study to examine how to eliminate or mitigate organizational conflicts of interest, we also strongly support preventing organizational conflicts. The Senate version of this bill would decrease conflicts of interest by mandating that DoD seek independent advice on systems architecture and systems engineering for major weapon systems. We also support the language initially proposed in S. 454 that would require that a contract for the performance of systems engineering and technical assistance (SETA) functions for major weapons systems contain a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in the development or construction of the weapon system or any component thereof. We urge you to include the "Organizational Conflict of Interest" provision that explicitly defines the minimum regulations to be enacted that will preclude contractors from advising the Department of Defense on weapons systems and then developing them.

Increasing competition in major weapons systems—Both bills enhance competition in the procurement process that will translate into the best value for taxpayers and also serves as an important tool to prevent waste, fraud, and abuse. We support language that would encourage programs to utilize methods such as competitive prototyping, periodic competitions for subsystem upgrades, licensing of additional suppliers, and periodic system or program reviews to address long-term competitive effects of program decisions. But we believe that competition, and with its benefits to taxpayers, will only be further enhanced by measures in the Senate bill to increase the use of government oversight or approval in make or buy decisions at every system level.

Increasing transparency in the waiver process—The answer to solving the problems with DoD's procurement process is not simply a matter of making new rules. We believe that many of the rules and controls are already in place for responsible procurement of weapons systems, but that these rules are too frequently ignored or otherwise not followed, resulting in a system that has been plagued by cost and schedule overruns. The House adopts an important strategy for this effort by forcing DoD to supply Congress with explanations for waivers to key provisions for Milestone decisions and follow-up annual reviews of these programs. This significantly increases Congress's ability to oversee DoD and make sure that taxpayers are getting the national security capabilities they need at a reasonable price.

We also support the proposed reforms to increase the emphasis on systems engineering, developmental testing, and technology maturity assessments, along with confidence levels for cost estimates. All of these principles help programs to have a strong foundation.

As important as all of these provisions are, it's important to recognize that this legislation is only one step in reforming weapons acquisition. The defense procurement process is also in desperate need of discipline. Standards for appropriate levels of design maturity should be clearly defined to meet missions and requirements. Waivers from procurement rules should be used rarely, should be the exception, not the rule, and should be made available to both Congress and the public. Additionally, spiral acquisition contracts should not be used to push immature technologies back in the production process, where they can still endanger the program's cost and schedule. All technologies should be mature before committing to production.

In the short term, Defense Secretary Robert Gates has demonstrated his commitment to restoring discipline to the Pentagon's weapons acquisition by his aggressive pro-

gram cuts, and Congress should follow his lead in putting the public good ahead of their parochial interests. But in order to achieve lasting, meaningful change, the Pentagon must follow the rules and controls in place, and Congress must conduct oversight to make sure that they do so. We look forward to working with you in the future to implement these changes.

DANIELLE BRIAN,
Project on Government
Oversight.

PETE SEPP,
Vice President, Na-
tional Taxpayers
Union, U.S. Public
Interest Research
Group.

RYAN ALEXANDER,
Taxpayers for Common
Sense.

BUSINESS EXECUTIVES
FOR NATIONAL SECURITY,
Washington, DC, March 31, 2009.

Hon. JOHN McCAIN,
Ranking Member, Committee on Armed Services,
U.S. Senate.

DEAR SENATOR McCAIN: We note with pleasure the introduction of your bill targeted towards improvement of the Defense Department's acquisition management process. At Business Executives for National Security (BENS), we believe—and have asserted for some time—that acquisition reform is one of the most important areas for achieving efficiencies and savings that can be redirected to the warfighter. In line with your proposals, research shows the keys to successful acquisition are to start programs with sound systems engineering, realism in cost-estimating and subsequent funding, and ensuring appropriate technology maturation before entry into the program. Your proposal takes steps in the appropriate direction toward ensuring increased attention to these important areas.

For over twenty five years BENS has been the nation's pre-eminent conduit for bringing the best business practices and advice from the private sector to the world of national security. Through this engagement BENS has come to recognize that the Department of Defense and the Military Services are not businesses; they are organizations with an ethos and culture unique to their members and mission. Recognizing the difference has allowed BENS to help the Defense Department adopt relevant, proven practices that slash bureaucracy, streamline operations, and cut waste without violating those non-business characteristics which cannot be changed.

Therefore, we are particularly supportive of the Senate bill, Weapon Systems Acquisition Reform Act of 2009 (S. 454). We believe this bill, as good as it is, could go further in addressing many of the embedded processes that continue to detract from the overall effectiveness of the process. We fail sometimes in the basic recognition that the defense acquisition system is a national enterprise comprised of branches and agencies of the federal government on both sides of the Potomac River, and in the defense and private sectors nationally and globally. Based on the research of our Task Force on Acquisition Law and Oversight, BENS has concluded that it is time to fundamentally reset the expectations for what our nation wants from the defense acquisition enterprise and its processes. Congress is best suited to define and advocate these expectations. Too many studies and too many good recommendations have gone unheeded. If we are to reform, only Congress can lead it.

Your attention to this important issue is heartening. BENS recommends that Congress, as it continues to fashion this legislation, give careful consideration to the recommendations we make in our report, which is expected to be issued by April 30, 2009. We look forward to a successful outcome on the acquisition management issue, and to providing any further help as you negotiate the final bill. Please contact Chuck Boyd should you have any questions.

Sincerely,

JOSEPH E. ROBERT, Jr.
Chairman, BENS
Board of Directors,
Chairman and CEO,
J.E. Robert Companies.

CHARLES G. BOYD,
President & CEO,
BENS.

Mr. McCAIN. Finally, I wish to say that there is another ongoing battle I will continue to engage in for as long as I am here, and that is the earmarking and porkbarreling that goes on in the Defense appropriations bill.

I am proud to have served for many years on the authorizing committee of the Armed Services Committee of the Senate. I see year after year, time after

time, billions of dollars of unwanted, unnecessary porkbarrel-earmark spending, many of it having nothing to do with the defense of this Nation and the men and women who serve it. I see earmark-porkbarrel projects highlighted even as short a time ago as yesterday in the Washington Post, and the outrageous abuse of the taxpayers' dollars. When Members of Congress were put in Federal prison, it was the Defense appropriations bill that was the source of some of the corruption.

So I look forward to passing this to help reform the Pentagon. We still need to reform the way the Congress of the United States does business in porkbarreling and earmarking scarce taxpayers' dollars that should be used to defend this Nation and not for the sources of porkbarrel and earmark spending that has become rampant. The last Omnibus appropriations bill had 9,000 earmark-porkbarrel projects in it, thousands of them on the defense side of the appropriations. It is unacceptable. It is outrageous. The Amer-

ican people are sick and tired of it. I will continue that fight.

Again, I thank the distinguished chairman, Senator LEVIN, for his leadership on this legislation.

I yield the floor.

Mr. LEVIN. Mr. President, let me again thank Senator MCCAIN for all he has done to bring us to the floor today. This is a bipartisan bill. It is a major reform of the acquisition system. It is long overdue. It is genuinely and desperately needed.

Mr. MCCAIN. Mr. President, I wish to take just a couple minutes to discuss the kinds of overruns we are talking about.

I ask unanimous consent that this report by the GAO of 2009 on major weapons programs, changes in costs and quantities for 10 of the highest cost acquisition programs, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

2009 GAO REPORT ON MAJOR WEAPONS PROGRAMS

TABLE 2: CHANGES IN COSTS AND QUANTITIES FOR 10 OF THE HIGHEST-COST ACQUISITION PROGRAMS

Program	Total cost (fiscal year 2009 dollars in millions)		Total quantity		Acquisition unit cost
	First full es- timate	Current es- timate	First full es- timate	Current es- timate	
Joint Strike Fighter	206,410	244,772	2,866	2,456	*38
Future Combat System	89,776	129,731	15	15	*45
Virginia Class Submarine	58,378	81,556	30	30	*40
F-22A Raptor	88,134	73,723	648	184	*195
C-17 Globemaster III	51,733	73,571	210	190	57
V-22 Joint Services Advanced Vertical Lift Aircraft	38,726	55,544	913	458	*186
F/A-18E/F Super Hornet	78,925	51,787	1,000	493	33
Trident II Missile	49,939	49,614	845	561	50
CVN 21 Nuclear Aircraft Class Carrier	34,360	29,914	3	3	-13
P-8A Poseidon Multi-mission Maritime Aircraft	29,974	29,622	115	113	1

*Enormous cost growth.

Source: GAO analysis of DOD data.

Mr. McCAIN. For the Joint Strike Fighter, the first full estimate was that the cost would be \$2.866 billion. The current estimate and percentage change is a 38-percent increase.

The Future Combat System was first estimated to cost \$89-and-some billion. It is now up to \$129 billion, a 45-percent increase in cost.

The Virginia class submarine was originally estimated to be around \$58 billion. It is now \$81 billion, a 40-percent increase.

The F-22, which will be the subject of debate on the floor of the Senate, original cost estimate was \$88 billion, and the cost has increased by 195 percent.

The Globemaster has a 57-percent increase, the C-17.

The V-22 Joint Services Advanced Vertical Lift Aircraft, a 186-percent increase in cost.

The list goes on and on, with the exception of the nuclear aircraft carrier, which has a 13-percent decrease in cost. We ought to see what they are doing.

The programs GAO reviewed in 2008, the most used initial cost estimates from sources previously found to be unreliable, many still began with low levels of technical maturity. The promised capabilities continued to be deliv-

ered later than planned, and 10 of the Pentagon's largest programs equaling half of the Department's overall acquisition dollars are significantly over budget and under delivery in capability.

So these are the reasons we are absolutely in need of addressing weapons acquisition reform as early and quickly as possible.

Mr. LEVIN. Mr. President, our staffs have worked hard to try to clear some amendments. We have been able to do so. But in order for us to move these amendments be adopted, they are going to have to have their sponsors come to the floor.

The nine amendments which have been cleared on both sides and which we can accept if we can get the sponsors here would be three amendments of Senator McCASKILL, one of Senator COLLINS, one of Senator COBURN, one of Senator WHITEHOUSE, one of Senator CARPER, one of Senator INHOFE, and one of Senator CHAMBLISS.

These amendments have not been filed yet. We have cleared them but they need to be filed by the Senators, and that is the reason we need them to come to the floor.

I will be happy to yield to my colleague.

Mr. McCAIN. Mr. President, the Chairman explained what is necessary. I urge my colleagues to come to the floor, if they have additional amendments, so we can finish the bill. It seems to be remarkably free of controversy.

Mr. LEVIN. Mr. President, on a bipartisan basis our committee approved this bill unanimously, the Weapon Systems Acquisition Reform Act of 2009. We have a few minutes so I will just make a few points highlighting this bill.

The Government Accountability Office reported last month, as both Senator MCCAIN and I mentioned earlier, the cost overruns on the Department's 97 largest acquisition programs alone totaled almost \$300 billion over the original program estimates. That is true, even though the Department of Defense cut the quantities being purchased and they reduced the performance expectations on many of the programs in order to hold down costs.

Second, we know what the underlying problems are at the Department of Defense. The Department of Defense acquisition programs fail because the

Department continues to rely on unreasonable cost and schedule estimates. They continue to establish unrealistic performance expectations. The Department continues to use immature technologies and to adopt costly changes to program requirements, to production quantities, and to funding levels right in the middle of these programs. When we do that we have unstable programs and costs that are going to rise.

Third, this bill contains a number of specific measures to address the problems I have just identified. The bill has the support of the President, Secretary of Defense, the Government Accountability Office, many independent experts on acquisition policy, and a number of public interest groups. There are many important provisions in this bill, but I want to highlight one of them this afternoon.

We are waiting for sponsors of amendments we have cleared, and those that we have not cleared, to come to the floor. We are open for business.

One of the most important provisions that is in this bill is the provision which establishes a director of independent cost assessment. It is the way to bring real discipline to the DOD's cost estimating process. At present, there is an entity called Cost Assessment Improvement Group, or CAIG, for short. They are supposed to be producing independent cost estimates on DOD acquisition programs. That is their responsibility. However, the CAIG operation is too low down in the bureaucracy. It is not directly accountable and reporting to the Secretary of Defense. It is a committee and includes representatives of each of the Under Secretaries and a number of other senior officials in the Department, chaired by a civil servant in the Senior Executive Service who is the Deputy Director for Resource Analysis in the Office of Program Analysis and Evaluation.

Just almost by saying those words one can understand why it does not have the direct clout we need this person to have. We are going to establish an individual who is responsible, a person who directly reports to the Secretary of Defense just the way in which another critically important office now does, the one that evaluates the technologies.

We are also going to have this person be Senate confirmed. The person who now is Senate confirmed, who does this for a different role, is the Director of Program Analysis and Evaluation. That person, that Director, is—I misspoke. It is the Director of Operational Testing and Evaluation who now is directly accountable to the Secretary of Defense and is Senate confirmed. We want this person who is going to be responsible for cost analysis to be also in that same position and to have that same kind of clout.

Now, the CAIG staff does a terrific job at what they do. I am not, in any way, disparaging the work of the CAIG

staff. But a career official in the Senior Executive Service who serves as the Deputy Director of an office that is not even headed by a Presidential appointee simply does not have the independence and the clout that is essential if the cost of these programs is going to be put under control.

By establishing a tough and an independent cost estimator who is Senate confirmed and reports directly to the Secretary of Defense, we believe our bill is going to go a long way toward ending the unrealistic, the overly optimistic cost assessments that are too often used in order to sell the new acquisition programs.

We have to reduce the unnecessary "gold plating" of weapon systems. We have to bring the Department of Defense undisciplined requirements system under control.

As I indicated, we are ready to begin addressing amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

REPUBLIC OF GEORGIA SITUATION

Mr. McCAIN. Mr. President, I thank my friend, the distinguished chairman of the Committee. I hope we can get these amendments filed as quickly as possible. In the meantime, I would like to make a comment about the recent situation in the Republic of Georgia.

It has been just 8 months since the world's attention was riveted by Russia's invasion of neighboring Georgia. In the midst of the fighting, the United States, the European Union, and the international community decried the violence and called on Russia to withdraw its troops from sovereign Georgian soil. There was talk of sanctions against Moscow, the Bush administration withdrew its submission to Congress of a nuclear cooperation agreement with Russia, and NATO suspended meetings of the NATO-Russia Council.

The outrage quickly subsided, however, and it seems that the events of last August have been all but forgotten in some quarters. A casual observer might guess that things have returned to normal in this part of the world, that the war in Georgia was a brief and tragic circumstance that has since been reversed.

But in fact this is not the case. While the stories have faded from the headlines, Russia remains in violation of the terms of the ceasefire to which it agreed last year, and Russian troops continue to be stationed on sovereign Georgian territory. I would like to spend a few moments addressing this issue. It bears remembering.

Last August, following months of escalating tension in the breakaway Georgian province of South Ossetia, the Russian military sent tanks and troops across the internationally recognized border into South Ossetia. It did not stop there, and Moscow also sent troops into Abkhazia, another breakaway province, dispatched its Black Sea Fleet to take up positions

along the Georgian coastline, barred access to the port at Poti, and commenced bombing raids deep into Georgian territory. Despite an appeal from Georgian officials on August 10, noting the Georgian withdrawal from nearly all of South Ossetia and requesting a ceasefire, the Russian attacks continued.

Two days later, the Russian president met with French President Nicolas Sarkozy, and ultimately agreed to a six-point ceasefire requiring, among other things, that all parties to the conflict cease hostilities and pull back their troops to the positions they had occupied before the conflict began. Despite this agreement, the Russian military continued its operations throughout Georgia, targeting the country's military infrastructure and reportedly engaging in widespread looting.

A follow-on ceasefire agreement signed on September 8 by French President Sarkozy and Russian President Medvedev required that all Russian forces would withdraw from areas adjoining South Ossetia and Abkhazia by October 10, but it took just 1 day for Moscow to announce that, while it would withdraw its troops to the two provinces, it intended to station thousands of Russian soldiers there, in violation of its commitment to return those numbers to preconflict levels. Russia also recognized the independence of South Ossetia and Abkhazia, the only country in the world to do so other than Nicaragua. The leaders of both provinces have suggested publicly that they may seek eventual unification with Russia.

Despite the initial international reaction to these moves, the will to impose consequences on Russia for its aggression quickly faded. To cite one example, the European Parliament agreed on September 3 to postpone its talks with Russia on a new partnership agreement until Russian troops had withdrawn from Georgia. Just 2 months later, the European Union decided to restart those talks. The U.N. Security Council attempted to move forward a resolution embracing the terms of the ceasefire, but Russia blocked action. The NATO allies suspended meetings of the NATO-Russia Council, then decided in March to resume them.

Yet today, Russia remains in violation of its obligations of the ceasefire agreement. Thousands of Russian troops remain in South Ossetia and Abkhazia, greatly in excess of the preconflict levels. Rather than abide by the ceasefire's requirement to engage in international talks on the future of the two provinces, Russia has recognized their independence, signed friendship agreements with them that effectively render them Russian dependencies, and taken over their border controls.

All of this suggests tangible results to Russia's desire to maintain a sphere of influence in neighboring countries, dominate their politics, and circumscribe their freedom of action in

international affairs. Just last week, President Medvedev denounced NATO exercises currently taking place in Georgia, describing them as “provocative.” These “provocative” exercises do not involve heavy equipment or arms and focus on disaster response, search and rescue, and the like. Russia was even invited to participate in the exercises, an invitation Moscow declined.

We must not revert to an era in which the countries on Russia’s periphery were not permitted to make their own decisions, control their own political futures, and decide their own alliances. Whether in Kyrgyzstan, where Moscow seems to have exerted pressure for the eviction of U.S. forces from the Manas base, to Estonia, which suffered a serious cyberattack some time ago, to Georgia and elsewhere, Russia continues its attempts to reestablish a sphere of influence. Yet such moves are in direct contravention to the free and open, rules-based international system that the United States and its partners have spent so many decades to uphold.

So let us not forget what has happened in Georgia, and what is happening there today. I would urge the Europeans, including the French President who brokered the ceasefire, to help hold the Russians to its terms. And in the United States, where there remain areas of potential cooperation with Moscow, from nuclear issues to ending the Iranian nuclear program, let us not sacrifice the full independence and sovereignty of countries we have been proud to call friends.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1045

Ms. COLLINS. Mr. President, the Weapon Systems Acquisition Reform Act of 2009, authored by Senators LEVIN and MCCAIN, would strengthen and reform the Department of Defense acquisition process.

The bill would bring increased accountability, more transparency, and cost savings to major defense acquisition programs. Simply put, the bill would build discipline into the planning and requirements process, keep projects focused, help to prevent cost overruns and schedule delays and ultimately save taxpayers’ dollars.

I am very proud to join the chairman and ranking member of the Armed Services Committee in cosponsoring this important initiative. I applaud their continued efforts to improve procurement at the Pentagon.

In fiscal year 2008, DOD spending reached \$396 billion, approximately 74 percent of total Federal contract spending. The scope of the Department’s contract spending is particu-

larly startling when one examines closely Army procurement. The number of Army contract actions has grown by more than 600 percent since 2001, and contract dollars have increased by more than 500 percent.

In 2007, the Army put on contract one out of every four Federal contracting dollars. These figures alone are overwhelming. But they actually understate the scope of the procurement challenges at the Department of Defense.

Research, development, testing, evaluation, and procurement of increasingly complex weapon systems challenge the Department’s ability to ensure that taxpayer dollars are wisely spent. Let me give you an example: The National Polar Orbiting Operational Environmental Satellite System—there is a mouthful—is just one of several Defense programs that have been undermined by cost overruns and schedule delays.

This is a complicated program that is required to promote and provide a remote sensing capability that is used by the Department of Defense and by the National Oceanic and Atmospheric Administration.

A 2006 report by an inspector general indicated that this one program was more than \$3 billion over the initial life cycle cost estimates and nearly 17 months behind schedule. So here we have an essential program that is \$3 billion over the initial life cycle cost estimates and it is about a year and a half behind schedule. Unfortunately, this is not an isolated example. It is but one of many examples of defense procurements that have suffered from soaring cost increases and unacceptable delays.

The legislation introduced by Senators LEVIN and MCCAIN, which I am pleased to cosponsor, would improve the Defense Department’s planning and program oversight in many ways.

First, the bill would create a new director of independent cost assessment to be the principal cost estimation official at the Department. The director would be responsible for monitoring and reviewing all cost estimates and cost analyses conducted in connection with the major defense acquisition programs. Having this set of independent eyes on critical but expensive programs would help to prevent wasteful spending. It would help to ensure that when we embark on a new defense acquisition, we truly have confidence in the cost estimates.

The bill also mandates that the Department carefully balance cost, schedule, and performance as part of the requirements development process. These reforms would build important discipline into the procurement process long before a request for proposals is issued and a contract is awarded. By carefully considering the needs of the program office, the associated requirements and estimated cost of a program, and the risks inherent in system development and deployment, the Depart-

ment will be able to make much more rational decisions about its investments and use more effective contracting vehicles for procurements long before taxpayer dollars are committed to the project.

I also applaud the bright lines this legislation would establish regarding organizational conflicts of interest by defense contractors. These reforms would strengthen the wall between Government employees and contractors, helping to ensure that ethical boundaries are respected. While certainly private sector contractors are vital partners with military and civilian employees at the Department of Defense, their roles and responsibilities must be well defined and free of conflicts of interest as they undertake their critical work supporting our Nation’s military.

What we are finding—and we have had oversight hearings in the Homeland Security Committee on this issue—is that in the Department of Homeland Security and the Department of Defense, in some cases we have defense contractors involved in setting requirements, defining requirements for projects on which subsidiaries of those defense contractors may well be bidding. We want to avoid those kinds of conflicts of interest which impair confidence in the integrity of the process.

We also want to make sure we are following current law as far as activities that should be done in-house because they are inherently governmental.

I note, too, that this legislation encourages the Department to reinvest personnel resources in systems engineers—a necessary element for any successful acquisition reform of the Department’s major weapon systems programs. Without experienced, well-trained engineers, the Department will be unable to set definitive requirements during the planning process, incapable of effectively testing and evaluating the development of these systems, and ineffective in addressing systems defects in the incredibly complex programs in which the Department, of necessity, invests. The lack of systems engineers also prevents strong program oversight, as the limited number of engineers available simply cannot focus sufficient time and attention on the programs as they are constantly pulled in multiple directions.

Adding systems engineers is only one part of the overall personnel reforms necessary to improve the acquisition process. DOD must also invest significantly in its undermanned acquisition workforce.

The dramatic downsizing of the defense acquisition workforce during the 1990s was followed by an even more dramatic increase in workload. So at the time that the Defense Department’s acquisition workforce was declining, the workload was increasing. In fiscal year 2001, the Department spent \$138 billion on contracts. Seven years later, DOD

spending reached \$396 billion—a 187-percent increase. Of that amount, \$202 billion was for the procurement of services. That requires labor-intensive acquisition management and oversight. Needless to say, these factors have greatly strained the defense acquisition workforce and greatly increased the risk of acquisition failure. At the same time, a significant increase in the use of contractor acquisition support personnel has added another layer of complexity as the Department must manage both organizational and personal conflicts of interest.

I commend Secretary Gates for recognizing just how important these workforce issues are. Under his leadership, the Department has set forth an aggressive program for strengthening the acquisition workforce, including increasing the number of acquisition personnel and improving their training. The Secretary has proposed increasing the workforce by 15 percent through 2015. That amounts to approximately 20,000 new employees. I also praise the Secretary for not only adding additional personnel but for thinking about what they should be doing. For example, he has proposed that some of these new employees take over tasks that are currently being performed by defense contractors. That is that conflict-of-interest issue I mentioned earlier. If the Secretary's plan goes through—and I am going to support him strongly in this regard—the acquisition workforce would increase to numbers not seen in a decade. That will save money and improve acquisition outcomes.

But this isn't just a numbers game. In addition to having a sufficient number of personnel, the Department must have the right mix. I am pleased that the Secretary has proposed 600 additional auditors for DCAA, the Defense Contract Audit Agency, and additional engineers and technical experts.

These acquisition changes will help to prevent contracting waste, fraud, abuse, and mismanagement. Most of all, they are absolutely essential to the effective implementation of the procurement reforms in this bill. We can write the best laws. We can impose the strongest reforms. But if we do not have sufficient personnel, well-trained employees to carry out these reforms, our efforts will be for naught.

I now call up an amendment I have at the desk. It is amendment No. 1045.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Ms. COLLINS], for herself and Mrs. McCASKILL, proposes an amendment number 1045.

Ms. COLLINS. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 1045

(Purpose: To require the Secretary of Defense to apply uniform earned value management standards to reliably and consistently measure contract performance, and to ensure that contractors establish and use approved earned value management systems)

On page 69, after line 2, add the following:

SEC. 207. EARNED VALUE MANAGEMENT.

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

(1) applies uniform EVM standards to reliably and consistently measure contract or project performance;

(2) applies such standards to establish appropriate baselines at the award of a contract or commencement of a program, whichever is earlier;

(3) ensures that personnel responsible for administering and overseeing EVM systems have the training and qualifications needed to perform this function; and

(4) has appropriate mechanisms in place to ensure that contractors establish and use approved EVM systems.

(b) ENFORCEMENT MECHANISMS.—For the purposes of subsection (a)(4), mechanisms to ensure that contractors establish and use approved EVM systems shall include—

(1) consideration of the quality of the contractors' EVM systems and the timeliness of the contractors' EVM reporting in any past performance evaluation for a contract that includes an EVM requirement; and

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

Ms. COLLINS. Mr. President, this amendment, which I am offering along with my distinguished colleague, Senator McCASKILL, who has brought great auditing skills to this body, would help to ensure that the Department is supplying certain critical principles consistently and reliably to all projects that use a specific management tool that is known as EVM, earned value management. The Department currently requires EVM tracking for all contracts that exceed \$20 million. This provides important visibility into the scope, schedule, and cost in a single integrated system. When properly applied, this system can provide an early warning of performance problems. The Government Accountability Office has observed, however, that contractor reporting on EVM often lacks consistency, leading to inaccurate data and faulty application of this metric. In other words, this is a garbage-in/garbage-out problem that we need to correct.

To address this challenge, our amendment would provide enforcement mechanisms to ensure that contractors establish and use approved EVM systems, and we would require the Department of Defense to consider the quality of the contractor's EVM systems and reporting in the past performance eval-

uation for a contract. When a contractor is bidding, the contracting official looks at any past performance. With improved data quality, both the Government and the contractor will be able to improve program oversight, leading to better acquisition outcomes.

This is so important. Some of the provisions that are particularly important in the Levin-McCain bill would increase transparency and oversight so that if an acquisition process is going in the wrong direction, we know about it and are able to take action. We are able to decide whether the Nunn-McCurdy breaches, for example, warrant halting the project. We are improving the cost estimate system for weapons acquisition projects. We have a lot of reforms. This would increase our transparency, our ability to flag problems.

I believe this amendment Senator McCASKILL and I offer would help to strengthen the Department's acquisition planning, increase and improve program oversight, and help to prevent contracting waste, fraud, and mismanagement.

Let me end my comments by reminding all of us why this bill and our amendment are so important.

Ultimately, these procurement reforms will help ensure that our brave men and women in uniform—our military personnel—have the equipment they need when they need it, that it performs as promised, and that our tax dollars are not wasted on programs that are doomed to fail.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, before the Senator from Maine leaves the floor, let me congratulate her on this amendment. She has put her finger on a very significant point. There is a weakness in this system of contract oversight that the Department of Defense has not satisfactorily addressed.

As frequently happens, the Senator from Maine is willing to take on issues which are not necessarily the most glamorous and do not necessarily get the headlines but really get to the inside of what needs to be delved into, needs to be looked at, needs to be analyzed, and needs to be addressed.

This is an amendment which will require the Department of Defense to use a management tool which is called earned value management. They acknowledge it is an important tool, but they also acknowledge too often contractors are not using it and that Government officials who are responsible for overseeing this system and this management tool are inadequately trained, not qualified. There are inadequate mechanisms to enforce contractor compliance.

So the Senator from Maine, as she so often does, has put her finger on a critical issue and is willing to tackle it and make it understandable for the rest of us. I commend her and Senator McCASKILL for this amendment, and we are delighted to support it.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the chairman for his thoughtful comments and for working with us on this amendment. I hope at the appropriate time it can be adopted. I believe it is acceptable to Senator MCCAIN. But I am unclear whether there is further clearance that needs to be done.

But, again, while the Senator is on the floor, I want to once again praise Senator LEVIN and Senator MCCAIN for tackling this critical issue. It is complex. And it is important that the reforms make a difference to our military—to those who need these weapon systems, who need the material and the supplies that the contracting is procuring. It is also important that taxpayers be protected. There have been far too many cost overruns and schedule delays that hurt those who are on the front lines, quite literally.

I praise and thank the chairman again for his leadership in this area.

Thank you, Mr. President.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. COLLINS. Mr. President, I am informed that the amendment I have offered with Senator McCASKILL, which is the pending amendment, No. 1045, has been cleared on our side.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, we very strongly support the amendment and hope it will be acted upon immediately.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1045) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Ms. COLLINS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. Thank you, Mr. President. And I thank the chairman.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I have come to the floor to speak about a couple of issues that relate to the Department of Defense and to defense issues,

but I want to especially today talk about the work that has been done by my colleague, Senator LEVIN, and my colleague from Arizona. The work they have done on procurement reform is very important.

I listened to some of the presentations earlier today by Senator LEVIN and Senator MCCAIN about the overruns in various weapons programs, the cost overruns, and the significant dislocations with respect to decisions that have been made or not made with certain weapons programs.

I think there is real need for reform, and the bill they have brought to the floor of the Senate is a great service to the American taxpayer. I think it is also a great service to our defense structure. We have limited funds. We have to use them effectively. We have to fund weapons programs that are essential to the defense strength of this country. That is what both of my colleagues are saying. And they are saying, when we have a program that has outlived its usefulness, a program that has cost overruns that never stop and seem completely out of control, we have to address that and deal with it and respond to it.

So we have been going through a long period here of unbelievable cost overruns in some programs without much notice and without much action attending to it. I think my two colleagues are doing a great service. I hope, as I know the chairman does, we will be able to move quickly to address this legislation, perhaps without even amendments, and go forward and get it through the Senate. We will have done, I think, a great service to strengthen our defense capability and protect the American taxpayer at the same time.

DEFENSE DUPLICATION

Mr. President, I want to raise an issue that does not directly relate to this bill but relates to all the considerations of this bill because it is a follow-on and one I think we will deal with in the next bill, defense authorization. That bill will also be chaired on the floor of the Senate by my colleague, Senator LEVIN. It deals with the issue of duplication.

In addition to contract and procurement reform—in this case procurement reform—the issue of duplication of our services at the Department of Defense is a very important issue. Every service wants to do everything. That is just the way it is. I wish to give an example of something I have been working on, so far unsuccessfully, but I am going to raise it and push it during Defense authorization because it relates to the very same things that my colleagues have talked about today.

These are pictures of unmanned aerial vehicles; UAVs they are called. It is sort of the new way to fly, particularly over a battlefield for reconnaissance purposes and so on. Many of us are familiar with what is called the Predator B, which the Air Force refers to as the Reaper. That is this airplane. The Predator B is used extensively and has

been used extensively in the war theater in Afghanistan and in Iraq and in that region. It is an unmanned aerial vehicle, unmanned aerial aircraft without a pilot. The pilot sits on the ground someplace in a little thing that looks almost like a trailer house, and they are flying this aircraft. In some cases, the pilot is 6,000, 8,000 miles away from where the aircraft is, flying it at a duty station perhaps at a National Guard base or somewhere else.

But, anyway, the Air Force has what is called the Predator. That is built by General Atomics, and it is a worthwhile program that has provided great service to us and to our country in terms of our defense capability.

This, by the way, is called the Sky Warrior. This is the Reaper. It is owned by the Air Force. This is the Sky Warrior. That is the U.S. Army.

Why does it look alike? Well, it is because it is made by the same company. It is made to different specifications because the Army wants a slightly different vehicle, but the Air Force has the Predator B, and the Army has the Sky Warrior.

Why does the Army have a Sky Warrior? Well, because they want to run their own reconnaissance. So what we have in these circumstances is, the Army, in the next 5 years, wants to spend \$800 million to buy more than 100 of the Sky Warriors, and eventually they want to have 500 Sky Warriors. The Air Force wants to spend \$1.5 billion to buy 150 more Predators, Predator Bs.

Here is what the Predator B and the Sky Warrior look like. As you can see, they are nearly identical. Both carry intelligence, surveillance, and reconnaissance sensors so they can find and track targets on the ground. Both can fire missiles so they can hit a target they might find, both can fly over 25,000 feet high for more than 30 hours which gives them range and endurance, but it seems to me a complete duplication of effort.

We are not talking about just the UAV mission itself; we are talking about the duplication of acquisition programs—engineering, contracting. I don't understand it.

For years, the Air Force used U-2s, F-15s, F-16s, even B-52s from time to time to provide surveillance, intelligence, reconnaissance, and close air support for the Army. They used manned aircraft to provide all of those services for the U.S. Army. It is not clear why that ought to be different just because we are using unmanned aircraft.

The Army says they plan to assign each set of 12 Sky Warriors to a specific combat unit. Of course, since most combat units in the Army are at their home base at any given time, most Sky Warriors will be based in the United States or perhaps Europe at any given time. The Air Force has a different approach. They have a streamlined operation concept. They have been working nearly 8 years in almost constant combat operations, and almost every single

Air Force Predator is at this point in the Central Command of Operations—CENTCOM.

It seems to me the services ought to do what they do best. What the Army does best is fight a war on the ground. What the Air Force does best is to provide timely intelligence, surveillance, and reconnaissance for the troops on the ground and to attack ground targets from the air. That is what each does best.

However, the Army wants to do exactly what the Air Force does and have a separate acquisition program to do so.

So we ought to be asking the question: Does this make sense to send thousands of airmen to Iraq and Afghanistan to be truck drivers in Army convoys while the Army plans to have thousands of troops operating unmanned aircraft? Yes, that is happening. Putting all of our large UAVs under the Air Force will result, in my judgment, in streamlined and more efficient acquisition of UAVs and allow the Army to concentrate its manpower on Army tasks.

Let me be clear. There are some surveillance—at low-altitude, over-the-battlefield surveillance with unmanned aircraft—that are just fine at 500 feet, 1,000 feet with various kinds of unmanned devices. I understand why the Army would want to operate that, and should. However, I don't understand the Army flying at 25,000 or 30,000 feet, a duplicate mission for which the Air Force exists.

So given the budget problems we face, with nondiscretionary and discretionary spending, we can't afford duplication of effort.

A few years ago, the Air Force proposed that it be designated as the executive agent for all medium- and high-altitude unmanned aerial vehicles. That made sense to me. The Air Force is the logical choice. They already have the infrastructure to deliver that combat power.

In 2007, by the way, the Pentagon's Joint Requirements Oversight Council endorsed that proposal, but the proposal didn't go anywhere because of intense opposition from the Army and those who support the Army in this Congress.

I don't think this should be an intra-mural debate between supporting the Army and supporting the Air Force. I support both. I want the Army to be equipped in an unbelievably important way to do its mission, and I want the Air Force to be similarly equipped. I just don't want the taxpayer to be paying for duplication of effort, and I don't want every service to believe it should do everything because that clearly is a duplication of effort.

The legislation that is before us today is about procurement reform, procurement reform itself. It does not address this specific issue of duplication, but this issue is certainly the second cousin to it. We will be discussing this when we get to the Defense au-

thorization bill, and that, too, is a very important part of how we can strengthen our defense; how do we make certain the taxpayers are getting their money's worth; and how do we make certain the men and women who serve in defense of this country are equipped to do what they do best.

I raise this issue of duplication because I think it is so important that we find a way to begin to unravel the unmistakable duplication that exists in so many areas within the Pentagon. This is one that should be self-evident to virtually everyone.

I wish to mention as well today the issue that will also come up in Defense authorization that is the first or second cousin to procurement reform, and that is contracting reform. I know my colleague from Michigan and my colleague from Arizona are very concerned about this as well, and I look forward to working with them on the Defense authorization bill.

A couple of points about contract reform: I have held, I believe, 18 hearings in the Democratic Policy Committee that I chair on contracting issues over a good number of years now. I wish to show a couple of photographs that describe some of the unbelievable circumstances that have existed and that we must take steps to correct, and I know my colleagues, the chairman and ranking member, are already doing so.

This, by the way, deals with contracting. I understand during wartime there are going to be contracts sometimes that are let without a lot of scrutiny and somebody is going to make a lot of money, or perhaps somebody doesn't quite measure up, but this is different. I think we have seen some of the greatest waste, fraud, and abuse in the history of this country in contracting.

This is a picture of a couple million dollars wrapped in Saran wrap, a couple of million dollars in cash. Franklin Willis is the guy with the white shirt. He is holding one of these. This happens to be in a palace in Iraq, one of Saddam's palaces. I assume the chairman of the committee has been in one of Saddam's palaces. I have been in one of Saddam's palaces in Baghdad. So we took over all of those palaces for headquarters, or a good many of them. This happens to be a couple of million dollars in cash put on a table because the contractor was coming to pick up the cash. Franklin Willis—a very respected guy, by the way, who went over from the Federal Government to work on these issues and testified in one of my hearings—said the word was to contractors: Bring a bag because we pay cash.

We were contracting for everything in Iraq. Just all kinds—they had over 130,000 contractors, I believe, at one point. So the company who was going to pick up this cash, by the way, was later indicted in criminal court. But Franklin Willis was showing us how reimbursements were made in Iraq. This is bills wrapped in Saran wrap. He

would say from time to time he would see people playing football catch with 100-dollar bills wrapped in Saran wrap waiting for the contractors to bring a bag, to pick up a couple million dollars on this day.

It is not an isolated problem that the contractor that was going to show up to pick up this money was later convicted—indicted and convicted—in a U.S. court for stealing millions of taxpayers' dollars. Franklin Willis said it was just like the old Wild West. That is what he said to us: It was like the Wild West. Bring a bag. We have cash.

So during this period of time, in Baghdad, as they began to try to set up a provisional government—which was the U.S. Government trying to set up a government, and we sent Ambassador Bremer over to set up a government—during that time, we know that pallets of cash were shipped to Iraq. This cash left the Federal Reserve Bank in New York. This pallet, each pallet, contains 640 bundles of 1,000-dollar bills and weighs 1,500 pounds. They sent 484 of these pallets to Iraq on C-130s. That is more than 363 tons of cash that was sent to Iraq in C-130s, totaling \$12 billion. Think of that: \$12 billion with reports of distributing cash onto the back of pickup trucks. Do you wonder why we were stolen blind?

A woman who has had a substantial amount of experience who has never gotten her due, but one of the most courageous women I have met in Washington, DC, Bunny Greenhouse, and for her testimony and for her courage she lost her job. Here is what she said. She was the former chief contracting officer at the Corps of Engineers. She was the top civilian working for the Army Corps of Engineers, and she was in the room when the logcap project was negotiated.

Let me describe to you what she said. This is the top civilian official in the U.S. Army Corps of Engineers. She had 25 years of great service to our country with two masters degrees, unbelievable qualifications, and performance appraisals that said she was outstanding every single time—until she spoke publicly.

Here is what she said:

I can unequivocally state that the abuse related to the contracts awarded to Kellogg, Brown & Root—

A subsidiary of Halliburton—represents the most blatant and improper contract abuse I have witnessed during the course of my professional career.

For that, this woman was demoted and lost her job; for the courage to speak out, she lost her job. Pretty unbelievable. This is an extraordinary woman.

We have seen from all of these circumstances unbelievable waste in contracting. It is not just—it is what Bunnatine Greenhouse said, the way the contracts were negotiated. She said they were illegal and so on.

Let me give an example, and I could give 100 examples. This shows \$40 million spent on a prison in Iraq they

called the whale. This is when most of the money had already been spent. You can see there is virtually nothing done. The Parsons Corporation got that money. This now sits empty, never having been used. A top floor was never finished. The U.S. Government says: Well, we gave it to the Iraqis.

The Iraqi Government says: Are you kidding me? We wouldn't take that in a million years. We don't want the prison. We would not use the prison. It was never given to us.

So \$40 million was spent of the taxpayers' money. Procurement reform and contractor reform are all related. I don't want to come and provide a message that steps in any way on anything that the chairman is doing on procurement reform because that is critically important.

We have to follow it with its first cousin, contract reform. The stories are so legend. In this photo is a young man who was killed. He was a Ranger and a Green Beret. He was electrocuted while taking a shower. This is his mother Cheryl. He was electrocuted because KBR got the contract for wiring facilities in Iraq and didn't do a good job. He was killed in a shower. Another man was power washing a Jeep or humvee and got electrocuted. The Army said: We think he took a radio or an electrical device into the shower. But he didn't.

It is not just this, but it is providing water to military bases that was more contaminated than the Euphrates River.

I will be on the floor when we come to defense authorization with a good number of amendments on contracting reform because we have to put a stop to this. It has gone on way too long.

Let me finish by coming back to where I started, and that is the issue of procurement reform. Our colleagues on the Defense Authorization Committee are trying to deal with virtually unlimited wants and resources. That is not new. We understand the problems that creates. So they have decided they have to put together procurement reform legislation. It is so important to this country to get this done and to get it right. Procurement reform is essential. It is the foundation of fixing the problems that exist with respect to these major weapons programs.

Then, I hope we can segue into contracting reform and the issues of duplication, on which I wish to work with the chairman and ranking member. I thank Senators LEVIN and McCAIN for their leadership. I requested that I be made a cosponsor of the procurement reform legislation. I look forward to visiting and working with them on amendments on contracting reform in the coming month or two, when we get to the defense authorization.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, let me very quickly thank Senator DORGAN for his extraordinary commitment to

the issues he has outlined. I don't know of anybody in this body who has devoted anywhere near the time he has to these issues. He has a passion second to none, and I commend him for it. We look forward to working with him on amendments on the authorization bill, and we also more than welcome his cosponsorship of the pending bill. I thank him for the effort he made.

I assume all the materials he has produced will go to the Commission on Contracting Reform, which has been created on wartime contracting. That will probably give us an opportunity, with the power they have, to take some concrete steps. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I believe we have cleared some amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS NOS. 1044, 1053, 1046, 1051, 1049, 1050, 1047, AND 1048, EN BLOC

Mr. LEVIN. Mr. President, Senator McCAIN and I now, with our staffs, have been able to clear eight amendments.

I ask unanimous consent that the following amendments be called up, considered, and approved en bloc: amendment No. 1044, by Senator INHOFE, which he will speak on; amendment No. 1053, Senator CHAMBLISS; Senator COBURN's amendment No. 1046; Senator MCCASKILL's amendments numbered 1051, 1049, and 1050; Senator WHITEHOUSE's amendment No. 1047; Senator CARPER's amendment No. 1048.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc and are agreed to.

The amendments were agreed to as follows:

AMENDMENT NO. 1044

(Purpose: To require a report on certain cost growth matters following the termination of a major defense acquisition program for critical cost growth)

On page 59, line 25, strike "(D)" and inserting "(E)".

On page 60, strike line 3 and insert the following:

lowing new subparagraphs (B), (C), and (D):

On page 60, line 4, insert "and submit the report required by subparagraph (D)" after "terminate such acquisition program".

On page 61, strike line 24 and insert the following:

gram;

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

"(i) an explanation of the reasons for terminating the program;

"(ii) the alternatives considered to address any problems in the program; and

"(iii) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program; and".

AMENDMENT NO. 1053

(Purpose: To clarify an exception to conflict of interest requirements applicable to contracts for systems engineering and technical assistance functions)

On page 63, line 11, insert "for special security agreements" after "to those required".

AMENDMENT NO. 1046

(Purpose: To require reports on the operation and support costs of major defense acquisition programs and major weapons systems)

On page 49, strike line 15 and all that follows through page 51, line 8, and insert the following:

view, including an assessment by the Director of the feasibility and advisability of establishing baselines for operating and support costs under section 2435 of title 10, United States Code.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report required by paragraph (1), the Secretary shall transmit the report to the congressional defense committees, together with any comments on the report the Secretary considers appropriate.

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

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by inserting "the Director of Independent Cost Assessment," before "and the Director".

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

(3) Section 2366a(a)(4) of such title is amended by striking "has been submitted" and inserting "has been approved by the Director of Independent Cost Assessment".

(4) Section 2366b(a)(1)(C) of such title is amended by striking "have been developed to execute" and inserting "have been approved by the Director of Independent Cost Assessment to provide for the execution of".

(5) Section 2433(e)(2)(B)(iii) of such title is amended by striking "are reasonable" and inserting "have been determined by the Director of Independent Cost Assessment to be reasonable".

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

"(A) be prepared or approved by the Director of Independent Cost Assessment; and".

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

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

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

(2) ELEMENTS.—In preparing the report required by paragraph (1), the Comptroller General shall, at a minimum—

(A) identify the original estimates for operating and support costs for major weapon systems selected by the Comptroller General for purposes of the report;

(B) assess the actual operating and support costs for such major weapon systems;

(C) analyze the rate of growth for operating and support costs for such major weapon systems;

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

(E) assess measures taken by the Department of Defense to reduce operating and support costs for major weapon systems; and

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

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

AMENDMENT NO. 1051

(Purpose: To enhance the review of joint military requirements)

On page 53, between lines 17 and 18, insert the following:

(c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

(1) JROC SUBMITTAL OF RECOMMENDED REQUIREMENTS TO UNDER SECRETARY FOR ATL.—Upon recommending a new joint military requirement, the Joint Requirements Oversight Council shall transmit the recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics for review and concurrence or non-concurrence in the recommendation.

(2) REVIEW OF RECOMMENDED REQUIREMENTS.—The Under Secretary for Acquisition, Technology, and Logistics shall review each recommendation transmitted under paragraph (1) to determine whether or not the Joint Requirements Oversight Council has, in making such recommendation—

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

(B) given appropriate consideration to trade-offs among cost, schedule, and performance in accordance with the requirements of section 181(b)(1)(C) of title 10, United States Code (as amended by subsection (b)); and

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

(3) NON-CONCURRENCE OF UNDER SECRETARY FOR ATL.—If the Under Secretary for Acquisition, Technology, and Logistics determines that the Joint Requirements Oversight Council has failed to take appropriate action in accordance with subparagraphs (A), (B), and (C) of paragraph (2) regarding a joint military requirement, the Under Secretary shall return the recommendation to the Council with specific recommendations as to matters to be considered by the Council to address any shortcoming identified by the Under Secretary in the course of the review under paragraph (2).

(4) NOTICE ON CONTINUING DISAGREEMENT ON REQUIREMENT.—If the Under Secretary for Acquisition, Technology, and Logistics and the Joint Requirements Oversight Council are unable to reach agreement on a joint military requirement that has been returned to the Council by the Under Secretary under paragraph (4), the Under Secretary shall transmit notice of lack of agreement on the requirement to the Secretary of Defense.

(5) RESOLUTION OF CONTINUING DISAGREEMENT.—Upon receiving notice under paragraph (4) of a lack of agreement on a joint military requirement, the Secretary of Defense shall make a final determination on whether or not to validate the requirement.

On page 53, line 18, strike “(c)” and insert “(d)”.

On page 54, line 12, strike “(d)” and insert “(e)”.

AMENDMENT NO. 1049

(Purpose: To specify certain inputs to the Joint Requirements Oversight Council from the commanders of the combatant commands on joint military requirements)

On page 51, line 12, insert “(a) IN GENERAL.—” before “Section 181”.

On page 51, line 23, strike “of subsection (f)...” and insert the following: “of subsection (f). Such input may include, but is not limited to, an assessment of the following:

“(1) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would justify a new joint military requirement.

“(2) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.

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

“(4) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or to partner in using technologies developed to meet the joint military requirement.”.

(b) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements of subsection (e) of section 181 of title 10, United States Code (as amended by subsection (a)), for the Joint Requirements Oversight Council to solicit and consider input from the commanders of the combatant commands. The report shall include, at a minimum, an assessment of the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements.

AMENDMENT NO. 1050

(Purpose: To provide for a review by the Comptroller General of the United States of waivers of the requirement for competitive prototypes based on excessive cost)

On page 59, strike line 15 and insert the following:

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

(1) NOTICE TO COMPTROLLER GENERAL.—Whenever a milestone decision authority authorizes a waiver of the requirement for prototypes under paragraph (1) or (2) of subsection (c) on the basis of excessive cost, the milestone decision authority shall submit a notice on the waiver, together with the rationale for the waiver, to the Comptroller General of the United States at the same time a report on the waiver is submitted to the congressional defense committees under paragraph (3) of that subsection.

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

(A) review the rationale for the waiver; and

(B) submit to the congressional defense committees a written assessment of the rationale for the waiver.

(e) APPLICABILITY.—This section shall apply to any

AMENDMENT NO. 1047

(Purpose: To further improve the cost assessment procedures and processes of the Department of Defense)

On page 43, between lines 20 and 21, insert the following:

(c) TECHNOLOGICAL MATURITY STANDARDS.—For purposes of the review and assessment conducted by the Director of Defense Research and Engineering in accordance with subsection (c) of section 139a of title 10, United States Code (as added by subsection (a)), a critical technology is considered to be mature—

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

(2) in the case of a major defense acquisition program that is being considered for Milestone C approval, if the technology has been demonstrated in a realistic environment.

On page 45, beginning on line 9, strike “programs and require the disclosure of all such confidence levels;” and insert “programs, require that all such estimates include confidence levels compliant with such guidance, and require the disclosure of all such confidence levels (including through Selected Acquisition Reports submitted pursuant to section 2432 of this title);”.

On page 47, line 16, add at the end the following: “The report shall include an assessment of—

“(A) the extent to which each of the military departments have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates; and

“(B) the overall quality of cost estimates prepared by each of the military departments.

On page 48, line 2, add at the end the following: “Each report submitted to Congress under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.”

AMENDMENT NO. 1048

(Purpose: To require consultation between the Director of Defense Research and Engineering and the Director of Developmental Test and Evaluation in assessments of technological maturity of critical technologies of major defense acquisition programs)

On page 42, line 12, insert “, in consultation with the Director of Developmental Test and Evaluation,” after “shall”.

MR. LEVIN. Mr. President, I move to reconsider the vote regarding the amendments agreed to en bloc.

MR. INHOFE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MR. McCAIN. Mr. President, it is my understanding, and I believe also the chairman’s understanding, that we may have one or two other amendments pending.

MR. LEVIN. I thank the Senator for making that point. We want to see additional amendments if they are out there. We will do our best to clear them but, if not, debate them. We appreciate the cooperation of everybody.

I yield the floor.

AMENDMENT NO. 1044

THE PRESIDING OFFICER. The Senator from Oklahoma is recognized.

MR. INHOFE. Mr. President, my amendment was one of the eight

amendments agreed to. I will be brief. I wish to get on record as to what it is I am trying to do.

First of all, though, I think my name may be on there as a cosponsor; if not, I ask unanimous consent that I be added at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, section 2094 of the bill requires the Secretary to submit written certification if a program is not terminated that states the acquisition program is essential to the national security, that no alternatives meet the joint military requirement, the new estimates are reasonable, and the management structure is adequate to manage and control the program acquisition cost. I concur with the certification process, but no similar requirement is there for the termination of an acquisition program. That is an area in which oversight is required and information critical as we continue to improve the acquisition process, which I believe this legislation will do.

My amendment requires the Secretary of Defense to submit a written report explaining the reasons for terminating the program, alternatives considered to address any problems in the program, and the course of action the Department of Defense plans to pursue to meet continuing joint military requirements intended to be met by the program being canceled. This report will provide Congress with historical documentation of the terminated or failed programs and why they are terminated.

Essentially, the language of the amendment is simply the requirement that if a program is terminated, submit to Congress a written report setting forth three things: One, an explanation of the reason for terminating the program; two, the alternatives considered to address any problems in the program; three, the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

In other words, it makes the same requirement on terminated programs as others. This has already been adopted en bloc, and I have no motion to make.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mrs. McCASKILL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS NOS. 1049, 1050, AND 1051

Mrs. McCASKILL. Mr. President, I rise to thank Chairman LEVIN and Ranking Member McCAIN on a good bill to address a serious and expensive problem in our military. We have costs that have ballooned. As Senator LEVIN explained earlier today, in 2008 alone the portfolio of DOD's 97 major defense

acquisition programs was nearly \$300 billion over cost and the average delay in terms of delivering these capabilities to the warfighter was 22 months. That is unacceptable to our warfighters and unacceptable to taxpayers.

There are obviously many examples of these systems that have been underestimated both on time of delivery and costs, but a good one is the Joint Strike Fighter. Right now, the JSF continues to rely on immature technologies and unrealistic cost schedules. We have a situation where DOD might actually procure these aircraft, these F-35s, costing \$57 billion, before we have even completed the developmental flight testing. That is just one, but it is a very good example of a program that is underperforming for the warfighter and for the taxpayer.

There are three amendments that have been added to this bill at my request, and I thank the Armed Services staff and particularly Senator LEVIN and Senator McCAIN for accepting these three amendments. I would like to briefly explain the three amendments we have added.

The first is one that will provide some more teeth in a very critical area that is of huge importance in this process; that is, tightening up the process and procedures at JROC.

JROC is the military's Joint Requirements Oversight Council. Now, that sounds pretty good. JROC sounds like a place where you are going to get oversight. But unfortunately, invariably, JROC has become a place where one branch of the military gets what it wants, and in return the other branch of the military gets what it wants, and in return the other branch of the military gets what it wants. It has been kind of a murky process. Based on hearings we have had and testimony and questions I have asked, it is clear to me that JROC has not been providing a lot of oversight—maybe a little too much back-scratching and not enough oversight. So two of these amendments are to deal with the JROC situation and hopefully improve it.

One is going to bring more input from combatant commands to the JROC process. The warfighter's perspective is very important, as this council makes decisions about requirements on systems the U.S. taxpayer is going to purchase. It is very important that the warfighters have input because they are the end user. Maybe what they are saying in that room is what is needed or it turns out that maybe it is not what is needed. We have had examples of where we have failed our warfighters in not anticipating what the needs actually are on the ground. The Iraq war is full of examples where we underestimated what we needed in some regards and overestimated what we needed in others. The warfighter being in the process is very important.

The other amendment that deals with the JROC—the Joint Requirements

Oversight Council—is bringing another voice to this process. The Under Secretary of Defense for Acquisitions, Technology and Logistics will now be required to concur on the JROC requirements with an eye toward cost, utility, and policy considerations. So we have now added a referee of sorts—another voice. So it isn't just going to be about the Air Force or the Navy or the Army keeping each other happy but, rather, someone in a responsible position to look and concur that what they are doing is in the best interest of cost, utility, and overall policy considerations.

That critical layer of the Under Secretary of Defense for Acquisitions, Technology and Logistics will also bring into the process the Secretary of Defense, if necessary, because if there is not an agreement, then the Secretary of Defense will have to come in and provide that ultimate decision-making with an eye toward cost, utility, and policy. This will allow the kind of leadership from the top to make sure these decisions are in the best interests of all of the military as opposed to everybody getting what they want.

The final amendment that has been accepted that I believe will help is a little bit of looking over the shoulder on cost waivers. We have put into this bill a number of situations where certain safeguards can be waived if they are going to be too expensive. The best example is the prototype. There is going to be no need for them to do a competitive prototype if they decide they need to waive that requirement based on the cost of producing that prototype. I don't disagree that there may be some circumstances where costs are going to be too high to do a prototype, but what I want to make sure is that we don't abuse the cost waiver. In order to avoid abusing the cost waiver, we need an auditor looking over their shoulders. So this amendment mandates the reporting of cost waivers to GAO—the Government Accountability Office, the overall auditor in the Federal Government—and it requires the GAO to provide a written review to the Senate Armed Services Committee and the House Armed Services Committee within 60 days of the receipt of that waiver. This will allow the GAO to look over the shoulder and make sure the cost waiver is one based on reliable, objective, and reasonable information. I don't think it is going to be necessary for GAO to do a lot of these analyses if the military knows that it can. Sometimes, just knowing somebody is looking over your shoulder brings about better behavior. That is the goal of this amendment, to make sure we don't abuse cost waivers because this bill is not going to do a lot of good if the military has the opportunity to drive in, around, and through it without appropriate oversight.

So I believe these amendments improve the bill. They are going to be helpful as we try to get a handle on the acquisition process.

I will continue to work with the chairman and the ranking member in any way I can, particularly on the Subcommittee on Contracting Oversight, which I chair, which is now part of the Homeland Security and Governmental Affairs Committee. We on that subcommittee are going to continue to look at contracting in DOD, particularly keeping an eye not just on the weapons acquisition but the acquisition of services at DOD. That has also been a huge growth industry as we have entered into contracting for support services such as never before in the American military, with, frankly, boxes and boxes of examples of waste, abuse, and fraud.

So I am pleased this bill is moving as quickly as it has, and I am particularly pleased there has been such a bipartisan effort in this body. It is refreshing when we can all come together and do the right thing, as we are doing on this bill.

Mr. President, I yield the floor.

Mr. UDALL of Colorado. Mr. President, I am pleased to rise in support of an amendment to this important bill, offered by my colleague Senator McCASKILL. I am proud to be a cosponsor of this amendment, which adds to good language in the bill requiring competitive prototyping. At its heart, this amendment is about our government wisely using taxpayer dollars.

Last year, the U.S. Department of Defense announced a new policy that DOD development programs in their early stages must involve at least two prototypes—to be developed by competing industry teams—before DOD can move forward into the system design and development phase, the longest and costliest part of the process.

The idea behind this policy makes sense: Technologies should be proven before contracts are awarded. Paper proposals alone do not always provide sufficient information on technical risk and cost estimates. But an investment in prototyping up-front can result in greater knowledge up-front, which in turn can lead to better cost and schedule assessments.

It seems to me that DOD had the right idea to resurrect competitive prototyping. The sponsors of this bill—Senators LEVIN and MCCAIN—agreed. The bill we are considering today would codify DOD's policy.

The bill would also authorize a waiver for competitive prototyping in the event of excessive cost. This was a change we made in the Senate Armed Services Committee, on which I sit. This change reflects DOD's concerns that it can sometimes be cost prohibitive to produce two or more prototypes of a system.

One of the goals of competitive prototyping is to try to reduce costs, not increase them. So I believe DOD should have authority to waive this requirement when producing two or more prototypes of a system would be cost prohibitive. However, we should ensure that this waiver authority is not

abused, or casually used as a way to avoid prototyping.

So I support this amendment offered by my colleague today, which will add a layer of fiscal oversight to the sole-source nature of prototyping that can result from these waivers. It would require DOD to report cost waivers both to the Government Accountability Office and to congressional defense committees and require GAO to provide a written review to the congressional defense committees. This amendment is about good government, and I would hope that my colleagues in both parties would support it.

I want to close by addressing the larger issue we are considering today—acquisition reform. As a member of the Armed Services Committee and as a taxpayer, this issue concerns me greatly. There seems to be universal agreement that reform is necessary. The GAO reported this year that DOD's major defense acquisition programs are nearly \$300 billion over budget. At a time of economic crisis and uncertainty, we need to work much harder to get these costs under control.

But DOD's acquisition system is complex and there is no shortage of ideas on how to fix it. I am a cosponsor of this bill because I believe it takes important steps in the right direction. It does not try to fix the whole system, but instead focuses mainly on the early phases of the acquisition process, which can often start with "inadequate foundations." As Chairman LEVIN stated in our committee, the "bill is designed to help put major defense acquisition programs on a sound footing from the outset." I believe this bill will do that. I commend the authors of this bill for their important work and for building bipartisan support for this bill.

I urge support of this bill and of the McCaskill amendment.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, let me thank Senator McCASKILL for her great work on the amendments she has just described. These are significant amendments, important amendments. They reflect the kind of dogged determination the good Senator from Missouri shows every day.

These amendments are so important to the procurement process.

I thank Senator McCASKILL for her three amendments, which have strengthened the bill by, No. 1, reinforcing requirements to make trade-offs between cost, schedule, and performance, by directing the Under Secretary of Defense for Acquisition, Technology and Logistics to review requirements and ensure that such trade-offs have been made; No. 2, enhancing the role of combatant commanders in developing requirements by spelling out issues on which their input should be solicited and considered; and No. 3, reinforcing competitive prototyping requirements in the bill by requiring a GAO review and assessment of any

waiver on the requirement on the basis of excessive cost.

These amendments improve the bill and reflect Senator McCASKILL's consistent dedication to acquisition reform in the best interests of the taxpayers.

I commend the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I also would express my appreciation to the Senator from Missouri for her hard work, not only on this amendment but on the committee. I thank her and I think it has improved the legislation.

In consultation, I think the chairman is going to talk about what we intend to do. I understand there are a couple of amendments that may require recorded votes, but we really need to have all amendments in so we can wrap up this legislation either tonight or tomorrow, depending on the wishes of the respective leaders.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Senator from Arizona. What we are trying to do is see if we can't limit amendments. We think we know the amendments that are still out there, but we need people who want to pursue amendments to let us know that and give us an opportunity to look at them, to discuss the amendments with folks.

I have not had an opportunity to talk with the majority leader about whether there will be an opportunity to have votes tonight if we can't work out amendments, but I better not say anything until I have that opportunity to check it out with the majority leader. I know Senator CHAMBLISS is here to be recognized.

I yield the floor.

AMENDMENTS NOS. 1053 AND 1054

Mr. CHAMBLISS. Mr. President, I rise to call up two amendments that have been filed at the desk, No. 1053 and No. 1054. I want to start by recognizing the great work Senators LEVIN and MCCAIN have done on this issue. I have been extremely concerned about the acquisition process at the Department of Defense for years—during my House years as well as my Senate years. There have been no two greater champions on the issue than Senators LEVIN and MCCAIN.

They put together a piece of legislation that I think really does move us down the road in the right direction. We are dealing with less money in the defense budget than we have ever had. Yet the needs are greater. So I commend them for the great work they have done.

One of the amendments I am going to talk about has already been accepted. I am very appreciative of their support of that amendment.

Both of these amendments relate to the organizational conflict of interest—OCI—area of the bill.

The first amendment, No. 1053, deals with the ways in which contractors

that have affiliates that provide systems engineering and technical assistance, or “SETA” services, must organize their SETA affiliates in order to mitigate conflict of interest.

In relation to large contractors having affiliates that perform SETA functions, this amendment would allow for a closer modeling of the arrangements that large U.S. companies that are foreign-owned or controlled currently have for their defense-related operations in order to protect classified information.

One aspect of these arrangements relates to how the corporate board for the U.S. company, or SETA affiliate in this case, is organized.

One model is “proxy board” which cannot communicate in any way with the parent company and prohibits any board member for the affiliate from serving on the board of or having other responsibilities within the parent company.

The proxy board model requires all outside board members and removes all prerogatives of ownership for the parent company. It does not allow the parent company to exercise any management control or oversight over the separate entity and, as such, is a huge liability for the parent company. As such, it is not an attractive model in many cases.

The other approach is a “special security agreement” which is what BAE, Rolls Royce, and other large defense contractors who have a reputation for responsibility and trustworthiness use for their U.S. affiliates. This approach requires some board members to be totally independent of the parent company but also permits some communication between the board of the affiliate and the parent company.

This model allows for regulated discussions between the affiliate and the parent and protects sensitive—versus routine—information from being shared.

This model has other aspects to it that provide for independence and security, and it makes sense and is less onerous for the parent company.

My amendment specifies that the arrangements between large contractors and their SETA affiliates should be similar to the “special security agreement” I have discussed above.

I am pleased that the managers have agreed to accept the amendment. I thank them for that.

The second amendment which I have filed, No. 1054, relates to prime contractor “make-buy” decisions. These decisions relate to which aspects of a contract the prime contractor chooses to either make themselves or contract out to another company.

The current bill prescribes what I believe to be onerous procedures for regulating the prime contractors’ decisions in this regard and provides for “government oversight of the process by which prime contractors consider such sources” and authorizes “program managers to disapprove the determina-

tion by a prime contractor to conduct development or construction in-house rather than through a subcontract.”

In my opinion, this is an example of the Government interfering in a private company’s legitimate business decisions and adds little value to the process.

Current acquisition regulations already provide for oversight of “make-buy” decisions by the Government. The “Acquisition Reform Working Group” composed of industry associations has strong language in their recent report on this bill opposing further Government intervention in “make-buy” decisions.

Prime contractors are already incentivized through the market to make wise choices in this area and are held accountable to the Government for their choices, both through the terms of the contract in question and through future competitions for which past performance is always a consideration.

My amendment strikes much of the provision in the bill and is intended to account for the fact that there are already procedures in place to address this issue. My amendment also attempts to prohibit excessive Government involvement in private sector business decisions.

I would like to quote from the Acquisition Reform Working Group’s, position paper they issued on this bill in relation to this issue.

The acquisition regulations already grant the government oversight of contractors’ make/buy programs . . . The government has an appropriate oversight role, but that role must be managed to assure that the government is able to hold a contractor accountable for results. If the government is to determine which subcontractors will be part of a major program, the government will necessarily assume responsibility for that choice which will result in a corresponding reduction in the prime contractor’s responsibility for the program.

Make-buy decisions are critical to program success. The prime contractor must consider the selection of a major subcontractor much as the government considers the selection of the prime contractor in the source selection process. The selection of the major subcontractors is made early in the proposal process . . . To have the government substitute an agency decision concerning these selections after award would likely put the prime contractor’s performance against the contract awarded base-line at risk. Any additional emphasis on the make-buy process should take into account the program risk created by Government direction for contractor source selection decisions.

There is a fine balance that must be maintained to hold contractors accountable for performance and results while affording the government an appropriate oversight role. It is unreasonable to expect a contractor to be held accountable for results if the government does not both provide the responsibility and the right incentives for that performance. Better and earlier planning and program management by the Government will mitigate a contractor’s performance risks more effectively than taking away a contractor’s intellectual property rights, innovation incentives, and accountability. Taking away such rights will also render the Defense market less attractive for new com-

panies, especially commercial companies, with high risk and little chance of reward.

That is a rather extensive quote from that report by the Acquisition Reform Working Group, but I thought it was important to rationalize the way of thinking related to how we look at this issue. Basically, what we are proposing is, not to change the way the situation works today with respect to make-buy contracts.

So if you have a major weapons system contractor that is awarded a contract, and under that contract, let’s say for an automobile that obviously requires a steering wheel, then the contractor ought to have the ability to decide whether to make that steering wheel themselves or whether to subcontract that steering wheel out to another contractor. If the contractor has a right to make those decisions then the numbers that were contained in their bid are going to reflect that and accurately reflect the ultimate price the Government pays. But if the Government has the right, as the bill says, to step in after the award and tell the prime contractor: You are not going to subcontract out, we are going to mandate that you make that steering wheel, then I think it does take away some of the flexibility and the ability on the part of the prime contractor to be able to adhere to the numbers and pricing that their bid contains.

This is a situation where, if we think contractors in the defense community are taking advantage of the system, the language in the bill is the direction in which we ought to go. But there are safeguards in every contract that the Department of Defense awards. I think what we need to do is focus more on making sure contractors are giving us the best possible buy we can get and the best quality of product we can get, and not hamstring those contractors who are making these bids. This will allow us to take the most advantage of taxpayer dollars that we have to use in equipping our men and women who wear the uniform of the United States.

I understand the committee may have issues with this amendment, but I think it is a good amendment. I urge its adoption.

I want to close by saying again that Senator McCAIN and I have talked about this issue of acquisition reform a number of times during my years in the Senate. There is no stronger advocate for doing what is right related to proper expenditure of taxpayer money than Senator McCAIN. I applaud him and Senator LEVIN for taking this on, getting in the weeds on it, because the contracts for which the Pentagon solicits bids and that they award on a daily basis are extremely complex, they are very large in the amount of money they spend, and this type of reform is not easy to put together.

But I think Senators LEVIN and McCAIN have done an excellent job of coming up with what I think is a good product. I think with some of the amendments that have come forward

today it is going to be an even better product.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, let me commend the Senator from Georgia for the amendment which we have adopted, amendment No. 1053, that makes a very useful clarification of the standard for the separate business unit definition on this original conflict-of-interest provision we have.

I wish to commend my friend from Georgia for doing that, for catching that, and for making that suggested change which we have now adopted in amendment No. 1053.

We would oppose amendment No. 1054, if it were offered, for the following reasons: There has been a report from the Defense Science Board Task Force that, because of consolidation in the defense industry, there has been a substantial reduction in innovation and competition.

In order to stimulate that, to make sure the avenues are open for small business, we have a provision in this bill which basically adopts the approach of the Defense Science Board Task Force and is consistent with the concerns they raise about the lack of competition resulting from consolidation.

But, equally important, we hear from small business owners consistently that they have been excluded by prime contractors from competing for subcontract work. When they do that, they, of course, are reserving the business for themselves, for the prime contractors themselves.

As the Senator from Georgia mentions, there is now some oversight. But the problem is, there is no ability to veto, in effect, the decision to keep the work in-house. We would not take over the competition or the contracting bidding process. But what we do provide for is the veto of a decision to keep work in-house, where we think it is anticompetitive or unfair.

It is kind of an in-between position. The Defense Science Board actually suggested we go further than we have. What we do in this bill is say that if a decision is made that the contractor is keeping work in-house, which should be put up to competition to allow small businesses to bid on it, the discretion would be available for the Department to override that decision.

We think that is kind of an appropriate thing to do to protect small businesses, to protect competition, and to make sure there is reasonable oversight of that decision of any prime contractor to keep the work for themselves instead of bidding it out, which, of course, would open it to smaller businesses and greater innovation.

So we would oppose this amendment should it be called up. On the other hand, we want to, again, commend the Senator from Georgia because he has gotten into issues such as this. While we disagree with him on this one, we

do want to note he has been very deeply involved in this bill. He has worked with us on this bill, and we greatly appreciate his support for our bill.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

HEALTH CARE REFORM

Mr. BROWN. Mr. President, as has always been the case when our Nation attempts to improve its health care system, some people and some groups try to scare Americans into believing it would be better to cling to what we have than to strive for something better—the same old story, the same old song.

Those who are using anti-reform scare tactics are typically people who are doing just fine, thank you, under the current system and, frankly, could not care less about those who are not doing so well, along with industry groups that want to make sure they can keep squeezing as much profit out of the health care system as possible.

It is that lust for profits—not a desire to honestly inform the public—that leads industry groups to demonize any reform proposals they themselves did not write.

In this case, conservative pundits, who I would guess have excellent health care coverage for themselves—the people you see on TV, the writers you see in the newspapers, the commentators you hear on the radio—conservative pundits, who probably have excellent health coverage for themselves, are trying to convince Americans that the only alternative to the status quo is “socialized medicine.” And the health insurance industry is trying to convince Americans that if it has to coexist with a federally backed insurance plan; that is, as an option for people, the insurance industry will disappear.

The private insurance industry did not disappear when Medicare was established. The private insurance industry did not disappear when Medicaid was established, even though many insurance companies said they would. Why would it disappear when a federally backed option is created for working-age adults?

Improving our health care system is too important a topic to be co-opted by inflammatory, unfounded rhetoric—rhetoric about “socialized medicine,” rhetoric about “Medicare for all,” rhetoric about “single-payer systems,” rhetoric that at the end of the day is nothing more than a bunch of hot air coming from a bunch of hotheads.

The truth is, Congress is contemplating health care reform that would increase consumer choice—increase

consumer choice—by improving access to private and public insurance alike.

We are not eliminating private plans. We are saying: OK, the private plans will be here. They will have rules. The public plan will be here as an option—only as an option. It will have the same rules. Let them compete. If the private plans are so good, they will do well. The public plan is there, frankly, to keep the private plans honest so the private plans do not eliminate people because of community rating, do not eliminate people because they might have a preexisting medical condition.

As I said, the truth is, the Congress is contemplating health care reforms that would increase consumer choice. There are zero—count them, zero—health care proposals under consideration in this Senate that would eliminate the private insurance system. In fact, every single one of them embraces and strengthens the private health insurance system.

If you have employer-sponsored coverage, the reforms under consideration are designed to help you keep it. So understand, if you have insurance today, you can keep what you have. Under the legislation we will look at, if you want to choose a new insurance plan, you should have the full complement of choices: several private plans and a public plan, if you want to choose it. It is simply an option. It makes sense. It is not socialized medicine. It is simply good government. It is good health care.

What we have done in the past simply has not worked. It is time for a different approach. It is time for a public option for the American people.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1055

Mr. LEVIN. Mr. President, I would call up, on behalf of Senator BINGAMAN, amendment No. 1055. I understand this has been cleared now. It is a useful clarification of the relationship between the developmental testing requirements in the bill and the testing reforms that were enacted 6 years ago.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. BINGAMAN, proposes an amendment numbered 1055.

Mr. LEVIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify the submittal of certifications of the adequacy of budgets by the Director of the Department of Defense Test Resource Management Center)

At the end of title I, add the following:

SEC. 106. CLARIFICATION OF SUBMITTAL OF CERTIFICATION OF ADEQUACY OF BUDGETS BY THE DIRECTOR OF THE DEPARTMENT OF DEFENSE TEST RESOURCE MANAGEMENT CENTER.

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

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph (B):

“(B) If the Director of the Center is not serving concurrently as the Director of Developmental Test and Evaluation under subsection (b)(2) of section 139c of this title, the certification of the Director of the Center under subparagraph (A) shall, notwithstanding subsection (c)(4) of such section, be submitted directly and independently to the Secretary of Defense.”.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1055) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I ask unanimous consent that the following be the only first-degree amendments in order to S. 454, other than the committee-reported substitute amendment, that the listed first-degree amendments be subject to second-degree amendments which are relevant to the amendment to which offered; that with respect to any subsequent agreement which provides for a limitation of debate regarding an amendment on the list, then that time be equally divided and controlled in the usual form; that if there is a sequence of votes with respect to these amendments, then there be 2 minutes equally divided and controlled prior to a vote in relation thereto; that upon disposition of the listed amendments, the substitute amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to vote on passage of the bill.

The amendments I am including in this unanimous consent proposal are as follows:

The Snowe amendment No. 1056 regarding small business contracting; a Thune amendment regarding weapons systems; a Coburn amendment regarding financial management, which we think we may have worked out, by the way; the Chambliss amendment No. 1054 regarding “make buy;” the Bingaman amendment, which we have already adopted so I will not refer to that; and the Murray amendment No. 1052 regarding national security objectives.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEVIN. I thank the Chair, and I thank my friend from Arizona and the staffs who worked this out. I think these amendments then would be considered probably tomorrow morning,

although I don’t know that we have final word on that. We ought to probably doublecheck that with our leaders, and I would note the absence of a quorum while we do that.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators recognized to speak for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEFENSE PROCUREMENT PROCESS

Mrs. MURRAY. Mr. President, there is no question that our country’s defense procurement process is broken. At a time when the American people are tightening their personal budgets, making sacrifices, and focusing on essentials, our defense acquisition program continues to run up huge bills.

Just this year, the GAO reported that the major defense procurement program is \$296 billion over budget. Not only are they over budget, they are behind schedule. In fact, 95 percent of DOD’s largest acquisition programs are now an average of 2 years behind schedule. Every extra day, every additional dollar spent on these systems is a step backward for our Nation’s other priorities.

As we tackle the big challenges by getting our economy back on track or our health care system working again for all Americans or establishing a clean energy future, it is time that we focused on trimming the fat in our defense budget.

I applaud our Armed Services chairman, Senator LEVIN, and the ranking member, Senator MCCAIN, for introducing the bold plan that is now before the Senate, which will bring about reform. Their bill recognizes that making changes to acquisition starts at the beginning of the process, with the proper testing and the cost calculating and development procedures. It also returns discipline to the process by making sure the rules limiting cost are enforced. Those and other badly needed steps are going to help reform our sys-

tem and return Federal dollars to meet the challenges we have on the horizon.

Mr. President, that should be only the first step because the truth is that, while today’s debate has been delayed for far too long, there is another hard conversation surrounding procurement that we have not yet even started, and that is the conversation about the future of the men and women who produce our tanks, our planes, and our boats. The skilled workforce our military depends on is a workforce that is disappearing today before our eyes.

Our Government depends on our highly skilled industries, our manufacturers, our engineers, our researchers, and our development and science base to keep the U.S. military stocked with the best and most advanced equipment and tools available. Whether it is scientists who are designing the next generation of military satellites or engineers who are improving our radar system or machinists who are assembling warplanes, these industries and their workers are one of our greatest strategic assets today. What if those weren’t available? What if we made budgetary and policy decisions without talking about the future needs of our domestic workforce? It is not impossible. It is not even unthinkable. It is actually what is happening.

We need to have a real dialog about the ramifications of these decisions before we lose the capability to provide our military with the tools and equipment they need because once our plants shut down, once our skilled workforce and workers move to other fields, and once that infrastructure is gone, it is not going to be rebuilt overnight if we need it.

As a Senator from the State of Washington, representing five major military bases and many military contractors, I am very aware of the important relationship between our military and the producers that keep them protected with the latest technological advances. I have also seen the ramifications of the Pentagon’s decisions on communities, workers, and families. As many here know, I have been sounding the alarm about a declining domestic aerospace industry for years.

This isn’t just about one company or one State or one industry. This is about our Nation’s economic stability. It is about our skill base. It is about our future military capability. We have watched as the domestic base has shrunk. We have watched as competition has disappeared and as our military has looked overseas for the products that we have the capability to produce right here at home.

Many in the Senate have spent a lot of time talking about how many American jobs are being shipped overseas in search of cheaper labor. But we haven’t focused nearly enough attention on the high-wage, high-skilled careers being lost to the realities of our procurement system. That is why, today, I am going to be introducing an amendment that will require the Pentagon to explain to