

Public Law 111–23
111th Congress

An Act

May 22, 2009
[S. 454]

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Weapon Systems
Acquisition
Reform Act of
2009.
10 USC 101 note.

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. Cost assessment and program evaluation.
Sec. 102. Directors of Developmental Test and Evaluation and Systems Engineering.
Sec. 103. Performance assessments and root cause analyses for major defense acquisition programs.
Sec. 104. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.
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 objectives in Department of Defense acquisition programs.
Sec. 202. Acquisition strategies to ensure competition throughout the lifecycle of major defense acquisition programs.
Sec. 203. Prototyping requirements for major defense acquisition programs.
Sec. 204. Actions to identify and address systemic problems in major defense acquisition programs prior to Milestone B approval.
Sec. 205. Additional requirements for certain major defense acquisition programs.
Sec. 206. Critical cost growth in major defense acquisition programs.
Sec. 207. Organizational conflicts of interest in major defense acquisition programs.

TITLE III—ADDITIONAL ACQUISITION PROVISIONS

- Sec. 301. Awards for Department of Defense personnel for excellence in the acquisition of products and services.
Sec. 302. Earned value management.
Sec. 303. Expansion of national security objectives of the national technology and industrial base.
Sec. 304. Comptroller General of the United States reports on costs and financial information regarding major defense acquisition programs.

10 USC 2430
note.

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.

(3) The term “major weapon system” has the meaning given that term in section 2379(d) of title 10, United States Code.

TITLE I—ACQUISITION ORGANIZATION

SEC. 101. COST ASSESSMENT AND PROGRAM EVALUATION.

(a) DIRECTOR OF COST ASSESSMENT AND PROGRAM EVALUATION.—

(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 Cost Assessment and Program Evaluation

“(a) APPOINTMENT.—There is a Director of Cost Assessment and Program Evaluation in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate.

President.

“(b) INDEPENDENT ADVICE TO SECRETARY OF DEFENSE.—(1) The Director of Cost Assessment and Program Evaluation is the principal advisor to the Secretary of Defense and other senior officials of the Department of Defense, and shall provide independent analysis and advice to such officials, on the following matters:

“(A) Matters assigned to the Director pursuant to this section and section 2334 of this title.

“(B) Matters assigned to the Director by the Secretary pursuant to section 113 of this title.

“(2) 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.

“(c) DEPUTY DIRECTORS.—There are two Deputy Directors within the Office of the Director of Cost Assessment and Program Evaluation, as follows:

“(1) The Deputy Director for Cost Assessment.

“(2) The Deputy Director for Program Evaluation.

“(d) RESPONSIBILITIES.—The Director of Cost Assessment and Program Evaluation shall serve as the principal official within the senior management of the Department of Defense for the following:

“(1) Cost estimation and cost analysis for acquisition programs of the Department of Defense, and carrying out the duties assigned pursuant to section 2334 of this title.

“(2) Analysis and advice on matters relating to the planning and programming phases of the Planning, Programming, Budgeting and Execution system, and the preparation of materials and guidance for such system, as directed by the Secretary of Defense, working in coordination with the Under Secretary of Defense (Comptroller).

“(3) Analysis and advice for resource discussions relating to requirements under consideration in the Joint Requirements Oversight Council pursuant to section 181 of this title.

“(4) Formulation of study guidance for analyses of alternatives for major defense acquisition programs and performance of such analyses, as directed by the Secretary of Defense

“(5) Review, analysis, and evaluation of programs for executing approved strategies and policies, ensuring that information on programs is presented accurately and completely, and assessing the effect of spending by the Department of Defense on the United States economy.

“(6) Assessments of special access and compartmented intelligence programs, in coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Intelligence and in accordance with applicable policies.

“(7) Assessments of alternative plans, programs, and policies with respect to the acquisition programs of the Department of Defense.

“(8) Leading the development of improved analytical skills and competencies within the cost assessment and program evaluation workforce of the Department of Defense and improved tools, data, and methods to promote performance, economy, and efficiency in analyzing national security planning and the allocation of defense resources.”.

(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 Cost Assessment and Program Evaluation.”.

(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 Cost Assessment and Program Evaluation, Department of Defense.”.

(b) INDEPENDENT COST ESTIMATION AND COST ANALYSIS.—

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

“§ 2334. Independent cost estimation and cost analysis

“(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense. In carrying out that responsibility, the Director shall—

Policies.

“(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;

Consultation.

“(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), the Secretaries of the military departments, and the heads of the Defense Agencies 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) issue guidance relating to the proper selection of confidence levels in cost estimates generally, and specifically, for the proper selection of confidence levels in cost estimates for major defense acquisition programs and major automated information system programs;

“(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major automated information system programs;

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

“(6) 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 decision to enter into low-rate initial production or full-rate production;

“(iii) any certification under section 2433a of this title; and

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

“(B) at any other time considered appropriate by the Director or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics; and

“(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the Department’s needs for realistic cost estimation.

Assessments.

“(b) REVIEW OF COST ESTIMATES, COST ANALYSES, AND RECORDS OF THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation—

“(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major automated information system programs of the military departments and Defense Agencies; and

“(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this section.

“(c) PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.—The Director of Cost Assessment and Program Evaluation may—

“(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate

of a military department or Defense Agency for a major defense acquisition program or major automated information system program of the Department of Defense;

“(2) comment on deficiencies in the methodology or execution of any cost estimate or cost analysis developed by a military department or Defense Agency for a major defense acquisition program or major automated information system program;

“(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the confidence level for any such cost estimate) for use at any event specified in subsection (a)(6); and

“(4) participate in the consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

“(d) DISCLOSURE OF CONFIDENCE LEVELS FOR BASELINE ESTIMATES OF MAJOR DEFENSE ACQUISITION PROGRAMS.—The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

“(1) disclose in accordance with paragraph (2) the confidence level used in establishing a cost estimate for a major defense acquisition program or major automated information system program, the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and

“(2) include the disclosure required by paragraph (1)—

“(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in subsection (a)(6); and

“(B) in the next Selected Acquisition Report pursuant to section 2432 of this title in the case of a major defense acquisition program, or the next quarterly report pursuant to section 2445c of this title in the case of a major automated information system program.

“(e) ANNUAL REPORT ON COST ASSESSMENT ACTIVITIES.—(1) The Director of Cost Assessment and Program Evaluation 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. Each report shall include, for the year covered by such report, an assessment of—

“(A) the extent to which each of the military departments and Defense Agencies have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates for major defense acquisition programs and major automated information systems;

“(B) the overall quality of cost estimates prepared by each of the military departments and Defense Agencies for major defense acquisition programs and major automated information system programs; and

“(C) any consistent differences in methodology or approach among the cost estimates prepared by the military departments, the Defense Agencies, and the Director.

“(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 the congressional defense committees not later than 10 days after the transmittal to Congress of the budget of the President for the next fiscal year (as submitted pursuant to section 1105 of title 31).

“(3)(A) Each report submitted to the congressional defense committees under this subsection shall be submitted in unclassified form, but may include a classified annex.

“(B) 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.

“(C) The unclassified version of each report submitted to the congressional defense committees under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.

Web posting.
Public
information.

“(4) The Secretary of Defense may comment on any report of the Director to the congressional defense committees under this subsection.

“(f) STAFF.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation 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 137 of such title is amended by adding at the end the following new item:

“2334. Independent cost estimation and cost analysis.”

(c) TRANSFER OF PERSONNEL AND FUNCTIONS.—

(1) TRANSFER OF FUNCTIONS.—The functions of the Office of Program Analysis and Evaluation of the Department of Defense, including the functions of the Cost Analysis Improvement Group, are hereby transferred to the Office of the Director of Cost Assessment and Program Evaluation.

10 USC 139c
note.

(2) TRANSFER OF PERSONNEL TO DEPUTY DIRECTOR FOR INDEPENDENT COST ASSESSMENT.—The personnel of the Cost Analysis Improvement Group are hereby transferred to the Deputy Director for Cost Assessment in the Office of the Director of Cost Assessment and Program Evaluation.

(3) TRANSFER OF PERSONNEL TO DEPUTY DIRECTOR FOR PROGRAM ANALYSIS AND EVALUATION.—The personnel (other than the personnel transferred under paragraph (2)) of the Office of Program Analysis and Evaluation are hereby transferred to the Deputy Director for Program Evaluation in the Office of the Director of Cost Assessment and Program Evaluation.

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by striking “Director of the Office of Program Analysis and Evaluation” and inserting “Director of Cost Assessment and Program Evaluation”.

(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 Cost Assessment and Program Analysis”.

(3) Section 2366a(a)(4) of such title is amended by inserting “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” after “has been submitted”.

(4) Section 2366b(a)(1)(C) of such title is amended by inserting “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” after “have been developed to execute”.

(5) 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 Cost Assessment and Program Evaluation; and”.

(6) Section 2445c(f)(3) of such title is amended by striking “are reasonable” and inserting “have been determined, with the concurrence of the Director of Cost Assessment and Program Evaluation, to be reasonable”.

(e) REPORT ON MONITORING OF OPERATING AND SUPPORT COSTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.—

Review.

(1) REPORT TO SECRETARY OF DEFENSE.—Not later than one year after the date of the enactment of this Act, the Director of Cost Assessment and Program Evaluation under section 139c 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, 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.

SEC. 102. DIRECTORS OF DEVELOPMENTAL TEST AND EVALUATION AND SYSTEMS ENGINEERING.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF POSITIONS.—Chapter 4 of title 10, United States Code, as amended by section 101(a) of this Act, is further amended by inserting after section 139c the following new section:

“§ 139d. Director of Developmental Test and Evaluation; Director of Systems Engineering: joint guidance

“(a) DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.—

“(1) APPOINTMENT.—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 test and evaluation.

“(2) PRINCIPAL ADVISOR FOR DEVELOPMENTAL TEST AND EVALUATION.—The Director 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.

“(3) SUPERVISION.—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) COORDINATION WITH DIRECTOR OF SYSTEMS ENGINEERING.—The Director of Developmental Test and Evaluation shall closely coordinate with the Director of Systems Engineering 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 planning processes of the Department.

“(5) DUTIES.—The Director shall—

“(A) develop policies and guidance for—

Policies.

“(i) the conduct of developmental test and evaluation in the Department of Defense (including integration and developmental testing of software);

“(ii) in coordination with the Director of Operational Test and Evaluation, the integration of developmental test and evaluation with operational test and evaluation;

“(iii) the conduct of developmental test and evaluation conducted jointly by more than one military department or Defense Agency;

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

“(C) monitor and review the developmental test and evaluation activities of the major defense acquisition programs;

“(D) provide advocacy, oversight, and guidance to elements of the acquisition workforce responsible for developmental test and evaluation;

“(E) periodically 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 provide input regarding needed changes or improvements for the test and evaluation strategic plan developed in accordance with section 196(d) of this title; and

“(F) 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.

“(6) ACCESS TO RECORDS.—The Secretary of Defense shall ensure that the Director has access to all records and data of the Department of Defense (including the records and data of each military department and including classified and proprietary information, as appropriate) that the Director considers necessary in order to carry out the Director’s duties under this subsection.

“(7) CONCURRENT SERVICE AS DIRECTOR OF DEPARTMENT OF DEFENSE TEST RESOURCES MANAGEMENT CENTER.—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.

“(b) DIRECTOR OF SYSTEMS ENGINEERING.—

“(1) APPOINTMENT.—There is a Director of Systems Engineering, who shall be appointed by the Secretary of Defense from among individuals with an expertise in systems engineering and development planning.

“(2) PRINCIPAL ADVISOR FOR SYSTEMS ENGINEERING AND DEVELOPMENT PLANNING.—The Director shall be the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on systems engineering and development planning in the Department of Defense.

“(3) SUPERVISION.—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) COORDINATION WITH DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.—The Director of Systems Engineering shall closely coordinate with the Director of Developmental Test and Evaluation 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 planning processes of the Department.

“(5) DUTIES.—The Director shall—

“(A) develop policies and guidance for—

“(i) the use of systems engineering principles and best practices, generally;

“(ii) the use of systems engineering approaches to enhance reliability, availability, and maintainability on major defense acquisition programs;

“(iii) the development of systems engineering master plans for major defense acquisition programs including systems engineering considerations in support of lifecycle management and sustainability; and

“(iv) the inclusion of provisions relating to systems engineering and reliability growth in requests for proposals;

“(B) review and approve the systems engineering master plan for each major defense acquisition program;

“(C) monitor and review the systems engineering and development planning activities of the major defense acquisition programs;

“(D) provide advocacy, oversight, and guidance to elements of the acquisition workforce responsible for systems engineering, development planning, and lifecycle management and sustainability functions;

“(E) provide input on the inclusion of systems engineering requirements in the process for consideration of joint military requirements by the Joint Requirements Oversight Council pursuant to section 181 of this title, including specific input relating to each capabilities development document;

“(F) periodically review the organizations and capabilities of the military departments with respect to systems engineering, development planning, and lifecycle management and sustainability, and identify needed changes or improvements to such organizations and capabilities; and

Policies.

“(G) perform such other activities relating to the systems engineering and development planning activities of the Department of Defense as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

“(6) ACCESS TO RECORDS.—The Director shall have access to any records or data of the Department of Defense (including the records and data of each military department and including classified and proprietary information as appropriate) that the Director considers necessary to review in order to carry out the Director’s duties under this subsection.

“(c) JOINT ANNUAL REPORT.—Not later than March 31 each year, beginning in 2010, the Director of Developmental Test and Evaluation and the Director of Systems Engineering shall jointly submit to the congressional defense committees a report on the activities undertaken pursuant to subsections (a) and (b) during the preceding year. Each report shall include a section on activities relating to the major defense acquisition programs which shall set forth, at a minimum, the following:

Effective date.

“(1) A discussion of the extent to which the major defense acquisition programs are fulfilling the objectives of their systems engineering master plans and developmental test and evaluation plans.

“(2) A discussion of the waivers of and deviations from requirements in test and evaluation master plans, systems engineering master plans, and other testing requirements that occurred during the preceding year with respect to such programs, any concerns raised by such waivers or deviations, and the actions that have been taken or are planned to be taken to address such concerns.

“(3) An assessment of the organization and capabilities of the Department of Defense for systems engineering, development planning, and developmental test and evaluation with respect to such programs.

“(4) Any comments on such report that the Secretary of Defense considers appropriate.

“(d) JOINT GUIDANCE.—The Director of Developmental Test and Evaluation and the Director of Systems Engineering shall jointly, in coordination with the official designated by the Secretary of Defense under section 103 of the Weapon Systems Acquisition Reform Act of 2009, issue guidance on the following:

“(1) The development and tracking of detailed measurable performance criteria as part of the systems engineering master plans and the developmental test and evaluation plans within the test and evaluation master plans of major defense acquisition programs.

“(2) The use of developmental test and evaluation to measure the achievement of specific performance objectives within a systems engineering master plan.

“(3) A system for storing and tracking information relating to the achievement of the performance criteria and objectives specified pursuant to this subsection.

“(e) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term ‘major defense acquisition program’ has the meaning given that term in section 2430 of this title.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title, as amended by section

101(a) of this Act, is further amended by inserting after the item relating to section 139c the following new item:

“139d. Director of Developmental Test and Evaluation; Director of Systems Engineering: joint guidance.”.

10 USC 2430
note.

(b) DEVELOPMENTAL TEST AND EVALUATION AND SYSTEMS ENGINEERING IN THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.—

(1) PLANS.—The service acquisition executive of each military department and each Defense Agency with responsibility for a major defense acquisition program shall develop and implement plans to ensure the military department or Defense Agency concerned has provided appropriate resources for each of the following:

(A) Developmental testing organizations with adequate numbers of trained personnel in order to—

(i) ensure that developmental 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;

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

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

(B) Development planning and systems engineering organizations with adequate numbers of trained personnel in order to—

(i) support key requirements, acquisition, and budget decisions made for each major defense acquisition program prior to Milestone A approval and Milestone B approval through a rigorous systems analysis and systems engineering process;

(ii) include a robust program for improving reliability, availability, maintainability, and sustainability as an integral part of design and development within the systems engineering master plan for each major defense acquisition program; and

(iii) identify systems engineering requirements, including reliability, availability, maintainability, and lifecycle management and sustainability requirements, during the Joint Capabilities Integration Development System process, and incorporate such systems engineering requirements into contract requirements for each major defense acquisition program.

(2) 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 and each Defense Agency with responsibility for a major defense acquisition program shall submit to the Director of

Developmental Test and Evaluation and the Director of Systems Engineering a report on the extent to which—

(A) such military department or Defense Agency has implemented, or is implementing, the plan required by paragraph (1); and

(B) additional authorities or resources are needed to attract, develop, retain, and reward developmental test and evaluation personnel and systems engineers with appropriate levels of hands-on experience and technical expertise to meet the needs of such military department or Defense Agency.

(3) ASSESSMENT OF REPORTS BY DIRECTORS OF DEVELOPMENTAL TEST AND EVALUATION AND SYSTEMS ENGINEERING.—The first annual report submitted to Congress by the Director of Developmental Test and Evaluation and the Director of Systems Engineering under section 139d(c) of title 10, United States Code (as added by subsection (a)), shall include an assessment by the Directors of the reports submitted by the service acquisition executives to the Directors under paragraph (2).

SEC. 103. PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

10 USC 2430
note.

(a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBILITY FOR PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES.—

(1) IN GENERAL.—The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense as the principal official of the Department of Defense responsible for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

(2) NO PROGRAM EXECUTION RESPONSIBILITY.—The Secretary shall ensure that the senior official designated under paragraph (1) is not responsible for program execution.

(3) STAFF AND RESOURCES.—The Secretary shall assign to the senior official designated under paragraph (1) appropriate staff and resources necessary to carry out official's function under this section.

(b) RESPONSIBILITIES.—The senior official designated under subsection (a) shall be responsible for the following:

(1) Carrying out performance assessments of major defense acquisition programs in accordance with the requirements of subsection (c) periodically or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology and Logistics, the Secretary of a military department, or the head of a Defense Agency.

(2) Conducting root cause analyses for major defense acquisition programs in accordance with the requirements of subsection (d) when required by section 2433a(a)(1) of title 10, United States Code (as added by section 206(a) of this Act), or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology and Logistics, the Secretary of a military department, or the head of a Defense Agency.

(3) Issuing policies, procedures, and guidance governing the conduct of performance assessments and root cause analyses by the military departments and the Defense Agencies.

(4) Evaluating the utility of performance metrics used to measure the cost, schedule, and performance of major defense acquisition programs, and making such recommendations to the Secretary of Defense as the official considers appropriate to improve such metrics.

(5) Advising acquisition officials on performance issues regarding a major defense acquisition program that may arise—

(A) prior to certification under section 2433a of title 10, United States Code (as so added);

(B) prior to entry into full-rate production; or

(C) in the course of consideration of any decision to request authorization of a multiyear procurement contract for the program.

(c) PERFORMANCE ASSESSMENTS.—For purposes of this section, a performance assessment with respect to a major defense acquisition program is an evaluation of the following:

(1) The cost, schedule, and performance of the program, relative to current metrics, including performance requirements and baseline descriptions.

(2) The extent to which the level of program cost, schedule, and performance predicted relative to such metrics is likely to result in the timely delivery of a level of capability to the warfighter that is consistent with the level of resources to be expended and provides superior value to alternative approaches that may be available to meet the same military requirement.

(d) ROOT CAUSE ANALYSES.—For purposes of this section and section 2433a of title 10, United States Code (as so added), a root cause analysis with respect to a major defense acquisition program is an assessment of the underlying cause or causes of shortcomings in cost, schedule, or performance of the program, including the role, if any, of—

(1) unrealistic performance expectations;

(2) unrealistic baseline estimates for cost or schedule;

(3) immature technologies or excessive manufacturing or integration risk;

(4) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;

(5) changes in procurement quantities;

(6) inadequate program funding or funding instability;

(7) poor performance by government or contractor personnel responsible for program management; or

(8) any other matters.

(e) SUPPORT OF APPLICABLE CAPABILITIES AND EXPERTISE.—The Secretary of Defense shall ensure that the senior official designated under subsection (a) has the support of other Department of Defense officials with relevant capabilities and expertise needed to carry out the requirements of this section.

Effective date.

(f) ANNUAL REPORT.—Not later than March 1 each year, beginning in 2010, the official responsible for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs shall submit to the congressional defense committees a report on the activities undertaken under this section during the preceding year.

SEC. 104. 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, in consultation with the Director of Developmental Test and Evaluation, 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.

Review.
Reports.

“(2) The Director shall submit to the Secretary of Defense and to the congressional defense committees by March 1 of 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.”

Deadline.
Reports.

(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 the congressional defense committees not later than March 1, 2010, 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.

10 USC 139a
note.

(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 that may be required by the Director, and by other research and engineering elements of the Department of Defense, to carry out the following:

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

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

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

(c) **TECHNOLOGICAL MATURITY STANDARDS.**—Not later than 180 days after the date of the enactment of this Act, the Director of Defense Research and Engineering, in consultation with the Director of Developmental Test and Evaluation, shall develop knowledge-based standards against which to measure the technological maturity and integration risk of critical technologies at key stages in the acquisition process for purposes of conducting the reviews and assessments of major defense acquisition programs required by subsection (c) of section 139a of title 10, United States Code (as so added).

Deadline.
10 USC 139a
note.

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

(a) **IN GENERAL.**—Section 181(d) of title 10, United States Code, as amended by section 101(d) of this Act, is further amended—

(1) by inserting “(1)” before “The Under Secretary”; and

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

“(2) 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 (e).”

10 USC 181 note.

(b) INPUT FROM COMMANDERS OF COMBATANT COMMANDS.—The Joint Requirements Oversight Council in the Department of Defense shall seek and consider input from the commanders of combatant commands, in accordance with section 181(d) of title 10, United States Code (as amended by subsection (a)). 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 inform the assessment of 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 within the theater of operations of the commander of a combatant command.

(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 the benefit, if any, of a partner nation assisting in development or use of technologies developed to meet the joint military requirement.

(c) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.—

Deadline.
Reports.

(1) REQUIREMENT.—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—

(A) subsection (d)(2) 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;

(B) the amendments to subsection (b) of section 181 of title 10, United States Code, made by section 942 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 287) and by section 201(b) of this Act; and

(C) the requirements of section 201(c) of this Act.

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

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

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

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

TITLE II—ACQUISITION POLICY

SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE OBJECTIVES IN DEPARTMENT OF DEFENSE ACQUISITION PROGRAMS.

(a) CONSIDERATION OF TRADE-OFFS.—

10 USC 2302
note.

(1) IN GENERAL.—The Secretary of Defense shall ensure that mechanisms are developed and implemented to require consideration of trade-offs among cost, schedule, and performance objectives as part of the process for developing requirements for Department of Defense acquisition programs.

(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 objectives are established for capabilities for which the Chairman of the Joint Requirements Oversight Council is the validation authority; and

(B) the process for developing requirements is structured to enable incremental, evolutionary, or spiral acquisition approaches, including the deferral of technologies that are not yet mature and capabilities that are likely to significantly increase costs or delay production until later increments or spirals.

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

(1) in paragraph (1)—

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

(B) by inserting “and” at the end of subparagraph

(B) after the semicolon; and

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

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

(2) in paragraph (3)—

(A) by inserting “, in consultation with the Under Secretary of Defense (Comptroller), the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Director of Cost Assessment and Performance Evaluation,” after “assist the Chairman”; and

(B) by striking “and” after the semicolon at the end;

(3) in paragraph (4), by striking the period at the end and inserting “; and”; and

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

“(5) assist the Chairman, in consultation with the commanders of the combatant commands and the Under Secretary of Defense for Acquisition, Technology, and Logistics, in establishing an objective for the overall period of time within which

an initial operational capability should be delivered to meet each joint military requirement.”.

10 USC 181 note.

(c) REVIEW OF JOINT MILITARY REQUIREMENTS.—The Secretary of Defense shall ensure that each new joint military requirement recommended by the Joint Requirements Oversight Council is reviewed to ensure that the Joint Requirements Oversight Council has, in making such recommendation—

(1) taken appropriate action to seek and consider input from the commanders of the combatant commands, in accordance with the requirements of section 181(d) of title 10, United States Code (as amended by section 105(a) of this Act);

(2) engaged in consideration of trade-offs among cost, schedule, and performance objectives in accordance with the requirements of section 181(b)(1)(C) of title 10, United States Code (as added by subsection (b)); and

(3) engaged in consideration of issues of joint portfolio management, including alternative material and non-material solutions, as provided in Department of Defense instructions for the development of joint military requirements.

10 USC 181 note.

(d) STUDY GUIDANCE FOR ANALYSES OF ALTERNATIVES.—The Director of Cost Assessment and Program Evaluation shall take the lead in the development of study guidance for an analysis of alternatives for each joint military requirement for which the Chairman of the Joint Requirements Oversight Council is the validation authority. In developing the guidance, the Director shall solicit the advice of appropriate officials within the Department of Defense and ensure that the guidance requires, at a minimum—

(1) full consideration of possible trade-offs among cost, schedule, and performance objectives for each alternative considered; and

(2) an assessment of whether or not the joint military requirement can be met in a manner that is consistent with the cost and schedule objectives recommended by the Joint Requirements Oversight Council.

(e) ANALYSIS OF ALTERNATIVES IN CERTIFICATION FOR MILESTONE A.—Section 2366a(a) of title 10, United States Code, as amended by section 101(d)(3) of this Act, is further amended—

(1) by striking “and” at the end of paragraph (3);

(2) by redesignating paragraph (4) as paragraph (5); and

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

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

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

10 USC 2430
note.

SEC. 202. ACQUISITION STRATEGIES TO ENSURE COMPETITION THROUGHOUT THE LIFECYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ACQUISITION STRATEGIES TO ENSURE COMPETITION.—The Secretary of Defense shall ensure that the acquisition strategy for each major defense acquisition program includes—

(1) measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract

level (at such tier or tiers as are appropriate) of such program throughout the life-cycle of such program as a means to improve contractor performance; and

(2) adequate documentation of the rationale for the selection of the subcontract tier or tiers under paragraph (1).

(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, for purposes of subsection (a)(1) may include measures to achieve the following, in appropriate cases if such measures are cost-effective:

(1) Competitive prototyping.

(2) Dual-sourcing.

(3) Unbundling of contracts.

(4) Funding of next-generation prototype systems or sub-systems.

(5) Use of modular, open architectures to enable competition for upgrades.

(6) Use of build-to-print approaches to enable production through multiple sources.

(7) Acquisition of complete technical data packages.

(8) Periodic competitions for subsystem upgrades.

(9) Licensing of additional suppliers.

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

(c) ADDITIONAL MEASURES TO ENSURE COMPETITION AT SUB-CONTRACT LEVEL.—The Secretary shall take actions to ensure fair and objective “make-buy” decisions by prime contractors on major defense acquisition programs by—

(1) 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 major weapon systems;

(2) providing for government surveillance 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; and

(3) providing for the assessment of the extent to which a contractor has given full and fair consideration to qualified sources other than the contractor in sourcing decisions as a part of past performance evaluations.

(d) CONSIDERATION OF COMPETITION THROUGHOUT OPERATION AND SUSTAINMENT OF MAJOR WEAPON SYSTEMS.—Whenever a decision regarding source of repair results in a plan to award a contract for performance of maintenance and sustainment of a major weapon system, the Secretary shall take actions to ensure that, to the maximum extent practicable and consistent with statutory requirements, contracts for such maintenance and sustainment are awarded on a competitive basis and give full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

(e) APPLICABILITY.—

(1) STRATEGY AND MEASURES TO ENSURE COMPETITION.—The requirements of subsections (a) and (b) 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.

- Deadline. (2) **ADDITIONAL ACTIONS.**—The actions required by subsections (c) and (d) shall be taken within 180 days after the date of the enactment of this Act.
- Deadlines. 10 USC 2430 note. **SEC. 203. PROTOTYPING REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.**
- (a) **COMPETITIVE PROTOTYPING.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall modify the guidance of the Department of Defense relating to the operation of the acquisition system with respect to competitive prototyping for major defense acquisition programs to ensure the following:
- (1) That the acquisition strategy for each major defense acquisition program provides for competitive 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 pursuant to paragraph (2).
- Waiver authority. (2) That the Milestone Decision Authority may waive the requirement in paragraph (1) only—
- (A) on the basis that the cost of producing competitive prototypes exceeds the expected life-cycle benefits (in constant dollars) of producing such prototypes, including the benefits of improved performance and increased technological and design maturity that may be achieved through competitive prototyping; or
- (B) on the basis that, but for such waiver, the Department would be unable to meet critical national security objectives.
- (3) That whenever a Milestone Decision Authority authorizes a waiver pursuant to paragraph (2), the Milestone Decision Authority—
- (A) shall require that the program produce a prototype before Milestone B approval (or Key Decision Point B approval in the case of a space program) if the expected life-cycle benefits (in constant dollars) of producing such prototype exceed its cost and its production is consistent with achieving critical national security objectives; and
- Notification. (B) shall notify the congressional defense committees in writing not later than 30 days after the waiver is authorized and include in such notification the rationale for the waiver and the plan, if any, for producing a prototype.
- (4) That prototypes may be required under paragraph (1) or (3) for the system to be acquired or, if prototyping of the system is not feasible, for critical subsystems of the system.
- (b) **COMPTROLLER GENERAL REVIEW OF CERTAIN WAIVERS.**—
- (1) **NOTICE TO COMPTROLLER GENERAL.**—Whenever a Milestone Decision Authority authorizes a waiver of the requirement for prototypes pursuant to paragraph (2) of subsection (a) on the basis of excessive cost, the Milestone Decision Authority shall submit the notification of the waiver, together with the rationale, to the Comptroller General of the United States at the same time it is submitted to the congressional defense committees.
- (2) **COMPTROLLER GENERAL REVIEW.**—Not later than 60 days after receipt of a notification of 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.

SEC. 204. ACTIONS TO IDENTIFY AND ADDRESS SYSTEMIC PROBLEMS IN MAJOR DEFENSE ACQUISITION PROGRAMS PRIOR TO MILESTONE B APPROVAL.

(a) **MODIFICATION TO CERTIFICATION REQUIREMENT.**—Subsection (a) of section 2366a of title 10, United States Code, is amended by striking “may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program,” and inserting “may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, or otherwise be initiated prior to Milestone B approval, or Key Decision Point B approval in the case of a space program.”

(b) **MODIFICATION TO NOTIFICATION REQUIREMENT.**—Subsection (b) of such section is amended—

(1) by inserting “(1)” before “With respect to”;

(2) in paragraph (1), as so designated, by striking “by at least 25 percent,” and inserting “by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent;” and

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

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

Deadline.
Reports.

“(A) identifies the root causes of the cost or schedule growth in accordance with applicable policies, procedures, and guidance;

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

“(C) includes one of the following:

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

Certification.

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

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

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

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

“(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval, or Key Decision Point A approval in the case of a space program, if the Milestone Decision Authority determines that such action is in the interest of national defense.”

Plans.

(c) **APPLICATION TO ONGOING PROGRAMS.**—

(1) **IN GENERAL.**—Each major defense acquisition program described in paragraph (2) shall be certified in accordance with the requirements of section 2366a of title 10, United States

10 USC 2366a
note.
Certification.
Deadline.

Code (as amended by this section), within one year after the date of the enactment of this Act.

(2) COVERED PROGRAMS.—The requirement in paragraph (1) shall apply to any major defense acquisition program that—

(A) was initiated before the date of the enactment of this Act; and

(B) as of the date of certification under paragraph (1) has not otherwise been certified pursuant to either section 2366a (as so amended) or 2366b of title 10, United States Code.

SEC. 205. ADDITIONAL REQUIREMENTS FOR CERTAIN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ADDITIONAL REQUIREMENTS RELATING TO MILESTONE B APPROVAL.—Section 2366b of title 10, United States Code, is amended—

(1) in subsection (d)—

(A) by inserting “(1)” before “The milestone decision authority may”; and

(B) by striking the second sentence and inserting the following:

“(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

“(A) the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

“(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification components specified in paragraphs (1) and (2) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification components.”;

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following new subsection (e):

“(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification components.”; and

(3) in subsection (a)—

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

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

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

Determination.
Waiver authority.
Deadline.

“(2) has received a preliminary design review 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”; and

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) in subparagraph (D), by striking the semicolon 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”;

(ii) by striking subparagraph (E); and

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

(b) CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10.—

10 USC 2366b
note.

(1) DETERMINATION.—Not later than 270 days after the date of the enactment of this Act, for each major defense acquisition program that received Milestone B approval before January 6, 2006, and has not received Milestone C approval, and for each space program that received Key Decision Point B approval before January 6, 2006, and has not received Key Decision Point C approval, the Milestone Decision Authority shall determine whether or not such program satisfies all of the certification components specified in paragraphs (1) and (2) of subsection (a) of section 2366b of title 10, United States Code (as amended by subsection (a) of this section).

Deadline.

(2) ANNUAL REVIEW.—The Milestone Decision Authority shall review any program determined pursuant to paragraph (1) not to satisfy any of the certification components of subsection (a) of section 2366b of title 10, United States Code (as so amended), not less often than annually thereafter to determine the extent to which such program currently satisfies such certification components until such time as the Milestone Decision Authority determines that such program satisfies all such certification components.

(3) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program which the Milestone Decision Authority determines under paragraph (1) does not satisfy all of the certification components of subsection (a) of section 2366b of title 10, United States Code, (as so amended) shall prominently and clearly indicate that such program has not fully satisfied such certification components until such time as the Milestone Decision Authority makes the determination that such program has satisfied all such certification components.

(c) REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH.—The official designated to perform oversight of performance assessment pursuant to section 103 of this Act, shall assess the performance of each major defense acquisition

10 USC 2433a
note.
Assessment.

program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of title 10, United States Code, but has not been terminated in accordance with section 2433a of such title (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 2433a(c)(3) of such title (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.

SEC. 206. CRITICAL COST GROWTH IN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ACTIONS FOLLOWING CRITICAL COST GROWTH.—

(1) IN GENERAL.—Chapter 144 of title 10, United States Code, is amended by inserting after section 2433 the following new section:

“§ 2433a. Critical cost growth in major defense acquisition programs

Consultations.

“(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 2433(d) of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

Determination.

“(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

“(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

“(A) the projected cost of completing the program if current requirements are not modified;

“(B) the projected cost of completing the program based on reasonable modification of such requirements;

“(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

“(D) the need to reduce funding for other programs due to the growth in cost of the program.

Deadline.
Certification.

“(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall terminate the program unless the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title, a written certification in accordance with paragraph (2).

“(2) A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

“(A) the continuation of the program is essential to the national security;

“(B) there are no alternatives to the program which will provide acceptable capability to meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

“(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

“(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

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

“(3) A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

Reports.

“(c) ACTIONS IF PROGRAM NOT TERMINATED.—(1) If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b), the Secretary shall—

“(A) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

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

“(C) require a new Milestone approval, or Key Decision Point approval in the case of a space program, for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

“(D) include in the report specified in paragraph (2) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

“(E) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

“(2) For purposes of paragraph (1)(D), the report specified in this paragraph is the first Selected Acquisition Report for the program submitted pursuant to section 2432 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

Reports.

Reports.

“(d) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

“(1) an explanation of the reasons for terminating the program;

“(2) the alternatives considered to address any problems in the program; and

“(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by inserting after the item relating to section 2433 the following new item:

“2433a. Critical cost growth in major defense acquisition programs.”.

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 2433(e) of such title 10 is amended to read as follows:

“(2) If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of section 2433a of this title.”.

(b) TREATMENT AS MDAP.—Section 2430 of such title is amended—

(1) in subsection (a)(2), by inserting “, including all planned increments or spirals,” after “an eventual total expenditure for procurement”; and

(2) by adding at the end the following new subsection:

“(c) For purposes of subsection (a)(2), the Secretary shall consider, as applicable, the following:

“(1) The estimated level of resources required to fulfill the relevant joint military requirement, as determined by the Joint Requirements Oversight Council pursuant to section 181 of this title.

“(2) The cost estimate referred to in section 2366a(a)(4) of this title.

“(3) The cost estimate referred to in section 2366b(a)(1)(C) of this title.

“(4) The cost estimate within a baseline description as required by section 2435 of this title.”.

SEC. 207. ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) REVISED REGULATIONS REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors in major defense acquisition programs.

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

(1) address organizational conflicts of interest that could arise as a result of—

(A) lead system integrator contracts on major defense acquisition programs and contracts that follow lead system

Deadline.
10 USC 2430
note.

integrator contracts on such programs, particularly contracts for production;

(B) the ownership of business units performing systems engineering and technical assistance functions, professional services, or management support services in relation to major defense acquisition programs by contractors who simultaneously own business units competing to perform as either the prime contractor or the supplier of a major subsystem or component for such programs;

(C) the award of major subsystem contracts by a prime contractor for a major defense acquisition program to business units or other affiliates of the same parent corporate entity, and particularly the award of subcontracts for software integration or the development of a proprietary software system architecture; or

(D) the performance by, or assistance of, contractors in technical evaluations on major defense acquisition programs;

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

(3) require that a contract for the performance of systems engineering and technical assistance functions for a major defense acquisition program contains a provision prohibiting the contractor or any affiliate of the contractor from participating as a prime contractor or a major subcontractor in the development or construction of a weapon system under the program; and

(4) establish such limited exceptions to the requirement in paragraphs (2) and (3) as may be necessary to ensure that the Department of Defense has continued access to advice on systems architecture and systems engineering matters from highly-qualified contractors with domain experience and expertise, while ensuring that such advice comes from sources that are objective and unbiased.

(c) CONSULTATION IN REVISION OF REGULATIONS.—

(1) RECOMMENDATIONS OF PANEL ON CONTRACTING INTEGRITY.—Not later than 90 days after the date of the enactment of this Act, the Panel on Contracting Integrity established pursuant to section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2320) shall present recommendations to the Secretary of Defense on measures to eliminate or mitigate organizational conflicts of interest in major defense acquisition programs.

Deadline.

(2) CONSIDERATION OF RECOMMENDATIONS.—In developing the revised regulations required by subsection (a), the Secretary shall consider the following:

(A) The recommendations presented by the Panel on Contracting Integrity pursuant to paragraph (1).

(B) Any findings and recommendations of the Administrator for Federal Procurement Policy and the Director of the Office of Government Ethics pursuant to section 841(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4539).

10 USC 2304
note.

(d) **EXTENSION OF PANEL ON CONTRACTING INTEGRITY.**—Subsection (e) of section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 is amended to read as follows:

Notification.

“(e) **TERMINATION.**—

“(1) **IN GENERAL.**—Subject to paragraph (2), the panel shall continue to serve until the date that is 18 months after the date on which the Secretary of Defense notifies the congressional defense committees of an intention to terminate the panel based on a determination that the activities of the panel no longer justify its continuation and that concerns about contracting integrity have been mitigated.

“(2) **MINIMUM CONTINUING SERVICE.**—The panel shall continue to serve at least until December 31, 2011.”

TITLE III—ADDITIONAL ACQUISITION PROVISIONS

10 USC 2302
note.

SEC. 301. AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES.

Deadline.

(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.

Procedures.

(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.

SEC. 302. EARNED VALUE MANAGEMENT.

(a) **MODIFICATION OF ELEMENTS IN REPORT ON IMPLEMENTATION.**—Subsection (a) of section 887 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4562) is amended by striking paragraph (7) and inserting the following new paragraphs:

“(7) A discussion of the methodology used to establish appropriate baselines for earned value management at the award of a contract or commencement of a program, whichever is earlier.

“(8) A discussion of the manner in which the Department ensures that personnel responsible for administering and overseeing earned value management systems have the training and qualifications needed to perform that responsibility.

“(9) A discussion of mechanisms to ensure that contractors establish and use approved earned value management systems, including mechanisms such as the consideration of the quality of contractor earned value management performance in past performance evaluations.

“(10) Recommendations for improving earned value management and its implementation within the Department, including—

“(A) a discussion of the merits of possible alternatives; and

“(B) a plan for implementing any improvements the Secretary determines to be appropriate.”.

(b) **MODIFICATION OF REPORT DATE.**—Subsection (b) of such section is amended by striking “270 days after the date of the enactment of this Act” and inserting “October 14, 2009”.

SEC. 303. EXPANSION OF NATIONAL SECURITY OBJECTIVES OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.

(a) **IN GENERAL.**—Section 2501(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

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

(b) **ASSESSMENT OF EFFECT OF TERMINATION OF MAJOR DEFENSE ACQUISITION PROGRAMS ON TECHNOLOGY AND INDUSTRIAL CAPABILITIES.**—Section 2505(b) of such title is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; and”; and

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

“(4) consider the effects of the termination of major defense acquisition programs (as the term is defined in section 2430 of this title) in the previous fiscal year on the sectors and capabilities in the assessment.”.

SEC. 304. COMPTROLLER GENERAL OF THE UNITED STATES REPORTS ON COSTS AND FINANCIAL INFORMATION REGARDING MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) **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.

(b) REVIEW OF FINANCIAL INFORMATION RELATING TO MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) REVIEW.—The Comptroller General of the United States shall perform a review of weaknesses in operations affecting the reliability of financial information on the systems and assets to be acquired under major defense acquisition programs.

(2) ELEMENTS.—The review required under paragraph (1) shall—

(A) identify any weaknesses in operations under major defense acquisition programs that hinder the capacity to assemble reliable financial information on the systems and assets to be acquired under such programs in accordance with applicable accounting standards;

(B) identify any mechanisms developed by the Department of Defense to address weaknesses in operations under major defense acquisition programs identified pursuant to subparagraph (A); and

(C) assess the implementation of the mechanisms set forth pursuant to subparagraph (B), including—

(i) the actions taken, or planned to be taken, to implement such mechanisms;

(ii) the schedule for carrying out such mechanisms; and

(iii) the metrics, if any, instituted to assess progress in carrying out such mechanisms.

(3) CONSULTATION.—In performing the review required by paragraph (1), the Comptroller General shall seek and consider input from each of the following:

(A) The Chief Management Officer of the Department of Defense.

(B) The Chief Management Officer of the Department of the Army.

(C) The Chief Management Officer of the Department of the Navy.

(D) The Chief Management Officer of the Department of the Air Force.

(4) REPORT.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit

to the congressional defense committees a report on the results of the review required by paragraph (1).

Approved May 22, 2009.

LEGISLATIVE HISTORY—S. 454 (H.R. 2101):

HOUSE REPORTS: Nos. 111-101 (Comm. on Armed Services) and 111-124 (Comm. of Conference) accompanying H.R. 2101.

CONGRESSIONAL RECORD, Vol. 155 (2009):

May 6, 7, considered and passed Senate.

May 13, considered and passed House, amended, in lieu of H.R. 2101 pursuant to H. Res. 432.

May 20, Senate agreed to conference report.

May 21, House agreed to conference report.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2009):

May 22, Presidential remarks.